

By: Representative Ladner

To: Marine Resources

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1042

1 AN ACT TO CREATE THE SHELL RECOVERY AND REPLENISHMENT
2 PROGRAM; TO AMEND SECTION 49-15-46, MISSISSIPPI CODE OF 1972, TO
3 AUTHORIZE THE MISSISSIPPI COMMISSION ON MARINE RESOURCES TO
4 ESTABLISH THE SHELL RECOVERY AND REPLENISHMENT PROGRAM FOR THE
5 PURPOSE OF REPLENISHING THE OYSTER SHELLS TAKEN FROM WATERS WITHIN
6 MISSISSIPPI; TO AUTHORIZE A PROGRAM FOR SHELLFISH ASSESSMENT TO BE
7 ESTABLISHED BASED ON THE RECOMMENDATION OF CERTAIN OFFICIALS OF
8 THE MISSISSIPPI DEPARTMENT OF MARINE RESOURCES; TO REMOVE THE
9 SHELL RETENTION FEES; TO PROVIDE THAT FUNDS RECEIVED FROM THE
10 PROGRAM SHALL BE PAID INTO A SPECIAL FUND IN THE STATE TREASURY
11 FOR THE COMMISSION TO USE TO PURCHASE, RECOVER AND REPLENISH
12 OYSTER SHELLS IN ORDER TO FURTHER OYSTER PRODUCTION IN THE STATE;
13 TO AMEND SECTION 49-15-17, MISSISSIPPI CODE OF 1972, TO ESTABLISH
14 THE "SHELL RECOVERY AND REPLENISHMENT PROGRAM ACCOUNT" WITHIN THE
15 SEAFOOD FUND; TO PROVIDE THAT FUNDS IN THE ACCOUNT SHALL BE USED
16 TO MANAGE, IMPROVE, ENHANCE AND REPLENISH THE OYSTER SHELL; TO
17 AMEND SECTION 49-15-63, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
18 LICENSES SHALL BE SUSPENDED UNTIL VIOLATORS OF THE SHELL RECOVERY
19 AND REPLENISHMENT PROGRAM COMPLY WITH ALL OF THE PROVISIONS OF THE
20 PROGRAM; TO AMEND SECTION 49-15-38, MISSISSIPPI CODE OF 1972, TO
21 CONFORM TO THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

23 **SECTION 1.** Section 49-15-46, Mississippi Code of 1972, is
24 amended as follows:

25 49-15-46. (1) Each vessel used to catch, take, carry or
26 transport oysters from the reefs of the State of Mississippi, or
27 engaged in transporting any oysters in any of the waters within



28 the territorial jurisdiction of the State of Mississippi, for
29 commercial use, shall annually, before beginning operations, be
30 licensed by the commission and pay the following license fee:

31 (a) Fifty Dollars (\$50.00) on each in-state vessel or
32 boat utilized for tonging oysters or gathering oysters by hand;

33 (b) One Hundred Dollars (\$100.00) on each in-state
34 vessel or boat utilized for dredging oysters;

35 (c) One Hundred Dollars (\$100.00) on each out-of-state
36 vessel or boat utilized for tonging oysters or gathering oysters
37 by hand; or

38 (d) Two Hundred Dollars (\$200.00) on each out-of-state
39 vessel or boat utilized for dredging oysters.

40 (2) Each captain of each commercial vessel, used for either
41 tonging or dredging, shall purchase a license entitled "captain
42 license - oyster" for a fee not to exceed Ten Dollars (\$10.00) and
43 may designate one (1) alternate captain for each license.

44 (3) The commission may authorize the transfer of a vessel
45 license to a different vessel provided that the owner of both
46 vessels is the same titled owner.

47 (4) All oysters harvested in the State of Mississippi shall
48 be tagged. Tags shall be issued by the department and shall bear
49 the catcher's name, the date and origin of the catch, the shell
50 stock dealer's name and permit number. The department shall
51 number all tags issued and shall maintain a record of those tags.



52 The commission, in its discretion, may adopt any regulations
53 regarding the tagging of oysters and other shellfish.

54 (5) Each person catching or taking oysters from the waters
55 of the State of Mississippi for personal use shall obtain a permit
56 from the commission and pay an annual recreational oyster permit
57 fee of Ten Dollars (\$10.00). Oysters caught under a recreational
58 permit shall not be offered for sale. The limits on the allowable
59 catch of oysters for recreational purposes shall be three (3)
60 sacks per week. The department shall issue tags of a
61 distinguishing color to designate recreationally harvested
62 oysters, which shall be tagged on the same day of harvest in the
63 manner prescribed in subsection (4) of this section for
64 commercially harvested oysters or by regulation of the commission.

65 (6) The commission shall * * * establish a Shell Recovery
66 and Replenishment Program for the purpose of replenishing the
67 shells taken from waters within the territorial jurisdiction of
68 the State of Mississippi * * * . By the recommendation of the
69 Executive Director, the Director of Marine Fisheries, Bureau
70 Director, Program Coordinator or other Mississippi Department of
71 Marine Resources designee, a program for shellfish assessment
72 shall be established that accomplishes the return of up to thirty
73 percent (30%) of the harvested oyster shell bought by commercial
74 processors, dealers or factories to an area approved by the
75 Mississippi Department of Marine Resources. The program shall
76 include a conservation equivalency reimbursement not to exceed One



77 Dollar (\$1.00) per sack for recreational and commercial harvesters
78 and shall be optional in lieu of the thirty percent (30%) return
79 program for commercial processors, dealers or factories.

80 * * *

81 (7) Funds received from the * * * Shell Recovery and
82 Replenishment Program shall be paid into a special fund in the
83 State Treasury to be appropriated by the Legislature for use by
84 the commission to purchase, recover and replenish oyster shell(s)
85 in order to further oyster production in this state, which
86 includes plantings of oysters and/or cultch materials.

87 (* * *8) During open seasons, oysters may be taken only by
88 hands, tongs and dredges.

89 (* * *9) Vessels licensed under Section 49-15-46 may keep
90 in whole, for personal consumption up to thirty-six (36) blue
91 crabs (portunidae family), per day. This exemption for personal
92 consumption does not apply to fish or crabs that are otherwise
93 illegal to possess or catch.

94 **SECTION 2.** Section 49-15-17, Mississippi Code of 1972, is
95 amended as follows:

96 49-15-17. (1) (a) All monies received or obtained by the
97 commission under the provisions of this chapter shall be paid over
98 by the commission to the State Treasurer and shall be deposited
99 into the fund known as the "Seafood Fund." All revenues collected
100 through the department, to include, but not limited to, commercial
101 saltwater licenses and taxes, permits, fines and penalties, and



102 confiscated catches, shall be deposited into the department
103 operating account (Seafood Fund) and expended for the operation of
104 the department, as authorized by the Legislature.

105 (b) There is established a special account to be known
106 as the "Artificial Reef Program Account" within the Seafood Fund.
107 Any funds received from any public or private source for the
108 purpose of promoting, constructing, monitoring or maintaining
109 artificial reefs in the marine waters of the state or in federal
110 waters adjacent to the marine waters of the state shall be
111 credited to the account. Any unexpended funds remaining in the
112 account at the end of the fiscal year shall not lapse into the
113 Seafood Fund, but shall remain in the account. The department may
114 expend any funds in the account, subject to appropriation by the
115 Legislature, to accomplish the purpose of the account.

116 (c) There is established a special account to be known
117 as the "Coastal Preserve Account" within the Seafood Fund. Any
118 funds received from any public or private source for the purpose
119 of management, improvement and acquisition of coastal preserves in
120 the state and money required to be deposited pursuant to Sections
121 27-19-56.10 and 27-19-56.27, shall be credited to the account.
122 Any unexpended funds remaining in the account at the end of the
123 fiscal year shall not lapse into the Seafood Fund, but shall
124 remain in the account. The department may expend any funds in the
125 account, subject to appropriation by the Legislature, for the
126 management, improvement and acquisition of coastal preserves.



127 (d) There is established a special account to be known
128 as the "Mississippi Seafood Marketing Program Account" within the
129 Seafood Fund. Monies required to be deposited into the account
130 under Section 27-19-56.27 and any funds received from any public
131 or private source for the purpose of promoting the Mississippi
132 seafood industry must be credited to the account. Any unexpended
133 funds remaining in the account at the end of the fiscal year do
134 not lapse into the Seafood Fund, but remain in the account. The
135 department may expend any funds in the account, subject to
136 appropriation by the Legislature, to accomplish the purposes of
137 this account including, but not limited to, providing funds for
138 cobia stock enhancement programs.

139 (e) There is established a special account to be known
140 as the "Shell Recovery and Replenishment Program Account" within
141 the Seafood Fund. Monies required to be deposited into the
142 account under Section 49-15-46 and any funds received from this
143 program must be credited to this account and shall be used for the
144 purpose of management, improvement, enhancing and replenishing the
145 oyster shell. Any unexpended funds remaining in the account at
146 the end of the fiscal year shall not lapse into the Seafood Fund,
147 but shall remain in the account. The department may expend any
148 funds in the account, subject to appropriation by the Legislature,
149 to accomplish the purpose of the account.

150 (2) The fund shall be treated as a special trust fund and
151 interest earned on the principal shall be credited to the fund.



152 (3) The secretary of the commission shall keep accurate
153 reports of monies handled as a part of the permanent records of
154 the commission, and the State Treasurer shall furnish the
155 secretary of the commission such forms as may be needed, and the
156 secretary shall account for such forms in his reports to the
157 Treasurer.

158 **SECTION 3.** Section 49-15-63, Mississippi Code of 1972, is
159 amended as follows:

160 49-15-63. (1) (a) Any person, firm or corporation
161 violating any of the provisions of this chapter or any ordinance
162 duly adopted by the commission, unless otherwise specifically
163 provided for herein, shall, on conviction, be fined not less than
164 One Hundred Dollars (\$100.00), nor more than Five Hundred Dollars
165 (\$500.00), for the first offense, unless the first offense is
166 committed during a closed season, in which case the fine shall be
167 not less than Five Hundred Dollars (\$500.00), nor more than One
168 Thousand Dollars (\$1,000.00); and not less than Five Hundred
169 Dollars (\$500.00), nor more than One Thousand Dollars (\$1,000.00),
170 for the second offense when such offense is committed within a
171 period of three (3) years from the first offense; and not less
172 than Two Thousand Dollars (\$2,000.00) nor more than Four Thousand
173 Dollars (\$4,000.00), or imprisonment in the county jail for a
174 period not exceeding thirty (30) days for any third or subsequent
175 offense when such offense is committed within a period of three
176 (3) years from the first offense.



177 (b) In addition, upon conviction of such third or
178 subsequent offense, it shall be the duty of the court to revoke
179 the license of the convicted party and of the boat or vessel used
180 in such offense, and no further license shall be issued to such
181 person and for * * * that boat to engage in catching or taking of
182 any seafoods from the waters of the State of Mississippi for a
183 period of one (1) year following such conviction. Forfeiture of
184 any equipment or nets used in a second or subsequent offense may
185 be instituted pursuant to Sections 49-15-201 through 49-15-207.
186 If the person in possession of or using the nets in the violation
187 is not the owner or licensee of the nets, the department shall
188 notify the owner or licensee of the nets. The nets shall be
189 subject to forfeiture unless the nets were stolen and prosecution
190 for the theft is initiated. Equipment as used in this section
191 shall not mean boats or vessels.

192 (c) Any person convicted and sentenced under this
193 section for a second or subsequent offense shall not be considered
194 for reduction of sentence.

195 (d) Except as provided under subsection (7) of Section
196 49-15-46 and subsection (5) of Section 49-15-45, any fines
197 collected under this section shall be paid into the Seafood Fund.

198 (e) In addition to any other penalties, the commission
199 may suspend the license of any person convicted of a violation of
200 this chapter and may suspend the license of any vessel used in the
201 violation for a period not to exceed five (5) days for the first



202 offense. For a second offense, the commission may suspend the
203 license of such person and vessel for a period not to exceed
204 thirty (30) days. For violations of the Shell Recovery and
205 Replenishment Program under Section 49-15-46, licenses shall be
206 suspended until the violators have complied with all provisions of
207 the program.

208 (f) Upon conviction of five (5) seafood violations
209 within a five-year period, the commission may revoke the license
210 of the convicted party and the boat or vessel used in the
211 offenses, and may prohibit indefinitely the issuance of a license
212 to the person and boat or vessel * * * that were engaged in
213 catching or taking of any seafood from the waters of the State of
214 Mississippi. The commission shall exercise this authority in
215 accordance with the administrative procedures in Section 49-15-401
216 et seq.

217 (2) For any violation of this chapter, the individual
218 registered as the captain shall be subject to the penalties
219 provided in this chapter, if that individual is aboard the vessel.
220 If that individual is not aboard the vessel, the individual
221 designated as the alternate captain under Section 49-15-46 or
222 substitute captain under Section 49-15-64.5 shall be subject to
223 the penalties provided in this chapter. If no individual is
224 designated under Section 49-15-46 or Section 49-15-64.5, the
225 person, firm or corporation owning the vessel shall be subject to
226 the penalties provided for boat captains.



227 (3) All citations issued to boat operators for not
228 possessing the boat's registration card shall be dismissed, along
229 with all related court costs, upon the presentment of the boat's
230 proper registration card to the court or magistrate holding the
231 trial or hearing.

232 **SECTION 4.** Section 49-15-38, Mississippi Code of 1972, is
233 amended as follows:

234 49-15-38. (1) (a) Unless otherwise permitted by the
235 commission, no oysters shall be taken from the reefs of this state
236 unless culled upon the natural reefs, and all oysters less than
237 three (3) inches from end to end, and all dead shells, shall be
238 replaced, scattered and broadcast immediately on the natural reefs
239 from which they are taken. It is unlawful for any captain or
240 person in charge of any vessel, or any canner, packer, commission
241 man, dealer or other person to purchase, sell or to have in that
242 person's possession or under that person's control any oysters off
243 the public reefs or private bedding grounds not culled according
244 to this section, or any oysters under the legal size. A ten
245 percent (10%) tolerance shall be allowed in relation to any
246 culling.

247 (b) The commission may authorize the culling of oysters
248 of a lesser measure. That authorization shall be in response to
249 special circumstances or extreme natural conditions affecting the
250 habitat, including, but not limited to, flooding. The department
251 may establish checkpoints in any area within its jurisdiction to



252 conduct inspections, collect fees and issue tags in the
253 enforcement of this chapter and regulations adopted by the
254 commission.

255 (2) The commission shall acquire and replant shells, seed
256 oysters and other materials, when funding is available, for the
257 purpose of growing oysters.

258 (3) Any person, firm or corporation failing or refusing
259 to * * * follow the provisions of the Shell Recovery and
260 Replenishment Program as required under Section 49-15-46 * * *, is
261 guilty of a misdemeanor and, upon conviction, shall be fined not
262 more than One Hundred Dollars (\$100.00) * * *. In addition to the
263 fine, the violator shall pay the reasonable value of the oyster
264 shells and shall be ineligible to be licensed for any activity set
265 forth in this chapter for a period of two (2) years from the date
266 of conviction.

267 (4) The planting of oyster shells as provided under this
268 chapter shall be under the direction and supervision of the
269 executive director of the department. The governing authorities
270 of each county and municipality bordering upon the Mississippi
271 Sound may assist the commission in the planting and replanting of
272 oyster shells.

273 **SECTION 5.** This act shall take effect and be in force from
274 and after July 1, 2018.

