

TITLE 22 – MISSISSIPPI DEPARTMENT OF MARINE RESOURCES

PART 15 – ADMINISTRATIVE RULES AS REQUIRED BY MISSISSIPPI ADMINISTRATIVE PROCEDURES LAW

INTRODUCTION

The Mississippi Administrative Procedures Law provides for public notification and participation in the governmental process and such provisions are applicable to the Mississippi Commission on Marine Resources (hereinafter “Commission”) and the Mississippi Department of Marine Resources (“DMR”). Pursuant to Miss. Code Ann. §§ 25-43-1.101, et seq., the Commission has adopted the following regulations on public document requests, hearings and declaratory opinions.

CHAPTER 1 AGENCY METHOD OF OPERATION

100 Requests for Information from the Department

It is the policy of the Commission to keep secure and to make available for public use and inspection all official public documents maintained by the DMR. Therefore, pursuant to the provisions in Miss. Code Ann. § 25-43-2.104, the agency will abide by the following rules for responding to requests for public information.

- 100.01 Official DMR information and files must be protected from alteration, removal and damage and all access to public documents will be controlled by DMR employees.
- 100.02 All requests for DMR information and files shall be submitted in writing to the Executive Director, Mississippi Department of Marine Resources, 1141 Bayview Ave., Suite 101, Biloxi, MS 39530.
- 100.03 The request must be marked “Request for Public Records” and must describe the type of record, names, dates, file numbers, title of publication and other information which may aid in locating the requested public records. Depending on the type of request, staff may require submission of a completed “Request for Disclosure of Public Records” form in order to proceed with the search for information and files.
- 100.04 The Executive Director or his designee will determine whether the records sought are exempt from production under the Mississippi Public Records Act

(Miss. Code Ann. §§ 25-61-1, et seq.) and any denials of access to exempt information or files will be provided to the requester in writing.

100.05 Individuals requesting inspection of DMR public records must be accompanied by DMR personnel when inspecting DMR records. Individuals requesting inspection of DMR public records will be advised as to when and where they may inspect the records.

100.06 A request for public records must be accompanied by sufficient funds to defray the actual cost of searching, reviewing, copying and, if applicable, mailing the requested records. DMR staff will notify requester of an estimate of costs to fulfill the request and said estimate will be due upon notice. Failure to submit estimated defrayal costs will render the request incomplete and staff will notify requester of denial of request. The processing of the request will resume upon receipt by DMR of payment of the cost estimate.

101 Procedures for Other Inquiries and Requests for DMR Action

It is the policy of the Commission to be responsive to the public in all matters within its jurisdiction. Pursuant to the provisions in Miss. Code Ann. § 25-43-2.104 (b), other inquiries (in addition to the requests for public documents) or requests for action by the agency must be submitted in writing and directed to the DMR Executive Director, 1141 Bayview Avenue, Suite 101, Biloxi, MS 39530.

CHAPTER 2 PROCEDURES FOR HEARINGS ON AND REVIEW OF COMMISSION RULES, REGULATIONS AND PUBLIC NOTICES

100 Purpose

The following rules shall control public hearings and hearings within the jurisdiction of the ~~Mississippi Commission on Marine Resources (hereinafter referred to as the "Commission") and, the Mississippi Department of Marine Resources ("DMR"), required by Commission and the DMR,~~ pursuant to the Administrative Procedures Law, Miss. Code Ann. § ~~25-43-17.~~ § 25-43-3.104 (2)(d).

101 Scope of Rules

These rules govern the conduct of public hearings on proposed changes to existing Commission rules and regulations, and conducting hearings on wetlands permits. Further, these rules provide the procedures for contesting proposed rules, and requests for the Commission to reconsider its decisions on the adoption of rules, regulations, public notices, and decisions of the Commission on the issuance, denial, or revocation of coastal wetlands permits.

102 Written Comments

The DMR will notify the public of proposed rule making by publication in a newspaper having general circulation in the county or counties potentially affected by the rule and on the DMR website at www.dmr.state.ms.us. The DMR will also maintain a rule making docket of the public notices, hearings, economic impact statements, rule adoptions and other rule making activities of the Commission, including an index and full text of all current rules in effect, on the DMR website. In addition, the public may obtain a copy of the any current rule or index by visiting the offices of the DMR at 1141 Bayview Ave., Suite 101, Biloxi, Mississippi, during normal office hours.

Written comments on proposed rules, regulations and **coastal wetland project permits** ~~public notices~~ are encouraged and they may be submitted to the Executive Director of the DMR or to the individual designated in the Notice as the person to contact. If public hearings are conducted **for a proposed wetland project**, written comments may be submitted no later than ten (10) working days prior to the Commission meeting, at the public hearing, or at such other time as set in the notice of the hearing. **The public will be provided at least twenty-five (25) days to respond after the filing of the proposed rule with the Secretary of State (except as provided in Miss. Code § 25-43-3.108 for emergency rule making in cases of imminent peril to the public).** Written comments presented at public hearings will be included as a part of the record of the public hearing.

103 Public Hearings

For the purpose of these rules, "public hearing" means a hearing that is conducted by the DMR prior to the adoption of a rule, regulation or **coastal wetlands permit** ~~action on a public notice~~ and it does not refer to a regularly scheduled Commission meeting. Public hearings shall be conducted only when required by statute or when the Commission or the DMR determines that public hearings are warranted to provide additional public input prior to the adoption of a rule, regulation or action on a public notice.

104 Notice of Public Hearings

If the determination is made to hold public hearings, then notification to the public shall be published in a newspaper having general circulation in the county or counties affected by the proposed rules, regulations or public notices. The Commission or the Executive Director of the DMR may order such additional publication as deemed necessary and appropriate. The notice should include the reason or purpose of the hearing, references to the rules and regulations **or wetlands project** involved and the date, time, and place of the hearing and the deadline for submitting written comments. **The notice should be published at least (1) three (3) days prior to the date of the hearing for wetlands projects and at least twenty days prior to the date of the hearing for rule making.** Additional notification will be provided to individuals that have personally requested notification pursuant to Miss. Code Ann. § ~~25-43-7~~ **25-43-3.103**.

105 Conduct of Public Hearings

- 105.01 Public hearings will be conducted at times, locations and facilities selected by the DMR. Representatives or employees of the DMR will preside over the public hearing. Prior to the commencement of the hearing, individuals in attendance will sign in on forms or registers provided by the DMR. At that time, they will indicate whether they wish to make oral comments at the public hearing. Those individuals who indicate that they wish to make oral comments will be called on to do so before the end of the public hearing. Any individual called on to make oral comments may waive his election to do so. Individuals not indicating their election to speak at the time that they sign in at the hearing will not be called on to make oral comments. Individuals called upon to make their oral comments will not be allowed to "pass" their remarks until later in the hearing and will not be allowed to allot any unused time to another individual.
- 105.02 Comments during the hearing must address the subject of the hearing. Comments on matters other than the subject of the hearing will not be allowed and will not be part of the consideration of the Commission on the proposed rule, regulation or coastal wetlands project ~~public notice~~. The representative or employee of the DMR who is selected to preside over the public hearing will announce before the commencement of oral comments the length of time each individual will be allowed to make comments. The time limit will be set after considering the number of individuals requesting time for oral comments and the total time available to conduct the entire public hearing.
- 105.03 The presiding representative or employee will make any additional orders, decisions and rulings which in his judgment are necessary for the orderly, fair, and efficient conduct of the public hearing.
- 105.04 Presentations on proposed rules, regulations and coastal wetlands projects ~~public notices~~ may be allowed at the discretion of the Executive Director of the DMR or the presiding representative or employee. Applicants for coastal wetlands permits should be prepared to make a presentation on the project at their designated public hearing so as to inform the general public about the proposed project.

106 Contesting Proposed Rules

Persons desiring to contest the making of any rule, regulation or coastal wetlands project permit ~~public notice~~, may do so by attending the public meetings on the proposed rule, regulation or coastal wetlands project permit ~~public notice~~, and stating there the basis of their objection. Alternatively, persons opposed to proposed rules, regulations, or coastal wetlands project permit ~~public notices~~ may object thereto by filing a written objection to the rules, regulations, or coastal wetlands project permit ~~public notices~~ with the Commission by mailing the objection to the

Executive Director of the DMR at 1141 Bayview Ave., Suite 101, Biloxi, MS 39530 or emailing the objection to the “DMR Directorate” at www.dmr.state.ms.us no later than the time allowed for written comments. Only persons complying with one of the two methods of objecting to proposed rules, regulations or public notices will be allowed to petition the Commission for reconsideration of the rule, regulation, permit decision or public notice.

107 Petition for Reconsideration Before the Commission

- 107.01 After the Commission has acted upon a rule, regulation or coastal wetlands permit application ~~public notice~~, any party (parties) opposed to the rule, regulation or coastal wetlands project permit ~~public notice~~, that complies with Section 106 7-above, may request reconsideration of the Commission's decision by filing a Petition for Reconsideration. The Petition for Reconsideration must be filed within fourteen (14) days of the final adoption of the rule, regulation, permit decision or public notice. The “final adoption” date, for purposes of reconsideration is the day that the Commission takes action and votes on the rule, regulation, permit decision or public notice, and not the day that its minutes are approved.
- 107.02 Petitions for Reconsideration of the issuance, denial or revocation of coastal wetlands permits may be made by any party authorized by Miss. Code Ann. § 49-27-39 to take an appeal to chancery court, and if made, the petition must be in accordance with the other terms of this ordinance. When a Petition for Reconsideration is filed by an objector to the issuance of a wetlands permit, the applicant may be required to defend the decision of the Commission.
- 107.03 The Petition shall state specifically the points of law or facts which the party requesting the reconsideration believes the Commission overlooked or misapprehended, and shall contain a statement of the action which the party wishes the Commission to take. The Petition shall contain such argument in support of the Petition as the requesting party wishes to present, but in no event shall the Petition exceed fifteen (15) pages in length (exclusive of exhibits). The Petition must be typed and double-spaced. The original and twelve (12) copies of the Petition for Reconsideration must be filed with the Commission through the DMR. Filing may be accomplished by mail, but filing shall be considered timely only if the Petition is received within the time period described above.
- 107.04 The Commission will consider the Petition for Reconsideration at its next regular meeting which occurs more than ten (10) days following the Petition's filing. The Commission may (1) make a final disposition of the Petition by either granting or denying the requested action without further argument; (2) request a response from the DMR prior to making a final disposition; (3) set the

matter for an evidentiary hearing; or (4) make such further order as it deems appropriate under the circumstances. Once a Petition for Reconsideration has been considered and ruled on by the Commission, no further requests for reconsideration will be allowed.

CHAPTER H-3 PROCEDURES FOR CONDUCTING EVIDENTIARY HEARINGS

100 Requesting an Evidentiary Hearing

- 100.01 The following procedures shall govern formal hearings and requests for reconsideration when such are granted by the Commission. Any request for hearing must be made within fourteen (14) days after the date the Commission takes action upon permit issuance, denial, modification or revocation, as shown on the Minutes of the Commission on Marine Resources; and may be requested by any interested party aggrieved by such action. For the purposes of this ordinance, an "interested party" in a request for reconsideration of a matter involving a coastal wetlands permit is defined as persons and organizations that have complied with the provisions of Mississippi Code Section 49-27-39. Persons, firms or organizations requesting reconsideration of decisions on wetlands permitting issues will follow the provisions of this ordinance in addition to those located in Chapter VIII Section 2, Part I.F. of the Mississippi Coastal Program.
- 100.02 Any person, firm or corporation that has a license or permit suspended or revoked may request an evidentiary hearing.
- 100.03 The Commission may order and require an evidentiary hearing on any matter within its jurisdiction.

101 Setting the Hearing

- 101.01 The Commission shall fix the time and place of such hearing and shall notify all parties thereto by certified mail. Individuals coming before the Commission may appear personally, by counsel, or both, produce witnesses and cross-examine witnesses.
- 101.02 The Commission shall delegate one of its members to act as the presiding officer or obtain the services of counsel from the Attorney General's Office to act as the presiding officer for the Commission.

102 Witnesses

The Commission is not authorized to issue subpoenas. Parties to an evidentiary hearing are responsible for assuring the attendance of their witnesses.

103 Pre-filing Testimony and Documents

- 103.01 Direct testimony of each witness to be relied upon during the hearing shall be pre-filed with the Commission and copies of the same shall be mailed to all parties seven (7) days prior to the hearing, except that in the discretion of the Commission this requirement may be modified or waived. Parties which call "adverse" witnesses shall not be required to submit pre-filed testimony as contemplated in this paragraph. At least seven (7) days prior to the hearing, all parties involved shall exchange copies of all exhibits that will be introduced during the hearing indicating the party offering and the witness who will sponsor each. The presiding officer may permit an exception to these requirements when witnesses or exhibits are necessary for rebuttal or impeachment. Failure to submit the above referenced exhibits and the pre-filed testimony in a timely fashion shall be grounds for exclusion of testimony of witnesses and exhibits from the hearing. Also, the presiding officer, in his discretion, may call a pre-hearing conference prior to any hearing to establish hearing guidelines and clarify issues.
- 103.02 Should the Commission waive the above mentioned requirement for pre-filed testimony, then at least seven (7) days before the hearing, all parties involved shall exchange a list of all witnesses each will call during the hearing, a brief statement of the testimony expected from each witness, and copies of all exhibits as set forth in 22 MISS ADMIN CODE 15.03.103.01 above.

104 Order of Proof

- 104.01 Statements or testimony shall be offered under oath and shall be recorded. The presiding officer shall open the hearing by identifying each of the parties thereto, describing the permit or matter that is the subject of the hearing, and, if appropriate, the prior action taken thereupon by the Commission. The presiding officer shall then inquire whether the parties wish to exclude witnesses that have not testified from the hearing. If witnesses that have not testified are excluded, no witnesses found improperly present in the hearing room during the proceeding may testify.
- 104.02 The order of proof shall be such that the staff of the DMR shall present a brief analysis and recommendation with regard to the permit in question, which shall be followed by presentation of proof by the non-objecting party, if any, and subsequently by presentation of proof by the objecting party and/or the staff of the DMR.

- 104.03 Each party shall be permitted to make a brief opening statement with regard to its position. Each witness shall testify through direct testimony which shall be pre-filed with the Commission pursuant to requirements set forth in 22 MISS ADMIN CODE 15.03.103.01 above. The presiding officer shall permit cross-examination, redirect examination limited to matters raised on cross-examination and may permit recross-examination limited to matters raised during redirect examination. Any Commissioner may, at any time, question a witness.
- 104.04 The strict rules of evidence shall not apply; however, all objections must be made in a timely fashion. The presiding officer may limit or exclude testimony which is redundant or not relevant to the issues before the Commission.
- 104.05 At the conclusion of the testimony and introduction of documents, each party will be permitted to make a brief closing statement summarizing the evidence offered by said parties in support of their respective positions, at which time the hearing record shall be closed.

105 Rules of Evidence

The Commission shall not be bound by the strict rules of evidence, but shall base all its determinations on sufficient evidence.

106 Deliberations by the Commission

- 106.01 The Commission may issue its ruling immediately at the conclusion of the presentation of evidence or may take the same under advisement until a subsequent meeting of the Commission.
- 106.02 Upon an affirmative vote of three-fifths of the members present, the Commission may go into executive session to deliberate. The Commission shall enter in its Minutes the Commission's final decision affirming, modifying or reversing its prior decision to deny, modify or revoke the permit or license. Said decision shall be final and conclusive. An appeal may be taken to the appropriate court within thirty (30) days of the date of notification of the Commission's decision. The parties shall be notified in writing of the Commission's decision. Mailing notification of the Commission's decision, postage pre-paid, to the parties shall constitute sufficient notice.

107 Transcript

The Commission, in its discretion, may not require a transcription of the hearing record, except in the event of an appeal, wherein said record shall be transcribed as provided by law.

108 Appeals

In the event of an appeal, the party prevailing before the Commission may be required by the Commission to defend the decision in court. Failure of the prevailing party to assist in the defense may result in the confession of the cause of action by the Commission. The prevailing party will be responsible for all costs of the defense.

CHAPTER 4 DECLARATORY OPINIONS

100 Scope

This chapter set forth the Commission's rules governing the form and content of requests for declaratory opinions, and the Commission's procedures regarding the requests, as required by Section 25-43-2.103 of the Mississippi Code. A declaratory opinion is a written statement by the Commission, pronouncing the applicability of a statute, rule or order within the primary jurisdiction of the Commission to specific circumstances. This chapter is intended to supplement and to be read in conjunction with the provisions of the Mississippi Administrative Procedures Law, Miss. Code Ann. §§ 25-43-1.101 et seq., which may contain additional information regarding the issuance of declaratory opinions. In the event of any conflict between these rules and the Mississippi Administrative Procedures Law, the latter shall govern.

101 Persons Who May Request Declaratory Opinions

Any person with a substantial interest in the subject matter may request a declaratory opinion from the Commission by following the specified procedures. "Substantial interest in the subject matter" means: an individual, business, group or other entity that is directly affected by the Commission's administration of the laws within its primary jurisdiction. "Primary jurisdiction of the agency" means the agency has a constitutional or statutory grant of authority in the subject matter at issue.

102 Subjects Which May Be Addressed In Declaratory Opinions

The Commission will issue declaratory opinions regarding the applicability to specified facts of:

102.01 A statute administered or enforceable by the Commission; or

102.02 A rule promulgated by the Commission.

The Commission will not issue a declaratory opinion regarding a statute or rule which is outside the primary jurisdiction of the agency.

103 Circumstances In which Declaratory Opinions Will Not Be Issued

The Commission may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:

- 103.01 The question presented lacks clarity;
- 103.02 Litigation is pending or anticipated, administrative action, or other adjudication which may either answer the question presented by the request or otherwise make an answer unnecessary;
- 103.03 The statute or rule on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;
- 103.04 The facts presented in the request are not sufficient to answer the question presented;
- 103.05 The request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;
- 103.06 The request seeks to resolve issues which have become moot, or are abstract or hypothetical such that the requestor is not substantially affected by the statute or rule on which a declaratory opinion is sought;
- 103.07 No controversy exists concerning the issue as the requestor is not faced with existing facts or those certain to arise which raise a question concerning the application of the statute or rule;
- 103.08 The question presented by the request concerns the legal validity of a statute or rule;
- 103.09 The request is not based upon facts calculated to aid in the planning of future conduct but is, instead, based on past conduct in an effort to establish the effect of that conduct;
- 103.10 No clear answer is determinable;
- 103.11 The question presented by the request involves the application of a criminal statute or a sets of facts which may constitute a crime;
- 103.12 The answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;
- 103.13 The question is currently the subject of an Attorney General's opinion request or has been answered by an Attorney General's opinion;

103.14 A similar request is pending before this agency or any other agency or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such a opinion would constitute the unauthorized practice of law.

103.15 The issuance of a declaratory opinion may adversely affect the interests of the State, the Commission or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise;

103.16 The question involves eligibility for a license, permit, certificate or other approval by the Commission or some other agency, and there is a statutory or regulatory application process by which eligibility for said license, permit, certificate or other approval would be determined.

104 Written Request Required

Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8-1/2 inches by 11 inches). Requests may be in the form of a letter addressed to the Executive Director of the DMR.

105 Where to Send Requests

All requests must be mailed, delivered or transmitted via facsimile to the Executive Director of the DMR, 1141 Bayview Ave., Suite 101, Biloxi, MS 39530 or emailing the request to the "DMR Directorate" at www.dmr.state.ms.us. The request must clearly state that it is a request for a declaratory opinion. No oral or telephone requests will be accepted for official declaratory opinions.

106 Name, Address and Signature of Requestor

Each request must include the full name, telephone number, and mailing address of the requestor. All requests shall be signed by the person filing the request, who shall attest that the request complies with the requirements set forth in these rules, including but not limited to a full, complete, and accurate statement of relevant facts and that there are no related proceedings pending before any other administrative or judicial tribunal.

107 Question Presented

Each request shall contain the following:

107.01 A clear and concise statement of all facts on which the opinion is requested;

107.02 A citation to the statute or rule at issue;

107.03 The question(s) sought to be answered in the opinion, stated clearly;

107.04 A suggested proposed opinion from the requestor, stating the answers desired by petitioner and a summary of the reasons in support of those answers;

107.05 The identity of all other known persons involved in or impacted by the described factual situation, including their relationship to the facts, name, mailing address and telephone number; and

107.06 A statement to show that the person seeking the opinion has a substantial interest in the subject matter.

108 Time for Commission's Response

Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the Commission shall, in writing:

108.01 Issue a declaratory opinion regarding the specified statute or rule as applied to the specified circumstances;

108.02 Decline to issue a declaratory opinion, stating the reasons for its action; or

108.03 Agree to issue a declaratory opinion by a specified time but not later than ninety (90) days after receipt of the written request.

The forty-five (45) day period shall begin running on the first State of Mississippi business day on or after the request is received by the DMR, whichever is sooner.

109 Opinion Not Final for Sixty Days

A declaratory opinion shall not become final until the expiration of sixty (60) days after the issuance of the opinion. Prior to the expiration of sixty (60) days, the Commission may, in its discretion, withdraw or amend the declaratory opinion for any reason which is not arbitrary or capricious. Reasons for withdrawing or amending an opinion include, but are not limited to, a determination that the request failed to meet the requirements of these rules or that the opinion issued contains a legal or factual error.

110 Notice by Commission to Third Parties

The Commission may give notice to any person, agency or entity that a declaratory opinion has been requested and may receive and consider data, facts, arguments and opinions from other persons, agencies or other entities other than the requestor.

111 Public Availability of Requests and Declaratory Opinions

Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying in accordance with the Public Records Act and the Commission's public records request procedure. All declaratory opinions and requests shall be indexed by name and subject. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from this requirement and shall remain confidential.

112 Effect of a Declaratory Opinion

The Commission will not pursue any civil, criminal or administrative action against a person who is issued a declaratory opinion from the Commission and who, in good faith, follows the direction of the opinion and acts in accordance therewith unless a court of competent jurisdiction holds that the opinion is manifestly wrong. Any declaratory opinion rendered by the Commission shall be binding only on the Commission on Marine Resources and the person to whom the opinion is issued on the specific issue addressed in that opinion. No declaratory opinion will be used as precedent for any other transaction or occurrence beyond that set forth by the requesting person.

REFERENCE TO ORDINANCES

Pursuant to the amendments to the Administrative Procedures Act, Section 25-43-101.1 et seq., of the Mississippi Code of 1972, the rules and regulations promulgated pursuant thereto by the Secretary of State; the former Ordinance 15.002 has been modified and the Commission and DMR have adopted the terminology and numbering system developed by the Secretary of State. Therefore, references to "ordinance" or to "part" appearing in these regulations or the underlying statutes are used interchangeably and refer to the same instrument.

This rule shall be in effect and be in force from and after the ___ day of _____, 2005.

MISSISSIPPI COMMISSION ON
MARINE RESOURCES

MISSISSIPPI DEPARTMENT OF
MARINE RESOURCES

By: _____
Vernon Asper, Chairman

By: _____
William W. Walker, Executive Director