

**Replace By Substitute
COMMITTEE AMENDMENT NO 1 PROPOSED TO**

House Bill No. 1211

BY: Committee

**Amend by striking all after the enacting clause and inserting
in lieu thereof the following:**

25 **SECTION 1.** Section 49-15-401, Mississippi Code of 1972, is
26 amended as follows:

27 49-15-401. It is the purpose of this article to establish an
28 administrative hearing procedure for the * * * Mississippi
29 Department of Marine Resources to enforce the rules and
30 regulations * * * set forth in Title 22 Administrative Code and
31 Sections 49-15-1 through 49-15-321, 49-27-1 through 49-27-71,
32 59-21-111, and such other statutes within the jurisdiction of
33 the * * * Department of Marine Resources. Unless specifically
34 authorized, the * * * department shall not seek both



35 administrative and criminal penalties against violators of the
36 statutes referred to herein for the same offense, except as
37 provided in Section 49-15-63. * * *

38 **SECTION 2.** Section 49-15-403, Mississippi Code of 1972, is
39 amended as follows:

40 49-15-403. (1) When any allegation or charge in the form of
41 a complaint has been made against a person for * * * violations
42 pursuant to the authorities outlined in Section 49-15-401 and such
43 matter has been brought before the * * * department for
44 administrative penalty processing, the * * * department shall:

45 (a) Cause the complaint to be in writing * * *, signed
46 by the person and/or office making the charge and include the
47 recommended fine;

48 (b) * * * Ensure that the complaint is filed * * * with
49 the executive director;

50 (c) Cause the * * * executive director of the
51 department, or his designee, to review the complaint; and

52 (d) Send or deliver a copy of the complaint and any
53 supporting documents to the alleged violator along with a request
54 for the alleged violator to respond to the allegations within
55 thirty (30) days. The notification shall be accomplished by any
56 of the methods provided for by the Mississippi Rules of Civil
57 Procedure. Citations issued at the time of the alleged violation
58 by marine enforcement officers shall constitute sufficient notice.



59 (2) Upon receipt of the response and any supporting
60 documents from the alleged violator, the executive director, or
61 his designee, shall review all information on file to determine
62 the merit of the complaint. If the executive director, or his
63 designee, determines that the complaint lacks merit, the executive
64 director may recommend that the complaint be dismissed.

65 (3) If the executive director, or his designee, determines
66 that there are reasonable grounds to indicate that a violation has
67 occurred or if the alleged violator admits to the truth of the
68 allegations upon which the complaint is based, the executive
69 director may * * * impose a fine not to exceed Ten Thousand
70 Dollars (\$10,000.00) for each violation. The executive director
71 shall send a copy of the * * * imposition of fine to the alleged
72 violator * * *.

73 (4) * * * The alleged violator shall have fifteen (15) days
74 from receipt of the * * * finding and recommended fine of the
75 executive director within which to file * * * a written request
76 for an informal settlement conference with the executive director,
77 or his designee. If the alleged violator requests a conference,
78 the executive director, or his designee, shall meet with the
79 alleged violator to discuss the proposed penalty and the
80 possibility of an agreed settlement. The alleged violator may
81 present evidence and written or oral comments at the executive
82 director's conference. The alleged violator may be represented by
83 legal counsel, at his or her own expense. If, in the judgment of



84 the executive director, or his designee, a reasonable settlement
85 is reached, the recommended penalty shall be revised accordingly.
86 The executive director shall make the final decision regarding the
87 penalty to be issued, which may include dismissal of the
88 complaint, issuance of a warning in lieu of a penalty or a
89 monetary penalty not to exceed Ten Thousand Dollars (\$10,000.00)
90 for each violation.

91 * * *

92 **SECTION 3.** Section 49-15-405, Mississippi Code of 1972, is
93 amended as follows:

94 49-15-405. (1) * * * If the alleged violator requests a
95 formal hearing within thirty (30) days from the receipt of the
96 finding and recommended fine, the executive director shall
97 designate a representative of the Attorney General's office to
98 preside over the hearing and render a finding and recommendation
99 as provided in this section.

100 * * *

101 (* * *2) A duly qualified court reporter shall be in
102 attendance and shall make a full and complete transcript of the
103 proceedings. The hearing shall be closed unless the alleged
104 violator requests a public hearing. The * * * hearing officer
105 shall have the right and duty to impose reasonable restrictions
106 as * * * he may deem necessary or appropriate to ensure an
107 orderly, expeditious and impartial proceedings, and shall admit
108 all relevant and material evidence except evidence which is unduly



109 repetitious. Hearsay shall be admissible to the extent permitted
110 by the * * * hearing officer.

111 (* * *3) For purposes of such hearing, the * * * hearing
112 officer is hereby empowered to require the attendance of
113 witnesses, administer oaths and hear testimony, either oral or
114 documentary, for and against the alleged violator. The * * *
115 hearing officer shall have the authority to issue subpoenas to
116 compel the attendance of witnesses and the production of books,
117 papers, records or other documentary evidence at a hearing.
118 Subpoenas to be issued shall be delivered to the sheriff of the
119 county where they are to be executed and the sheriff shall serve
120 them. In case of the failure of any person to comply with any
121 subpoena issued by the * * * hearing officer, the * * * hearing
122 officer may invoke the aid of any court of general jurisdiction of
123 this state. The court may thereupon order such person to comply
124 with the requirements of the subpoena. Failure to comply with the
125 order of the court may be treated as contempt thereof.

126 (* * *4) At the conclusion of the hearing, the * * *
127 hearing officer shall issue a written * * * recommendation
128 incorporating * * * his findings of facts and conclusions of law
129 regarding whether a violation has occurred and * * * the
130 appropriate penalty, if any, that * * * he may assess not to
131 exceed Ten Thousand Dollars (\$10,000.00) per violation. * * *

132 (5) The hearing officer's recommendation shall then be
133 forwarded to the executive director who will make the final



134 decision regarding whether a violation has occurred and the
135 appropriate penalty, if any.

136 (6) The executive director's final decision shall be
137 delivered to the alleged violator.

138 **SECTION 4.** Section 49-15-407, Mississippi Code of 1972, is
139 amended as follows:

140 49-15-407. Failure of the alleged violator to request an
141 informal settlement conference or a hearing, * * * to respond to
142 the complaint within thirty (30) shall constitute a waiver of the
143 right to a hearing, and any penalties assessed by the * * *
144 executive director shall be due and payable as provided in Section
145 49-15-415.

146 **SECTION 5.** Section 49-15-409, Mississippi Code of 1972, is
147 amended as follows:

148 49-15-409. The * * * department shall have jurisdiction over
149 all persons and property necessary to administer and enforce the
150 provisions of this article and the * * * authorities outlined in
151 Section 49-15-401. The * * * department may adopt rules and
152 regulations to implement the provisions of this article.

153 **SECTION 6.** Section 49-15-411, Mississippi Code of 1972, is
154 amended as follows:

155 49-15-411. (1) Any individual aggrieved by a final decision
156 of the * * * executive director shall be entitled to judicial
157 review.



158 (2) Any appeal from the * * * executive director's decision
159 shall be filed in the Chancery Court of the Second Judicial
160 District of Harrison County, Mississippi, on the record made,
161 including a verbatim transcript of the testimony at the hearing
162 held before the * * * executive director. The appeal shall be
163 filed within thirty (30) days after notification of the decision
164 of the * * * executive director is mailed or served, and the
165 proceedings in chancery court shall be conducted as other matters
166 coming before the court on appeal. The appeal shall be perfected
167 upon filing notice of the appeal and by the prepayment of all
168 estimated costs, including the cost of preparation of the record
169 of the proceedings before the * * * executive director, and the
170 filing of a bond in the sum of Five Hundred Dollars (\$500.00)
171 conditioned that if the * * * executive director's final decision
172 be affirmed by the chancery court, the aggrieved party shall pay
173 the costs of the appeal to the chancery court.

174 (3) The scope of review of the chancery court in such cases
175 shall be limited to a review of the record made before the * * *
176 executive director's final decision to determine if the * * *
177 decision is unlawful for the reason that it was:

- 178 (a) Not supported by any substantial evidence;
179 (b) Arbitrary or capricious; or
180 (c) In violation of some statutory or constitutional
181 right of the individual.



182 (4) No relief shall be granted based upon the court's
183 finding of harmless error by the * * * executive director in
184 complying with the procedural requirements of this article. If
185 there is a finding of prejudicial error in the proceedings, the
186 cause may be remanded for a rehearing consistent with the findings
187 of the court.

188 (5) Any party aggrieved by action of the chancery court may
189 appeal to the State Supreme Court in the manner provided by law.

190 **SECTION 7.** Section 49-15-413, Mississippi Code of 1972, is
191 amended as follows:

192 49-15-413. Each violation of the rules and regulations * * *
193 set forth in Title 22 of the Administrative Code or violations of
194 the statutes set forth in Chapters 15 and 27 of Title 49, and
195 Chapter 21 of Title 59, Mississippi Code of 1972, shall be subject
196 to the imposition of a civil penalty up to Ten Thousand Dollars
197 (\$10,000.00).

198 **SECTION 8.** Section 49-15-415, Mississippi Code of 1972, is
199 amended as follows:

200 49-15-415. (1) Any penalty assessed by the * * * department
201 shall be due and payable within forty-five (45) days of the
202 notification of the decision. All sums of money collected as a
203 result of criminal or civil penalties levied under this article
204 shall be paid into the Seafood Fund created and described in
205 Section 49-15-17.



206 (2) If the judgment is not paid within the forty-five (45)
207 days, or within such additional time as the * * * department may
208 allow, the * * * department may file suit in the chancery court of
209 the county where the defendant resides or in the case of a
210 nonresident defendant in the Chancery Court of the Second Judicial
211 District of Harrison County or any other court with appropriate
212 jurisdiction to enforce the decision of the * * * executive
213 director and recover reasonable attorney's fees and all court
214 costs.

215 (3) A copy of the notification sent by the * * * department
216 to the violator shall be sufficient proof as to the judgment of
217 the * * * department.

218 **SECTION 9.** Section 49-15-323, Mississippi Code of 1972, is
219 amended as follows:

220 49-15-323. If any violation of any marine resources law or
221 regulation is alleged to have been committed in the Gulf of Mexico
222 outside of the state's territorial waters where the state has
223 jurisdiction over the recreational or commercial fishing vessel,
224 under the Magnuson-Stevens Fishery Conservation and Management
225 Act, 16 USCS Section 1856, or any other provision of federal law,
226 the * * * Department of Marine Resources shall have jurisdiction
227 of the offense and may commence administrative enforcement action
228 against alleged violators in accordance with the administrative
229 procedures provisions of Section 49-15-401 et seq., Mississippi
230 Code of 1972.



231 **SECTION 10.** Section 49-15-63, Mississippi Code of 1972, is
232 amended as follows:

233 49-15-63. (1) (a) Any person, firm or corporation
234 violating any of the provisions of this chapter or any ordinance
235 duly adopted by the * * * department, unless otherwise
236 specifically provided for herein, shall, on conviction, be fined
237 not less than One Hundred Dollars (\$100.00), nor more than Five
238 Hundred Dollars (\$500.00), for the first offense, unless the first
239 offense is committed during a closed season, in which case the
240 fine shall be not less than Five Hundred Dollars (\$500.00), nor
241 more than One Thousand Dollars (\$1,000.00); and not less than Five
242 Hundred Dollars (\$500.00), nor more than One Thousand Dollars
243 (\$1,000.00), for the second offense when such offense is committed
244 within a period of three (3) years from the first offense; and not
245 less than Two Thousand Dollars (\$2,000.00) nor more than Four
246 Thousand Dollars (\$4,000.00), or imprisonment in the county jail
247 for a period not exceeding thirty (30) days for any third or
248 subsequent offense when such offense is committed within a period
249 of three (3) years from the first offense.

250 (b) In addition, upon conviction of such third or
251 subsequent offense, it shall be the duty of the court to revoke
252 the license of the convicted party and of the boat or vessel used
253 in such offense, and no further license shall be issued to such
254 person and for said boat to engage in catching or taking of any
255 seafoods from the waters of the State of Mississippi for a period



256 of one (1) year following such conviction. Forfeiture of any
257 equipment or nets used in a second or subsequent offense may be
258 instituted pursuant to Sections 49-15-201 through 49-15-207. If
259 the person in possession of or using the nets in the violation is
260 not the owner or licensee of the nets, the department shall notify
261 the owner or licensee of the nets. The nets shall be subject to
262 forfeiture unless the nets were stolen and prosecution for the
263 theft is initiated. Equipment as used in this section shall not
264 mean boats or vessels.

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

268 (d) Except as provided under subsection (5) of Section
269 49-15-45, any fines collected under this section shall be paid
270 into the Seafood Fund.

271 (e) In addition to any other penalties, the * * *
272 department may suspend the license of any person convicted of a
273 violation of this chapter and may suspend the license of any
274 vessel used in the violation for a period not to exceed five (5)
275 days for the first offense. For a second offense, the * * *
276 department may suspend the license of such person and vessel for a
277 period not to exceed thirty (30) days.

278 (f) Upon conviction of five (5) seafood violations
279 within a five-year period, the * * * department may revoke the
280 license of the convicted party and the boat or vessel used in the



281 offenses, and may prohibit indefinitely the issuance of a license
282 to the person and boat or vessel to engage in catching or taking
283 of any seafood from the waters of the State of Mississippi.

284 The * * * department shall exercise this authority in accordance
285 with the administrative procedures in Section 49-15-401 et seq.

286 (2) For any violation of this chapter, the individual
287 registered as the captain shall be subject to the penalties
288 provided in this chapter, if that individual is aboard the vessel.
289 If that individual is not aboard the vessel, the individual
290 designated as the alternate captain under Section 49-15-46 or
291 substitute captain under Section 49-15-64.5 shall be subject to
292 the penalties provided in this chapter. If no individual is
293 designated under Section 49-15-46 or Section 49-15-64.5, the
294 person, firm or corporation owning the vessel shall be subject to
295 the penalties provided for boat captains.

296 (3) All citations issued to boat operators for not
297 possessing the boat's registration card shall be dismissed, along
298 with all related court costs, upon the presentment of the boat's
299 proper registration card to the court or magistrate holding the
300 trial or hearing.

301 **SECTION 11.** This act shall take effect and be in force from
302 and after July 1, 2021.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**



1 AN ACT TO AMEND SECTION 49-15-401, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT THE DEPARTMENT OF MARINE RESOURCES SHALL ENFORCE
3 THE RULES AND REGULATIONS, ADMINISTRATIVE CODE AND OTHER STATUTES
4 WITHIN THE JURISDICTION OF THE DEPARTMENT OF MARINE RESOURCES; TO
5 AMEND SECTIONS 49-15-403 AND 49-15-405, MISSISSIPPI CODE OF 1972,
6 TO REVISE THE ADMINISTRATIVE HEARING PROCESS FOR VIOLATIONS WITHIN
7 THE JURISDICTION OF THE DEPARTMENT OF MARINE RESOURCES AND TO
8 CLARIFY THE AUTHORITY OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT;
9 TO PROVIDE THAT THE EXECUTIVE DIRECTOR SHALL MAKE THE FINAL
10 DECISION REGARDING THE PENALTY, IF ANY, TO BE ISSUED; TO AMEND
11 SECTION 49-15-407, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT AN
12 ALLEGED VIOLATOR'S FAILURE TO PRESENT EVIDENCE SHALL CONSTITUTE A
13 WAIVER OF THE RIGHT TO A HEARING; TO AMEND SECTION 49-15-409,
14 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE DEPARTMENT OF MARINE
15 RESOURCES SHALL HAVE JURISDICTION OVER ALL PERSONS AND PROPERTY
16 NECESSARY TO ADMINISTER AND ENFORCE THE ADMINISTRATIVE HEARING
17 PROCEDURES FOR THE DEPARTMENT; TO AMEND SECTION 49-15-411,
18 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ANY INDIVIDUAL AGGRIEVED
19 BY A FINAL DECISION OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF
20 MARINE RESOURCES SHALL BE ENTITLED TO JUDICIAL REVIEW; TO AMEND
21 SECTIONS 49-15-413, 49-15-415, 49-15-323 AND 49-15-63, MISSISSIPPI
22 CODE OF 1972, TO CONFORM TO THE PROVISIONS OF THIS ACT; AND FOR
23 RELATED PURPOSES.

