

By: Representative Ryan

To: Conservation and  
Water Resources; Game  
and Fish

## HOUSE BILL NO. 878

1 AN ACT TO AMEND SECTIONS 49-4-7, 49-15-3, 49-15-11, 49-15-21,  
2 49-15-301 AND 63-11-19, MISSISSIPPI CODE OF 1972, TO TRANSFER THE  
3 DUTIES, POWERS, PERSONNEL AND RESOURCES OF THE MARINE LAW  
4 ENFORCEMENT DIVISION OF THE DEPARTMENT OF WILDLIFE, FISHERIES AND  
5 PARKS TO THE DEPARTMENT OF MARINE RESOURCES; AND FOR RELATED  
6 PURPOSES. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF  
7 MISSISSIPPI:

8  
9 SECTION 1. From and after July 1, 1999, all law enforcement  
10 functions of the Mississippi Department of Wildlife, Fisheries and  
11 Parks that pertain to saltwater aquatic life and marine resources  
12 under the jurisdiction of the Mississippi Department of Marine  
13 Resources, are transferred to the Department of Marine Resources.  
14 All employees, vehicles, boats, equipment, funds and other  
15 resources of the Department of Wildlife, Fisheries and Parks that  
16 are used for or allocated to law enforcement functions related to  
17 saltwater aquatic life and marine resources are transferred to the  
18 Department of Marine Resources, to be used for law enforcement  
19 purposes of the Department of Marine Resources.

20 SECTION 2. Section 49-4-7, Mississippi Code of 1972, is  
21 amended as follows:

22 49-4-7. The Commission on Wildlife, Fisheries and Parks  
23 shall establish and appoint advisory committees for the Division  
24 of Parks and Recreation and the Division of Wildlife and  
25 Fisheries. The advisory committees shall aid the Commission on  
26 Wildlife, Fisheries and Parks in formulating policies, discussing  
27 problems and considering other matters related to these divisions  
28 which are designated by the commission.

29 The department is designated as the single state agency to

30 receive and expend any federal funds being received or expended by  
31 any agency transferred to the department by Chapter 484, Laws of  
32 1978, except the Department of Marine Resources, and to receive  
33 and expend any federal funds made available for matters within the  
34 jurisdiction of the department.

35 The department shall be responsible for conserving, managing,  
36 developing and protecting the wildlife and fisheries resources of  
37 the State of Mississippi, except for saltwater aquatic life and  
38 marine resources under the jurisdiction of the Mississippi  
39 Department of Marine Resources. The department shall coordinate  
40 all functions of state government related to wildlife and  
41 fisheries resources that are within the jurisdiction of the  
42 department.

43 SECTION 3. Section 49-15-3, Mississippi Code of 1972, is  
44 amended as follows:

45 49-15-3. As used in this chapter, the term:

46 (a) "Commission" means the Mississippi Commission on  
47 Marine Resources.

48 (b) "Department" means the Department of Marine  
49 Resources.

50 (c) "Domicile" means a person's principal or primary  
51 place of abode in which a person's habitation is fixed and to  
52 which the person, whenever absent, has the present intention of  
53 returning after a departure of absence therefrom, regardless of  
54 the duration of the absence. The burden of proving domicile in  
55 the State of Mississippi shall be on the person claiming that  
56 status. A person holding a current driver's license shall be  
57 deemed to be domiciled within the state issuing the license. If a  
58 person does not hold a current driver's license the following  
59 evidence may be considered in establishing, but is not necessarily  
60 determinative of domicile: residence for income or other tax  
61 purposes, homestead exemption receipt or other means prescribed by  
62 the commission. In the case of minors, domicile of the parents

63 shall be used as evidence of the minor's domicile.

64 (d) "Game fish" means cobia, also known as ling or  
65 lemonfish (*rachycentron canadum*). The cobia is classified as game  
66 fish.

67 (e) "Illegal oysters" means:

68 (i) All untagged shell stock;

69 (ii) Shell oysters obtained from uncertified shops  
70 or dealers or from an unlicensed catcher;

71 (iii) Oysters obtained from waters not declared  
72 safe and sanitary by the department, except those oysters caught  
73 by the commission for re-laying or under private leases pursuant  
74 to Section 49-15-27;

75 (iv) Shucked oysters obtained from uncertified  
76 shops or repackers.

77 (f) "Inspector" means the chief inspector, the  
78 assistant chief inspector or any deputy inspector employed by the  
79 department \* \* \*.

80 (g) "Natural reefs" means any bottom under the  
81 jurisdiction of the commission of one or more acres on which  
82 oysters grow naturally, or have grown naturally, in a quantity  
83 sufficient to warrant commercial fishing as a means of livelihood,  
84 or have been used in such a manner within a period of ten (10)  
85 years next preceding the time the bottoms may come up for  
86 determination by the commission.

87 (h) "Resident" means a person, firm or corporation that  
88 is domiciled in this state.

89 (i) "Seafood" means all oysters, saltwater fish,  
90 saltwater shrimp, diamondback terrapin, sea turtle, crabs and all  
91 other species of marine or saltwater animal life existing or  
92 living in the waters within the territorial jurisdiction of the  
93 State of Mississippi.

94

95 (j) "Tonging reefs" means any bottom under the

96 jurisdiction of the commission designated by the commission as an  
97 area in which oysters may only be taken by use of hand tongs.

98 SECTION 4. Section 49-15-11, Mississippi Code of 1972, is  
99 amended as follows:

100 49-15-11. (1) The Mississippi Department of Marine  
101 Resources is hereby established and full power is vested in the  
102 department to manage, control, supervise, enforce and direct any  
103 matters pertaining to saltwater aquatic life and marine resources  
104 under the jurisdiction of the commission. \* \* \*

105 (2) (a) The Executive Director of the Department of Marine  
106 Resources shall have the authority to organize the Department of  
107 Marine Resources with persons meeting established qualifications  
108 for \* \* \* positions of duty and responsibility including, but not  
109 limited to, the deputy director, division chiefs, biologists, law  
110 enforcement officers and other personnel. \* \* \*

111 (b) All personnel actions initiated as a result of the  
112 transfer of law enforcement officers and administrative support  
113 staff are subject to the State Personnel Board rules, regulations  
114 and procedures, except as otherwise provided in this paragraph.  
115 Until July 1, 2000, the personnel actions of the executive  
116 director are exempt from State Personnel Board rules, regulations  
117 and procedures in order to give the executive director flexibility  
118 in selecting law enforcement officers and administrative support  
119 staff and in creating the position of Chief of the Law Enforcement  
120 Division of the department and in selecting a person qualified for  
121 that position. The Chief of the Law Enforcement Division of the  
122 department must have at least five (5) years' experience in the  
123 enforcement of laws that regulate the saltwater aquatic life and  
124 marine resources of the state and must otherwise be a  
125 well-qualified and trained law enforcement officer.

126 (c) The executive director shall implement a merit  
127 promotion system for all employees of the department, including  
128 law enforcement officers. The department's merit promotion system

129 shall be based on an individual's merit, demonstrated performance  
130 and tenure.

131 (3) Whenever the terms "Mississippi Marine Conservation  
132 Commission," "Marine Conservation Commission," "Bureau of Marine  
133 Resources" and "Mississippi Marine Resources Council" appear in  
134 any state law, they shall mean the "Mississippi Commission on  
135 Marine Resources."

136 SECTION 5. Section 49-15-21, Mississippi Code of 1972, is  
137 amended as follows:

138 49-15-21. (1) The executive director \* \* \* shall appoint  
139 the necessary enforcement officers for the administration of this  
140 chapter. The salary of all enforcement officers employed shall be  
141 as determined by the State Personnel Board. However, the members  
142 of the Enforcement Officers' Reserve Unit created in subsection  
143 (4) shall serve without pay, and shall not be employees of the  
144 State of Mississippi for purposes of the State Personnel System,  
145 the Workers' Compensation Law, the Public Employees' Retirement  
146 System or the State Employees' Life and Health Insurance Plan.

147 (2) All enforcement officers shall be experienced and  
148 qualified persons thoroughly familiar with the seafood business  
149 and shall be at least twenty-one (21) years of age and be a high  
150 school graduate or its equivalent. The enforcement officers  
151 shall diligently enforce all laws and regulations for the  
152 protection, propagation, preservation or conservation of all  
153 saltwater aquatic life of the State of Mississippi, and they are  
154 hereby constituted peace officers of the State of Mississippi,  
155 with full police power and jurisdiction to enforce all laws of  
156 the State of Mississippi and all regulations adopted and  
157 promulgated by the commission. Enforcement officers may  
158 exercise such powers in any county of the State of Mississippi  
159 and on any waters of the state, and they are hereby authorized  
160 to carry firearms or other weapons, concealed or otherwise, and  
161 they shall investigate all persons, corporations and otherwise

162 who are alleged to have violated any laws, and make affidavits,  
163 arrests and serve papers of any court of competent jurisdiction,  
164 in like manner as is provided for sheriffs and deputy sheriffs,  
165 when the same shall be in connection with the enforcement of the  
166 seafood laws of the State of Mississippi and such other laws and  
167 regulations of this state as the commission \* \* \* may designate.

168 The enforcement officers may seize at any time aquatic life  
169 caught, taken or transported in a manner contrary to the laws of  
170 this state, and may confiscate and dispose of the same. Any net  
171 or other paraphernalia used or employed in connection with a  
172 violation may be seized, and forfeiture proceedings may be  
173 instituted pursuant to Sections 49-7-251 through 49-7-257.

174 Enforcement officers may draft the aid of captains, crews and  
175 boats or licensed vessels to enforce this chapter and may,  
176 without warrant, board and search vessels or vehicles. The  
177 application for any license or permit from the commission to  
178 catch, fish, take, transport or handle or process any form of  
179 aquatic life, or the taking, catching, transporting or handling  
180 or processing of any and all aquatic life in this state shall  
181 constitute acquiescence and agreement upon the part of the  
182 owners, captains and crews, employers and dealers to the  
183 provisions of this chapter and the agreement that enforcement  
184 officers may exercise the authority granted under the provisions  
185 hereof.

186 (3) Prior to entering into performance of their duties or  
187 delegations or as soon after appointment as possible, each  
188 enforcement officer, at the expense of the commission \* \* \*, shall  
189 attend and complete an appropriate curriculum in the field of law  
190 enforcement at the Mississippi Law Enforcement Officers' Training  
191 Academy. However, members of the Enforcement Officers' Reserve  
192 Unit created in subsection (4) of this section may attend the  
193 Mississippi Law Enforcement Officers' Training Academy at the  
194 expense of the commission \* \* \* if it deems the training necessary

195 or desirable. No enforcement officer shall be entitled to payment  
196 of salary after the first six (6) months in office if he has  
197 either failed to attend the academy or has failed to comply  
198 with other qualifications or successfully complete any law  
199 enforcement qualification examinations as the director deems  
200 necessary. The enforcement officers shall, on a periodic basis,  
201 be required to attend additional advanced courses in law  
202 enforcement in order that they will be properly improved and  
203 trained in the modern, technical advances of law enforcement.

204 (4) (a) There is hereby created an Enforcement Officers'  
205 Reserve Unit, hereinafter termed "the reserve," to assist the  
206 enforcement officers in the performance of their duties under this  
207 chapter. The reserve shall consist of volunteers who are approved  
208 by the chief inspector or his designated representative, and the  
209 members of the reserve shall serve without pay. Reserve officers  
210 shall be in such numbers as determined by the enforcement needs,  
211 with the maximum strength of reserve officers limited to the same  
212 number as enforcement officers.

213 (b) To be eligible for membership in the reserve, an  
214 applicant must be twenty-one (21) years of age, be a high school  
215 graduate or its equivalent, be in good physical condition, have a  
216 Mississippi driver's license, be in good standing with the  
217 community, be available for training and duty, not be a member of  
218 any police, auxiliary police, civil defense, or private security  
219 agency, have never been convicted of a felony, and have one (1) of  
220 the following:

221 (i) An honorable discharge or honorable separation  
222 certificate from one (1) of the United States military services;

223 (ii) Three (3) years of responsible post-high  
224 school work experience that required the ability to deal  
225 effectively with individuals and groups of persons;

226 (iii) Successful completion of sixty (60) semester  
227 hours at an accredited college or university; or

228 (iv) The qualifications as are outlined in this  
229 section for enforcement officers.

230 Members of the immediate family of enforcement officers shall  
231 not be eligible for the reserve unless a special waiver is  
232 granted.

233 Upon acceptance into the reserve, members shall receive a  
234 temporary appointment for one (1) year. During this year of  
235 temporary status, members must successfully complete the required  
236 training and must qualify on the same firearms course as  
237 enforcement officers.

238 (c) The reserve shall be under the leadership and  
239 direction of the assistant chief inspector, who may designate an  
240 enforcement officer to coordinate the actions of the reserve. The  
241 training of the reserve shall be conducted by an enforcement  
242 officer. The reserve shall meet at least once each month for the  
243 purpose of training and transacting any business as may come  
244 before it. The chief inspector shall be notified in writing of  
245 all meetings of the reserve and the time and place of the meetings  
246 shall be recorded with the chief inspector. The chief inspector  
247 shall prepare a reserve officer's manual with the advice and  
248 consent of the commission \* \* \*. The manual shall include, but is  
249 not limited to, the following: activities and operations,  
250 training, administration and duties. During active service, the  
251 reserve shall be under the direction of the chief inspector or his  
252 designated representative. When a reserve officer is on active  
253 duty and assigned to a specific enforcement officer, he shall be  
254 under the direct supervision of that officer. Reserve officers  
255 serve at the discretion of the chief inspector and may be  
256 dismissed by him or by a board of inquiry appointed by the  
257 commission \* \* \*. Reserve officers shall furnish their own  
258 uniforms and other personal equipment if the commission \* \* \* does  
259 not provide such items.

260 (d) The commission \* \* \* may require, by regulation,



261 members of the Enforcement Officers' Reserve Unit to attend  
262 officer reserve training programs conducted by county or municipal  
263 agencies.

264 (e) The commission \* \* \* may issue uniforms to such  
265 reserve officers and may authorize the issuance of any state  
266 equipment necessary for the reserve officers to adequately assist  
267 law enforcement officers. The commission \* \* \* shall develop a  
268 reserve officer identification system to accomplish the issuance  
269 of such items in accordance with the State Auditor guidelines.

270 (f) If the commission \* \* \* determines that a member of  
271 the Enforcement Officers' Reserve Unit may attend a training  
272 program as authorized under this section, it shall require that  
273 reserve officer to sign an agreement, prior to attending a  
274 training program, which shall stipulate that if the reserve  
275 officer accepts employment from any other public or private law  
276 enforcement agency within three (3) years after completion of his  
277 training program, the reserve officer or the respective hiring law  
278 enforcement agency shall reimburse the department for the total  
279 cost of his training program. By October 1 of each year, the  
280 department \* \* \* shall provide the Game and Fish Committee of the  
281 Mississippi House of Representatives and the Ports and Marine  
282 Resources Committee of the Mississippi Senate a listing which  
283 contains each name and the respective cost of training each  
284 reserve officer received during the previous year.

285 SECTION 6. Section 49-15-301, Mississippi Code of 1972, is  
286 amended as follows:

287 49-15-301. (1) The Mississippi Commission on Marine  
288 Resources is hereby established and full power is vested in the  
289 commission to regulate all matters pertaining to all saltwater  
290 aquatic life and marine resources, including the law enforcement  
291 function related to such regulation. The commission shall  
292 administer the Coastal Wetlands Protection Law and the Public  
293 Trust Tidelands Act. The power and duties of the commission shall

294 be exercised through the Department of Marine Resources. \* \* \*

295 (2) The Mississippi Commission on Marine Resources shall  
296 consist of six (6) members to be appointed as follows:

297 (a) The Governor shall appoint six (6) members who  
298 shall be residents of Jackson, Harrison and Hancock Counties with  
299 the advice and consent of the Senate. The Governor shall appoint  
300 two (2) members from each county. The members designated in  
301 subparagraphs (i), (ii), (iv) and (vi) must be a resident of the  
302 county where the business he is appointed to represent is located.

303 (b) The commission shall be composed as follows:

304 (i) One (1) member shall be a commercial seafood  
305 processor.

306 (ii) One (1) member shall be a commercial  
307 fisherman.

308 (iii) One (1) member shall be a recreational  
309 sports fisherman.

310 (iv) One (1) member shall be a charter boat  
311 operator.

312 (v) One (1) member shall be a member of an  
313 incorporated nonprofit environmental organization.

314 (vi) One (1) member shall be from the nonseafood  
315 industry.

316 \* \* \*

317 (c) Of the initial members appointed by the Governor,  
318 the members designated in subparagraphs (i),(ii) and (iii) shall  
319 serve for an initial term of two (2) years and one (1) member  
320 shall be appointed from each county. The members designated in  
321 subparagraphs (iv), (v) and (vi) shall serve an initial term of  
322 four (4) years and one (1) member shall be appointed from each  
323 county. All terms after the initial terms shall be for a period  
324 of four (4) years. \* \* \*

325 (d) Any vacancy in the office of an appointed member of  
326 the commission shall be filled by appointment by the Governor for

327 the balance of the unexpired term.

328 (3) Each member shall have a demonstrated history of  
329 involvement in the matter of jurisdiction for which he is  
330 appointed to represent and his employment and activities must not  
331 conflict with the matter of jurisdiction represented. A member  
332 shall not have a record of conviction of violation of fish and  
333 game or seafood laws or regulations within the five (5) years  
334 preceding his appointment or a record of any felony conviction.

335 (4) The commission shall elect a chairman who shall preside  
336 at all meetings of the commission, and the commission shall also  
337 elect a vice chairman who shall serve in the absence or inability  
338 of the chairman. \* \* \*

339 (5) Each member shall be paid actual and necessary expenses  
340 incurred in attending meetings of the commission and in performing  
341 his duties away from his domicile under assignment by the  
342 commission. In addition, members shall receive the per diem  
343 authorized in Section 25-3-69, Mississippi Code of 1972.

344 (6) The commission shall adopt rules and regulations  
345 governing times and places of meetings and shall adopt bylaws  
346 governing the manner of conducting its business. Each member  
347 shall take the oath prescribed by Section 268 of the Mississippi  
348 Constitution of 1890 and shall, before assuming office, enter into  
349 bond in the amount of Thirty Thousand Dollars (\$30,000.00), to be  
350 approved by the Secretary of State conditioned according to law  
351 and payable to the State of Mississippi.

352 (7) The commission shall not take any action, except by vote  
353 in meeting assembled, and such action shall be included in the  
354 minutes of the commission. A majority of the members shall  
355 constitute a quorum of the commission.

356 (8) The commission, through the Department of Marine  
357 Resources, shall devise a plan to make licenses available in each  
358 coastal county.

359 (9) (a) There is hereby created a marine resources

360 technical advisory council composed of the Executive Director of  
361 the Gulf Coast Research Lab, or his designee; the Executive  
362 Director of the Department of Environmental Quality, or his  
363 designee; and the Executive Director of the Department of Marine  
364 Resources, or his designee.

365 (b) The council shall give technical assistance to the  
366 commission.

367 (10) For purposes of this section the following definitions  
368 apply:

369 (a) "Charter boat operator" means an individual who  
370 operates a vessel for hire guiding sports fishermen for a fee and  
371 is duly licensed to engage in such activity in the State of  
372 Mississippi.

373 (b) "Commercial fisherman" means a fisherman who sells,  
374 barter or exchanges any or all of his catch or who is paid for  
375 attempting to catch marine species.

376 (c) "Commercial seafood processor" means an individual  
377 who engages in the business of purchasing seafood products and  
378 preparing them for resale and who is duly licensed to engage in  
379 such commercial activity in the State of Mississippi.

380 (d) "Incorporated environmental nonprofit organization"  
381 means an organization duly incorporated in any state as a  
382 nonprofit organization and whose stated goals and purposes are the  
383 conservation of natural resources.

384 (e) "Non-seafood industry" means an industry not  
385 involved in the catching, processing or packaging of marine  
386 species.

387 (f) "Recreational sports fisherman" means an individual  
388 who catches or harvests marine species only for recreation or  
389 personal consumption and not for sale.

390 SECTION 7. Section 63-11-19, Mississippi Code of 1972, is  
391 amended as follows:

392 63-11-19. A chemical analysis of the person's breath, blood

393 or urine, to be considered valid under the provisions of this  
394 section, shall have been performed according to methods approved  
395 by the State Crime Laboratory created pursuant to Section 45-1-17  
396 and the Commissioner of Public Safety and performed by an  
397 individual possessing a valid permit issued by the State Crime  
398 Laboratory for making such analysis. The State Crime Laboratory  
399 and the Commissioner of Public Safety are authorized to approve  
400 satisfactory techniques or methods, to ascertain the  
401 qualifications and competence of individuals to conduct such  
402 analyses, and to issue permits which shall be subject to  
403 termination or revocation at the discretion of the State Crime  
404 Laboratory. The State Crime Laboratory shall not approve the  
405 permit required herein for any law enforcement officer other than  
406 a member of the State Highway Patrol, a sheriff or his deputies, a  
407 city policeman, an officer of a state-supported institution of  
408 higher learning campus police force, a security officer appointed  
409 and commissioned pursuant to the Pearl River Valley Water Supply  
410 District Security Officer Law of 1978, a national park ranger, a  
411 national park ranger technician, a military policeman stationed at  
412 a United States military base located within this state other than  
413 a military policeman of the Army or Air National Guard or of  
414 Reserve Units of the Army, Air Force, Navy or Marine Corps, a  
415 marine law enforcement officer employed by the Department of  
416 Marine Resources, or a conservation officer employed by the  
417 Mississippi Department of Wildlife, Fisheries and Parks. The  
418 permit given a conservation officer or a marine law enforcement  
419 officer shall authorize such officer to administer tests only for  
420 violations of Sections 59-23-1 through 59-23-7.

421 The State Crime Laboratory shall make periodic, but not less  
422 frequently than quarterly, tests of the methods, machines or  
423 devices used in making chemical analysis of a person's breath as  
424 shall be necessary to ensure the accuracy thereof, and shall issue  
425 its certificate to verify the accuracy of the same.

426           SECTION 8. This act shall take effect and be in force from  
427 and after July 1, 1999.