

By: Representative Ladner

To: Marine Resources

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 THE COMMISSION TO ESTABLISH RULES AND
7 REGULATIONS AND PER SACK ASSESSMENTS TO ACCOMPLISH THE PROGRAM; TO
8 REMOVE THE SHELL RETENTION FEES; TO PROVIDE THAT FUNDS RECEIVED
9 FROM THE PROGRAM SHALL BE PAID INTO A SPECIAL FUND IN THE STATE
10 TREASURY FOR THE COMMISSION TO USE TO RECOVER AND REPLENISH OYSTER
11 SHELLS IN ORDER TO FURTHER OYSTER PRODUCTION IN THE STATE; TO
12 AMEND SECTION 49-15-17, MISSISSIPPI CODE OF 1972, TO ESTABLISH THE
13 "SHELL RECOVERY AND REPLENISHMENT PROGRAM ACCOUNT" WITHIN THE
14 SEAFOOD FUND; TO PROVIDE THAT FUNDS IN THE ACCOUNT SHALL BE USED
15 TO MANAGE, IMPROVE, ENHANCE AND REPLENISH THE OYSTER INDUSTRY; TO
16 AMEND SECTION 49-15-63, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
17 LICENSES SHALL BE SUSPENDED UNTIL VIOLATORS OF THE SHELL RECOVERY
18 AND REPLENISHMENT PROGRAM COMPLY WITH ALL OF THE PROVISIONS OF THE
19 PROGRAM; TO AMEND SECTION 49-15-38, MISSISSIPPI CODE OF 1972, TO
20 CONFORM TO THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

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

24 49-15-46. (1) Each vessel used to catch, take, carry or
25 transport oysters from the reefs of the State of Mississippi, or
26 engaged in transporting any oysters in any of the waters within
27 the territorial jurisdiction of the State of Mississippi, for



28 commercial use, shall annually, before beginning operations, be
29 licensed by the commission and pay the following license fee:

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

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

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

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

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

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

46 (4) All oysters harvested in the State of Mississippi shall
47 be tagged. Tags shall be issued by the department and shall bear
48 the catcher's name, the date and origin of the catch, the shell
49 stock dealer's name and permit number. The department shall
50 number all tags issued and shall maintain a record of those tags.
51 The commission, in its discretion, may adopt any regulations
52 regarding the tagging of oysters and other shellfish.



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

64 (6) The commission shall * * * establish a Shell Recovery
65 and Replenishment Program for the purpose of replenishing the
66 shells taken from waters within the territorial jurisdiction of
67 the State of Mississippi * * *. The commission shall have the
68 authority to establish rules and regulations and per sack
69 assessments to accomplish the purpose of the program.

70 * * *

71 (7) Funds received from the * * * Shell Recovery and
72 Replenishment Program shall be paid into a special fund in the
73 State Treasury to be appropriated by the Legislature for use by
74 the commission to recover and replenish oyster shell(s) in order
75 to further oyster production in this state, which includes
76 plantings of oysters and/or cultch materials.



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

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

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

86 49-15-17. (1) (a) All monies received or obtained by the
87 commission under the provisions of this chapter shall be paid over
88 by the commission to the State Treasurer and shall be deposited
89 into the fund known as the "Seafood Fund." All revenues collected
90 through the department, to include, but not limited to, commercial
91 saltwater licenses and taxes, permits, fines and penalties, and
92 confiscated catches, shall be deposited into the department
93 operating account (Seafood Fund) and expended for the operation of
94 the department, as authorized by the Legislature.

95 (b) There is established a special account to be known
96 as the "Artificial Reef Program Account" within the Seafood Fund.
97 Any funds received from any public or private source for the
98 purpose of promoting, constructing, monitoring or maintaining
99 artificial reefs in the marine waters of the state or in federal
100 waters adjacent to the marine waters of the state shall be
101 credited to the account. Any unexpended funds remaining in the



102 account at the end of the fiscal year shall not lapse into the
103 Seafood Fund, but shall remain in the account. The department may
104 expend any funds in the account, subject to appropriation by the
105 Legislature, to accomplish the purpose of the account.

106 (c) There is established a special account to be known
107 as the "Coastal Preserve Account" within the Seafood Fund. Any
108 funds received from any public or private source for the purpose
109 of management, improvement and acquisition of coastal preserves in
110 the state and money required to be deposited pursuant to Sections
111 27-19-56.10 and 27-19-56.27, shall be credited to the account.
112 Any unexpended funds remaining in the account at the end of the
113 fiscal year shall not lapse into the Seafood Fund, but shall
114 remain in the account. The department may expend any funds in the
115 account, subject to appropriation by the Legislature, for the
116 management, improvement and acquisition of coastal preserves.

117 (d) There is established a special account to be known
118 as the "Mississippi Seafood Marketing Program Account" within the
119 Seafood Fund. Monies required to be deposited into the account
120 under Section 27-19-56.27 and any funds received from any public
121 or private source for the purpose of promoting the Mississippi
122 seafood industry must be credited to the account. Any unexpended
123 funds remaining in the account at the end of the fiscal year do
124 not lapse into the Seafood Fund, but remain in the account. The
125 department may expend any funds in the account, subject to
126 appropriation by the Legislature, to accomplish the purposes of



127 this account including, but not limited to, providing funds for
128 cobia stock enhancement programs.

129 (e) There is established a special account to be known
130 as the "Shell Recovery and Replenishment Program Account" within
131 the Seafood Fund. Monies required to be deposited into the
132 account under Section 49-15-46 and any funds received from this
133 program must be credited to this account and shall be used for the
134 purpose of management, improvement, enhancing and replenishing the
135 oyster industry. Any unexpended funds remaining in the account at
136 the end of the fiscal year shall not lapse into the Seafood Fund,
137 but shall remain in the account. The department may expend any
138 funds in the account, subject to appropriation by the Legislature,
139 to accomplish the purpose of the account.

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

142 (3) The secretary of the commission shall keep accurate
143 reports of monies handled as a part of the permanent records of
144 the commission, and the State Treasurer shall furnish the
145 secretary of the commission such forms as may be needed, and the
146 secretary shall account for such forms in his reports to the
147 Treasurer.

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

150 49-15-63. (1) (a) Any person, firm or corporation
151 violating any of the provisions of this chapter or any ordinance



152 duly adopted by the commission, unless otherwise specifically
153 provided for herein, shall, on conviction, be fined not less than
154 One Hundred Dollars (\$100.00), nor more than Five Hundred Dollars
155 (\$500.00), for the first offense, unless the first offense is
156 committed during a closed season, in which case the fine shall be
157 not less than Five Hundred Dollars (\$500.00), nor more than One
158 Thousand Dollars (\$1,000.00); and not less than Five Hundred
159 Dollars (\$500.00), nor more than One Thousand Dollars (\$1,000.00),
160 for the second offense when such offense is committed within a
161 period of three (3) years from the first offense; and not less
162 than Two Thousand Dollars (\$2,000.00) nor more than Four Thousand
163 Dollars (\$4,000.00), or imprisonment in the county jail for a
164 period not exceeding thirty (30) days for any third or subsequent
165 offense when such offense is committed within a period of three
166 (3) years from the first offense.

167 (b) In addition, upon conviction of such third or
168 subsequent offense, it shall be the duty of the court to revoke
169 the license of the convicted party and of the boat or vessel used
170 in such offense, and no further license shall be issued to such
171 person and for * * * that boat to engage in catching or taking of
172 any seafoods from the waters of the State of Mississippi for a
173 period of one (1) year following such conviction. Forfeiture of
174 any equipment or nets used in a second or subsequent offense may
175 be instituted pursuant to Sections 49-15-201 through 49-15-207.
176 If the person in possession of or using the nets in the violation



177 is not the owner or licensee of the nets, the department shall
178 notify the owner or licensee of the nets. The nets shall be
179 subject to forfeiture unless the nets were stolen and prosecution
180 for the theft is initiated. Equipment as used in this section
181 shall not mean boats or vessels.

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

185 (d) Except as provided under subsection (7) of Section
186 49-15-46 and subsection (5) of Section 49-15-45, any fines
187 collected under this section shall be paid into the Seafood Fund.

188 (e) In addition to any other penalties, the commission
189 may suspend the license of any person convicted of a violation of
190 this chapter and may suspend the license of any vessel used in the
191 violation for a period not to exceed five (5) days for the first
192 offense. For a second offense, the commission may suspend the
193 license of such person and vessel for a period not to exceed
194 thirty (30) days. For violations of the Shell Recovery and
195 Replenishment Program under Section 49-15-46, licenses shall be
196 suspended until the violators have complied with all provisions of
197 the program.

198 (f) Upon conviction of five (5) seafood violations
199 within a five-year period, the commission may revoke the license
200 of the convicted party and the boat or vessel used in the
201 offenses, and may prohibit indefinitely the issuance of a license



202 to the person and boat or vessel * * * that were engaged in
203 catching or taking of any seafood from the waters of the State of
204 Mississippi. The commission shall exercise this authority in
205 accordance with the administrative procedures in Section 49-15-401
206 et seq.

207 (2) For any violation of this chapter, the individual
208 registered as the captain shall be subject to the penalties
209 provided in this chapter, if that individual is aboard the vessel.
210 If that individual is not aboard the vessel, the individual
211 designated as the alternate captain under Section 49-15-46 or
212 substitute captain under Section 49-15-64.5 shall be subject to
213 the penalties provided in this chapter. If no individual is
214 designated under Section 49-15-46 or Section 49-15-64.5, the
215 person, firm or corporation owning the vessel shall be subject to
216 the penalties provided for boat captains.

217 (3) All citations issued to boat operators for not
218 possessing the boat's registration card shall be dismissed, along
219 with all related court costs, upon the presentment of the boat's
220 proper registration card to the court or magistrate holding the
221 trial or hearing.

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

224 49-15-38. (1) (a) Unless otherwise permitted by the
225 commission, no oysters shall be taken from the reefs of this state
226 unless culled upon the natural reefs, and all oysters less than



227 three (3) inches from end to end, and all dead shells, shall be
228 replaced, scattered and broadcast immediately on the natural reefs
229 from which they are taken. It is unlawful for any captain or
230 person in charge of any vessel, or any canner, packer, commission
231 man, dealer or other person to purchase, sell or to have in that
232 person's possession or under that person's control any oysters off
233 the public reefs or private bedding grounds not culled according
234 to this section, or any oysters under the legal size. A ten
235 percent (10%) tolerance shall be allowed in relation to any
236 culling.

237 (b) The commission may authorize the culling of oysters
238 of a lesser measure. That authorization shall be in response to
239 special circumstances or extreme natural conditions affecting the
240 habitat, including, but not limited to, flooding. The department
241 may establish checkpoints in any area within its jurisdiction to
242 conduct inspections, collect fees and issue tags in the
243 enforcement of this chapter and regulations adopted by the
244 commission.

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

248 (3) Any person, firm or corporation failing or refusing
249 to * * * follow the provisions of the Shell Recovery and
250 Replenishment Program as required under Section 49-15-46 * * *, is
251 guilty of a misdemeanor and, upon conviction, shall be fined not



252 more than One Hundred Dollars (\$100.00) * * *. In addition to the
253 fine, the violator shall pay the reasonable value of the oyster
254 shells and shall be ineligible to be licensed for any activity set
255 forth in this chapter for a period of two (2) years from the date
256 of conviction.

257 (4) The planting of oyster shells as provided under this
258 chapter shall be under the direction and supervision of the
259 executive director of the department. The governing authorities
260 of each county and municipality bordering upon the Mississippi
261 Sound may assist the commission in the planting and replanting of
262 oyster shells.

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

