

ACT OF DONATION

TO THE STATE OF MISSISSIPPI

FROM:

ACT OF DONATION AND TITLE TRANSFER

_____, a _____ corporation
(name of corporation) (name of state where incorporated)
(hereinafter referred to as "Donor"), represented by _____ and
(insert name)
acting on behalf of _____, who declared the following, to wit:
(corp. name)

1. He is the _____ of, _____ whose address is
(title) (corp. name)
_____, and whose agent, for purposes of service of process, is
(corp. address)
_____, who can be located at
(name of agent)
_____.
(mailing address for corp. agent with physical address and p.o. box if available)

2. He is duly authorized to make the donations and title transfer specified herein and
execute this Act of Donation and Title Transfer on behalf of Donor;

and

Joe Spraggins, acting on behalf of the Mississippi Department of Marine

Resources, who declared the following, to wit:

1. He is the Executive Director of the Mississippi Department of Marine Resources,
the agency charged with administering and enforcing the Artificial Reef
Development Plan for the State of Mississippi, pursuant to Miss. Code Ann. §§
49-15-305 (2)(f) and 49-15-15 (q).

2. He is duly authorized to accept the donations specified herein and to execute this Act of Donation on behalf of the Mississippi Department of Marine Resources, acting on behalf of the State of Mississippi (“Donee”).

ARTICLE I – DEFINITIONS

- 1.1. **“Agreement”** means this Act of Donation and Title Transfer from (_____) to the State of Mississippi, by and through the Mississippi Department of Marine Resources.
(name of donor)
- 1.2. **“Artificial Reef Fund”** means the Artificial Reef Program Account within the state’s Seafood Fund, as provided in Miss. Code Ann. § 49-15-17 (1)(b).
- 1.3. **“COE Permitted Site”** means the artificial reef site described in Article 5.1 below, and encompasses an area 4000’ x 4000’, which is the location for the placement of the Donated Structure, as permitted by the U.S. Corps of Engineers.
- 1.4. **“Donated Structure”** means the (_____), to be used as an artificial reef, and is to be used to describe collectively, those materials being donated.
(description of structure)
- 1.5. **“Donee”** means the State of Mississippi, by and through the Mississippi Department of Marine Resources.
- 1.6. **“Donor”** means (_____).
(corp. name)
- 1.7. **“Latitude and Longitude”** means coordinate positions provided in measurements from a differential global positioning system receiver.
- 1.8. **“Mississippi Artificial Reef Plan”** means the Artificial Reef Development Plan for the State of Mississippi, developed pursuant to Miss. Code Ann. § 49-15-15 (q).

1.9. “National Fishing Enhancement Act” means the National Fishing Enhancement Act of 1984, 33 U.S.C.A. § 2101, et seq.

1.10. “National Artificial Reef Plan” means the National Artificial Reef Plan, 33 U.S.C.A. § 2103.

1.11. “Notification of Acceptance” means the document issued by the Donee entitled “Notification of Acceptance of Structure Placement and Title”, a copy of which is attached hereto and made a part hereof.

1.12. “Person” means both natural and juridical persons.

1.13. “Structure Site” means the specific point, as described in latitude and longitude coordinates, located within the COE permitted site, where the Donated Structure is to be placed.

ARTICLE II – DONATION OF STRUCTURE

2.1. Donation of Structure. In consideration of the mutual covenants and conditions set forth below, and for the purpose of enhancing fishing resources in waters within and adjacent to the coast of Mississippi, Donor, in accordance with the National Fishing Enhancement Act, the National Artificial Reef Plan, and the Mississippi Artificial Reef Plan, does hereby irrevocably grant, donate, transfer, carry, assign, and deliver unto the Donee the following described Donated Structure, to wit:

Said Donated Structure’s dimensions are as follows:

Height of Jacket (at its current location): Approximately ____ ft. (includes portion of Structure + 15 ft above water)

Dimension of Jacket Base: Approximately ____ ft x ____ ft (center to center of legs at mud line)

Dimension of Jacket Top: Approximately ___ ft x ____ ft (center to center of legs at +15 ft)

The center of Donated Structure prior to donation is described as:

Latitude	=	_____
Longitude	=	_____
x	=	_____
y	=	_____

To have and to hold said Donated Structure unto Donee and its assigns forever, subject to the following disclaimer and warranties.

ARTICLE III – WARRANTIES

3.1. Donor Disclaimer. This donation is made by Donor without any warranty, either express or implied, and in particular, any warranty as to the condition, fitness, or usability of said Donated Structure for any purpose, except as provided as follows or as otherwise provided in this Agreement.

3.2. Materials. Donor warrants that the materials donated meet the applicable requirements of the National Fishing Enhancement Act, the National Artificial Reef Plan, the Mississippi Artificial Reef Plan, and any and all permits issued according to those plans, including, but not limited to, the permit issued by the U.S. Army Corps of Engineers.

3.3. Hazardous Material. Donor warrants that, as of the date of transfer, except for possible trace amounts which may be allowed by law, the Donated Structure is free of any hydrocarbons or other hazardous materials listed or described in any current

federal, Mississippi state, or local law, ordinance, rule, regulation, order, decree, or requirement.

3.4. Good Title. Donor warrants that its title to the Donated Structure is free and clear of all encumbrances of any kind or description.

ARTICLE IV – PERMITS

4.1. Donee Responsibilities. Donee shall be responsible for obtaining the required permits for the construction and management of an artificial reef at the Structure Site described below, pursuant to the applicable requirements of the National Fishing Enhancement Act of 1984 and the Mississippi Artificial Reef Plan.

ARTICLE V – LOCATION AND PLACEMENT

5.1. Location. Operations to place the Donated Structure on the sea floor of the Gulf of Mexico shall be conducted by Donor at the site selected by the Donee. The Donated Structure shall be placed such that a minimum clearance above the highest point of the structure is fifty (50) feet below the mean low sea level of the surface of the water is placed within the boundaries of the permitted site, in such a manner that the Donated Structure shall be acceptable by the U.S. Coast Guard for the use of unlit aids to navigation to mark the site. The location of the Structure Site and the COE Permitted Site # _____ is further defined hereunder in NAD27/Clark 1866:

(permit number)

Structure Site:

Latitude	=	_____
Longitude	=	_____
x	=	_____
y	=	_____

COE Permitted Site Corner Coordinates:

Northwest Corner:

Latitude = _____
Longitude = _____
x = _____
y = _____

Northeast Corner:

Latitude = _____
Longitude = _____
x = _____
y = _____

Southeast Corner:

Latitude = _____
Longitude = _____
x = _____
y = _____

Southwest Corner:

Latitude = _____
Longitude = _____
x = _____
y = _____

5.2. Position. Donor shall place the Donated Structure at the Structure Site, as described in 5.1 above, and on the sea floor in a horizontal position.

5.3. Accepted Range. Donor shall place the Donated Structure as accurately as possible on the Structure Site described in 5.1 above, but in no case shall the Donated Structure be placed more than five hundred (500) feet from the Structure Site.

5.4. Placement of Buoy by Donor. Upon placement of the Donated Structure, the Donor shall also deploy a buoy if requested by the Donee. Said buoy shall conform to all U.S. Coast Guard specifications and Donee specifications. Said buoy shall be depicted on the Surveyor's plat required below, pursuant to paragraph 5.9.

5.5. Representative of Donee. Donor shall provide, at its expense, for a representative of Donee to be present at the Structure Site at the time of placement of the Donated Structure. Donee's representative shall act as an observer only and shall not serve, nor be deemed to serve, in any operational or advisory capacity whatsoever, and Donor shall assume all responsibility for any action Donor takes during the placement of the Donated Structure.

5.6. Donee Disclaimer. Donor shall assume all responsibility for all liability which may be associated with the transport and disposition of the Donated Structure, or any part thereof. Donee shall assume no liability for the transport and disposition of the Donated Structure, or any part thereof. The Donor shall be solely responsible for the Donated Structure until such time as it has been properly placed on the sea floor at the Structure Site described above in 5.1., and until all other terms and condition of this Agreement, including but not limited to Donee's mailing of the completed Notification of Acceptance as specified in Article VIII herein, have been fulfilled.

5.7. Structure Site Permits. Donor warrants that the Donated Structure shall be sited and placed in accordance with all terms, conditions, and special conditions of all U.S. Army Corps of Engineers permits, and all other permits issued to construct the artificial reef, in addition to all specifications contained herein.

5.8. Completion. Donor's proper placement of the Donated Structure at the Structure Site described above and completion of all terms and conditions of this Agreement, including, but not limited to, Donee's mailing of the completed Notification of Acceptance, shall relieve Donor of any and all obligations or requirements to further transport or move the Donated Structure.

5.9. Surveyor's Plat. Donor agrees to furnish Donee with a certified surveyor's plat of the final location and clearance of the Donated Structure, including location of buoy, within thirty (30) days following final placement of the Donated Structure and buoy.

ARTICLE VI – TITLE

6.1. Passing of Title. After the completion of Donor's placement of the Donated Structure and buoy at the Structure Site and delivery of Surveyor's Plat, and the completion of all other terms and conditions of this Agreement, including, but not limited to, Donee's mailing of the completed Notification of Acceptance have been fulfilled, title to the Donated Structure and buoy shall pass from Donor to Donee free and clear of all encumbrances of any kind or description.

ARTICLE VII – LIABILITY

7.1. Delivery of Structure – Donor's Actions. Donor shall be solely responsible for the Donated Structure until all terms and conditions of this Agreement, including, but not limited to, Donee's mailing of Notification of Acceptance have been fulfilled. Donor shall indemnify and hold Donee harmless from and against any and all claims, demands, or causes of action of any description in favor of any person for damage or loss to persons or property arising from Donor's actions or failure to act during the operations required to deliver the Donated Structure and to properly place it at the Structure Site described above, and until such times as all other terms and conditions of this Agreement have been fulfilled.

7.2. Delivery of Structure – Donee’s Negligence. Donor shall be solely responsible for the Donated Structure and its delivery until such time as all terms and conditions of this Agreement, including, but not limited to, Donee’s mailing of the completed Notification of Acceptance have been fulfilled. It is understood and agreed that Donee’s representative will serve as an observer only and shall not act, nor be deemed to act, in an operational or advisory capacity during the operations to deliver and properly place the Donated Structure at the Structure Site.

7.3. Title Passage of Structure and Buoy. Donee shall be responsible for Donated Structure and buoy only after all terms and conditions of this Agreement, including, but not limited to, Donee’s mailing of the Notification of Acceptance as specified in Article VIII herein, have been fulfilled. Donee shall not have any interest in, responsibility for, or liability for the Donated Structure or any part thereof until all terms and conditions of this Agreement have been fulfilled. After all terms and conditions of this Agreement have been fulfilled, Donee will be responsible for any and all claims, demands, or causes of action in favor of any person for damage or loss that may occur to persons or property arising after title to Donated Structure passes to Donee and arising out of or in any way connected with use of the Donated Structure, or any appurtenances attached thereto by Donee or other persons, provided that the Donated Structure meets the requirements of the National Artificial Reef Plan and the Mississippi Artificial Reef Plan, except that Donor hereby assumes responsibility and liability for any personal injury, property damages, loss or damage of any description, including, but not limited to, loss or damage to fish or wildlife, or fish or wildlife habitat, which may result from a spill, seepage, or release from the Donated Structure

of hydrocarbons or hazardous materials that are listed or otherwise described in any current federal, Mississippi state or local law, ordinance, rule, regulation, order, decree, or requirement, other than those trace amounts allowed under Article III, Section 3.3 of this agreement.

7.4. Notice of Claims. In all aforesaid instances wherein the Donee agrees to accept responsibility (i.e., after all the terms and conditions of this Agreement have been fulfilled), if such a claim, demand, or cause of action is filed against Donor, Donor shall promptly notify Donee in writing and by certified mail. This notice shall be addressed to the Executive Director, Mississippi Department of Marine Resources, and shall specify the nature of and the specific basis for such claim, demand, or cause of action and the amount claimed, or the estimated amount claimed to the extent then known. In all aforesaid instances wherein the Donor agrees to accept responsibility (i.e., after all terms and conditions of the Agreement have been fulfilled), if such a claim, demand, or cause of action is filed against Donee, Donee shall promptly notify Donor in writing and by certified mail. This notice shall be addressed to _____, and shall specify the nature of and the specific basis for such claim, demand, or cause of action and the amount claimed, or the estimated amount claimed to the extent then known.

(corporation's representative/agent for service of process in Mississippi)

7.5. Legal Representation. In all instances wherein the Donee agrees to accept responsibility (i.e., after all the terms and conditions of this Agreement have been fulfilled), at the election of the Donee, the Donee shall either provide legal representation for Donor against such claim, demand or cause of action, or reimburse Donor for all reasonable costs incurred by Donor in defending against such claim,

demand or cause of action, provided that the Donor provides written notice to the Donee as provided above.

7.6. Disclaimer – Liability for Maintenance and Repair. After all terms and conditions of this Agreement, including, but not limited to, Donee's mailing of the completed Notification of Acceptance, have been fulfilled, Donor shall have no obligation or duty whatsoever to provide for the maintenance or repair of the Donated Structure of any appurtenance attached thereto.

ARTICLE VIII -- ACCEPTANCE

8.1. Obligations of Donee and Donor. Donee hereby obligates itself to accept the donation of both the Donated Structure and the funds specified herein upon the fulfillment of the following conditions:

- a. Donor has delivered the Donated Structure to the proper Structure Site as specified herein;
- b. Donor has completed any and all operations to place the Donated Structure at the Structure Site as specified herein, including, but not limited to, buoying the structure to Donee's specifications;
- c. Donor has conducted a survey, procured a certified surveyor's plat of the Donated Structure at the Structure Site after the operations have been completed in full, and delivered the certified surveyor's plat to the Donee;
- d. Donee has received, examined, and accepted Donor's certified surveyor's plat and has sent to Donor by certified mail a completed and signed Notification of Acceptance. Unless otherwise agreed, Donee will provide Notification of

Acceptance within ten (10) business days of receiving the certified surveyor's plat, provided that Donee accepts said plat as sufficient representation of proper placement of the Donated Structure at the Structure Site.

8.2. Acceptance by Donee. Donee's acceptance of the Donated Structure and funds shall be deemed to occur and title shall pass only upon the fulfillment of the conditions specified in Section 8.1 (a-d) above. More particularly, acceptance shall be deemed to occur and title shall pass at 12:00 midnight on the date that Donee mails to Donor the Notification of Acceptance. Acceptance shall not be deemed to occur at any time prior to the fulfillment of said conditions. It is specifically understood and agreed that Donee shall have no ownership interest in the Donated Structure unless and until Donee mails the completed Notification of Acceptance, and any and all liability for actions, occurrences, or omissions which might occur prior to Donee's mailing of the completed Notification of Acceptance, other than those arising solely out of the direct negligence of the Donee, as provided in Section 7.2 above, shall be the sole responsibility of the Donor.

ARTICLE IX – DONATION TO ARTIFICIAL REEF FUND

9.1. Donation to the Artificial Reef Fund. Donor agrees to and shall donate to the state's Artificial Reef Fund the sum of _____, as provided by
(spell out amount and put # in parenthesis)
the Seafood Fund statute and more particularly, the special provision for the Artificial Reef Fund. The Donor shall deliver the aforesaid sum to the Donee simultaneously with delivery of the certified surveyor's plat to the Donee. Acceptance of the aforesaid sum shall be deemed to occur upon Donee's acceptance of the Donated

Structure and title passage of the Donated Structure as evidenced by the Donee's mailing of the completed Notification of Acceptance, as provided in Article VIII herein.

9.2. Donee acknowledges and covenants with the Donor that the donation herein shall be used solely for promoting, constructing, monitoring and maintaining artificial fishing reefs in the marine waters of the State of Mississippi and in adjacent federal waters.

ARTICLE X – FORUM SELECTION

10.1. Laws and Jurisdiction of Mississippi. This Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi. The Donor and Donee expressly agree that the laws of the State of Mississippi shall govern the validity, construction, interpretation and effect of this agreement. Further, the Donor and Donee expressly agree that the Courts of the State of Mississippi shall have exclusive jurisdiction over the parties in any action at law relating to the subject matter or the interpretation of this agreement.

IN WITNESS WHEREOF, the parties have executed this Act of Donation and Title Transfer on the date set forth below.

DONOR

DONEE

MISSISSIPPI DEPARTMENT OF
MARINE RESOURCES

(insert name)

Joe Spraggins

(insert title)

Executive Director

STATE OF _____ §

COUNTY OF _____ §

PERSONALLY appeared before me, the undersigned authority in and for the jurisdiction aforesaid, the within named _____, of _____, in the above and foregoing instrument of writing, who acknowledged to me that he signed and delivered the above and foregoing instrument of writing on the day and year and for the purposes therein mentioned. GIVEN under my hand and official seal of office on this the ____ day of, 2000.

(Seal)

Notary Public in and for the State of

My Commission Expires:

STATE OF MISSISSIPPI §

COUNTY OF HARRISON §

PERSONALLY appeared before me, the undersigned authority in and for the jurisdiction aforesaid, the within named Joe Spraggins, Executive Director of the Mississippi Department of Marine Resources in the above and foregoing instrument of writing, who acknowledged to me that he signed and delivered the above and foregoing instrument of writing on the day and year and for the purposes therein mentioned. GIVEN under my hand and official seal of office on this the ____ day of _____, .

(Seal)

NOTARY PUBLIC

My Commission Expires:
