MISSISSIPPI LEGISLATURE REGULAR SESSION 2004

By: Representatives Frierson, Janus

To: Marine Resources

HOUSE BILL NO. 1139

AN ACT TO AMEND SECTION 49-15-37, MISSISSIPPI CODE OF 1972, TO DELETE THE REQUIREMENT THAT OYSTERS MUST BE RELAYED IN THE PRESENCE OF A CONSERVATION OFFICER AND ALLOW RELAYING IN THE PRESENCE OF AN EMPLOYEE OF THE DEPARTMENT OF MARINE RESOURCES; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 49-15-37, Mississippi Code of 1972, is amended as follows:

49-15-37. By order of the commission, the director, under the direction and control of the commission, shall employ boats, crews and laborers and shall cultivate the public reefs of the state, and shall dredge the oysters in the Mississippi Sound from places where they are too thick, and shall spread them on reefs where they are too thin, and shall carry shells from the factories and spread them in places where the oyster beds can be improved and enlarged. The department may purchase other materials as may be equally suitable for the propagation of oysters. The department in cultivating the reefs, transplanting and spreading oysters and shells and other suitable materials, may expend any funds available for that purpose. In taking seed oysters, care shall be used to not injure or destroy the merchantable oysters on the reefs from which they are taken. The seed oysters shall be tonged from the "conner" or seed reefs, unless it is practicable and safe to dredge those oysters. The commission may, by orders spread on its minutes, establish new bedding grounds at those places within the boundaries of the state as it may determine, on advice of the director, or on advice of technical governmental experts, or competent aquatic biologists. On existing public

reefs in which oysters exist and in waters not of a safe sanitary quality as determined by the department, the commission shall prohibit any person, firm or corporation from taking oysters from those areas. The commission shall from time to time remove the oysters from the areas and re-lay or replant them in an approved area for a period of time under Section 49-15-36 before they may be harvested. The commission may transport the oysters to an onshore, molluscan depuration facility for the purpose of proving depuration technology and for other experimental purposes. In connection with the testing of onshore, molluscan depuration technology, the commission may sell or dispose of the re-layed oysters in a manner consistent with all applicable state and federal laws and regulations. Any funds received from the sale of the oysters shall be used in a like manner as those funds received under Section 49-15-38.

If the commission finds that onshore, molluscan depuration technology proves to be successful, the commission may issue permits to private enterprise which may locate depuration facilities in Hancock, Harrison and Jackson Counties. The commission shall promulgate rules and regulations for the taking of oysters from reefs for transport to an onshore, molluscan depuration facility and for the operation of the facilities. Each depuration facility operated by private enterprise shall return oyster shells to the oyster reefs for replanting under the proper supervision of the department and under Section 49-15-38.

The commission may issue permits to persons to remove oysters by dredging or otherwise from water bottoms which are not of a safe sanitary quality for oysters for human consumption even though those areas may have been reserved for tonging only in Section 49-15-39. These areas shall be designated as seed grounds, and permits to persons shall be issued only for the purpose of transplanting oysters to privately leased Mississippi

territorial waters. The commission may permit the transplanting of these seed oysters by a duly authorized public agency.

The commission may, upon certification of the department that the water bottom from which oysters are to be removed is not of a safe, sanitary quality for oyster production for human consumption and has been unsafe for a period of at least one (1) year immediately preceding certification, and upon complying with the following requirements, permit the dredging of oysters from contaminated public areas and re-laying the oysters to private leased grounds in the State of Mississippi:

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

(b) Permittee must be bonded in compliance with the permit system established by the commission;

(c) Permittee must fulfill all permit requirements as established by the commission;

(d) Permittee shall not move oysters from one (1) contaminated area to another contaminated area;

(e) Permittee shall move oysters only to an area leased by the commission after April 13, 1977; and

(f) Permittee shall not move oysters from the contaminated area without the presence of <u>an employee of the department</u> at all times, from the dredging of the oysters from the contaminated areas to their deposit on private leased grounds or to an onshore, molluscan depuration facility.

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

Any person obtaining a permit to remove oysters from seed grounds shall post a penal bond of One Hundred Dollars ($100.00) per leased acre with the commission to be forfeited upon any

violation of this section. The bond may be approved by the director of the department if the director finds the bond to be secured by sufficient property or sureties.

The commission shall regulate the amount and time of taking of oysters from seed areas and shall supervise the removal, planting and harvesting of oysters from the areas. The time set for the taking of oysters from contaminated seed areas for re-laying or replanting and the time set for the taking of oysters from private leased grounds shall be separated by not less than a period of time determined under Section 49-15-36 during which neither activity may be allowed.

The commission shall regulate the taking of oysters from contaminated seed areas and the subsequent depuration of the oysters by off-bottom techniques to protect public health, while at the same time fostering the utilization of the state's oyster resources. The regulations shall include the setting of the period of depuration for the oysters by the use of appropriate techniques and provide for <u>an employee of the department</u> to be present when the oysters are taken from contaminated seed areas and deposited on private lease grounds. Any person, firm or corporation engaged in the depuration of oysters by off-bottom techniques or onshore, molluscan depuration facility shall pay to the department an amount equal to the regular compensation of the <u>employee of the department</u> for the time the <u>employee</u> actually spends performing the duties.

Only persons who have been residents of Mississippi for at least five (5) years shall be eligible to obtain permits for removal of oysters from seed grounds.

The commission shall designate certain uncontaminated reefs in the state as public reefs and shall remove oysters from water bottoms which are not of a safe, sanitary quality for oyster production for human consumption and shall transport the oysters to the public reefs which shall be reserved for tonging only.

SECTION 2. This act shall take effect and be in force from and after its passage.