

By: Senator(s) Thompson, Moran

To: Ports and Marine Resources

SENATE BILL NO. 2544
(As Sent to Governor)

1 AN ACT RELATING TO THE REGULATION OF SEAFOOD AND OYSTERS BY
2 THE MISSISSIPPI DEPARTMENT OF MARINE RESOURCES; TO AMEND SECTIONS
3 49-15-3, 49-15-5, 49-15-7, 49-15-9, 49-15-16, 49-15-17, 49-15-18,
4 49-15-23, 49-15-27, 49-15-29, 49-15-30, 49-15-31, 49-15-34,
5 49-15-35, 49-15-36, 49-15-37, 49-15-38, 49-15-40, 49-15-44,
6 49-15-45, 49-15-46 AND 49-15-47, MISSISSIPPI CODE OF 1972, TO
7 CLARIFY THE AUTHORITY OF THE MISSISSIPPI DEPARTMENT OF MARINE
8 RESOURCES TO LEASE REEFS AND BOTTOM LAND FOR OYSTER
9 GROWING/HARVESTING AND TO CLARIFY THE AUTHORITY OF THE DEPARTMENT
10 TO REGULATE THE TAKING OF OYSTERS AND THE ESTABLISHMENT OF NEW
11 OYSTER BEDS; TO REQUIRE ALL LESSEES TO BE RESIDENTS OF THE STATE;
12 TO ESTABLISH THE "OYSTER PRODUCTION PRESERVE ACCOUNT" WITHIN THE
13 DEPARTMENT'S SEAFOOD FUND, WHICH IS EARMARKED FOR OYSTER
14 PRODUCTION MANAGEMENT AND TO REQUIRE ANNUAL REPORTS ON
15 EXPENDITURES; TO CLARIFY THE FIRST RIGHT OF RENEWAL OF EXISTING
16 LESSEES; TO PRESCRIBE CERTAIN REQUIREMENTS FOR THE INITIAL
17 APPLICATION FOR LEASE; TO PROVIDE FOR PENALTIES AND PROCEDURES IN
18 THE EVENT OF DEFAULT IN PAYMENT OF RENT; TO PROVIDE FOR
19 CANCELLATION AND FOR FORFEITURES; TO PROVIDE A RIGHT OF APPEAL; TO
20 DELETE CERTAIN PROVISIONS RELATING TO DEPURATION TECHNOLOGY; TO
21 DELETE CERTAIN PROVISIONS RELATING TO RESTRICTED SEED AREAS; TO
22 PROVIDE RECIPROCITY FOR CERTAIN NONRESIDENT VESSEL OYSTER DREDGING
23 AND TONGING FEES; TO DELETE THE AUTHORITY OF LOCAL GOVERNING
24 AUTHORITIES TO ASSIST THE DEPARTMENT IN PLANTING OYSTER SHELLS; TO
25 DELETE THE PROVISIONS THAT ALL REEFS ARE PUBLIC; TO PRESCRIBE
26 CERTAIN CONDITIONS FOR STATE-OWNED REEFS; TO DELETE THE AUTHORITY
27 OF THE DEPARTMENT TO EXERCISE EMINENT DOMAIN IN CONSTRUCTING
28 CANALS; TO CLARIFY THE AUTHORITY OF MUNICIPALITIES RELATIVE TO THE
29 WATERS OF THE MISSISSIPPI SOUND; TO REPEAL SECTION 49-15-39,
30 MISSISSIPPI CODE OF 1972, WHICH REGULATES TONGING REEFS AND
31 PRESCRIBES CERTAIN CRIMINAL PENALTIES RELATED TO TONGING REEFS AND
32 TO REPEAL SECTION 49-15-40.1, MISSISSIPPI CODE OF 1972, WHICH
33 AUTHORIZES THE MISSISSIPPI DEPARTMENT OF MARINE RESOURCES TO
34 CONDUCT A PILOT PROGRAM FOR BOTTOM LAND LEASING FOR OYSTER



35 PRODUCTION IN WATERS ADJACENT TO HANCOCK COUNTY; AND FOR RELATED
36 PURPOSES.

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

38 **SECTION 1.** Section 49-15-3, Mississippi Code of 1972, is
39 amended as follows:

40 49-15-3. As used in this chapter, the term:

41 (a) "Commission" means the Mississippi Advisory
42 Commission on Marine Resources.

43 (b) "Department" means the Department of Marine
44 Resources.

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



59 (d) "Game fish" means cobia, also known as ling or
60 lemonfish (rachycentron canadum). The cobia is classified as game
61 fish.

62 (e) "Illegal oysters" means:

63 (i) All untagged shell stock;

64 (ii) Shell oysters obtained from uncertified shops
65 or dealers or from an unlicensed catcher;

66 (iii) Oysters obtained from waters not declared
67 safe and sanitary by the department, except those oysters caught
68 by the * * * department for re-laying or under private leases
69 pursuant to Section 49-15-27;

70 (iv) Shucked oysters obtained from uncertified
71 shops or repackers.

72 (f) "Inspector" means the chief inspector, the
73 assistant chief inspector, deputy inspector, bureau director and
74 certified enforcement officer employed by the department.

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

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



84 (i) "Seafood" means all oysters, saltwater fish,
85 saltwater shrimp, diamondback terrapin, sea turtle, crabs and all
86 other species of marine or saltwater animal life existing or
87 living in the waters within the territorial jurisdiction of the
88 State of Mississippi.

89 * * *

90 **SECTION 2.** Section 49-15-5, Mississippi Code of 1972, is
91 amended as follows:

92 49-15-5. All seafoods existing or living in waters within
93 the territorial jurisdiction of the State of Mississippi not held
94 in private ownership legally acquired, and all beds and bottoms of
95 rivers, streams, bayous, lagoons, lakes, bays, sounds and inlets
96 bordering on or connecting with the Gulf of Mexico or Mississippi
97 Sound within such territorial jurisdiction, including all oysters
98 and other shell fish and parts thereof grown thereon, either
99 naturally or cultivated, shall be, continue, and remain the
100 property of the State of Mississippi, to be held in trust for the
101 people thereof until title thereto shall be legally divested in
102 the manner and form hereinafter authorized, and the same shall be
103 under the exclusive control of the * * * department until the
104 right of private ownership shall vest therein as hereinafter
105 provided.

106 **SECTION 3.** Section 49-15-7, Mississippi Code of 1972, is
107 amended as follows:



108 49-15-7. All shells of dead oysters, clams and other
109 shellfish; and all of the oyster shells, clam shells, mussel
110 shells, dead reef shells, and cay shells, being upon or under the
111 bottom of, or under the tidewaters within the territorial
112 jurisdiction of the State of Mississippi, and all beds, banks and
113 accumulations of such shells within such territorial jurisdiction
114 on or under the bottoms of such waters, or surrounded by such
115 waters, being the property of the State of Mississippi are hereby
116 further declared to be the property of the State of Mississippi
117 under the jurisdiction of the * * * department.

118 **SECTION 4.** Section 49-15-9, Mississippi Code of 1972, is
119 amended as follows:

120 49-15-9. The sole right of planting, cultivating in racks or
121 other structures, and gathering oysters and erecting bathhouses
122 and other structures in front of any land bordering on the Gulf of
123 Mexico or Mississippi Sound or waters tributary thereto belongs to
124 the riparian owner and extends not more than seven hundred fifty
125 (750) yards from the shore, except for state-owned lands on Deer
126 Island, which shall be not more than four hundred (400) yards from
127 shore, measuring from the average low water mark, but where the
128 distance from shore to shore is less than fifteen hundred (1500)
129 yards, the owners of either shore may plant and gather to a line
130 equidistant between the two (2) shores, but no person shall plant
131 in any natural channel so as to interfere with navigation, and
132 such riparian rights shall not include any reef or natural oyster



133 bed and does not extend beyond any channel. A riparian owner
134 shall comply with the Coastal Wetlands Protection Act in
135 exercising the use of these riparian rights. Stakes of such frail
136 materials as will not injure any watercraft may be set up to
137 designate the bounds of the plantation, but navigation shall not
138 be impeded thereby. The riparian owner shall clearly mark such
139 cultivation racks and other structures. The * * * department may
140 adopt regulations to require that the racks are adequately marked
141 to ensure the safety of users of public waters. Any oysters
142 planted by such riparian owner are the private property of such
143 riparian owner, subject to the right of the * * * department to
144 adopt reasonable rules and regulations as to the planting and
145 gathering of such oysters. All bathhouses, piers, wharfs, docks
146 and pavilions, or other structures owned by the riparian owner are
147 likewise the private property of such owner, who shall be entitled
148 to the exclusive use, occupancy and possession thereof, and may
149 abate any private or public nuisance committed by any person or
150 persons in the area of his riparian ownership and may, for such
151 purposes, resort to any remedial action authorized by law. The
152 governing authorities of any municipality and the board of
153 supervisors of any county are authorized to adopt reasonable rules
154 and regulations to protect riparian owners in the enjoyment of
155 their riparian rights, and for such purposes may regulate the use
156 of beaches, landings, and riparian areas abutting or fronting on
157 roads, streets or highways.



158 **SECTION 5.** Section 49-15-16, Mississippi Code of 1972, is
159 amended as follows:

160 49-15-16. The * * * department may develop a limited entry
161 fisheries management program for all resource groups. The * * *
162 department may require a license for each resource group and shall
163 establish the fees for such licenses. The * * * department may
164 establish a means test or any other criteria to determine
165 eligibility for licenses under the limited entry program.
166 The * * * department may impose a moratorium on the issuance of
167 licenses for a fishery resource.

168 **SECTION 6.** Section 49-15-17, Mississippi Code of 1972, is
169 amended as follows:

170 49-15-17. (1) (a) All monies received or obtained by
171 the * * * department under the provisions of this chapter shall be
172 paid over by the * * * department to the State Treasurer and shall
173 be deposited into the fund known as the "Seafood Fund." All
174 revenues collected through the department, to include, but not
175 limited to, commercial saltwater licenses and taxes, permits,
176 fines and penalties, and confiscated catches, shall be deposited
177 into the department operating account (Seafood Fund) and expended
178 for the operation of the department, as authorized by the
179 Legislature.

180 (b) There is established a special account to be known
181 as the "Artificial Reef Program Account" within the Seafood Fund.
182 Any funds received from any public or private source for the



183 purpose of promoting, constructing, monitoring or maintaining
184 artificial reefs in the marine waters of the state or in federal
185 waters adjacent to the marine waters of the state shall be
186 credited to the account. Any unexpended funds remaining in the
187 account at the end of the fiscal year shall not lapse into the
188 Seafood Fund, but shall remain in the account. The department may
189 expend any funds in the account, subject to appropriation by the
190 Legislature, to accomplish the purpose of the account.

191 (c) There is established a special account to be known
192 as the "Coastal Preserve Account" within the Seafood Fund. Any
193 funds received from any public or private source for the purpose
194 of management, improvement and acquisition of coastal preserves in
195 the state and money required to be deposited pursuant to Sections
196 27-19-56.10 and 27-19-56.27, shall be credited to the account.
197 Any unexpended funds remaining in the account at the end of the
198 fiscal year shall not lapse into the Seafood Fund, but shall
199 remain in the account. The department may expend any funds in the
200 account, subject to appropriation by the Legislature, for the
201 management, improvement and acquisition of coastal preserves.

202 (d) There is established a special account to be known
203 as the "Mississippi Seafood Marketing Program Account" within the
204 Seafood Fund. Monies required to be deposited into the account
205 under Section 27-19-56.27 and any funds received from any public
206 or private source for the purpose of promoting the Mississippi
207 seafood industry must be credited to the account. Any unexpended



208 funds remaining in the account at the end of the fiscal year do
209 not lapse into the Seafood Fund, but remain in the account. The
210 department may expend any funds in the account, subject to
211 appropriation by the Legislature, to accomplish the purposes of
212 this account, including, but not limited to, providing funds for
213 cobia stock enhancement programs.

214 (e) There is established a special account to be known
215 as the "Oyster Production Preserve Account" within the Seafood
216 Fund. Monies required to be deposited from oyster leasing and
217 licensing payments under Section 27-15-27, sack fees, money
218 required to be deposited pursuant to Sections 27-19-56.10 and
219 27-19-56.27, and any funds received from any public or private
220 source for the purpose of oyster production and propagation in
221 this state, which includes plantings of oysters and cultch
222 materials, shall be credited to the account. Any unexpended funds
223 remaining in the account at the end of the fiscal year shall not
224 lapse into the Seafood Fund, but shall remain in the account. The
225 department may expend any funds in the account, subject to
226 specific appropriation by the Legislature, for the management,
227 improvement and acquisition of permissible property for oyster
228 production and propagation in the state, which includes plantings
229 of oysters and cultch materials. The Department of Marine
230 Resources shall develop an annual report to the Legislature which
231 describes the annual expenditures from this fund for the purpose
232 of furthering oyster production and propagation in this state to



233 be included in the department's annual budget request to the
234 Legislative Budget Office and to be transmitted to the Chairmen of
235 the Senate and House Committees on Ports and Marine Resources.

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

238 (3) The * * * department shall keep accurate reports of
239 monies handled as a part of the permanent records of the * * *
240 department, and the State Treasurer shall furnish the * * *
241 department such forms as may be needed, and the * * * department
242 shall account for such forms in * * * reports to the Treasurer.

243 **SECTION 7.** Section 49-15-18, Mississippi Code of 1972, is
244 amended as follows:

245 49-15-18. The executive director of the department shall
246 publish an abstract copy of this chapter and all subsequent
247 amendments to this chapter and all rules and regulations
248 promulgated by the * * * department under this chapter. The
249 department may distribute the publication to all persons
250 requesting a copy and to each licensee at the time of issuance of
251 the license. New regulations and amendments to this chapter may
252 be supplied to each licensee within a reasonable time after their
253 promulgation or passage. The department may charge a reasonable
254 fee not to exceed actual cost for its publications.

255 **SECTION 8.** Section 49-15-23, Mississippi Code of 1972, is
256 amended as follows:



257 49-15-23. (1) (a) The Mississippi * * * Department of
258 Marine Resources and the Commission on Wildlife, Fisheries and
259 Parks are hereby authorized and empowered to establish the
260 dividing line between salt and fresh waters, and when such line
261 has been established and notice thereof given as provided herein,
262 it shall be recognized in the courts in connection with any
263 proceedings under the game and fish laws of this state. Such line
264 may be changed from time to time by the Mississippi * * *
265 Department of Marine Resources and the Commission on Wildlife,
266 Fisheries and Parks on proper publication of such changes.

267 (b) In establishing the dividing line between salt and
268 fresh waters, no part of the Bay of St. Louis shall be declared to
269 be fresh water.

270 (c) In establishing the dividing line between salt and
271 fresh waters, none of the waters within the municipal boundaries
272 of the City of Pascagoula, as they existed on January 1, 1981,
273 shall be declared to be fresh water.

274 (d) In establishing the dividing line between salt and
275 fresh waters, no part of Bayou Cassotte and its tributaries, Bang
276 Bayou and its tributaries, Bayou Cumbest and its tributaries,
277 Crooked Bayou, Middle Bayou and that part of Heron Bayou with its
278 tributaries which lie in the State of Mississippi shall be
279 declared to be fresh water.

280 (2) Whenever any dividing line is established or changed as
281 above provided, notice shall be given to the public by publication



282 for three (3) weeks in a newspaper published and having general
283 circulation in the county or counties affected thereby, and a
284 description of the dividing line shall be filed in the office of
285 the chancery clerk of such counties or county.

286 **SECTION 9.** Section 49-15-27, Mississippi Code of 1972, is
287 amended as follows:

288 49-15-27. The department is hereby granted full and complete
289 authority to lease the bottoms within its jurisdiction upon the
290 following terms and conditions:

291 (1) All areas within the department's jurisdiction, not
292 designated * * * state-owned reefs by this chapter, * * *
293 including natural reefs and all areas not within the boundaries of
294 riparian property owners may be leased by the department.

295 (2) All individual lessees shall be residents of the State
296 of Mississippi, or if a firm or corporation, such firm or
297 corporation shall be organized under the laws of the State of
298 Mississippi and owned by a resident of the State of Mississippi.

299 (3) No individual, corporation, partnership or association
300 may lease less than one (1) acre nor more than * * * two thousand
301 five hundred (2,500) acres total; however, in the case of an
302 individual there shall * * * be counted towards such limitation
303 any lands leased by a corporation, partnership or association in
304 which such individual owns ten percent (10%) or less interest and,
305 in the case of a corporation, partnership or association, there
306 shall * * * be counted toward such limitation any lands leased by



307 an individual stockholder, partner or associate thereof who owns
308 ten percent (10%) or less interest in such corporation,
309 partnership or association.

310 (4) Individuals, firms or corporations desiring to lease
311 bottoms shall make application to the department in writing,
312 describing the area to be leased. Applications must include a
313 plat showing the proposed lease area and description of cultch
314 material type and amount to be deployed on the leased area.

315 (5) * * * (a) Any person who qualifies and who desires to
316 lease a part of the bottom or bed of any of the waters of this
317 state as provided in this section shall present to the department
318 a written application, and pay an application fee in the amount of
319 Fifty Dollars (\$50.00). This application shall contain the name
320 and address of the applicant and a reasonably definite description
321 of the location and amount of land covered by water desired by the
322 applicant. Upon receipt of the application, the department shall
323 then register the application with date and time stamped thereon,
324 shall order an examination to determine whether the water bottoms
325 applied for are leasable, and shall determine the acreage upon
326 which the rental of the lease shall be fixed. If the area is
327 found to be leasable, the department shall either make a lease
328 with the applicant or issue a written notice declining the
329 application with reasons for same within * * * thirty (30)
330 days * * * of the date of the application. Such lease * * * shall
331 be for the area described in the application upon payment of the



332 prorated annual rent in advance for the remainder of the calendar
333 year.

334 (b) When applications are made by two (2) or more
335 persons for the same water bottoms, the applicant or the heirs or
336 transferors of a deceased applicant who files the first
337 application has prior claim.

338 (c) The department shall require that the bottoms of
339 water areas to be leased be as definable as possible, taking into
340 consideration such factors as the shape of the body of water, and
341 the condition of the bottom as to hardness or softness which would
342 render it desirable or undesirable for the purpose of oyster
343 cultivation.

344 (d) The provisions of this subsection shall apply only
345 to the initial application for an oyster lease, and not to the
346 renewal of a lease.

347 (e) The department may not execute a lease until the
348 department has posted notice of the application for the lease on
349 its website for thirty (30) consecutive days.

350 (f) Any person claiming ownership of or interest in the
351 water bottoms to be leased may protest the issuance of the lease
352 on the grounds that the protesting party owns the water bottoms,
353 but only by delivering via certified mail notice of the protest in
354 writing to the Secretary of State, and the lease applicant on or
355 before the thirtieth day after notice of the application was
356 posted. The notice of protest shall include all information and



357 documentation that the protesting party believes is relevant to
358 the question of ownership. The right to protest issuance of the
359 lease pursuant to this section shall expire if a protest is not
360 made on or before the ninetieth day after notice of the
361 application was posted.

362 (g) If a protest is timely made, the Secretary of State
363 shall review the claim to ownership of the contested water bottoms
364 and issue a preliminary determination to the protesting party, and
365 the lease applicant within ninety (90) days of receiving the
366 notice of protest. Any applicant shall have the right to appeal
367 any decision of the department related to such protest to the
368 circuit court with proper venue.

369 (h) A lease applicant may withdraw a lease application
370 and receive a full refund from the department of all application
371 fees, by submitting a written request for withdrawal to the
372 department within ninety (90) days after the department posts
373 notice of the application on its website.

374 (6) Such leases shall be for an initial term of * * *
375 fifteen (15) years, with the * * * lessee * * * having the right
376 of first renewal of the lease for an additional * * * fifteen (15)
377 years, and continue to renew at * * * fifteen-year intervals, at
378 the same ground rental rate so long as lessee actively cultivates
379 and gathers oysters, and complies with the provisions of this
380 chapter. No lease may be transferred without approval by the
381 department of the transfer.



382 (7) The terms of every lease issued hereunder shall ensure
383 the maximum cultivation and propagation of oysters. Throughout
384 the term of every lease issued hereunder, each lessee shall add
385 cultch and make other necessary efforts to ensure the maximum
386 cultivation and propagation of oysters. The department shall
387 promulgate regulations to set forth guidelines for lessees to
388 follow to ensure the maximum cultivation and propagation of
389 oysters under the lease. The lessee shall submit a written report
390 with supporting documentation to the department of efforts to
391 cultivate and propagate oysters for the previous year. If the
392 department finds a lessee is not making efforts to cultivate and
393 propagate oysters, and the lessee fails to take remedial steps to
394 address same, such lease shall be subject to termination as
395 provided for hereunder.

396 (* * *8) The department shall fix a ground rental rate
397 at * * * Three Dollars (\$3.00) per acre per year. The annual
398 rental payments shall be due by December 31 for the next calendar
399 year.

400 (9) Any lessee who pays the rent on or after the first day
401 of January shall pay the rent due plus an additional ten percent
402 (10%) penalty. The failure of the lessee to pay the rent
403 punctually on or before the first of each March, ipso facto and
404 without demand or putting in default, terminates and cancels the
405 lease and forfeits to the department all the works, improvements,
406 betterments, and oysters on the leased water bottom. The



407 department may at once enter on the water bottom and take
408 possession thereof. Such water bottom shall then be open for
409 lease in accordance with subsections (5) through (8) of this
410 section. Ten (10) days thereafter the department shall enter the
411 termination, cancellation, and forfeiture on its books and give
412 public notice thereof by publication in one (1) local paper in the
413 county where the formerly leased water bottoms are located. On or
414 before the first day of each February, the department shall issue
415 a written notice of delinquency by certified mail to each lessee
416 who has not yet paid the rent. The department shall also publish
417 notice of such delinquency on its website.

418 (* * *10) The department shall keep an accurate chart of
419 the areas within its jurisdiction and shall mark on such chart
420 those areas which are under lease. All leases shall be marked by
421 appropriate poles, stakes or buoys of such material as will not
422 injure watercraft, at the expense of the leaseholder. The
423 department shall keep an accurate book, designated "Mississippi
424 Oyster Farms" which shall contain copies of all leases. The
425 department shall maintain a map of designated state-owned, leased
426 areas, and areas available for lease on the department's website.
427 If any lease be cancelled or expire, such fact shall be noted on
428 the face of such lease. Lessees shall be "oyster farmers" for the
429 purposes of any grants, aid, subsidies or other assistance from
430 the federal government or other governmental or private agencies.



431 (* * *11) All funds derived from leasing shall be paid into
432 the Seafood Fund under Section 49-15-17, for use by the department
433 to further oyster production in this state, which includes
434 plantings of oysters and cultch materials.

435 (* * *12) All leases made by the department under the
436 authority of this section shall be subject to the paramount right
437 of the state and any of its political subdivisions authorized by
438 law, to promote and develop ports, harbors, channels, industrial
439 or recreational projects, and all such leases shall contain a
440 provision that in the event such authorized public body shall
441 require the area so leased or any part thereof for such public
442 purposes, that the lease shall be terminated on reasonable notice
443 fixed by the department in such lease. On the termination of any
444 lease, the lessees shall have the right to remove any oysters
445 within the leased area within such time as may be fixed by the
446 department and in accordance with such reasonable rules and
447 regulations as the department may adopt.

448 Any person convicted of taking oysters from leased land or
449 from waters that are not of a safe sanitary quality without a
450 permit as provided in Section 49-15-37 shall, on the first
451 offense, forfeit all equipment used, exclusive of any boat or
452 boats; and be fined not to exceed Two Thousand Dollars (\$2,000.00)
453 or sentenced not to exceed one (1) year in the county jail, or
454 both. Subsequent convictions shall be punishable by forfeiture of
455 all equipment, including any boat or boats; and a fine not to



456 exceed Five Thousand Dollars (\$5,000.00) or not to exceed two (2)
457 years in prison, or both such fine and imprisonment.

458 The department is enjoined to cooperate with the Jackson
459 County Port Authority, the Harrison County Development Commission,
460 the municipal port commission and other port and harbor agencies,
461 so that oyster beds shall not be planted in close proximity to
462 navigable channels. The department or lessee shall have no right
463 of action as against any such public body for damages accruing to
464 any natural reef or leased reef by any necessary improvement of
465 such channel in the interest of shipping, commerce, navigation or
466 other purpose authorized by law.

467 (13) A lessee has the exclusive use of the water bottoms
468 leased and all oysters and cultch grown or placed thereon.
469 However, this exclusive right is subordinate to the rights and
470 responsibilities of the state, any political subdivision of the
471 state, the United States, or any agency or agent thereof, to take
472 action in furtherance of coastal protection, conservation or
473 restoration.

474 (14) In order to protect the health and safety of the
475 residents of the State of Mississippi, the terms and conditions
476 relating to the leasing of bottoms provided in this section shall
477 be fully applicable to any lease executed by the Mississippi
478 Department of Marine Resources prior to the passage of this act,
479 and the department shall revise any lease issued prior to the



480 passage of this act as necessary in order to comply with the
481 provisions of this section.

482 **SECTION 10.** Section 49-15-29, Mississippi Code of 1972, is
483 amended as follows:

484 49-15-29. (1) The * * * department shall assess and collect
485 license fees and taxes as authorized under this chapter.

486 (2) All commercial licenses provided for under this chapter
487 that relate to seafood shall be purchased from May 1 through April
488 30 at the fees provided in this chapter. The licenses shall
489 expire on April 30 following the date of issuance.

490 (3) When an application for an original or renewal license
491 of any kind authorized by this chapter is received by the * * *
492 department, the * * * department shall determine whether the
493 vessel or related equipment subject to that license is owned and
494 operated in compliance with applicable federal and state laws. If
495 the * * * department determines that a vessel or its owner is not
496 in compliance with applicable federal and state laws, then no
497 license shall be issued or renewed for the operation of that
498 vessel for a period of one (1) year. All licenses shall be made
499 available for purchase at any building which is regularly operated
500 by the department * * * on the Mississippi Gulf Coast.

501 (4) The * * * department may authorize any person, other
502 than a salaried employee of the state to issue any license under
503 this chapter which the * * * department deems appropriate. The
504 authorized person may collect and retain for issuance of the



505 license the sum of One Dollar (\$1.00) in addition to the license
506 fee provided in this chapter. The * * * department shall
507 establish the qualifications of persons authorized to issue
508 licenses under this section and shall also establish the procedure
509 for the issuance of that license by the authorized person and the
510 procedure for collection of license fees by and from the
511 authorized person.

512 (5) The * * * department may design, establish, and
513 administer a program to provide for the purchase, by electronic
514 means, of any license, permit, registration or reservation issued
515 by the * * * department. Any actual costs associated to provide
516 these documents electronically may be added to the cost of the
517 electronic program.

518 **SECTION 11.** Section 49-15-30, Mississippi Code of 1972, is
519 amended as follows:

520 49-15-30. (1) The * * * department may promulgate rules and
521 regulations for nonresident permits in order to promote reciprocal
522 agreements with other states.

523 (2) Except as otherwise provided in Section 49-15-46,
524 the * * * department shall provide that residents of other states
525 bordering on the Gulf of Mexico who are applicants for a
526 commercial fishing license of any type as provided for in this
527 chapter shall pay the same fee or fees that a resident of this
528 state pays in this state for that license if the respective
529 applicant's domicile state does not charge a greater fee or fees



530 for a Mississippi resident than for a resident of any other state
531 to engage in a like activity in the other state. If the
532 applicant's domicile state does charge a greater fee or fees for
533 residents of Mississippi than for a resident of the applicant's
534 domicile state, then that applicant shall pay the same fee or fees
535 that the applicant's domicile state charges residents of
536 Mississippi.

537 (3) The * * * department shall require a nonresident to
538 purchase the same type and number of licenses and pay the same
539 fees that are required of Mississippi residents to engage in like
540 activity in the nonresident's state.

541 (4) (a) If an applicant applies for a nonresident
542 commercial fishing license to engage in a certain activity and the
543 applicant's state does not issue a nonresident commercial fishing
544 license for that activity, then the * * * department shall not
545 issue such license to the applicant.

546 (b) If the applicant's domicile state has additional
547 mandatory licensing requirements, the applicant must meet those
548 requirements before receiving a nonresident commercial fishing
549 license.

550 (5) Any nonresident who engages in the commercial taking of
551 seafood within the territorial waters of Mississippi without
552 having the required nonresident commercial license is guilty of a
553 misdemeanor and shall be fined Five Thousand Dollars (\$5,000.00)
554 and shall forfeit any equipment, gear or nets used in the offense.



555 **SECTION 12.** Section 49-15-31, Mississippi Code of 1972, is
556 amended as follows:

557 49-15-31. (1) The * * * department may construct, maintain
558 and operate all patrol stations, camps and related facilities as
559 may be deemed necessary by the * * * department.

560 (2) If a regulatory agency of a foreign state establishes a
561 station or checkpoint through which Mississippi residents must
562 pass for license, permit or catch inspection, or otherwise, the
563 department shall establish similar stations or checkpoints through
564 which residents of the foreign states shall be required to pass.

565 **SECTION 13.** Section 49-15-34, Mississippi Code of 1972, is
566 amended as follows:

567 49-15-34. (1) The * * * department shall require all boats
568 used under regulation of this chapter which are also used in
569 waters of other states and required by those states to pay
570 licenses or fees for the same purposes as licenses and fees are
571 required under this chapter to purchase a license which reflects
572 that the licensed boats are used inside and outside the
573 territorial waters of Mississippi. Upon the issuance of that
574 license, the licensed boat, if used exclusively for commercial
575 fishing or charter boats which have been licensed and authorized
576 by the United States Coast Guard under 46 CFR Sections 24-26 and
577 46 CFR Sections 175-187, shall be deemed to be in the business of
578 interstate transportation, but this shall in no way affect the
579 collection of other licenses and fees by the * * * department



580 which would otherwise be due under this chapter. The * * *
581 department shall assess and collect an annual license fee of
582 Twenty Dollars (\$20.00) on each boat engaged in operations under
583 this subsection.

584 (2) Notwithstanding the provisions of this chapter,
585 the * * * department shall establish a transport permit to land
586 seafood in this state which is legally taken outside of the
587 Mississippi territorial waters without obtaining a license under
588 this chapter. The * * * department by regulation shall require
589 the registration of those landings. The * * * department may
590 establish a permit fee in an amount not to exceed the amount of
591 the license fee established in Section 49-15-28(1). This
592 subsection shall not be construed to supersede Section 49-15-71.

593 **SECTION 14.** Section 49-15-35, Mississippi Code of 1972, is
594 amended as follows:

595 49-15-35. Upon the request of the boards of supervisors of
596 the respective coastal counties, the * * * department may adopt
597 ordinances prohibiting the taking and catching of menhaden within
598 certain limits of the coast line of the county so requesting, but
599 the * * * department shall not fix such limits except upon request
600 of the board of supervisors, and such limit shall not exceed two
601 (2) miles from the shore line, or two (2) miles from the corporate
602 limit boundaries of any municipality bordering on the Mississippi
603 Sound.



604 **SECTION 15.** Section 49-15-36, Mississippi Code of 1972, is
605 amended as follows:

606 49-15-36. (1) The Department of Marine Resources shall have
607 full jurisdiction and control of all * * * designated state-owned
608 reefs and oyster bottoms of the State of Mississippi. In no event
609 shall the department designate more than twenty percent (20%) of
610 the permitted areas available as state-owned reefs.

611 (2) * * * State-owned reefs may be opened for harvest of
612 oysters during the season on a rotating basis. If the department
613 determines that a particular reef has been overharvested or that a
614 high percentage of sublegal size oysters exist on a particular
615 reef and that harvest could damage future oyster crops, the
616 department may close designated reef areas and keep them closed
617 during the season.

618 (3) The department shall promulgate regulations regarding
619 the closing of oyster reefs to protect the public health. When
620 that testing indicates the oysters on the closed reef are suitable
621 for consumption, the reef shall be opened for the taking of
622 oysters as soon as notice of that opening may be made to
623 interested parties. The authority to open or close oyster reefs
624 under this chapter shall be solely within the discretion of the
625 department. The Gulf Coast Research Laboratory or other certified
626 laboratory shall cooperate with the department and shall conduct
627 necessary tests to determine the condition of oyster reefs at the



628 request of the department. The department may limit the sale of
629 oysters for human consumption.

630 (4) (a) The department may issue special permits for the
631 purpose of catching oysters outside the open season or in areas
632 not normally open to harvest to those nonprofit organizations that
633 are tax exempt under Section 501(c) of the United States Internal
634 Revenue Code and which have on file with the Department of Revenue
635 a tax exemption letter issued by the United States Internal
636 Revenue Service.

637 (b) The department shall promulgate rules and
638 regulations governing the taking of oysters by the nonprofit
639 organization and shall issue such regulations to all organizations
640 upon request and at the issuance of the special permit.

641 (5) The department shall establish a reasonable period of
642 time for depuration of oysters replanted from restricted waters.
643 That period of time shall be consistent with the maintenance of
644 the public health and may vary from time to time and from one reef
645 to another in accordance with environmental conditions.

646 * * *

647 **SECTION 16.** Section 49-15-37, Mississippi Code of 1972, is
648 amended as follows:

649 49-15-37. * * * The department may employ boats, crews and
650 laborers * * * to cultivate the * * * state-owned reefs of the
651 state, and * * * dredge the oysters in the Mississippi Sound from
652 places where they are too thick, and * * * spread them on reefs



653 where they are too thin, and * * * carry shells from the factories
654 and spread them in places where the oyster beds can be improved
655 and enlarged. The department may open state-owned reefs to the
656 public for harvest. The department may purchase other materials
657 as may be equally suitable for the propagation of oysters. The
658 department in cultivating the reefs, transplanting and spreading
659 oysters and shells and other suitable materials, may expend any
660 funds available for that purpose, as provided by Section
661 49-15-17(1)(e). In taking seed oysters, care shall be used to not
662 injure or destroy the merchantable oysters on the reefs from which
663 they are taken. The seed oysters shall be tonged from the
664 "conner" or seed reefs, unless it is practicable and safe to
665 dredge those oysters. The * * * department may * * * establish
666 new bedding grounds at those places within the boundaries of the
667 state as it may determine, on advice of the director, or on advice
668 of technical governmental experts, or competent aquatic
669 biologists. On existing * * * state-owned reefs in which oysters
670 exist and in waters not of a safe sanitary quality as determined
671 by the department, the * * * department shall prohibit any person,
672 firm or corporation from taking oysters from those areas.
673 The * * * department shall from time to time remove the oysters
674 from the areas and relay or replant them in an approved area for a
675 period of time under Section 49-15-36 before they may be
676 harvested. * * * Any funds received from the sale of the oysters



677 shall be used in a like manner as those funds received under
678 Section 49-15-38.

679 * * *

680 The * * * department may issue permits to persons to remove
681 oysters by dredging or otherwise from water bottoms which are not
682 of a safe sanitary quality for oysters for human
683 consumption * * *. These areas * * * may be designated as seed
684 grounds, and permits to persons shall be issued only for the
685 purpose of transplanting oysters to privately leased Mississippi
686 territorial waters. The * * * department may permit the
687 transplanting of these seed oysters by a duly authorized public
688 agency.

689 The * * * department may, upon * * * determining the water
690 bottom from which oysters are to be removed is not of a safe,
691 sanitary quality for oyster production for human consumption and
692 has been unsafe for a period of at least one (1) year immediately
693 preceding certification, and upon complying with the following
694 requirements, permit the dredging of oysters from restricted
695 public areas and relaying the oysters to private leased grounds in
696 the State of Mississippi:

697 (a) Permittee must hold valid lease of oyster bedding
698 grounds in the State of Mississippi;

699 (b) Permittee must be bonded in compliance with the
700 permit system established by the * * * department;



701 (c) Permittee must fulfill all permit requirements as
702 established by the * * * department;

703 (d) Permittee shall not move oysters from one
704 restricted area to another restricted area;

705 (e) Permittee shall move oysters only to an area leased
706 by the * * * department; and

707 (f) Permittee shall not move oysters from the
708 restricted area without the presence of an employee of the
709 department at all times, from the dredging of the oysters from the
710 restricted areas to their deposit on private leased grounds or to
711 an onshore, molluscan depuration facility.

712 Harvesting of oysters shall be permitted only during daylight
713 hours and with the most efficient gear possible consistent with
714 conservation requirements of not damaging the reefs. This shall
715 include permission to use two (2) dredges per boat on restricted
716 areas and on private leased grounds.

717 Any person obtaining a permit to remove oysters from seed
718 grounds shall post a penal bond of One Hundred Dollars (\$100.00)
719 per leased acre with the * * * department to be forfeited upon any
720 violation of this section. The bond may be approved by the
721 director of the department if the director finds the bond to be
722 secured by sufficient property or sureties.

723 The * * * department shall regulate the amount and time of
724 taking of oysters from seed areas and shall supervise the removal,
725 planting and harvesting of oysters from the areas. The time set



726 for the taking of oysters from restricted seed areas for relaying
727 or replanting and the time set for the taking of oysters from
728 private leased grounds shall be separated by not less than a
729 period of time determined under Section 49-15-36 during which
730 neither activity may be allowed.

731 * * *

732 **SECTION 17.** Section 49-15-38, Mississippi Code of 1972, is
733 amended as follows:

734 49-15-38. (1) (a) Unless otherwise permitted by the * * *
735 department, no oysters shall be taken from * * * state-owned
736 reefs * * * unless culled * * *, and all oysters less than three
737 (3) inches from end to end, and all dead shells, shall be
738 replaced, scattered and broadcast immediately on the * * * reefs
739 from which they are taken. It is unlawful for any captain or
740 person in charge of any vessel, or any canner, packer, commission
741 man, dealer or other person to purchase, sell or to have in that
742 person's possession or under that person's control any oysters off
743 the * * * state-owned reefs or private bedding grounds not culled
744 according to this section, or any oysters under the legal size. A
745 ten percent (10%) tolerance shall be allowed in relation to any
746 culling.

747 (b) The * * * department may authorize the culling of
748 oysters of a lesser measure. That authorization shall be in
749 response to special circumstances or extreme natural conditions
750 affecting the habitat, including, but not limited to, flooding.



751 The department may establish checkpoints in any area within its
752 jurisdiction to conduct inspections, collect fees and issue tags
753 in the enforcement of this chapter and regulations adopted by the
754 commission.

755 (2) The * * * department shall acquire and replant shells,
756 seed oysters and other materials, when funding is available, for
757 the purpose of growing oysters.

758 (3) Any person, firm or corporation failing or refusing to
759 pay the shell retention fee required under Section 49-15-46 to the
760 department when called for by the department, is guilty of a
761 misdemeanor and, upon conviction, shall be fined not more than One
762 Hundred Dollars (\$100.00) for each barrel of shells for which they
763 fail or refuse to tender the shell retention fee. In addition to
764 the fine, the violator shall pay the reasonable value of the
765 oyster shells and shall be ineligible to be licensed for any
766 activity set forth in this chapter for a period of two (2) years
767 from the date of conviction.

768 (4) The planting of oyster shells as provided under this
769 chapter shall be under the direction and supervision of the
770 executive director of the department. * * *

771 **SECTION 18.** Section 49-15-40, Mississippi Code of 1972, is
772 amended as follows:

773 49-15-40. * * * The * * * department may support projects in
774 the nature of digging or constructing canals or ditches to bring
775 additional water to existing oyster reefs or beds in need of that



776 water, or for the purpose of creating or establishing new oyster
777 reefs or beds. * * * The * * * department may also enter into
778 interstate or intrastate efforts to support these projects and may
779 seek and utilize aid from all federal, state and local sources in
780 this endeavor. * * *

781 * * *

782 **SECTION 19.** Section 49-15-44, Mississippi Code of 1972, is
783 amended as follows:

784 49-15-44. The * * * department shall prohibit the sale or
785 possession of illegal oysters. It is unlawful for any person,
786 firm or corporation to possess or to engage in the sale of oysters
787 not certified in this state, or to shuck or repack for sale any
788 illegal oysters, unless that person, firm or corporation possesses
789 a bill of sale, valid permit or affidavit of another state,
790 properly dated, evidencing the legality of the sale or possession
791 of the oysters in that state. Any person in possession of illegal
792 oysters shall be subject to civil or criminal prosecution and
793 shall be fined not less than One Hundred Dollars (\$100.00) or
794 punished as provided in Section 49-15-63.

795 **SECTION 20.** Section 49-15-45, Mississippi Code of 1972, is
796 amended as follows:

797 49-15-45. * * * Any municipality bounded by the Gulf of
798 Mexico or Mississippi Sound, which has wholly or partly within its
799 corporate limits, or in the waters adjacent thereto, a public
800 oyster reef reserved for catching oysters exclusively by use of



801 hand tongs, is hereby authorized to aid and cooperate with
802 the * * * department in enforcing all laws regulating the
803 catching, taking and transporting of oysters, including all of the
804 provisions of this chapter, and all regulations and ordinances of
805 such * * * department relating to such oyster reefs.

806 * * *

807 **SECTION 21.** Section 49-15-46, Mississippi Code of 1972, is
808 amended as follows:

809 49-15-46. (1) Each vessel used to catch, take, carry or
810 transport oysters from the reefs of the State of Mississippi, or
811 engaged in transporting any oysters in any of the waters within
812 the territorial jurisdiction of the State of Mississippi, for
813 commercial use, shall annually, before beginning operations, be
814 licensed by the department and pay the following license fee:

815 (a) Fifty Dollars (\$50.00) on each in-state vessel or
816 boat used for tonging oysters or gathering oysters by hand;

817 (b) One Hundred Dollars (\$100.00) on each in-state
818 vessel or boat used for dredging oysters;

819 (c) One Hundred Dollars (\$100.00) on each out-of-state
820 vessel or boat used for tonging oysters or gathering oysters by
821 hand, or the license fee charged by the out-of-state licensing
822 entity to Mississippi vessels or boats for tonging or gathering
823 oysters, whichever is greater; or

824 (d) Two Hundred Dollars (\$200.00) on each out-of-state
825 vessel or boat used for dredging oysters, or the license fee



826 charged by the out-of-state licensing entity to Mississippi
827 vessels or boats for dredging oysters, whichever is greater.

828 (2) Each molluscan shellfish aquaculture operation shall
829 annually, before beginning operations, be licensed by the
830 department and pay the following license fee:

831 (a) Fifty Dollars (\$50.00) on each resident molluscan
832 shellfish aquaculture operation; or

833 (b) One Hundred Dollars (\$100.00) on each nonresident
834 molluscan shellfish aquaculture operation.

835 (3) The department may authorize the transfer of a vessel
836 license to a different vessel provided that the owner of both
837 vessels is the same titled owner.

838 (4) All oysters harvested in the State of Mississippi shall
839 be tagged. Tags shall be issued by the department and shall bear
840 the catcher's name, the date and origin of the catch, the shell
841 stock dealer's name and permit number. The department shall
842 number all tags issued and shall maintain a record of those tags.
843 The department, in its discretion, may adopt any regulations
844 regarding the tagging of oysters and other shellfish.

845 (5) Each person catching or taking oysters from the waters
846 of the State of Mississippi for personal use shall obtain a permit
847 from the department and pay an annual recreational oyster permit
848 fee of Ten Dollars (\$10.00). Oysters caught under a recreational
849 permit shall not be offered for sale. The limits on the allowable
850 catch of oysters for recreational purposes shall be three (3)



851 sacks per week. The department shall issue tags of a
852 distinguishing color to designate recreationally harvested
853 oysters, which shall be tagged on the same day of harvest in the
854 manner prescribed in subsection (4) of this section for
855 commercially harvested oysters or by regulation of the department.

856 (6) The department shall assess and collect a shell
857 retention fee for the shells taken from waters within the
858 territorial jurisdiction of the State of Mississippi as follows:

859 (a) Commercial and recreational harvesters - Fifteen
860 Cents (15¢) per sack paid to the department on the day of harvest;

861 (b) Initial oyster processor, dealer or factory first
862 purchasing the oysters - Fifteen Cents (15¢) per sack paid to the
863 department no later than the tenth day of the month following the
864 purchase, on forms submitted by the department;

865 (c) Commercial harvesters transporting their catch out
866 of the state - Fifty Cents (50¢) per sack paid to the department
867 on the day of harvest, in addition to the fees paid in paragraph
868 (a) of this subsection; and

869 (d) Commercial harvesters not selling their oysters to
870 a Mississippi dealer - Fifteen Cents (15¢) per sack paid to the
871 department on the day of harvest, in addition to fees paid in
872 paragraph (a) of this subsection.

873 Funds received from the shell retention fee shall be paid
874 into a special fund in the State Treasury to be appropriated by
875 the Legislature for use by the department to further oyster



876 production in this state, which includes plantings of oysters
877 and/or cultch materials.

878 (7) During open seasons, oysters may be taken only by hands,
879 tongs and dredges.

880 (8) Vessels licensed under Section 49-15-46 may keep in
881 whole, for personal consumption up to thirty-six (36) blue crabs
882 (portunidae family), per day. This exemption for personal
883 consumption does not apply to fish or crabs that are otherwise
884 illegal to possess or catch.

885 **SECTION 22.** Section 49-15-47, Mississippi Code of 1972, is
886 amended as follows:

887 49-15-47. (1) It is unlawful for any person, firm or
888 corporation to discharge solid or human waste from any vessel
889 while the vessel is used to harvest or transport oysters in the
890 marine waters of the state.

891 (2) Each vessel used to harvest or transport oysters is
892 required to have an approved functional marine sanitation device
893 (MSD), portable toilet or other sewage disposal receptacle
894 designed to contain human sewage. The approved marine sanitation
895 device (MSD), portable toilet or other sewage disposal receptacle
896 shall:

897 (a) Be used only for the purpose intended.

898 (b) Be secured while on board and located to prevent
899 contamination of shell stock by spillage or leakage.



900 (c) Be emptied only into an approved sewage disposal
901 system.

902 (d) Be cleaned before being returned to the vessel.

903 (e) Not be cleaned with equipment used for washing or
904 processing food.

905 (3) The use of other receptacles for sewage disposal may be
906 approved by the department if the receptacles are:

907 (a) Constructed of impervious, cleanable materials and
908 have tight-fitting lids; and

909 (b) Meet the requirements listed in subsection (2).

910 (4) The * * * department shall promulgate administrative
911 penalties for violations of this section, which may include, but
912 not be limited to, revocation of the license of the oyster vessel
913 for up to one (1) year for the first offense, revocation up to two
914 (2) years for the second offense, and permanent revocation for the
915 third offense.

916 (5) Upon issuance of a citation for a violation of this
917 section, the vessel shall be removed from the oyster reef and any
918 oysters on board the vessel shall be confiscated and disposed of
919 by the department. The vessel shall not be permitted to harvest
920 from any * * * state-owned or private reefs until the vessel is
921 properly equipped as determined by an inspection by the
922 department.

923 **SECTION 23.** Section 49-15-39, Mississippi Code of 1972,
924 which regulates tonging reefs and prescribes certain criminal



925 penalties related to tonging reefs and Section 49-15-40.1,
926 Mississippi Code of 1972, which authorizes the Mississippi
927 Department of Marine Resources to conduct a pilot program for
928 bottom land leasing for oyster production in waters adjacent to
929 Hancock County, are hereby repealed.

930 **SECTION 24.** This act shall take effect and be in force from
931 and after its passage.

