TITLE 22 – MISSISSIPPI DEPARTMENT OF MARINE RESOURCES

PART 17 REGULATION OF SHELLFISH LANDING, UNLOADING, TRANSPORTING, PROCESSING, BUYING, SELLING, OPENING, AND OTHER SHELLFISH RELATED ACTIVITIES IN THE STATE OF MISSISSIPPI

Chapter 01 Introduction

Purpose

100 This Part establishes the minimum requirements necessary to regulate the intrastate and interstate commerce of molluscan shellfish and to establish a program to protect the public health of consumers by assuring the sale or distribution of shellfish from safe sources and assuring shellfish have not been adulterated during landing, unloading, transporting, processing, buying, selling, opening and other shellfish related activities in the state.

Chapter 02 Justification and Authority

100 The Mississippi Commission on Marine Resources (herein after referred to as the "Commission") has determined that it is in the best interest of the State of Mississippi and necessary for the protection, conservation, and propagation of all shellfish in the waters under the territorial jurisdiction of the State of Mississippi to regulate the landing, unloading, transporting, processing, buying, selling, opening, and other shellfish related activities in the state.

101 The Commission is required by Miss. Code Ann. § 49-15-15 (1) (c) to regulate all seafood sanitation and processing programs.

102 The Commission is required by Miss. Code Ann. § 49-15-44 to prohibit the sale or possession of illegal oysters as defined in Miss. Code Ann. § 49-15-3 (e).

103 Miss. Code Ann. § 49-15-28, addresses seafood wholesale licensing.

104 Miss. Code Ann. § 49-15-29, authorizes the Commission to assess and collect certain taxes and license fees.

105 Miss. Code Ann. § 49-15-30, authorizes the Commission to promulgate regulations for nonresident certificates.

106 Miss. Code Ann. § 49-15-42, addresses tagging, landing and unloading of oysters.

107 Miss. Code Ann. § 49-15-43, addresses the packaging of oysters.

108 Miss. Code Ann. § 49-15-45, provides that certain municipalities may enforce oyster regulations.

109 Miss. Code Ann. § 49-15-46 (3), requires all oysters harvested in Mississippi shall be tagged.

110 Miss. Code Ann. § 49-15-63, addresses general penalties for violation of these regulations.

Chapter 03 Definitions

100 **ADULTERATED** – Shellfish shall be deemed to be adulterated if any foreign substance has been added to the shellfish, or has been mixed or packed therewith so as to increase its bulk or weight, or reduce its quality, or make it appear better or of greater value than it is.

101 **CERTIFIED INTERSTATE SHELLFISH SHIPPER** – An individual, firm or corporation who has been issued a numbered license and certification by the Commission or the Mississippi Department of Marine Resources (DMR), its Executive Director, Director of Marine Fisheries, Seafood Technology Bureau Director or other DMR designee for shellfish handling and processing, or a non-resident individual, firm or corporation who has been issued a numbered license and certification by the non-resident's appropriate State Shellfish Control Authority indicating that the individual, firm or corporation operates in compliance with the sanitation and program regulations of the National Shellfish Sanitation Program, and is therefore eligible to participate in the interstate shipment of shellfish.

102 **CERTIFIED SHELLFISH PLANT** – A certified shellfish plant is defined as a shellfish plant which complies with the provisions of this Part and which possesses a valid shellfish processing plant license and certification from the Commission or the DMR, its Executive Director, Director of Marine Fisheries, Seafood Technology Bureau Director or other DMR designee for shellfish handling and processing. A certified shellfish plant is recognized as a Certified Interstate/Intrastate Shellfish Shipper. A certified shellfish plant is designated as either a: Shellstock Shipper (SS), Shucker-Packer (SP), Repacker, (RP) or Reshipper (RS).

103 **ILLEGAL MOLLUSCAN SHELLFISH** – All molluscan shellstock, molluscan shellfish, obtained from uncertified shops or dealers or from an unlicensed harvester, molluscan shellstock obtained from waters not declared safe and sanitary by the DMR and offered for sale or sold, and shucked molluscan shellfish obtained from uncertified shops or dealers (Miss Code Ann. §49-15-3(e)).

104 **INTERSTATE COMMERCE** – The movement of a shipment or service across state or international borders; or the intent to continue a movement within a state that originated from another state or country.

105 **INTRASTATE COMMERCE** – The movement that originates in a single state, moves in that state only and delivers in that originating state.

106 **LANDED** – The point at which shellfish first are brought to a point of land after being harvested and are no longer transported by boat or vessel.

107 **MISBRANDED** – Shucked shellfish shall be deemed to be misbranded if its labeling is false or misleading in any way, or if it does not bear a label in accordance to Chapter 11 (Labeling and Tagging of Shellfish) of this Part.

108 **REPACKER (RP)** – A person other than the original certified shucker-packer who repacks shucked shellfish into other containers. A repacker may also repack and ship shellstock. A repacker shall not shuck shellfish.

109 **RESHIPPER (RS)** – A person who purchases shucked shellfish or shellstock from other certified shippers and sells the product without repacking or relabeling to other certified shippers, wholesalers, or retailers.

110 **SHALL** – Is used to state mandatory requirements.

111 **SHELLFISH** – All edible molluscan shellfish species of oysters, clams, mussels, or scallops; either shucked or in the shell; fresh or frozen; whole or in part.

112 **SHELLSTOCK** – Shellfish in the shell.

113 **SHELLSTOCK SHIPPER (SS)** – A person who grows, harvests, buys, or repacks and sells shellstock. They are not authorized to shuck shellfish or to repack shucked shellfish. A shellstock shipper may also ship shucked shellfish

114 **SHOULD** – Is used to state recommended or advisory procedures or to identify recommended equipment.

115 **SHUCKER-PACKER (SP)** – A person who shucks and packs shellfish. A shucker-packer may act as a shellstock shipper or reshipper or may repack shellfish originating from other certified dealers.

Chapter 04 Requirements for Non-Residents

100 As provided for in Miss. Code Ann. § 49-15-30, it shall be unlawful for any nonresidents buying, selling, transporting, or handling shellfish in the State of Mississippi to fail to:

100.01 Purchase or pay all fees and licenses required of a Mississippi resident engaged in a similar or like activity in said nonresident's state.

100.02 Purchase or pay all additional fees and licenses required of a Mississippi resident engaged in a similar or like activity in Mississippi.

Chapter 05 Transfer of Tagged Shellfish

100 When molluscan shellfish are transferred from a licensed harvester to a certified dealer or from a certified dealer's mobile unit to another certified dealer's mobile unit, the transfer of tagged shellfish shall take place across transfer facilities or locations that are periodically monitored by DMR for sanitary conditions or at a certified dealer's facility that is inspected by the DMR. There shall be no such transfers at any other locations except for emergency conditions as declared by the certified dealer and approved by the DMR. It shall be unlawful to fail to comply with the terms of this section.

Chapter 06 Molluscan Shellfish Handling and/or Processing Facilities

100 Any person, firm, corporation or business desiring to alter an existing or construct a new molluscan shellfish handling/transporting/processing facility shall acquire a Mississippi Certified Shellfish Sanitation or Processing Plant license and certification from the DMR to operate any such facility, should contact the DMR staff in charge of the regulatory molluscan shellfish handling and processing responsibilities. The DMR staff shall be contacted prior to handling or processing any molluscan shellfish in any fashion in any altered or new molluscan shellfish handling/ transporting/processing facility. It shall be unlawful to fail to comply with the terms of this section.

101 The DMR shall manage the State of Mississippi's molluscan shellfish sanitation program according to the relevant specifications stated in the current National Shellfish Sanitation Program (NSSP) Model Ordinance Guidelines/Interstate Shellfish Sanitation Conference (ISSC), and according to Commission Title and Parts that are not in conflict with these specifications and according to the applicable statutes of the State of Mississippi.

102 The DMR's management includes inspections of the certified facilities in accordance with relevant NSSP/ISSC sanitation/health safety specifications and issuance to certified dealers itemized statements of compliances and non-compliances with these specifications. For the cited excessive non-compliances, the DMR shall provide the processor a schedule of corrections to bring the facilities into compliance according to the current and applicable NSSP/ISSC specifications. Otherwise, certification shall not be issued or renewed, and will be considered revoked. It shall be unlawful to operate a processing or shipping facility without a current valid license and certification.

103 The implementation of the requirements by the DMR as specified herein are subject to the following:

103.01 No procedure or guideline of the NSSP/ISSC, which is or may be in conflict with any statute of the Legislature of the State of Mississippi has or should be in the future applied or enforced by the DMR.

103.02 No procedure or guideline of the NSSP/ISSC which may be more stringent than any relevant federal regulation or law has or should be applied by the DMR.

103.03 The DMR may, consistent with its existing practice, dispute any proposed or adopted procedure or guideline of the NSSP/ISSC, in accordance with the procedures laid down therefore by said Conference; when, in the opinion of the DMR, any such proposed guideline or regulation would appear to be unnecessary for the accomplishment of the goals of the NSSP/ISSC, or scientifically invalid, or unduly and unnecessarily burdensome upon the State of Mississippi's molluscan shellfish industry, or for any other reason deemed proper by the DMR.

Chapter 07 Legally Harvested and Properly Tagged

100 It shall be unlawful for any person, firm, or corporation to possess, land, handle, unload, open, sell or offer for sale or transport any shellfish taken from the waters under the territorial jurisdiction of the State of Mississippi except those shellfish taken legally and properly tagged from an area declared open to shellfish harvesting by public order of the Commission or as hereby authorized the DMR, its Executive Director, Director of Marine Fisheries, Seafood Technology Bureau Director or other DMR designee in accordance with the procedures outlined in the most current version of Title 22 Part I (Oyster Harvesting) and as provided for in Miss. Code Ann. § 49-15-42.

Chapter 08 Possession of Illegal Shellfish

100 It shall be unlawful for any person, firm or corporation to sell or possess any illegal shellfish as provided for in Miss. Code Ann. § 49-15-44.

Chapter 09 Processing Plant Requirements for License and Certification

100 As provided in Miss. Code Ann. § 49-15-15 (1)(c), in the three coastal counties, the shellfish sanitation program regulating processing plants and shellfish sold in retail stores operating in conjunction with a processing plant or seafood market that primarily deals with seafood is under the exclusive authority of the Commission.

101 It shall be unlawful for any person to engage in handling, shucking, packaging, repackaging, or shipping shellfish for sale, who does not possess a dealer's or processor's license and certification from the Commission or as hereby authorized by the DMR, its Executive Director, Director of Marine Fisheries, Seafood Technology Bureau Director or other DMR designee in charge of molluscan shellfish handling and

processing. The license and certification must be renewed annually. This does not apply to a restaurant or similar establishment, which may shuck and serve, under sanitary conditions, raw oysters at a half-shell bar for consumption on the premises.

102 Each certified molluscan shellfish seafood facility shall follow the provisions as described in the general requirements for dealers in the current NSSP Model Ordinance Guidelines.

103 A license and certification held by a person shall be suspended or revoked by the Commission when it has reason to believe that a public health hazard exists or whenever the holder has violated any of the requirements of this regulation or whenever the holder has interfered with a representative of the DMR in the performance of duties.

104 The DMR shall in all cases serve upon the holder a written notice of intent to suspend the license and certification. The notice shall specify the violations and afford the holder such reasonable opportunity to correct such violations as may be agreed to by the parties or in absence of agreement fixed by the Commission before making any order of suspension effective. A copy of the inspection sheet handed to the license and certification holder or his authorized representative, or in their absence, posted in a conspicuous place in the establishment, shall constitute a written notice to suspend the license and certification.

105 A suspension of license and certification shall remain in effect until the violation has been corrected to the satisfaction of the Commission. In a case where the shellfish and shellfish products involved create a health hazard or whenever adulterated or misbranded shellfish and/or shellfish products are found, or in any case of willful refusal to permit an inspection, the DMR, its Executive Director, Seafood Technology Bureau Director, or other DMR personnel designated by the DMR Executive Director, may issue a Cease and Desist order effective immediately to suspend all related shellfish activities. This order shall be in effect until such time as proper corrective actions have been taken and the order is officially lifted.

106 Upon request for reapplication, from any person whose license and certification has been suspended, the Commission or as hereby authorized DMR officers, the DMR shall make such inspection(s) and/or collect samples as deemed necessary to determine compliance with the requirement of this regulation. Upon repeated violations, the Commission may revoke a license and certification following reasonable notice to the license and certification holder and an opportunity for a hearing.

Chapter 10 Adulterated, Misbranded, or Unlabeled Shellfish and Shellfish Products Prohibited

100 It shall be unlawful for any person within the state of Mississippi, under the jurisdiction and authority of the Commission in accordance with Miss. Code Ann. 49-15-15 (c) to provide, purchase, sell, offer, possess, or expose for sale, or have in possession with

intent to sell, any raw shellfish and shellfish products which are adulterated, misbranded, mislabeled or unlabeled.

101 No person shall hold or pack shellfish under conditions whereby the shellfish may become adulterated.

102 Any adulterated, misbranded, mislabeled, or unlabeled shellfish or shellfish products under the jurisdiction and authority of the Commission in accordance with Miss. Code Ann. 49-15-15 (c), may be impounded by the direction of the Commission or as hereby authorized the DMR, its Executive Director, Director of Marine Fisheries, Seafood Technology Bureau Director or other DMR designee in charge of molluscan shellfish handling and processing, or Marine Patrol Officer.

103 Seizure and disposal of shellfish products shall be carried out by a Marine Patrol Officer as directed by the Commission, or as hereby authorized the DMR Executive Director, Director of Marine Fisheries, Seafood Technology Bureau Director or Certified Seafood Officer, in charge of molluscan shellfish handling and processing.

Chapter 11 Labeling and Tagging of Shellfish

100 All containers or packages enclosing fresh shucked or frozen raw shucked shellfish and shucked shellfish products shipped within, into or out of the State of Mississippi shall originate from a certified dealer and shall be conspicuously, indelibly, and legibly labeled with the following information:

100.01 Name of the product.
100.02 Name and address of the packer, repacker, or distributor.
100.03 Size of container.
100.04 Certification number.
100.05 Net drained weight when packed.
100.06 On packages containing sixty-four (64) fluid ounces or more shall have on the lid and sidewall or bottom the "DATE SHUCKED" indicated as the number of the day, month and year or the month, day and year.
100.07 On packages of less than sixty-four (64) fluid ounces of fresh product labeled with the wording "SELL BY' followed by a date expressed as a month, day and year, not to exceed seventeen (17) days from the date shucked.
100.08 Containers of frozen shucked shellfish shall show the date the product was shucked and the date frozen, labeled as "DATE SHUCKED" and "DATE FROZEN" followed by the date expressed as the month, day, and year. Shucked product previously frozen must be labeled with the wording "PREVIOUSLY FROZEN".

101 All shellfish shipped within, into or out of the State of Mississippi by a certified dealer shall be tagged with the following indelible, legible information:

101.01 Dealer's name
101.02 Dealer's address
101.03 Dealer certification number and original shellstock shipper's certification number
101.04 Date of harvest
101.05 Harvest area

102 When both the harvester and dealer tags appear on the container, the dealer's tag is not required to duplicate the information on the harvester's tag.

103 It shall be unlawful for any shellfish harvested from Mississippi waters or landed in the state and shipped into interstate commerce to originate from other than a Mississippi Certified Dealer.

104 If the shellfish is removed from the original container by the dealer, the tag on the new container shall meet the requirements in Chapter 11 of this Part.

105 All shellfish and shucked shellfish shipped by a certified dealer within, into or out of the State of Mississippi shall be accompanied by a bill of lading or bill of sale with the following information:

105.01 Shipper's name, address, and certification number.
105.02 Date of shipment.
105.03 Name and address of consignee.
105.04 Type and quantity of shellfish products.
105.05 Bulk tagging of shellstock is permitted when conducted in accordance with current NSSP guidelines as described in the most current version of the NSSP's Model Ordinance.

Chapter 12 Purchase and Sales Records / Shellfish Tag Retention

100 Persons, firms or corporations handling, shucking, buying, selling, or shipping shellfish shall keep accurate records showing the names, addresses, and certification numbers of all persons from whom lots of shellfish are received, the source of each lot (growing area) and the names and addresses of persons to whom lots are sold or shipped and the dates of the aforementioned transactions. Shellfish tags are required to be attached to containers until containers are empty and thereafter kept on record for at least ninety (90) days. Persons, firms or corporations handling, shucking, buying, selling or shipping shellstock shall record the tag number of each container of shellstock and to whom or from whom the shellstock were shipped, sold, bought or received. Such records shall be open to inspection at any time during operating hours, by any duly authorized representative of the DMR, including Officers of the Marine Patrol.

Chapter 13 Shipping and Transportation of Molluscan Shellfish

100 Licensed harvesters may transport their own daily harvested shellstock intrastate unrefrigerated for up to four (4) hours after the checkout time listed on their trip ticket.

101 Interstate shipping of shellfish shall only be through a certified seafood dealer or processor and no shellfish shall enter or exit the state of Mississippi un-refrigerated.

102 It shall be unlawful for shellstock to fail to be transported in refrigerated trucks when the shellstock have been previously refrigerated.

103 When mechanical refrigeration units are used, the units shall:

- 103.01 Be equipped with automatic controls; and
- 103.02 Maintain the ambient air temperature in the storage area at temperatures of 45°F (7.2°C) or less.

104 All ice used in the processing, storage, or transportation of shellstock or shucked shellfish shall:

- 104.01 Be made on-site from potable water in a commercial ice machine; or
- 104.02 Come from a facility sanctioned by the DMR or the appropriate regulatory agency.

105 When shipping time is four (4) hours or less, it shall be unlawful for any dealer to fail to ship all shellfish:

- 105.01 Well iced; or
- 105.02 In mechanically refrigerated conveyances which are equipped with automatic temperature controls that maintain the ambient air temperature in the storage area at temperatures of 45°F (7.2°C) or less.

106 When shipping time is four (4) hours or less, the dealer should provide thermal recorders during shipment.

107 When the shipping time is greater than four (4) hours, it shall be unlawful for any dealer to fail to ship all shellfish:

- 107.01 In mechanically refrigerated conveyances which are equipped with automatic temperature controls that maintain the ambient air temperature in the storage area at a temperature of 45°F (7.2°C) or less; or
- 107.02 In containers with an internal ambient air temperature maintained at or below temperatures of 45°F (7.2°C).

108 It shall be unlawful for any transportation of shucked shellfish to fail to be in either mechanically refrigerated vehicles or well-iced and protected from contamination.

109 When the shipping time is greater than four (4) hours, unless the dealer has an approved alternate means of monitoring the time-temperature, the dealer shall assure that a suitable time-temperature recording device accompanies each shipment of shellfish.

110 It shall be unlawful for any shellfish, whether refrigerated or not, to be unprotected from sun and contamination during transport. Dogs, cats, birds, and other animals shall not be allowed in any vehicle or vessel used to transport shellfish.

111 All vehicles transporting shucked shellfish intrastate must be properly licensed in accordance with Miss. Code Ann. 49-15-28 and 49-15-29.

112 Frozen shellfish shall be transported in such a manner as to remain frozen solid and the temperature of the product maintained at 0°F (-17.8°C) or less.

113 Other than documented common carriers, all mechanically refrigerated transport vehicles used by DMR certified dealers for transporting shellfish must be certified and inspected by the DMR.

114 It shall be unlawful to open containers of shucked shellfish in transit, except for inspection by an official of the DMR or other duly authorized official.

Chapter 14 Receiving and Storage of Molluscan Shellfish

100 Shellfish shall be stored in a mechanically refrigerated conveyance or unit which is equipped with automatic temperature controls and maintains the ambient air temperature in the storage area at temperatures of 45°F (7.2°C) or less and is protected from contamination.

101 Shucked shellfish may be stored well iced provided that the ice is from a DMR approved water source and is free of contaminants.

102 All shellstock must be mechanically refrigerated in a DMR approved cooler or conveyance within four (4) hours after the checkout time.

103 Shellfish dealers and processors shall place shellfish under temperature control within two (2) hours of receipt from the harvester.

104 When the dealer is also the harvester, shellfish shall be placed in a mechanically refrigerated unit within four (4) hours.

105 Frozen shellfish shall be stored in such a manner as to remain frozen solid and the temperature of the product maintained at 0°F (-17.8°C) or less.

106 Once placed under temperature control and until sale to the final processor or consumer, it shall be unlawful to fail to keep shellfish:

106.01 Iced; or
106.02 Placed and stored in a storage area or conveyance maintained at 45°F (7.2°C) or less; and
106.03 Without ice, mechanical refrigeration or other approved methods of refrigeration for more than two (2) hours at points of transfer.

107 Shellstock oysters shall be packed in clean barrels, sacks, hampers, or other measurable containers.

Chapter 15 Recreationally Harvested Shellstock or Shellfish Purchased for Personal Consumption

100 Chapters 13 & 14 of this Part shall not apply to recreationally harvested shellstock or shellfish purchased for personal consumption from a licensed and certified establishment or individual. All shellfish purchased for personal consumption must be properly labeled as specified in this Part, and be accompanied by a receipt or a bill of sale containing the following information, the intent being that the following information is present and available for inspection by any official of DMR:

100.01 Name, license and certification number of seller
100.02 Quantity of shellfish purchased
100.03 Purchase date

Chapter 16 Shellfish Recall

100 When molluscan shellfish have been landed and have moved into or through the handling, processing and/or marketing system and have been determined by the DMR as subjected to contamination that threatens imminent peril to public health, such oysters shall be recalled. The recalled oysters shall be properly disposed of under the supervision of the DMR to prevent human consumption.

Chapter 17 Depuration

100 Depuration of shellstock is permitted as described in the current NSSP Model Ordinance guidelines.

Chapter 18 Post Harvest Processing

100 Post Harvest Processing is permitted as described in the current NSSP Model Ordinance guidelines.

Chapter 19 Responsibility

100 It shall be the duty and responsibility of each owner, manager, and operator of a certified shellfish plant to insure that all regulations pertaining thereto are strictly adhered to and that only safe, wholesome, unadulterated shellfish shall be offered for sale to the consuming public. It shall be his duty and responsibility to see that his plant is properly supervised at all times and all shellfish can be identified, whether shellstock or shucked shellfish, to insure that they were harvested from approved growing waters and that they have been handled and processed in a sanitary manner. Each owner shall be subject to penalties under this Part and Miss. Code Ann.

Chapter 20 Penalties

100 Any unlawful act under this Part committed by any person, firm, or corporation shall be deemed a violation of the provisions of this Part and shall constitute a misdemeanor and upon conviction, said person shall be punished in accordance with Miss. Code Ann. § 49-15-63 unless a penalty is specifically provided elsewhere in the Mississippi Code of 1972, Annotated.

101 Violations of more than one section or subsection of this Part or part thereof shall be considered separate offenses and punished as such.

102 Any shellfish in violation of any section of this Part shall be subject to confiscation and disposal of such shellfish by direction of any designated Marine Patrol Officer of the DMR.

Chapter 21 Sections and Subsections Declared Separable

100 Each section and subsection of this Part is hereby declared separable, and if any section or subsection or part thereof shall be held invalid or unconstitutional, the balance of said Title 22 Part 17 shall remain in full force and effect.

Chapter 22 Administrative Procedures Act

100 Pursuant to the amendments to the Administrative Procedures Act, Section 25-43-101.1, et seq., of the Mississippi Code of 1972, and the rules and regulations promulgated pursuant thereto by the Secretary of State; the former Ordinance 17.001 has been modified and the commission and department have adopted the terminology and numbering system developed by the Secretary of State. Therefore, references to "ordinance" or to "Part " appearing in these regulations or the underlying statutes are used interchangeably and refer to the same instrument.

Title 22 – MISSISSIPPI DEPARTMENT OF MARINE RESOURCES, Part 17 REGULATION OF SHELLFISH LANDING, UNLOADING, TRANSPORTING, PROCESSING, BUYING, SELLING, OPENING, AND OTHER SHELLFISH RELATED ACTIVITIES IN THE STATE OF MISSISSIPPI, shall be in effect and be in force from and after the 1st day of January, 2009.

Adopted this the 16th day of December, 2008.

MISSISSIPPI COMMISSION ON MARINE RESOURCES

By: _____
Vernon Asper, Ph.D., Chairman

MISSISSIPPI DEPARTMENT OF MARINE RESOURCES

By: _____
William Walker, Ph.D., Executive Director