# TITLE 22 – MISSISSIPPI DEPARTMENT OF MARINE RESOURCES

# PART 1 RULES AND REGULATIONS FOR SHELLFISH HARVESTING, TAGGING, LANDING, UNLOADING, TRANSPORTING, RELAYING, MANAGEMENT, AREA CLASSIFICATION, AND OTHER SHELLFISH RELATED ACTIVITIES IN THE STATE, AND THE LEASING OF TERRITORIAL WATERS UNDER THE JURISDICTION OF 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 (MCMR) 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 harvesting, landing, unloading, transporting, processing, buying, selling, opening, relaying, and other shellfish related activities in the state, and the leasing of waters within the area under the territorial jurisdiction of the State of Mississippi.

101 The MCMR is authorized by Miss. Code Ann. § 49-15-15, as amended, to enact all regulations necessary for the protection, conservation or propagation of all seafood in the waters under the territorial jurisdiction of the State of Mississippi.

102 The MCMR is required by Miss. Code Ann. § 49-15-15 (1) (c), as amended, to regulate all seafood sanitation and processing programs.

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

104 All beds, banks and accumulations of all shells being under the bottom of, or under the tidewaters within the territorial jurisdiction of the State of Mississippi are declared to be the property of the State of Mississippi under the jurisdiction of the MCMR as provided for in Miss. Code Ann. § 49-15-7, as amended.

105 Miss. Code Ann. § 49-15-36(3), as amended, requires the MCMR to promulgate regulations regarding the closing of oyster reefs which are determined to be restricted.

106 Miss. Code Ann. § 49-15-27, as amended, grants the MCMR authority to lease bottoms.

107 Miss. Code Ann. § 49-15-29, as amended, authorizes the MCMR to assess and collect certain taxes and license fees.

108 Miss. Code Ann. § 49-15-30, as amended, authorizes the MCMR to promulgate regulations for nonresident permits.

109 Miss. Code Ann. § 49-15-37, as amended, authorizes the cultivation of oyster reefs and removal of oysters from restricted areas through the MCMR.

110 Miss. Code Ann. § 49-15-39, as amended, provides for dredging limits and designation of reefs reserved for tonging by the MCMR.

111 Miss. Code Ann. § 49-15-41, as amended, prohibits oyster harvesting at night.

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

113 Miss. Code Ann. § 49-15-43, as amended, addresses the packaging of oysters.

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

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

116 Miss. Code Ann. § 49-15-63, as amended, 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 **APPROVED AREA -** Waters where the growing and harvesting of shellfish for direct marketing is allowed by the authority of the MCMR or as hereby authorized the Mississippi Department of Marine Resources (MDMR), its Executive Director, Director of Marine Fisheries, Bureau Director, Program Coordinator or other MDMR designee; where pathogenic micro-organisms, poisonous and deleterious substances are not present in the area in dangerous concentrations, and where bacteriological quality of the water of every sampling station does not exceed a fecal coliform median or geometric mean MPN of 14 per 100 ml, and not more than 10 percent of the samples exceed an MPN of 43 for a 5-tube decimal dilution test or an MPN of 49 per 100 ml. for a 3-tube decimal dilution test. An approved area may be temporarily closed when a public health emergency resulting from, for example, a hurricane, flooding, chemical spill, hazardous waste or raw sewage discharge, sinking or grounding of vessels carrying hazardous cargoes, evidence of the existence of marine biotoxins, or any other public health emergency as declared by the MCMR or as hereby authorized the MDMR, its Executive Director, the Director of Marine Fisheries, Bureau Director, Program Coordinator or other MDMR designee thereof.

102 **CONDITIONALLY APPROVED AREA -** Waters that meet approved area criteria for a predictable period. The period is conditional upon established performance standards specified in a management plan. A conditionally approved shellfish growing area is a closed area when the area does not meet the approved growing area criteria and is temporarily closed by the MCMR or as

hereby authorized the MDMR, its Executive Director, Director of Marine Fisheries, Bureau Director, Program Coordinator or other MDMR designee.

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

104 **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.

105 **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 containing (1) the name and place of business of the processor or packer and the name of the product (2) an accurate statement of the quantity of the contents in terms of weight, measure, numerical count or size of container, (3) the permit number of the processor or packer (4) net drained weight when packed (5) on packages of sixty-four (64) fluid ounces or more of fresh product, labeled with the date shucked with the wording "DATE SHUCKED" followed by the date expressed as the month, day, and year, or (6) 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 fourteen (14) days from the date shucked. 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".

106 **PROHIBITED AREA** – Waters that are prohibited for the harvest of shellfish for any purpose except depletion. A prohibited shellfish growing area is a closed area for the harvesting of shellfish at all times.

107 **RESTRICTED AREA** – Closed area waters from which shellfish may be harvested only if permitted and subjected to a suitable and effective purification process as determined and permitted by the MCMR.

108 **SANITARY SURVEY** – The evaluation of all actual and potential pollution sources and environmental factors having a bearing on shellfish growing area water quality.

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

110 **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.

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

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

113 **UNCLASSIFIED AREA** – Waters that are presently unclassified and from which the harvest of shellfish is prohibited pending classification of the area as prohibited, restricted, conditionally approved, or approved based on a sanitary survey of the area and granting of permission to harvest shellfish in accordance with the respective classification by the MCMR or as hereby authorized the

MDMR, its Executive Director, Director of Marine Fisheries, Bureau Director, Program Coordinator or other MDMR designee.

**Chapter 04 Legally Harvested and Properly Tagged Shellfish**

100 It shall be unlawful for any person, firm, or corporation to harvest, 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 MCMR or as hereby authorized the MDMR, its Executive Director, Director of Marine Fisheries, Bureau Director, Program Coordinator or other MDMR designee in accordance with the procedures outlined in this Part and its document parts.

101 With the exception of permitted private leaseholders or their agents legally harvesting from their own lease, it shall be unlawful for any person, firm, or corporation to have possession of tags in excess of the daily sack limit.

101.01 It shall be unlawful for harvesters to fail to tag shellstock at the time of landing with the following indelible, legible information (as required by Mississippi Code § 49-15-46(3) as amended).
101.01.01 Harvester's name.
101.01.02 Harvester's license number.
101.01.03 Date of harvest.
101.01.04 Harvest location(s).
101.01.05 Mississippi shellstock dealer's name and permit number.
101.02 All shellstock or oyster tags provided by the MDMR shall be affixed to the sack or container with the fastener provided by the MDMR for such purpose.
101.03 Additional shellstock tagging requirements may be required by the MDMR as may be necessary.

102 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 MDMR:

102.01 Name and permit or license number of seller.
102.02 Quantity of shellfish purchased.
102.03 Purchase date.

103 Failure to meet the above-described standards shall be unlawful.

**Chapter 05 Possession of Illegal (Molluscan) Shellfish**

100 It shall be unlawful for any person, firm or corporation to sell or possess any illegal (molluscan) shellfish as defined in Miss. Code Ann. § 49-15-3 and as provided for in § 49-15-44, as amended.

**Chapter 06 Shellfish Harvesting Requirements/Specifications**

100 Except for oysters legally harvested on private lease sites, it shall be unlawful for any person, firm or corporation to take from the reefs of this state any oysters that measure less than three (3) inches from end to end.

100.01 End to end shall be defined for the purpose of this chapter as the greatest length from the hinge of the oyster to its bill.

101 It shall be unlawful to fail to immediately scatter and broadcast evenly on to the natural reefs from which they are taken all dead shells, small oysters and oysters in excess of the daily sack limits.

102 It shall be unlawful for any person, firm or corporation to purchase, sell or have in his possession or under his control any oysters taken from the public reefs not culled according to the provisions of this Chapter, or any oysters under the legal size aforesaid.

102.01 A ten percent (10%) tolerance by number shall be allowed in relation to any culling.

102.01.01 The ten percent (10%) tolerance shall be determined from a representative sample of the total catch.

102.01.02 A representative sample is defined for the purposes herein as ten percent (10%) of the total catch.

103 It shall be unlawful to fail to pack shellstock oysters in clean barrels, sacks, hampers, or other measurable containers before the boat or vessel leaves the natural reef from which they were harvested.

104 It shall be unlawful to transfer oysters from one vessel to another vessel, until said vessel has been checked-out at the appropriate check station.

105 While engaged in the harvest of oysters, it shall be unlawful for any boat or vessel to tow or to be tied to any other boat or vessel licensed for oystering.

106 It shall be unlawful for any boats or vessels engaged in the harvest of oysters to fail to be continuously manned by a qualified person capable of operating said boat or vessel from the time they check-in for the day till the time they check-out.

107 During the period of May 1 through September 30 of each year, it shall be unlawful for any boats or vessels harvesting or transporting shellstock, to fail to provide protection from direct exposure to the sun by having a suspended awning or similar covering above said shellstock at any time shellstock is onboard said boat or vessel.

**Chapter 07 Dredge Specifications**

100 It shall be unlawful for any person, firm, or corporation to take or attempt to take any oysters from the waters under the territorial jurisdiction of the State of Mississippi by the use of a dredge having a weight in excess of one hundred forty (140) pounds and the tooth bar cannot have more than sixteen (16) teeth and the teeth on the tooth bar cannot exceed five (5) inches unless otherwise permitted by the MCMR or as hereby authorized the MDMR, its Executive Director, Director of Marine Fisheries, Bureau Director, Program Coordinator or other MDMR designee.

101 No person, firm or corporation may use more than two (2) such dredges.

**Chapter 08 Shellfish Area Openings and Closings**

100 The MCMR shall set the opening date of oyster season in an Opening Order at a regularly scheduled meeting.

100.01 The Opening Order shall include:
100.01.01 The date that oyster season shall open.
100.01.02 A description of shellfish growing areas to open.
100.01.03 A description of check-in and check-out stations and alternate stations.
100.01.04 Telephone number(s) from which information may be obtained with respect to closing and reopening waters.
100.01.05 Sack limits.
100.01.06 Necessary regulations relating to shellfish harvesting, additional tagging requirements, additional time to temperature requirements of shellstock, processing and distribution.
100.02 Notice of the opening date shall be included in the minutes of the meeting, in its Opening Order and shall be published in a newspaper or newspapers having general circulation in the three coastal counties.

101 Opening and closing of shellfish growing area waters and oyster reefs shall be by issuance of a legal notice signed by the MCMR or as hereby authorized the MDMR, its Executive Director, Director of Marine Fisheries, Bureau Director, Program Coordinator or other MDMR designee thereof.

101.01 Notice of openings and closings shall be released to the news media.
101.02 A twenty-four (24) hour recorded telephone message service of closures and openings may be provided when possible.
101.03 If a closure is necessitated by a rainfall event or rise in river stage occurring after 4:00 p.m., the closure will be effective no later than 4:00 p.m. the following day.
101.04 If a closure is necessitated by a rainfall event or rise in river stage occurring prior to 4:00 p.m., the closure will be effective no later than 4:00 p.m. that day.
101.05 Whenever sampling data indicates this time frame sequence is not adequate to protect public health in a reef area, said area may be closed immediately and any oysters or other shellfish taken from said area may be required to be returned to the water.

102 If closure is necessitated by any other polluting event, which threatens imminent peril to public health, closure will be immediate and any oysters or other shellfish taken which have been subjected to such pollution as determined by the MDMR shall be returned to the water.

103 During any closure of a conditionally approved area the MDMR will:

103.01 Sample closed areas in accordance with state statute until oysters or other shellfish are free of pollutants in accordance with the respective Management Plan and state statue.
103.02 Provide notification of the reopening through standard media news releases, and by recorded telephone messages.

104 The Executive Director of the MDMR is authorized to close any area to harvest when necessary to conserve the resource.

**Chapter 09 Harvester License and Check Stations**

100 It shall be unlawful for any person, firm, or corporation to take or attempt to take any oysters from the waters under the territorial jurisdiction of the State of Mississippi without first having obtained a license as specified in Miss. Code Ann. § 49-15-29, as amended.

101 It shall be unlawful for any person, firm, or corporation to take or attempt to take any oysters from the waters under the territorial jurisdiction of the State of Mississippi without first having registered (checked-in) on the day of harvest at the check-in station or drop box in the area where harvesting shall be attempted.

101.01 Upon registration, while harvesting, or upon check-out, each person may be required to show his license to the Marine Patrol Officer or other designated official of the MDMR. The licensee may receive from the Marine Patrol Officer or other designated official a trip ticket upon which shall be included the area that the licensee is permitted to harvest oysters.

101.02 All licensees must observe any instructions given at the check station by any Marine Patrol Officer or other designated official.

101.03 All fishermen must check out at the same designated check station where they checked in.

101.03.01 Check stations shall operate from 7:00 A.M. to 4:00 P.M. local time when the area is open for harvest.

101.03.02 All oystering activities shall cease prior to 4:00 P.M. each day and all fishermen shall be checked out at the appropriate check station by 4:00 P.M.

101.03.03 The Executive Director is hereby authorized to establish earlier checkout times, additional tagging requirements and additional time to temperature requirements of shellstock as may be required or necessary.

101.03.04 All oysters must be landed and tagged as soon as possible after the boat is safely secured on the date of harvest.

101.04 The MDMR trip ticket shall indicate the check out time and must remain with the catch until final disposition and be available for inspection with the molluscan shellfish by any authorized Marine Patrol Officer or MDMR staff in charge of the regulatory molluscan shellfish handling and processing responsibilities.

**Chapter 10 Resident Recreational and Non-Resident Requirements**

100 No nonresident recreational harvest will be permitted in the State of Mississippi.

101 It shall be unlawful for any Mississippi recreational harvesters to fail to obtain a recreational harvest tally card at the check-in/out station prior to their initial harvest trip.

101.01 The recreational tally card must be presented at the check-in/out station prior to any recreational harvest trip.

102 It shall be unlawful for any nonresidents buying, selling, transporting, or handling shellfish in the State of Mississippi to fail to:

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

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

**Chapter 11 Closed Shell or Cultch Plant Areas**

100 It shall be unlawful for any person, firm, or corporation to place or cause to be placed any material or gear used in the catching or taking of saltwater fish, shrimp, crabs or shellfish, with the exception of crab traps or pots, or hook and line fishing or cast nets on any public reef area that has been planted with shells or other cultch material that has not been released or opened to harvest by the MCMR or the MDMR.

**Chapter 12 Adulterated, Misbranded, or Unlabeled Shellfish and Products**

100 It shall be unlawful for any person within the state of Mississippi to produce, harvest, 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, or unlabeled and no person shall hold or pack shellfish under conditions whereby the shellfish may become adulterated.

100.01 Any adulterated, misbranded, mislabeled, or unlabeled shellfish or shellfish products may be impounded by the direction of the MCMR or as hereby authorized the MDMR, its Executive Director, Director of Marine Fisheries, Bureau Director, the Program Coordinator or other MDMR designee in charge of molluscan shellfish handling and processing, or Marine Patrol Officer.

100.02 Seizure and disposal of such shellfish products shall be by the direction of the MCMR, or as hereby authorized the MDMR, its Executive Director or Marine Patrol Officer.

**Chapter 13 Transportation of Shellstock by Vessel**

100 Boats or vessels transporting shellstock legally harvested and legally transported from waters outside the State of Mississippi into Mississippi unrefrigerated shall:

100.01 Before entering Mississippi territorial waters apply to the Department for a transport permit.
100.02 Comply with all permit conditions required by the Department.
100.03 Properly tag shellstock as described in this Part.
100.04 Mechanically refrigerate shellstock within four (4) hours after landing such that the product is maintained at 45° F. (7.2° C.) or less.
100.05 The Executive Director is hereby authorized to establish earlier checkout times, additional tagging requirements and additional time to temperature requirements of shellstock as may be required or necessary.

101 The MDMR may place any additional conditions on the transportation of shellstock harvested from waters outside of the State of Mississippi that it deems necessary to protect public health and to ensure compliance with the provisions of this Part and with the laws of the State of Mississippi.

102 Failure to comply with the above shall be unlawful.

**Chapter 14 Tonging Line**

100 All waters north of a line herein described shall be defined as tonging reefs in accordance Miss. Code Ann. § 49-15-3 (j), as amended. Beginning at a point on the southern shore at the mouth of Bayou Caddy, thence proceeding to a point one (1) nautical mile due east of said point, thence proceeding

northeasterly, following the meandering of the shoreline one (1) nautical mile there from, and maintaining one (1) nautical mile off the CSX railroad bridge, thence proceeding easterly following the meandering of the shoreline one (1) nautical mile there from, to a point on Longitude 89°15.139'W, thence proceeding due south to a point at Latitude 30°17.138'N, Longitude 89°15.139'W , thence proceeding due east to a point at Latitude 30°17.138'N, Longitude 89°14.340'W, thence proceeding due north to a point at Longitude 89°14.340'W one (1) nautical mile from the shoreline, thence proceeding easterly following the meandering of the shoreline one (1) nautical mile from the shoreline to the intersection of the Alabama State line.

101 It shall be unlawful for any person, firm or corporation engaged in the catching of oysters on a tonging reef, as described in Chapter 14.100, to have on board the boat or vessel an oyster dredge, unless that area is temporarily open to dredging by order of the MCMR.

**Chapter 15 Marine Sanitation Devices**

100 As provided for in Miss. Code Ann. § 97-15-30, as amended, it shall be unlawful for any person, firm or corporation to discharge solid or human waste overboard any boat or vessel while said boat or vessel is in any public or private marine waters of the State of Mississippi. Each boat or vessel used in the harvest or transport of shellfish is required to have onboard a functional approved marine sanitation device (MSD), portable toilet or other sewage disposal receptacle to contain human sewage. The approved marine sanitation device (MSD), portable toilet or other sewage disposal receptacle shall:

100.01 Be used only for the purpose intended.
100.02 Be secured while on board and located to prevent contamination of shellstock by spillage or leakage.
100.03 Be emptied only into a sewage disposal system.
100.04 Be cleaned before being returned to the boat.
100.05 Not be cleaned in equipment used for washing or processing food.

101 The use of other receptacles for sewage disposal may be approved by the MDMR if the receptacles are:

101.01 Constructed of impervious, cleanable materials and have tight fitting lids.
101.02 Meet the requirements listed in Chapter 15.100.

102 Failure of harvest vessels to have such device on board while harvesting or transporting shellfish shall be unlawful.

**Chapter 16 Management Documents Associated With This Part**

100 The MDMR shall manage and maintain a Management Plan for Shellfish Growing Waters and harvesters' operations according to the relevant specifications stated in the current National Shellfish Sanitation Program (NSSP) of the Interstate Shellfish Sanitation Program (ISSP), according to MCMR Titles and Parts and requirements that are not in conflict with these specifications and according to the applicable statutes of the State of Mississippi.

101 This plan shall include opening and closing criteria for all shellfish growing area waters in the State of Mississippi.

102 The MDMR Management Plan for Shellfish Growing Waters includes the classification of shellfish growing areas in accordance with relevant NSSP or ISSP growing waters.

103 The implementation of the requirements by the MDMR as specified herein is subject to the following:

103.01 No procedure or guideline of the NSSP or ISSC, which is or may be in conflict with any provisions of Mississippi Code has or should be in the future applied or enforced by the MDMR.

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

103.03 The MDMR may, consistent with its existing practice, dispute any proposed or adopted procedure or guideline of the ISSC, in accordance with the procedures laid down therefore by said Conference, when, in the opinion of the MDMR, any such proposed guideline or regulation would appear to be unnecessary for the accomplishment of the goals of the 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 MDMR.

104 In managing and maintaining its' Management Plan for Shellfish Growing Waters, the MDMR may modify or change area specific management provisions of Chapter 17 of this Part, or the classification and description of shellfish growing area waters in Chapter18 of this Part in accordance with this Chapter. Area specific management provisions and the classification and description of shellfish growing area waters will be maintained and published as Legal Notices.

104.01 Such changes will become effective after publication of those changes in a newspaper having general circulation in the three coastal counties.

**Chapter 17 Management Plan for Shellfish Growing Waters**

100 All Areas classified as **PROHIBITED** are closed to the harvesting of shellfish at all times.

101 All Areas classified as **RESTRICTED** are closed to the direct harvesting of shellfish.

101.01 The MCMR may permit relaying or depuration operations out of these areas after sufficient study to determine that the shellfish will depurate to the required levels within a specified period of time, and that the growing waters in these areas meet the requirements to be classified as restricted to relaying and/or depuration.

102 All Areas classified as **APPROVED** may be open to the direct harvesting of shellfish from the time the MCMR adopts as the opening date of oyster season provided the area is open pursuant to this Part and its subsequent revision and until that area is officially closed by order of the MCMR, or as hereby authorized the MDMR its Executive Director, Deputy Director, Director of Marine Fisheries, Bureau Director or Biological Program Coordinator, however, all Areas, or portions thereof, classified as **APPROVED** may be opened and closed to the harvest of shellfish in the manner outlined below for **CONDITIONALLY APPROVED** Areas, other than the area specific measures listed.

103 All Areas or portions thereof classified as **CONDITIONALLY APPROVED**, may be open to the direct harvesting of shellfish only during the time the MCMR adopts as the opening date of oyster

season provided the area is open pursuant to this Part and until the area is officially closed by order of the MCMR or as hereby authorized the MDMR, its Executive Director, Deputy Director, Director of Marine Fisheries, Bureau Director or Biological Program Coordinator, **AND ONLY UNDER THE FOLLOWING CONDITIONS**:

103.01 The area, or portions thereof, shall not be "opened" to start the season and/or shall be "closed":

103.01.01 When reports concerning chemical spills, discharge of hazardous wastes, and/or discharge of raw untreated sewage, or poorly treated sewage from malfunctioning city sewage collection system pump stations, chemical plants or users, harbors, shipping terminals, marinas, ships, barges, or the sinking or grounding of vessels carrying hazardous cargoes are substantiated, or when other area specific closing criteria as published by the MDMR are met or exceeded.

103.01.02 When hurricanes, storms, localized flooding or other natural disasters strike the area.

103.01.03 When the geometric mean of the seawater from compliant sampling stations in the area exceed a fecal coliform most probable number (MPN) of 14 per 100 ml. and/or more than 10 percent of the samples exceed a MPN of 43 for a 5-tube 3 dilution test.

103.01.04 When there is evidence of the existence of marine biotoxins or other biological, chemical, or radiological agents in the seawater or shellfish in the area exceeding recognized acceptable limits.

103.01.05.01 **AREA I "B" CONDITIONALLY APPROVED WATERS-** The Pearl River is equal to or exceeds 10 feet as measured at the Pearl River, Louisiana gauge, and/or, when one (1) or more inches of rainfall occurs in any 24 consecutive hours as measured at the Waveland and/or Bay St. Louis (NASA) NOAA rainfall gauges.

103.01.05.02 **AREA II "A", II "B" or II "D" CONDITIONALLY APPROVED WATERS -** The Pearl River is equal to or exceeds 10 feet as measured at the Pearl River, Louisiana gauge, and/or, when one (1) or more inches of rainfall occurs in any 24 consecutive hours as measured at the Waveland or Bay St. Louis (NASA) NOAA gauges.

103.01.05.03 **AREA II "C" CONDITIONALLY APPROVED WATERS and its' subdivisions -** The Pearl River is equal to or exceeds 12.5 feet as measured at the Pearl River, Louisiana gauge, and/or when two (2) or more inches of rainfall occurs in any 24 consecutive hours as measured at the Waveland or Bay St. Louis (NASA) NOAA gauges.

103.01.06 Designated MDMR personnel will perform monitoring of the closing criteria utilizing sources such as the Internet, telephone, direct observation, and reports provided by other official sources.

103.01.07 When a closing criteria condition is found to exist, the designated MDMR personnel will immediately notify the MDMR Executive Director, Deputy Director, Director of Marine Fisheries, Bureau Director or Biological Program Coordinator of the situation. The area, or portion thereof, will then be closed in accordance with this Part.

103.01.08 If a controlling gauge for rainfall or river stage reading is missing or unavailable, evaluation of all available information such as from the Intranet, National Weather Service, precipitation estimates, U.S. Geological Survey hydrographic estimates and direct observations will be utilized to determine if the closing criteria had been met or exceeded, in which case, the area will be closed in accordance with this Part.

103.02 When any one or more of the above criteria are found to exist, the MCMR or as hereby authorized the MDMR, its Executive Director, Deputy Director, Director of Marine Fisheries, Bureau Director or Biological Program Coordinator thereof, shall delay opening or shall close subject area, or affected portion thereof, to shellfish harvesting.

103.03 Whenever any shellfish growing water area is closed under the provisions listed above, said waters are hereby deemed not safe and sanitary, and oyster reefs lying in said closed waters are hereby deemed and determined to be contaminated or otherwise unfit for consumption.

104 Areas may be "opened" to start the season and/or may be "re-opened":

104.01 When any chemicals or hazardous waste residuals remaining in the seawater or oyster meats are less than the tolerance set for such chemicals or hazardous waste by the federal agencies responsible; or, when such residuals are judged to be non-hazardous to the public health by the MDMR.

104.02 When any raw sewage spills or discharges are diluted to the point that they are within accepted standards as determined by microbiological analysis of seawater samples collected at the site of the spill or discharge.

104.03 When hurricanes, storms, localized flooding or other natural disasters have subsided; and microbiological analysis of seawater and/or oyster meat samples indicate that the seawater is again acceptable and that the shellfish have gone through a sufficient time interval to permit natural biological cleansing.

104.04 When rainfall has subsided and microbiological analysis of seawater samples indicate that the seawater is again acceptable and that the shellfish have gone through a sufficient time interval to permit natural biological cleansing.

104.05 When, following a delay in the "opening" of the area for oyster season or following a "closure" of the area due to any one or more of the environmental conditions listed above, seawater samples shall be collected from each compliant sampling station in the area for microbiological analysis in accordance with state statute. The seawater shall be deemed acceptable when the microbiological analysis of compliant stations in the area indicates a geometric mean fecal coliform MPN of 14 per 100 ml of water or less. This shall be deemed a sufficient time interval to permit natural biological cleansing; however, if oyster meats are sampled for verification, the results shall be less than a fecal coliform MPN of 230 per 100 grams of meat.

104.06 When there is no evidence of the existence of marine biotoxins or other biological, chemical or radiological agents in excess of tolerances set for such biotoxins, biological, chemical or radiological agents in the seawater and oyster meat samples taken from the area.

104.07 When the following area specific criteria or when other area specific criteria as published by the MDMR are met:

104.07.01 **AREA I "B", II "A", II "B" or II "D" CONDITIONALLY APPROVED WATERS-** The Pearl River has receded to less than 10 feet or has crested as measured at the Pearl River, Louisiana gauge, and/or the microbiological analysis of seawater samples indicate that the seawater is again acceptable and the shellfish have gone through a sufficient time interval to permit natural biological cleansing.

104.07.02 **AREA II "C" CONDITIONALLY APPROVED WATERS-** The Pearl River has receded to less than 12.5 feet or has crested as measured at the Pearl River, Louisiana gauge, and/or the microbiological analysis of seawater samples indicate that the seawater is again acceptable and the shellfish have gone through a sufficient time interval to permit natural biological cleansing.

104.08 When the above criteria are in compliance, the MCMR or as hereby authorized the MDMR, its Executive Director, Deputy Director, Director of Marine Fisheries, Bureau Director or Biological Program Coordinator thereof, may open subject area to shellfish harvesting.

105 All **UNCLASSIFIED AREAS** are closed to the harvest of shellfish pending classification of the area as **PROHIBITED, RESTRICTED, CONDITIONALLY APPROVED**, or **APPROVED** based on a sanitary survey of the area and granting of permission to harvest shellfish in accordance with the respective classification by the MCMR or as authorized in this Part; the MDMR, its Executive Director, Director of Marine Fisheries, Bureau Director or Biological Program Coordinator.

## Chapter 18 Classification and Description of Shellfish Growing Areas Waters

### 100 Prohibited Areas

100.01 The following waters are **PROHIBITED** in **ALL AREAS**:

100.01.01 All waters that lie within a 1,000-foot radius of any present or future wastewater treatment plant or facility outfall, or located within any present or future marina, harbor or yacht club are classified as **PROHIBITED**.

100.02 The following waters of **AREA II (2)** are **PROHIBITED**:

100.02.01 All waters of Bayou Caddy west of a line running from the most seaward point on the south shore of the mouth of Bayou Caddy northward to the most seaward point on the north shore of the mouth of Bayou Caddy.

100.02.02 All waters west of a line commencing at a point on the east shore of the mouth of Joe's Bayou and running due north to a point on the northwestern shoreline of St. Louis Bay. These waters include Joe's Bayou, the Jourdan River, Catfish Bayou, Cutoff Bayou, and all waters west of the described line.

100.02.03 All waters north of a line commencing at the southern most point of the south shore of the mouth of the Wolf River and running due west to a point of intersection on the aforesaid north-south prohibiting line of the Jourdan River. These waters include Bayou Acadian, the Wolf River, DeLisle Bayou, Cedar Bayou, the northern reaches of St. Louis Bay, and waters adjacent to the DuPont Titanium Oxide Plant.

100.02.04 All waters east of a line commencing at the northwestern most point on the west shore of Mallini Bayou and running in a north northwestern direction to the Bayou Portage Channel Light 3 (Qk. Fl. 17ft. "3"), thence, running in a north-northwestern direction to a point of intersection on the aforesaid east-west prohibiting line of the Wolf River. These waters include Mallini Bayou, Bayou Portage, and waters of the eastern reaches of St. Louis Bay.

100.03 The following waters of **AREA III (3)** are **PROHIBITED**:

100.03.01 All waters between a LINE running parallel to and 0.5 nautical mile west of the center of the Gulfport Ship Channel and a LINE running parallel to and 0.5 nautical mile east of the center of the Gulfport Ship Channel for the full length of the Gulfport Ship Channel.

100.04 The following waters of **AREA V (5)** are **PROHIBITED**:

100.04.01 All waters between a LINE running parallel to and 0.25 nautical mile west of the center of the Broadwater Channel and a LINE running parallel to and 0.25 nautical mile east of the center of said Channel for the full length of the Broadwater Channel.

100.04.02 All waters between a LINE running parallel to and 0.25 nautical mile west of the center of Biloxi Channel and a LINE running parallel to and 0.25 nautical mile east of the Biloxi Channel for the full length of said Channel.

100.04.03 All waters including Biloxi Channel between the mainland shoreline and Deer Island as defined by the following line: A line commencing at the southeastern most tip of Point Caddie (Coast Guard Point) in the City of Biloxi, Mississippi, thence, directly south to the north shore of Deer Island, thence, following the meanderings of the

Deer Island shoreline northwestward to the west end of Deer Island, thence, due west toward Biloxi Channel Light 12, (Fl. R. 2.5 sec. 17 Ft. 3M "12") intersecting the Biloxi Channel east prohibiting line herein established, thence, north along said prohibiting line to the mainland shoreline and along said mainland shoreline to the point of beginning.

100.04.04 All waters of the Biloxi Back Bay and tributaries of Biloxi Back Bay north of the U.S. Highway 90 Bridge.

100.04.05 All waters of the Ocean Springs Small Craft Harbor, Channel, and Bayou.

100.05 The following waters of **AREA VI (6)** are **PROHIBITED**:

100.05.01 All waters enclosed by the following described line:

100.05.01.01 This line commences at a point on the U.S. Highway 90 Pascagoula River Bridge running due south through the southeastern most point on the western shore of Lac La Buche, thence, continuing due south to intersect the above described west-east restriction line running from Biloxi East Channel Light 8 to Pascagoula Channel Light 39, thence, running due east along that restriction line toward Pascagoula Channel Light 39 intersecting the Area 6 eastern boundary prior to reaching Pascagoula Channel Light 39, thence, running in a northwestern and northern direction along the eastern boundary of Area 6, which is the prohibiting line running 0.5 nautical mile west of and parallel to the west spoil line of the Pascagoula Channel and the West bank of the East Pascagoula River, to the east end of the U. S. Highway 90 Pascagoula River Bridge, thence, in a northwestern direction along said Bridge to the point of beginning.

100.06 The following waters of **AREA VII (7)** are **PROHIBITED**:

100.06.01 All waters north of a line running east to west along the north side of the U.S. Highway 90 Pascagoula River Bridge from a point on the west bank of the East Pascagoula River to a point on the west bank of the West Pascagoula River including the East Pascagoula River, the West Pascagoula River, Marsh Lake, and all associated tributaries.

100.06.02 All waters enclosed by the following described line:

100.06.02.01 The line is the western boundary of Area VII commencing from a point on the west bank of the East Pascagoula River and the north side and east end of the U.S. Highway 90 Pascagoula River Bridge, thence, running south along said west bank to the Pascagoula Bay at the mouth of the East Pascagoula Channel, thence, running along said west spoil bank line southeastward to a point on a line running due east from Round Island North Spit Light 2 (Fl. R. 4 sec. 17ft. "2"), thence, running due west on said east-west line for 0.5 nautical mile from the west spoil bank line, thence, running southeastward, parallel to and remaining 0.5 nautical mile west from the west spoil bank line of the Pascagoula Channel to a point of directional change, thence, running southward, parallel to and remaining 0.5 nautical mile west from the west spoil bank line of the Pascagoula Channel to a point due west of the western tip of Petit Bois Island, thence, running due east from said point to a point 0.5 nautical mile east from the east spoil bank line of the Pascagoula Ship Channel, thence, running northward, parallel to and remaining 0.5 nautical mile east from the east spoil bank line of the Pascagoula Ship Channel, to a point due east of Pascagoula Channel Lighted Buoy 28, (R. "28" Fl. R. 2.5 sec.), thence, running northeastward to that southern most tip of that part of the Grande Batture Islands just south of L'Isle Chaude Bay, thence, running westward to the northern shore of the mouth of Brown

Bayou on Pt. aux Chenes, thence, after enclosing the waters of Brown Bayou, running southwestward following the meanderings of the shoreline and enclosing shoreline tributaries, natural or manmade, around Pt. aux Chenes to the eastern shore of Bayou Cassotte, thence, after enclosing the waters and tributaries of Bayou Cassotte, running northwestward following the meanderings of the shoreline to the eastern shore of Bayou Chico, thence, after enclosing the waters and tributaries of Bayou Chico, running westward following the meanderings of the shoreline and enclosing tributaries, manmade or natural, to the eastern shore of the mouth of the East Pascagoula River, thence, running northward following the east bank of the East Pascagoula River and enclosing the waters of each of its' tributaries, natural or manmade, to a point on the north side and east end of the U.S. Highway 90 Pascagoula River Bridge, thence, running westward along the north side of said Bridge to a point on the west bank of the East Pascagoula River and the north side and east end of said Bridge, which is the **POINT OF BEGINNING**. These herein described prohibited waters include: the East Pascagoula River, the Pascagoula Channel and adjacent waters, Bayou Chico, Bayou Cassotte, the Bayou Cassotte Ship Channel and adjacent waters, and adjacent waters of Pt. Aux Chenes around to and including Brown Bayou.

101 **Unclassified Areas**

101.01 The following waters are **UNCLASSIFIED** in ALL AREAS:

101.01.01 All bodies of waters of the state not otherwise classified in this Part or through Legal Notices of the MDMR are **UNCLASSIFIED**.

102 **Restricted Areas**

102.01 The following waters of **AREA I (1)** are **RESTRICTED**:

102.01.01 All waters of the Pearl River north of its mouth and all waters north and west of the mouth of all bayous and tributaries entering Area I from the mouth of the Pearl River following the mainland shoreline in an easterly direction around Lighthouse Point thence northerly to the mouth of Bayou Caddy.

102.01.02 **AREA I "A"** enclosed by the following described line:

102.01.02.01 The line commences at the mouth of the Pearl River on the Mississippi/Louisiana state line and running due south to a point on the Mississippi/Louisiana state line, thence running in a south-southeasterly direction following the aforesaid state line to Mississippi Intracoastal Waterway St. Joe Pass Light 3, thence running in a due north direction to the southern shore of Heron Bay Point, thence running in a northeasterly direction following the meanderings of the mainland shoreline of Heron Bay, thence running in a westerly direction following the meanderings of the mainland shoreline to the mouth of the Pearl River, which is the **POINT OF BEGINNING**.

102.02 The following waters of **AREA II (2)** are **RESTRICTED**:

102.02.01 All waters between the mainland SHORELINE commencing at the most seaward point on the south shore of the mouth of Bayou Caddy, thence, running northeastward across the mouth of Bayou Caddy and following the meanderings of the mainland shoreline enclosing the waters of all other tributaries to a point on the

mainland shoreline and on the west end of the U.S. Highway 90 bridge across the mouth of St. Louis Bay AND A LINE commencing at a point due east of the most seaward point on the south shore of the mouth of Bayou Caddy at Longitude 89°24.000'W and thence running due north to a point 700 feet seaward from the mainland shoreline and thence running northeastward, parallel to and remaining 700 feet seaward of the mainland shoreline, to a point on the U.S. Highway 90 bridge across the mouth of St. Louis Bay 700 feet east of the mainland shoreline and the west end of the U.S. Highway 90 bridge. These waters are known as a **RESTRICTED SHORELINE SAFETY ZONE**.

102.02.02 All waters of St. Louis Bay north of an east-west line running along the U.S. Highway 90 Bridge across the mouth of St. Louis Bay not otherwise classified are classified as **RESTRICTED**. These waters include the waters the waters off Cowand Point; but do not include the waters of Mallini Bayou. All waters between the mainland SHORELINE commencing at the east end of the U.S. Highway 90 bridge across St. Louis Bay and running south-southeastward following the meanderings of the mainland shoreline around Henderson Point enclosing all tributaries to a point on the mainland shoreline on the eastern boundary of Area II at Menge Avenue in Pass Christian, MS AND A LINE commencing at a point seaward and 700 feet west of the east end of the U.S. Highway 90 bridge across St. Louis Bay and running south-southeastward, parallel and remaining 700 feet seaward of the mainland shoreline, around Henderson Point to a point 700 feet seaward and due south of Menge Avenue in Pass Christian, MS; except those waters otherwise classified. These waters are known as a **RESTRICTED SHORELINE SAFETY ZONE**.

102.03 The following waters of **AREA V (5)** are **RESTRICTED**:

102.03.01 All waters of Biloxi Bay and Davis Bayou, and its' tributaries south and east of the U.S. Highway 90 Biloxi Bay Bridge enclosed by the following described line; except, for those waters classified as **PROHIBITED**.

102.03.01.01 The enclosing line commences at a point on the southeastern most tip of Point Cadet (Coast Guard Point or Point Caddie) in the City of Biloxi, Mississippi, thence, due south to the north shore of Deer Island, thence, following the meanderings of the shoreline southeastward to the east end of Deer Island, thence, running southeastward to Biloxi East Channel Light 14 (Q R 17ft 3M "14" Ra Ref), thence, due east to a point on the shore, thence, northwestward following the meanderings of the mainland shoreline to Marsh Point, thence, eastward along the south shore of Davis Bayou, thence, after enclosing the tributaries on the southern shore of Davis Bayou, to a point on the southern shore of Davis due south of Cedar Point, thence running in a westerly direction following the meanderings of the north shoreline of Davis Bayou across the mouth of Ocean Springs Harbor, Channel, and Bayou (classified as PROHIBITED), thence, continuing westward following the meanderings of the north shore of Biloxi Bay to the north end of the U.S. Highway 90 Biloxi Bay Bridge, thence, southwestward along said Bridge to the point of beginning at said southeastern most tip of Point Cadet (Coast Guard Point or Point Caddie).

102.04 The following waters of **AREA VIII (8)** are **RESTRICTED**:

102.04.01 All waters of Bayou Cumbest

102.04.02 All waters of Bayou Heron and its tributaries and all waters of Mattie Clark Bayou and its tributaries.

102.04.03 All waters of Bang's Lake, North Bayou and Bangs Bayou and their tributaries south of Latitude 30°23.000'N.

102.04.04 All waters and tributaries of Point Aux Chenes Bay and Mississippi Sound north of a line beginning at a point on the western shoreline of Point Aux Chenes Bay north of Brown Bayou at Latitude 30°20.500'N and running due east to the Mississippi/Alabama state line boundary; including all waters and tributaries of L'Isle Chaude Bay, Jose Bay, Grand Bay, North and South Rigolets, Middle Bay, Jose Bayou, Graw Point Bay, Crooked Bayou, Southwest Bayou, Clay Bayou and Middle Bayou, unless otherwise classified.

103 **Conditionally Approved Areas**

103.01 The following waters of **AREA I (1)** are **CONDITIONALLY APPROVED**:

103.01.01 **AREA I "B"** enclosed by the following described line:

103.01.01.01 The line commences on a point at Mississippi Intracoastal Waterway St. Joe Pass Light 3 and running easterly along the Mississippi/Louisiana state line boundary, to Longitude 89°20.000'W thence northerly along Longitude 89°20.000' W to a point of intersection with a line drawn due east from the most seaward point on the south shore of the mouth of Bayou Caddy, thence westerly along said line of intersection to a point on the south shore of the mouth of Bayou Caddy, thence running in a south southwesterly direction along and following the meanderings of the mainland shoreline around Point Clear and Point St. Joseph to the westernmost point of Heron Bay Point, thence due south to Mississippi Intracoastal Waterway St. Joe Pass Light 3 which is the **POINT OF BEGINNING**.

103.02 The following waters of **AREA II (2)** are **CONDITIONALLY APPROVED**:

103.02.01 **AREA II "A"** enclosed by the following described line:

103.02.01.01 The line commences at a point on the CSX Railroad Bridge across St. Louis Bay at the center of the swing span and runs easterly along said bridge to a point 700 feet seaward of the eastern end of said bridge thence, running south-southeastwardly, parallel to and remaining 700 feet seaward of the mainland shoreline around Henderson Point following the meanderings of the mainland shoreline 700 feet there from, running easterly and remaining 700 feet seaward of the prohibited waters of Pass Christian Municipal Harbor to a point 700 feet seaward of the southernmost point on the mainland shoreline due south of Menge Avenue in Pass Christian, Mississippi, thence, running south-southeastwardly, along a direct line drawn between the aforesaid point to the westernmost tip of Cat Island, to a point one (1) nautical mile from the mainland shoreline, thence running westerly, parallel to and following the meanderings of the mainland shoreline, maintaining a distance of one (1) nautical mile there from, to a point one (1) nautical mile south of the CSX Railroad Bridge across St. Louis Bay, on a line drawn between the Mississippi Square Handkerchief Shoal Light 2 (FL R 4s 17ft 4M "2") and a point on the CSX Railroad Bridge across St. Louis Bay at the center of the swing span, thence northeasterly following said line to a point on the CSX Railroad Bridge across St. Louis Bay at the center of the swing span, said point being the **POINT OF**

**BEGINNING**. This area includes portions of the public reefs known as Henderson Point and Pass Christian.

103.02.02 **AREA II "B"** enclosed by the following described line:

103.02.02.01 The line commences at a point at the center of the swing span on the CSX Railroad Bridge across St. Louis Bay thence running southwesterly along a direct line to Mississippi Sound Square Handkerchief Shoal Light 2 (FL R 4s 17ft 4M "2"), on the western edge of the Square Handkerchief Shoal, thence running due west from said Mississippi Sound Square Handkerchief Shoal Light 2 to Longitude 89°20.000'W, thence southerly along 89°20.000'W, to a point of intersection with a line drawn due east from the most seaward point of the south shore mouth of Bayou Caddy, thence due west along said line to a point at Longitude 89°24.000'W and thence running due north to a point 700 feet seaward from the mainland shoreline, thence running north-northeastward parallel to and remaining 700 feet seaward from the mainland shoreline to a point 700 feet seaward and east of the west end of the CSX Railroad Bridge across the St. Louis Bay, thence running eastward along the CSX Railroad Bridge to a point at the center of the swing span, said point being the POINT OF BEGINNING. This area includes the public reefs known as St. Stanislaus and Waveland.

103.02.03 **AREA II "C"** enclosed by the following described line:

103.02.03.01 The line commences at a point one (1) nautical mile from the mainland shoreline on a direct line drawn between a point 700 feet seaward of the southernmost point on the mainland shoreline due south of Menge Avenue in Pass Christian, MS, to the westernmost tip of Cat Island, thence running westerly, parallel to and following the meanderings of the mainland shoreline, maintaining a distance of one (1) nautical mile there from, to a point one (1) nautical mile south of the CSX Railroad Bridge across St. Louis Bay, on a line drawn between the Mississippi Square Handkerchief Shoal Light 2 (FL R 4s 17ft 4M "2") and a point on the CSX Railroad Bridge across St. Louis Bay at the center of the swing span, thence running due west from said Mississippi Sound Square Handkerchief Shoal Light 2 to Longitude 89°20.000'W, thence southerly along Longitude 89°20.000'W to a point of intersection with a line drawn through Mississippi Sound Pass Marianne Light 4P (Fl R 2.5s 17ft 3M "4P") and Mississippi Sound Pass Marianne Light 15P (Fl G. 4s 17ft. 5M "15P"), thence running north-northeasterly from said Pass Marianne Light 15P, thence running northeasterly to Mississippi Sound Pass Marianne Buoy 12P, thence running northeasterly to the Mississippi Sound Pass Marianne Merrill Shell Bank Light (Fl W 6s 30ft. 4M), thence running northerly to Mississippi Sound Pass Marianne Buoy 6P, thence running northeasterly to Mississippi Sound Pass Marianne Light 4P (Fl R 2.5s 17ft 3M "4P"), thence running easterly to Mississippi Sound Pass Marianne Buoy 2P, thence running easterly to Mississippi Sound Marianne Channel Lighted Buoy 3 (Fl G 4s 4M "3"), thence running northeasterly from said Marianne Channel Lighted Buoy 3 to a point of intersection on the Mississippi Intracoastal Waterway with a line drawn north-northwesterly from the westernmost tip of Cat Island and a point 700 feet seaward of the

southernmost point on the mainland shoreline due south of Menge Avenue in Pass Christian, MS, thence running north-northwesterly along said line to the **POINT OF BEGINNING**. This area includes the northern portion of Pass Marianne reef and southern portions of the Pass Christian reef.

103.02.03.02 **AREA II "C"** shall be further sub-divided as follows:

103.02.03.02.01 **AREA II "E"** is comprised of those waters of AREA II "C" that are west of Longitude 89° 16.000' W and north of Latitude 30° 15.500' N.

103.02.03.02.02 **AREA II "F"** is comprised of those waters of AREA II "C" that are east of Longitude 89° 16.000' W and north of Latitude 30° 16.300' N.

103.02.03.02.03 **AREA II "G"** is comprised of those waters of AREA II "C" that are south of Areas II "E" and II "F".

103.02.04 **AREA II "D"** enclosed by the following described line:

103.02.04.01 Starting at a point 700 feet from the western shore of the St. Louis Bay on the CSX Railroad Bridge, thence easterly along the CSX Railroad Bridge to a point 700 feet from the eastern shore of St. Louis Bay thence northerly 700 feet from the mainland shoreline following the meanderings of the mainland shoreline 700 feet from the mainland shoreline to a point 700 feet from the eastern shoreline of St. Louis Bay on the U.S. Highway 90 bridge, thence westerly along the U.S. Highway 90 bridge to a point 700 feet from the western shoreline of the St. Louis Bay on the U.S. Highway 90 bridge, thence southerly 700 feet from the mainland shoreline following the meanderings of the mainland shoreline 700 feet from the mainland shoreline, to the point of beginning on the CSX Railroad Bridge.

104 **Approved Areas**

104.01 The following waters of **AREA II (2)** are **APPROVED**:

104.01.01 **AREA II APPROVED** enclosed by the following described line:

104.01.01.01 The line commences at a point on the boundary line between Mississippi and Louisiana at Longitude 89°20.000'W, thence running easterly along said state line to a point due south of the westernmost tip of Cat Island, thence running due north to the westernmost tip of Cat Island, thence running north-northwesterly along a line drawn between the westernmost tip of Cat Island and a point 700 feet seaward of the southernmost point on the mainland shoreline due south of Menge Avenue in Pass Christian, MS, thence continuing along said line to a point of intersection with the Mississippi Intracoastal Waterway thence running southwesterly to Mississippi Sound Marianne Channel Lighted Buoy 3 (Fl G 4s 4M "3"), thence running westerly to Mississippi Sound Pass Marianne Buoy 2P, thence running westerly to Mississippi Sound Pass Marianne Light 4P (Fl R 2.5s 17ft 3M "4P"), thence running southwesterly to Mississippi Sound Pass Marianne Buoy 6P, thence running westerly to the Mississippi Sound Pass Marianne Merrill Shell Bank Light (Fl W 6s 30ft. 4M), thence running southwesterly to Mississippi Sound Pass Marianne Buoy 12P, thence running southwesterly to

Mississippi Sound Pass Marianne Light 15P (Fl G. 4s 17ft. 5M "15P"), and from said Pass Marianne Light 15P running southwesterly along a line drawn through Mississippi Sound Pass Marianne Light 4P and Pass Marianne Light 15P to a point of intersection with Longitude 89°20.000'W, thence running southerly along Longitude 89°20.000'W to a point on the boundary line between Mississippi and Louisiana, said point being the **POINT OF BEGINNING**. This area includes the public reefs known as Telegraph, and Buoy reefs, the Shell Keys referred to as Pelican, Fletcher's, and Umbrella, and the southern portion of Pass Marianne reef.

104.01.01.02 **AREA II APPROVED** shall be further sub-divided as follows:

104.01.01.02.01 **AREA II "H"** is comprised of those waters of AREA II APPROVED that are west of Longitude 89° 15.000' W.

104.01.01.02.02 **AREA II "I"** is comprised of those waters of AREA II APPROVED that are east of Longitude 89° 15.000' W.

**Chapter 19 On-Bottom Shellfish Leasing Regulations**

100 Authority to Lease.

100.01 The MDMR shall accept applications for on-bottom leases within the coastal waters of Mississippi.

100.02 For purposes of this Part, on-bottom lease operations shall be restricted to operations using natural shell or other approved cultch material without employing racks or other support structures.

100.03 Any individual or entity wanting to lease bottoms shall complete a bottom lease application form and submit it to the MDMR Director of Marine Fisheries.

100.03.01 Application forms shall be available from the MDMR in Biloxi, MS.

100.03.02 Applications will be reviewed by the MDMR staff for compliance with application guidelines and completeness.

100.03.03 When all application guidelines are met and requested information is provided, the applicant's intent to lease will be advertised by the MDMR once a week for two consecutive weeks in a newspaper of general circulation in the county of the intended lease area.

100.03.03.01 Costs of the Advertisement will be paid to the MDMR by the original lease applicant.

100.03.04 If the guidelines cannot be met or requested information provided, the applicant may withdraw his application.

100.03.05 Written public comment and sealed bids from other interested parties will be received by the MDMR for a period of fifteen (15) days from the first date of advertisement.

100.03.06 The advertisement will set the date, time and place for opening the sealed bids.

100.03.07 A recommendation will be made to the MCMR to grant or deny the lease application following the fifteen (15) day period and applicant will be notified in writing of the MCMR action on his lease application within 30 days after the MCMR action on the lease proposal.

101 Application Requirements to Lease Bottoms

101.01 All lease applicants and applications must meet the following guidelines:

101.01.01 Each individual, firm, corporation, partnership, association, or other entity requesting to lease must be a resident of the State of Mississippi, or be organized under the laws of the State and registered with the Secretary of State's Office.

101.01.02 Each application for a bottom lease must be for five (5) acres or more, but shall not exceed one hundred (100) acres.

101.01.02.01 The proposed lease area must be contiguous.

101.01.02.02 The proposed lease area must be configured as a square or rectangle with the lease area boundaries meeting at right angles.

101.01.02.03 The length of the proposed lease area cannot be greater than twice the distance of the width of the lease area.

101.01.02.04 No proposed lease areas will be approved that are within one-quarter (0.25) nautical mile of an existing lease area or lease area that is pending final approval.

101.02 Political subdivisions of the State of Mississippi may lease up to one thousand (1,000) acres of bottoms for oyster reef development and such political subdivisions are authorized to permit residents of the State of Mississippi to harvest shellfish from such reefs and charge and receive a fee for each sack of shellfish harvested.

101.02.01 The MCMR shall consider and approve the application of a political subdivision after determining that:

101.02.01.01 No conflicts exist with sites requested in applications filed prior to the application of the political subdivision.

101.02.01.02 A fair and reasonable rental payment has been set.

101.02.01.03 Such lease will ensure the maximum cultivation and propagation of shellfish.

102 No individual, corporation, partnership, or association may lease less than five (5) acres nor more than one hundred (100) acres; provided, however, that in the case of an individual, there shall not be counted towards such limitation any lands leased by a corporation, partnership, or association in which such individual owns ten (10%) percent or less interest, and, in the case of a corporation, partnership, or association, there shall not be counted towards such limitation, any lands leased by an individual stockholder, partner, or associate thereof, who owns ten (10%) percent or less interest in such corporation, partnership, or association.

103 No areas designated as tonging reefs by this Part, nor areas defined as natural reefs by Miss. Code Ann. §49-15-3 (g), as amended, nor areas within the boundaries of riparian property owners defined by Miss. Code Ann. §49-15-9, as amended, shall be leased for oystering by the MCMR.

104 Each application shall be accompanied by a description of the area intended for lease using differential GPS latitude and longitude coordinates, and a map taken from NOAA nautical charts, 11371, 11372, 11373, or 11374, depicting the area to be leased.

105 Each lease application must be accompanied by a bid price per acre in the form of a sealed bid attached to the application. Said bid must be at least one dollar ($1.00) per acre.

106 Each proposed lease area must be located in waters classified as **APPROVED** or **CONDITIONALLY APPROVED** as described in this Part.

107 Applications shall be submitted to the MDMR Director of Marine Fisheries.

107.01 The time and date each application is received shall be noted on the application.

107.01.01 In the event that applications are received for overlapping areas, the applications shall be processed in order of the earliest receipt and so noted before the MCMR, prior to consideration of each lease application; however, the MCMR is authorized to exercise its discretion as to which bid is the highest responsible bid, and such leases shall be awarded to promote the maximum cultivation and propagation of oysters.

107.01.02 In granting leases, the MCMR may specify any special conditions and limitations under which the lease is granted.

108 Conditions of Leases

108.01 All leases granted by the MCMR shall include the following conditions:

108.01.01 Such leases shall be for a period of one (1) year with the right of the lessee to renew the lease for an additional year, and from year to year, at the same ground rental so long as lessee actively cultivates and gathers shellfish and complies with all provisions specified herein, and all applicable state laws, ordinances, Titles and Parts and public notice requirements, provided that no lease shall be renewed for more than twenty-five (25) years unless it is rebid.

108.01.01.01 In any such rebidding, if the successful bidder is someone other than the lessee, the successful bidder shall, before taking possession of the leased bottoms, pay to the lessee the fair market value of the lessee's shellfish in place as determined by the MCMR.

108.01.01.02 If the lessee is prevented from gathering shellfish from the area leased by storm, or other natural phenomenon, he nevertheless may renew the lease if the bottoms are actively worked by lessee during the remaining term of the lease.

108.01.01.03 No lease may be transferred without prior written approval by the MCMR of the transfer. The MCMR may deny such transfer.

108.02 Appropriate poles, stakes or buoys, constructed of such material as will not be injurious to watercraft, shall mark all leases at the expense of the leaseholder.

108.02.01 Each leaseholder shall mark at least the four (4) corners of each lease with an appropriate marker, and shall maintain all markers.

108.02.02 Each marker shall list the lease number and marker position (i.e. southeast (SE) corner).

108.02.03 Each lessee must file a "Private Aids to Navigation" application with and receive permit approval from the U.S. Coast Guard, for the lease markers, and provide a copy of the permit approval to the MDMR Director of Marine Fisheries prior to final granting of the lease and placement of the markers.

108.03 Each lessee must apply for and receive a permit to alter the bottoms (wetlands permit) from the MCMR and supply a copy of the permit to the MDMR Director of Marine Fisheries, prior to the final granting of the lease.

109 All leases made by the MCMR under the authority of this chapter shall be subject to the paramount right of the State of Mississippi and any of its political subdivisions authorized by law, to promote and develop ports, harbors, channels, industrial or recreational projects, freshwater diversion projects, and all such leases shall contain a provision that in the event such authorized public body shall require the area so leased or any part thereof for such public purposes, that the lease shall be terminated on reasonable notice fixed by the MCMR in such lease.

109.01 On the termination of any lease, the lessees shall have the right to remove any shellfish within the leased area within such time as may be fixed by the MCMR and in accordance with such reasonable rules and regulations as the MCMR may adopt.

109.02 Further, all lease agreements shall contain provisions requiring the lessee to waive any and all claims for damages that may result from any fresh water diversion projects authorized by the State of Mississippi.

110 The MCMR shall cooperate with the Jackson County Port Authority, the Harrison County Development Commission, the Municipal Port Commissions, and other port and harbor agencies, in order that the oyster beds shall not be planted in close proximity to navigable channels.

110.01 The MCMR or lessee shall have no right of action as against any such public body for damages accruing to any natural reef or leased reef by any necessary improvement of such channel in the interest of shipping, commerce, navigation, or other purpose authorized by law.

111 All activities conducted by lessee on the lease area must have prior written approval from the MCMR, the MDMR Executive Director, or his designee in his possession at the time of such activity, and must be done in accordance within the provisions of the lease agreement, all applicable laws of the State of Mississippi, and all MCMR Titles, Parts, regulations, and public notices.

112 All leases shall expire on April 30 of each year.

112.01 All leases leased before or after April 30 of each year shall be prorated from the date of lease to the following April 30.

112.02 All leases leased prior to April 30, 1989 shall expire on the date indicated in the current lease agreement.

112.03 All leases leased after April 30, 1989 shall expire April 30, 1990, provided that said lease shall be prorated from the current date of lease to April 30, 1990, and any unearned balance returned to said lessee.

113 Each lessee shall have the option to renew said lease provided he submits a written application with payment of annual or prorated rental for the subsequent lease period within thirty (30) days of the lease expiration date to the MDMR Director of Marine Fisheries.

114 Each lessee shall provide a written summary of lease activity report for the previous lease period upon forms provided by the MDMR within thirty (30) days from the lease expiration date.

114.01 These forms shall be submitted to the MDMR Director of Marine Fisheries.

115 Failure to abide by any provision specified herein, in the lease agreement, any applicable laws of the State of Mississippi, or any MCMR Title, Part, regulation, or public notice shall be grounds for immediate termination of the lease agreement.

**Chapter 20 Regulations for Relaying Activities**

100 All persons or entities other than the MDMR wishing to relay shellfish in the State of Mississippi shall complete and submit an application for a relaying permit to the MDMR, attn: Biological Program Coordinator.

100.01 Applications are available from the MDMR.
100.02 Applications will be reviewed by the MDMR staff for compliance with application guidelines and requested information.
100.03 When all application guidelines are met and requested information provided, the applicant's intent to relay will be advertised once a week for two consecutive weeks in a newspaper of general circulation in the county or counties closest to the intended activity.
100.04 Written public comment will be received by the MDMR for a period of fifteen (15) days from the first date of advertisement.
100.05 A recommendation will be made to the MCMR to grant or deny the permit at the next regularly scheduled MCMR meeting following the fifteen day period, and applicants will be notified in writing of the MCMR actions.
100.06 All applicants must:
100.06.01 Hold a valid lease of oyster bedding grounds in the State of Mississippi.
100.06.02 Have been a resident of the State of Mississippi for at least five (5) years.
100.06.03 Have a valid Mississippi shellfish license.

101 Approval of Relaying Permit

101.01 If the MCMR approves the relaying permit application, a relaying permit will be issued.
101.01.01 Said permit shall specify any specific conditions under which the relaying is permitted in addition to those conditions specified in Miss. Code Ann. § 49-15-37, as amended, any other applicable section of the Statute, or any Title, Part or public notice adopted by the MCMR.
101.01.02 Permittee must comply with the following guidelines:
101.01.02.01 Permittee must hold a valid lease of oyster bedding grounds in the State of Mississippi.
101.01.02.02 Permittee shall not relay shellfish from one restricted area to another restricted area.
101.01.02.03 Permittee must fulfill all permit requirements as established by the MCMR.

102 Harvesting of Relayed Shellfish

102.01 Harvesting of shellfish is permitted only during daylight hours and with the most efficient gear possible, consistent with conservation considerations, and in such a way not to damage the reef.
102.01.01 This includes permission to use two (2) dredges per boat in restricted areas and on private leased grounds.
102.02 Prior to harvesting any relayed shellfish, the permittee must complete and submit a request to harvest relayed shellfish on an application form from the MDMR, and receive written permission for such harvesting from the MCMR or as hereby authorized the MDMR, its Executive Director, Directors, Director of Marine Fisheries, Bureau Director or Biological Program Coordinator.
102.03 The permittee must follow all procedures contained in this Part, as well as any set forth in the permit.

103 Bonding

103.01 Permittee must be bonded in compliance with the permit system established by the MCMR.
103.01.01 Permittees are required to post a penal bond of one hundred dollars ($100.00) per acre leased with the MCMR.
103.01.02 This bond shall be forfeited if permittee violates any provisions of this Part.
103.01.03 The Chairman of the MCMR shall approve the bond if sufficient property or sureties secure it.

104 Relaying Procedures

104.01 Permittee shall not relay shellfish from the restricted area without the presence of an Officer of the MDMR, or designated official of the MCMR.
104.01.01 The Officer or designated official shall be present at all times relaying activities are in progress.
104.01.01.01 This shall include the time the shellfish are harvested from the restricted area to their deposition on private leased grounds, or to an onshore, molluscan depuration facility.
104.01.01.02 The permittee shall pay to the MCMR an amount equal to the compensation regularly received by such Officer or designated official for the time such Officer or designated official actually spends performing the above described duties.

105 Permission to Harvest Relayed Shellfish

105.01 Permittee shall not harvest relayed shellfish without prior written permission from the MCMR or as hereby authorized the MDMR, its Executive Director, Director of Marine Fisheries, Bureau Director or Biological Program Coordinator.

106 Time Periods Between Relaying and Harvesting of Relayed Shellfish

106.01 There shall be a sufficient time interval to allow natural biological cleansing of the shellfish between the time the permittee is permitted to take the shellfish from the restricted area(s), and the time he is then allowed to harvest these shellfish or any other shellfish from his leased area, during which time neither activity is allowed.
106.01.01 During this time interval, the permittee nor any other person or entity is allowed to harvest the relayed shellfish.
106.01.02 This period shall be at least fourteen (14) consecutive days, except if the area relayed to fails during any of those 14 consecutive days to meet all requirements of its management plan.
106.01.03 If during the 14 consecutive days, the area fails to meet its management plan as specified above, harvesting shall be not be allowed until the area has once again met its management plan for 14 consecutive days, or until shorter periods of time are demonstrated to be adequate to permit natural biological cleansing to occur.
106.01.04 The period of time to allow natural biological cleansing shall be deemed sufficient and adequate if the bacteriological quality of the shellfish after relaying are of the same quality as the same species already in the approved or conditionally approved relay area; or if oyster meats are sampled for verification, the results shall be less than a fecal coliform MPN of 230 per 100 grams of meat, provided that no evidence exists that the shellfish prior to relaying contained substances that equal

or exceed the action levels, tolerances, and other established levels for poisonous or deleterious substances in seafood as established by the Food and Drug Administration, and/or any levels of substances established by the State of Mississippi.

107 Protection from Contamination

107.01 All relayed shellfish shall be protected from contamination sources such as, but not limited to, boat fuel, oil, bilge, dogs, cats, birds, and other animals, and from sunlight for extended periods of time.

107.02 All portions of boats and other equipment coming in contact with shellfish relayed from restricted areas to permitted approved or conditionally approved areas shall be rinsed with waters from such approved or conditionally approved waters after each unloading and prior to leaving the permitted approved or conditionally approved area.

108 Relaying Records

108.01 The MDMR Biological Program Coordinator and each permittee shall maintain adequate relaying records.

108.01.01 Each record shall note the quantity and type shellfish relayed, dates of relaying, specific areas shellfish are relayed from and to, and any other necessary information.

108.01.02 Specific areas should be described using differential GPS latitude and longitude coordinates.

108.01.03 In the absence of differential GPS latitude and longitude readings an accurate map will be supplied depicting the relay source site and the specific location within the permittees' lease where the shellfish were relayed.

**Chapter 21 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 shall be punished in accordance with Miss. Code Ann. § 49-15-63, as amended, unless a penalty is specifically provided elsewhere in the Mississippi Code Ann. of 1972, as amended,.

101 Any person, firm, or corporation convicted of taking shellfish from leased land or from closed waters as described in Chapter 17 of this Part shall, upon conviction thereof, be subject to all the penalties provided under Miss. Code Ann. § 49-15-27, as amended.

102 Violations of more than one chapter or subchapter of this Part or part thereof shall be considered separate offenses and punished as such.

103 Any person in possession of shellfish in violation of any chapter of this Part shall be subject to confiscation and disposal of such shellfish by direction of any designated Marine Patrol Officer of the MDMR.

## Chapter 22 Chapters and Subchapters Declared Separable

100 Each chapter and subchapter of this Part is hereby declared separable, and if any chapter or subchapter or part thereof shall be held invalid or unconstitutional, the balance of said Title 22 Part 01 shall remain in full force and effect.

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

## Chapter 23 Administrative Procedures Act

100 Pursuant to the amendments to the Administrative Procedures Act, § 25-43-1.101, *et seq.*, of the Mississippi Code Ann. of 1972, as amended, and the rules and regulations promulgated pursuant thereto by the Secretary of State; the former Ordinance 1.016 has been modified and the MCMR and Mississippi Department of Marine Resources 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 1 RULES AND REGULATIONS FOR SHELLFISH HARVESTING, TAGGING, LANDING, UNLOADING, TRANSPORTING, RELAYING, MANAGEMENT, AREA CLASSIFICATION, AND OTHER SHELLFISH RELATED ACTIVITIES IN THE STATE, AND THE LEASING OF TERRITORIAL WATERS UNDER THE JURISDICTION OF THE STATE OF MISSISSIPPI,** shall be in effect and be in force from and after the 24th day of May, 2010.

Adopted this the 20th day of April, 2010

**MISSISSIPPI COMMISSION ON MARINE RESOURCES**

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

**MISSISSIPPI DEPARTMENT OF MARINE RESOURCES**

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