TITLE 22 – MISSISSIPPI DEPARTMENT OF MARINE RESOURCES

PART 13 RULES AND REGULATIONS FOR AQUACULTURE IN THE MARINE ENVIRONMENT IN THE STATE OF MISSISSIPPI

Chapter 01 Introduction

Purpose

100 This Part establishes the requirements for aquaculture activities in marine waters that require a permit under the provisions of the Coastal Wetlands Protection Act and the Mississippi Aquaculture Act of 1988, and said requirements are to be used in making permit decisions regarding regulated activities in marine waters and provide regulatory guidance for industry and resource agencies.

Chapter 02 Justification and Authority

100 The Mississippi Commission on Marine Resources (MCMR) is vested with the jurisdiction and authority over all marine aquatic life and is authorized to enact all regulations necessary for the protection, conservation and propagation of all seafood in the waters under the territorial jurisdiction of the State of Mississippi, as provided for in Miss. Code Ann. § 49-15-15, as amended.

101 The MCMR is vested with the jurisdiction and authority over all coastal wetlands including the flora and fauna on and in the wetlands, and is charged with the protection of the coastal wetlands pursuant to the Coastal Wetlands Protection and Miss. Code Ann. § 49-27-1, et seq., as amended.

102 The MCMR through the Mississippi Department of Marine Resources (MDMR) is charged with the responsibility of promulgating rules and regulations which specify design criteria to protect marine resources and to prevent the release of undesirable species from an aquaculture facility into the environment, as provided for in the Mississippi Aquaculture Act of 1988, Miss. Code Ann. § 79-22-15, as amended.

103 The MCMR provides these requirements for aquaculture activities in marine waters that require a permit under the provisions of the Coastal Wetlands Protection Act and the Mississippi Aquaculture Act of 1988, and said requirements are to be used in making

permit decisions regarding regulated activities in marine waters and provide regulatory guidance for industry and resource agencies.

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

Chapter 03 Definitions

100 ISLANDS - All islands in the territorial waters of the State of Mississippi, which includes, but is not limited to, Petit Bois, Horn, East Ship, West Ship, Cat, Round and Deer Islands.

101 MILE - For the purposes of this Title and Part, a mile shall be interpreted to mean one nautical mile.

102 NET-PEN - A net-pen shall refer to any aquaculture system that uses nets or cages suspended in the water column to grow fish or invertebrates excluding molluscan shellfish.

103 OFF-BOTTOM AQUACULTURE means molluscan shellfish aquaculture operations in the marine waters that utilize the water column or do not otherwise fall within the definition of on-bottom aquaculture.

104 ON-BOTTOM AQUACULTURE means molluscan shellfish aquaculture operations in the marine waters that use natural shell, spat on shell, or other approved cultch material deployed on the water bottoms, without employing racks, cages, or other containers or support structures.

105 SHORELINE - That area where the water contacts the land including the mainland and all offshore and barrier islands.

Chapter 04 Requirements Applicable to all Aquaculture Operations

100 The following requirements shall apply to all types of aquaculture activities in the marine waters of the State of Mississippi.

100.01 Aquaculture operations must not discharge any waste materials into the surrounding waters. For purposes of this section, waste materials include solids, debris, sanitary and kitchen wastes, oil, and grease; but exclude fouling

organisms, the excrement of the cultured species, and commercially prepared feeds fed to them.

100.02 All aquaculture operations' structures must be properly marked and lighted in accordance with U.S. Coast Guard regulations. In order to minimize the impacts to sea turtles, the structure and any associated vessels moored adjacent to it shall use external lighting systems composed of low pressure sodium vapor lights with a maximum of 55 watts per bulb or any other light source proven and documented not to disturb sea turtles. Coast Guard required navigation lights are exempt from this guideline.

100.03 Generally, only non-lethal methods of predator control shall be allowed. However, invertebrates are exempt from this guideline. To ensure that the applicant has taken measures to prevent the deaths or harm of potential predators, a predator control plan that details the type of predator controls being proposed (i.e. mesh size of netting, color of netting, height of netting, etc.) for each aquaculture operation shall be approved by the MDMR prior to the issuance of a permit.

100.04 Aquaculture activities in State waters must be performed in a manner that would not cause substantial negative impacts to tidal marsh or coastal or marine habitats such as seagrass beds, naturally occurring oyster and clam beds, or endangered species such as sea turtles and Gulf Sturgeon.

100.05 All applicants shall provide the MDMR with a plan for securing or moving, if necessary, the aquaculture facility in the event of a significant storm or hurricane. The permitted facility shall comply with the approved storm plan in the event of a significant storm or hurricane. The aquaculture operation must maintain nets and moorings in a whole and intact condition. No gear may be abandoned. Any net or gear accidentally dropped or lost during storm events that is not recovered immediately shall be tagged with a float, positioned using differential Global Positioning System, and reported to the MDMR within 24 hours. The lost net or gear must be recovered by the aquaculture operation within 30 days of the date lost. The aquaculture operation must notify the MDMR on the date the net or gear is recovered.

100.06 All moorings and cages must have attached a corrosion resistant metal or plastic tag. The tag must be legibly and permanently stamped with letters containing the leaseholder's full name. The minimum height of the letters must be at least 3/16 of an inch.

100.07 Nets, mooring and rigging lines, and anti-predator equipment must be stretched tight, held taut, and maintained in a manner to diminish the likelihood of entangling finfish, decapod crustaceans, sea birds, marine mammals, and sea turtles.

100.08 The aquaculture operation is responsible for collection and proper disposal of all equipment used in the aquaculture operation on submerged lands or when such materials are removed during harvesting or become dislodged during storm events.

100.09 Transport, harvest, or sale of shellfish, other than seedstock from a grow-out facility (lease) which is closed for public health purposes to another grow-out facility, is prohibited without a valid special activity permit.

100.10 All holding, transport, and culture systems of the aquaculture operation must be designed, operated and maintained to prevent the escape of cultured aquatic species into waters of the state.

100.11 All shellfish from aquaculture leases, hatchery, nursery, farm or facilities being transported or shipped must be in distinct containers identified by the producer's Department of Agriculture and Commerce cultivation permit number.

100.12 The use of biocidal chemicals is prohibited unless approved by the MDMR prior to use.

100.13 All culture materials, cover nets, bags or other designated markers placed on or in the waters must be clean and free of pollutants including petroleum based products such as creosote, oils and greases, or other pollutants. Compounds used as preservatives must be used in accordance with the product label.

100.14 Aquaculture operations on Public Trust Tidelands (state-owned) must obtain an aquaculture lease or other authorization from the Secretary of State's office and

remain current with annual fees and conditions of that authorization agreement. This section does not apply to on-bottom molluscan shellfish operations.

Chapter 05 Requirements Specific to Finfish and Crustacean Aquaculture

100 Net-pen or other containment systems for culturing finfish, crustaceans or other non-molluscan marine organisms shall be located in waters of sufficient depth. A minimum clearance of ten (10) feet below the bottom of the net-pen system shall be maintained at all times. The distance shall be measured at mean low water. If monitoring indicates a serious problem with water quality or other environmental conditions at the site (i.e., when certain limits for specific parameters established in the monitoring program or by the Mississippi Department of Environmental Quality are exceeded), the operation must be adjusted to reduce impacts. Adjustments shall include, but are not limited to, modifying the feeding rate or feeding schedule, reducing the amount of fish in the net-pen system, or increasing or decreasing the clearance under the nets to allow for increased water circulation.

101 Net-pen aquaculture operations shall not be located within two (2) miles of the shoreline.

102 Variations to the requirements in this Chapter are allowed for cultivation of filter-feeder species without commercial feeds, with approval by the MCMR.

103 All purchases of live fish, regardless of life stage, must be accompanied by a USDA accredited veterinarian signed "Certificate of Veterinary Inspection" attesting to the good health of the species.

Chapter 06 Requirements Specific to Molluscan Shellfish Aquaculture

100 All operations must comply with regulations governing shellfish, including Title 22, Part 1 and ISSC regulations. All harvested oysters, whether from aquaculture farms, leases, or facilities, must be landed and tagged according to Title 22, Part 1, Chapter 04.

101 Molluscan shellfish aquaculture operations must only culture species native to the Gulf of Mexico. Polyploid native species are permitted. Imported shellfish seed stock to be used for grow-out in Mississippi waters must be first generation descendants of broodstock who originated in the Gulf of Mexico. The hatchery where the shellfish seed stock was produced must provide documentation of broodstock origin.

102 On-bottom and off-bottom Culture

102.01 Operations must be designed to minimize the impacts to water circulation patterns and the natural movement of sediment in the nearshore areas.

102.02 Any cultch materials used must be approved by the MDMR before use. Approval is based, in part, on the environmental suitability of the material. Cultch materials placed in the grow-out area must be a suitable substrate for attachment of oyster larvae. These include materials such as natural molluscan shells; fossilized shell; coral, and other aquatic organisms; lithic materials such as crushed and graded limestone, granite, and gravel which contain calcium carbonate or fossilized organisms; or recycled materials which contain lithic fractions and calcium carbonate, including crushed and 47 graded concrete. Exceptions to this list of generally accepted cultch materials must be specifically approved by the MCMR.

102.03 All operations must occur in waters three feet or deeper, as measured by mean low water. The MCMR may allow variance to this water depth requirement after review and approval.

102.04 Off-bottom aquaculture operations within 750 yards of the shoreline must comply with the following:

102.04.01 Containers, racks, and cages must be arranged in rows with adequate space between rows to allow for reasonable ingress and egress to the shoreline.

102.04.02 Racks or cages must not be located within 200 feet of the shoreline. The MCMR may allow variance to this setback on showing that there are no conflicts with traditional user groups in the area (i.e. flounder fishermen, beachgoers, etc.).

102.05 Off-bottom aquaculture operations are not permitted in the marine waters of the Bay of St. Louis north of the CSX bridge.

103 On-Shore Culture.

103.01 On-shore culture of molluscan shellfish includes any aquaculture operation of molluscan shellfish that involves either the production or grow-out of spat, seed

stock, spawning, and larval culture; and not intended for direct consumption, whether or not they are located on or off shore.

103.02 All on-shore molluscan shellfish aquaculture facilities must certify that all stock cultured and originating from sources outside of Mississippi are free of any diseases or parasites harmful to marine organisms, excluding Dermo (*Perkinsus marinus*). Certification must be submitted to the MDMR prior to the operation of the aquaculture facility.

103.03 Facilities based on land must be designed and operated in a manner that minimizes adverse impacts to the receiving waters, adjacent wetlands, and uplands.

103.04 Facility pumping, intake, and discharge systems must be designed in a manner which does not create currents that substantially increases sedimentation, scouring, turbidity, or in any way substantially damage the surrounding habitat. Aquaculture operations with such systems must obtain a discharge permit from the Mississippi Department of Environmental Quality.

103.05 When utilizing a near shore saline water source, the intake and discharge pipes must be located in a manner not to cause a navigational hazard.

103.06 Place intake and discharge pipes in a location that minimizes environmental and aesthetic impacts.

Chapter 07 Monitoring Program Requirements

100 The aquaculture operation must maintain records and provide a monthly report of the following:

100.01 A daily record of the number of incidental deaths of vertebrate coastal wildlife that occur within the leased area. Additionally, the aquaculture operation must notify the MDMR immediately upon the injury or death of any threatened or endangered species, marine mammal, or raptor within the leased area.

100.02 An accounting of the stock added and harvested in a given month.

100.03 On shore culture operators must maintain records of any transfers of brood stock, seed, gametes, or larvae.

100.04 All records must be maintained for a minimum of two years, and must be available to the MDMR for inspection.

101 The MDMR will maintain the following records provided by the permittee while the aquaculture operation continues:

101.01 Construction and remodeling plans for any permitted aquaculture facility;

101.02 Aquaculture operational plans; and

101.03 Aquaculture permits.

102 The MDMR will inspect commercial land-based and float aquaculture systems at least every six months.

Chapter 08 Aquaculture Research

100 State educational institutions conducting marine aquaculture projects are exempt from fees under this Part, but must comply with all other regulations.

Chapter 09 On-Bottom Shellfish Leasing Regulations

100 On-Bottom Shellfish Leases.

The MCMR has the authority to issue on-bottom leases for shellfish aquaculture operations under Miss. Code Ann. §49-15-27.

100.01 Each proposed lease area must be located in waters classified as **APPROVED, CONDITIONALLY APPROVED, or RESTRICTED**. Harvests in lease areas must comply with the regulations in Title 22, Part 1.

100.02 Each application for a bottom lease must be for five acres or more, but shall not exceed 500 acres.

100.03 The proposed lease area must be contiguous.

100.03.01 The proposed lease area must be configured as a square or rectangle with the lease area boundaries meeting at right angles. However, the lease rent may be adjusted pro rata to conform to non-rectangular shapes within the lease area.

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

100.03.03 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 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 percent or less interest in such corporation, partnership, or association.

100.04 No proposed lease areas will be approved that are within 100 feet of an existing lease area or lease area that is pending final approval, unless the same person holds both leases.

100.05 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.

100.06 Leases must be active and engaged in shellfish aquaculture activities throughout their term. The applicant must not begin any activities on the lease until they have obtained all applicable permits, including MDMR wetlands permits. Failure to obtain permits is evidence that the lease is not active.

101 Lease Applications.

101.01 Any person wanting to lease bottoms must complete an on-bottom shellfish lease application form and submit it to the MDMR Director of Marine Fisheries. Application forms are available from the MDMR in Biloxi, Mississippi.

101.02 Applicants 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.

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

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

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

102 Application Review.

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

102.02 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.

102.03 A recommendation will be made to the MCMR to grant or deny the lease application 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.

103 Conditions of Leases

103.01 All leases granted by the MCMR must include the following conditions:

103.01.01 **Term.** Such leases shall be for a term of five years, with the right of the lessee to renew the lease for an additional five years, and continue to renew at five-year intervals, at the same ground rental rate so long as lessee actively cultivates and gathers shellfish, complies with all provisions of this Part, and has all applicable permits and licenses.

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

103.01.03 All leases leased before or after July 1 of each year shall be prorated from the date of lease to the following expiration of five years from the date of the lease.

103.01.04 All leases expire on July 1 of the year in which five-year lease term or renewal term expires.

103.01.05 All leases leased prior to July 1, 2015 shall expire on the date indicated in the current lease agreement.

103.01.06 All leases leased after July 1, 2015 shall expire July1 of the year in which each five-year lease term or renewal term expires.

103.01.07 Each lessee shall have the option to renew said lease provided they 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.

103.02 **Boundary Markings.** 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.

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

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

103.02.03 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.

103.03 **Public Works.** 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.

103.04 **Termination.** 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. On the termination of any lease, the lessee must remove any poles, stakes, buoys or other structures associated with the lease.

103.05 **Waivers.** 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.

103.06 **Other Conditions.** In granting leases, the MCMR may specify any special conditions and limitations under which the lease is granted.

104 Subleases and Transfers

104.01 Subleasing is prohibited.

104.02 Lease transfers must first obtain prior written approval by the MCMR of the transfer. The MCMR may deny such transfer. Transfers of portions of the lease are not permitted.

104.03 To obtain a transfer, the transferee must apply for the lease as if it were a new lease.

104.04 The lease transferee must be a Mississippi resident or corporation.

104.05 The new lease combined with other leases held by the lease transferee must not amount to more than 500 acres.

104.06 All terms and conditions, including term limitations, from the lease transfer to the transferee.

105 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.

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

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

105.03 A fair and reasonable rental rate of not less than five dollars per acre has been set.

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

106 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.

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.

107 Each lessee must provide an annual written summary of lease activity report to the MDMR Director of Marine Fisheries for the previous lease period upon forms provided by the MDMR within 30 days from the lease anniversary date.

108 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 10 Penalties

100 Any person, firm or corporation violating any of the provisions of this Part shall be, in addition to civil liability provided for in Miss. Code Ann. § 49-27-55, as amended, guilty of a misdemeanor, and on conviction, shall be penalized in accordance with Miss. Code Ann. § 49-27-57, as amended. Violations of more than one chapter or subchapter of this

Part, or part thereof, shall be considered separate offenses and punished as such. In the case of continuing violations, each day shall constitute a separate offense.

Chapter 11 Chapter and Subchapter Declared Separable

100 Each chapter and subchapter of this Title and 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 13 shall remain in full force and effect.

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

Chapter 12 Administrative Procedures Act

100 Pursuant to the amendments to the Administrative Procedures Act, § 25-43-1.101, et seq., of the Mississippi Code of 1972, as amended, and the rules and regulations promulgated pursuant thereto by the Secretary of State; the former Ordinance 13.001 has been modified and the MCMR and MDMR 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 13 RULES AND REGULATIONS FOR AQUACULTURE IN THE MARINE ENVIRONMENT IN THE STATE OF MISSISSIPPI, shall be in effect and in force from and after the 17th day of November 2016.

Adopted this the 18th day of October 2016.

MISSISSIPPI COMMISSION ON MARINE RESOURCES

By: _____
Richard Gollott, Chairman

MISSISSIPPI DEPARTMENT OF MARINE RESOURCES

By: _____
Jamie M. Miller, Executive Director