

By: Senator(s) Thompson, Carter, DeLano, Wiggins, England, Moran, Seymour, Hill, McLendon

To: Rules

SENATE CONCURRENT RESOLUTION NO. 550

1 A CONCURRENT RESOLUTION EXPRESSING THE SUPPORT OF THE
2 MISSISSIPPI LEGISLATURE FOR THE PLAINTIFFS AND THE RULING OF *THE*
3 *UNITED STATES DISTRICT COURT IN HARRISON COUNTY, MISSISSIPPI, ET*
4 *AL. V. THE U.S. ARMY CORPS OF ENGINEERS* REGARDING THE DIVERSION OF
5 WATERS OF THE MISSISSIPPI RIVER THROUGH THE OPENING OF THE BONNET
6 CARRE' SPILLWAY; RESPECTFULLY REQUESTING THE CORPS OF ENGINEERS
7 COMPLY WITH THE RULING AND CONSULT WITH THE NATIONAL MARINE
8 FISHERIES SERVICE TO CONSERVE THE ESSENTIAL FISH HABITAT IN THE
9 MISSISSIPPI SOUND ON THE MISSISSIPPI GULF COAST; EXPRESSING THE
10 SUPPORT OF THE MISSISSIPPI LEGISLATURE FOR THE IMPLEMENTATION OF
11 THE FEDERAL MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT
12 ACT; EXPRESSING THE SUPPORT OF THE MISSISSIPPI LEGISLATURE FOR THE
13 COMPLETION OF A NEW ENVIRONMENTAL IMPACT STATEMENT (EIS) TO ASSESS
14 THE POTENTIAL IMPACT OF FEDERAL ACTIONS SIGNIFICANTLY AFFECTING
15 THE QUALITY OF THE HUMAN ENVIRONMENT REGARDING OPENINGS OF THE
16 BONNET CARRE' SPILLWAY, INCLUDING CONSIDERATION OF ALTERNATIVE
17 MEANS OF FLOOD CONTROL AND MANAGEMENT ON THE MISSISSIPPI RIVER
18 WHICH COULD LESSEN OR MITIGATE ADVERSE IMPACTS TO THE MISSISSIPPI
19 SOUND ESTUARY AND LAKE PONTCHARTRAIN FROM OPERATION OF THE BONNET
20 CARRE' SPILLWAY AND OTHER ELEMENTS OF THE MISSISSIPPI RIVER AND
21 TRIBUTARIES PROJECT; AND ACKNOWLEDGING THE ENVIRONMENTAL IMPACTS
22 OF THE RECENT OPERATION OF THE SAID BONNET CARRE' SPILLWAY IN
23 DECIMATION OF OYSTER HARVESTS AND OTHER ESSENTIAL FISH HABITAT,
24 THE MISSISSIPPI COAST TOURISM INDUSTRY AND CONSEQUENTLY THE TAX
25 BASES OF LOCAL AND STATE GOVERNMENTS; AND FOR RELATED PURPOSES.

26 WHEREAS, in the case of *Harrison County, City of Biloxi, City*
27 *of D'Iberville, City of Diamondhead, City of Pass Christian, City*
28 *of Waveland, Hancock County, Mississippi Commercial Fisheries*
29 *United, Inc., and Mississippi Hotel and Lodging Association v.*



30 *U.S. Army Corps of Engineers (United States District Court for the*
31 *Southern District of Mississippi, January 2023)*, the plaintiffs
32 sued the federal United States Army Corps of Engineers stating the
33 more frequent, lengthier openings of the Bonnet Carre' Spillway in
34 recent years have caused significant damage to the environment and
35 economy of the Mississippi Gulf Coast. The plaintiffs contended
36 the Mississippi Sound has been designated as an Essential Fish
37 Habitat governed by the federal Magnuson-Stevens Fishery
38 Conservation and Management Act, and the Corps has failed to
39 comply with said Act; and

40 WHEREAS, the Federal Court in this case granted the
41 Plaintiffs' Motion for Summary Judgment, and the Court ordered the
42 Corps of Engineers to consult with the National Marine Fisheries
43 Service before September 30, 2023, regarding the impact of
44 Spillway openings on Essential Fish Habitats:

45 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF
46 MISSISSIPPI, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

47 (a) That the Mississippi Legislature hereby supports
48 the Plaintiffs and the ruling of the United States District Court
49 regarding the diversion of polluted waters of the Mississippi
50 River through the opening of the Bonnet Carre' Spillway and
51 respectfully requests the United States Army Corps of Engineers,
52 the National Marine Fisheries Service and all parties to this case
53 comply with federal law in order to conserve the fishery habitat
54 found off the Mississippi Gulf Coast and protect the economy and



55 culture of our state. The plaintiffs and the style of this
56 landmark case is *Harrison County, Mississippi, City of Biloxi,*
57 *City of D'Iberville, City of Diamondhead, City of Pass Christian,*
58 *City of Waveland, Hancock County, Mississippi Commercial Fisheries*
59 *United, Inc., and Mississippi Hotel and Lodging Association v.*
60 *U.S. Army Corps of Engineers, Cause No. 1:19CV986-LG-RPM (United*
61 *States District Court for the Southern District of Mississippi,*
62 *January 2023);*

63 (b) That the Mississippi Legislature fully supports the
64 United States Army Corps of Engineers and National Marine
65 Fisheries Service compliance with the Court's order and adherence
66 to the Magnuson-Stevens Fishery Conservation and Management Act;

67 (c) That the Mississippi Legislature fully supports the
68 completion of a new or supplemental Environmental Impact Statement
69 (EIS) as mandated by the National Environmental Policy Act of 1969
70 (NEPA) to assess the potential impact of actions "significantly
71 affecting the quality of the human environment," which
72 specifically takes into account the opening of the Bonnet Carre'
73 Spillway and its adverse impact on the Mississippi Sound as
74 designated Essential Fish Habitat, including consideration of
75 alternative means of flood control and management on the
76 Mississippi River, which could lessen or mitigate adverse impacts
77 to the Mississippi Sound Estuary and Lake Pontchartrain from
78 operation of the Bonnet Carre' Spillway and other elements of the
79 Mississippi River and Tributaries Project. The United States Army



80 Corps of Engineers, responsible for the Mississippi River and
81 Tributaries and Mississippi River mainline levee system, completed
82 the first Environmental Impact Statement (EIS) in 1976, a
83 supplemental EIS in 1998, and a second supplemental EIS in 2020.
84 All three EIS documents completed by the Corps evaluate the flood
85 risk between Cape Girardau, Missouri and Head of Passes,
86 Louisiana. All three EIS documents failed to take into account
87 the impacts of diversion of polluted floodwaters by opening the
88 Bonnet Carre' Spillway into the Mississippi Sound from Lake
89 Ponchartrain, Lake Borgne and the Rigolets. Mississippi's
90 Essential Fish Habitat in the Mississippi Sound should be
91 evaluated regularly as the openings of the Bonnet Carre' Spillway
92 directly affect our fish and oyster population, economy, tourism,
93 governmental tax base, and thus our very culture. In 2009, an
94 Environmental Impact Statement (EIS) for the Mississippi
95 River-Gulf Outlet (MRGO), Louisiana, and Lake Borgne wetland
96 creation and shoreline protection project was performed, but it,
97 again, failed to take into account the diversion of polluted
98 floodwaters into the Mississippi Sound from the Bonnet Carré
99 Spillway into Lake Ponchartrain, Lake Borgne and the Rigolets; and
100 (d) That the Mississippi Legislature acknowledges that
101 the environmental impacts tied to the recent operation of the
102 Bonnet Carre' Spillway include decimation of oyster harvests,
103 shrimp, blue crab, damage to Essential Fish Habitat in
104 Mississippi, and algae blooms that closed the waters and beaches



105 along the Gulf Coast affecting both Mississippi's economy and our
106 way of life and causing substantial injury to Mississippi Public
107 Trust Tidelands. Mississippi oyster beds and harvesting industry
108 are currently lifeless with no resurrection in sight if the Bonnet
109 Carre' Spillway openings continue to flood the Mississippi Sound
110 with polluted floodwaters. Mississippi shrimp and other seafood
111 industries and the Mississippi Coast tourism industry were also
112 adversely affected.

113 BE IT FURTHER RESOLVED, That the Attorney General of the
114 State of Mississippi is authorized to request the Court to retain
115 jurisdiction over this matter to the extent necessary to ensure
116 compliance with the Court's Opinion and Order and with applicable
117 provisions of the Magnuson-Stevens Fishery Conservation and
118 Management Act and to join such litigation to protect the citizens
119 and fisheries of this State.

120 BE IT FURTHER RESOLVED, That this resolution be transmitted
121 by the Secretary of the Senate to the Mississippi Attorney
122 General, the Director of the United States Corps of Engineers, to
123 each plaintiff in the aforementioned case, to the Mississippi
124 Sound Coalition, the Executive Director of the Department of
125 Marine Resources, the Executive Director of the Mississippi
126 Department of Environmental Quality and to members of
127 Mississippi's Congressional Delegation, and be made available to
128 the Capitol Press Corps.

