

APA-1
6/93

**TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION**

Control No. 220 Department or Agency Conservation and Natural Resources
Rule No.: 220-3-.02 Oystering

New Amend Repeal (of Existing Rule) Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? YES

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? YES

Is there another, less restrictive method of regulation available that could adequately protect the public? NO

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? NO

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the rule? N/A

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? YES

Does the proposed rule have any economic impact? NO

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975 and that it conforms to all applicable filing requirements of the Alabama Administrative Procedure Division of the Legislative Reference Service.

Signature of Certifying Officer *David J. Egan*
Secretary of Administrative Procedure

Date *April 20, 2012*

APA-2
6/93

Department of Conservation and Natural Resources
Marine Resources Division

NOTICE OF INTENDED ACTION

AGENCY NAME: Department of Conservation and Natural Resources

RULE NO. & TITLE: (1) 220-3-.01 **Shrimping**; (2) 220-3-.02 **Oystering**; (3) 220-3-.03 **Use of Nets and Harvest of Mullet**; (4) 220-3-.31 **Crabs**; (5) 220-3-.53 **Open Season/Area for the Taking of Live Saltwater Bait – Point Clear Area.**

INTENDED ACTION: Amendments for each rule.

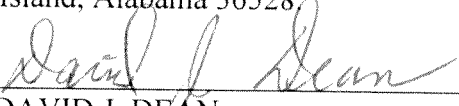
SUBSTANCE OF PROPOSED ACTION: (1) 220-3-.01 -To further provide for shrimping; to further provide for the taking of shrimp for recreational purposes; to provide certain location information; to further define certain shrimp nursery areas; and to further provide for the use of certain trawls or seines; (2) 220-3-.02 – To further provide for oystering; to prohibit certain taking or possession of oysters; to require certain presentation of oysters to the declared shop; and to further provide for oyster harvest areas; (3) 220-3-.03 – To further provide for the use of certain nets; to further provide for use of certain mesh size; and to provide for certain location information; (4) 220-3-.31 – To further provide for the taking of crabs; to further provide for crab traps; and to further specify areas where it is unlawful to place crab traps; (5) 220-3-.53 – To further provide for and specify an area for the taking of live saltwater bait.

TIME, PLACE, MANNER OF PRESENTING VIEWS: Interested persons may present their views in writing to the Director of the Marine Resources Division at any time during the period stated below, or orally if requested in advance by personally appearing at Room 469, Folsom Administrative Building, 64 North Union Street, Montgomery, Alabama, at 10:00 a.m., Tuesday June 5, 2012.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Tuesday, June 5, 2012.

CONTACT PERSON AT AGENCY: Chris Blankenship, Division Director, Marine Resources Division, P. O. Box 189, Dauphin Island, Alabama 36528



DAVID J. DEAN
Secretary of Administrative Procedure

N. Gunter Guy, Jr.

220-3-.02 Oystering

(1) The taking of oysters from public reefs is regulated by both the Department of Conservation and Natural Resources and the Department of Public Health; therefore, you should contact the Marine Resources Division, P. O. Box 189, Dauphin Island, AL 36528 for information on the latest regulations.

(2) Unless otherwise provided, the minimum lawful size of oysters taken shall be three inches (3") with an allowance of not more than five percent (5%) for undersize oysters and cultch material for the cargo on hand and no more than 10% of undersize oysters and cultch material in any one sack. Oysters shall be culled upon the reef from which they were taken.

(3) Except as otherwise hereinafter provided, it shall be unlawful for any person to take or attempt to take oysters except by hand or hand tongs and by the use of dredges in designated areas.

(4) It shall be unlawful for persons to take oysters by swimming, diving or wading in Heron Bay or its tributaries north of a line from Barron Point to Cedar Point.

(5) It shall be unlawful for any person to take or attempt to take oysters from the public reefs and/or from private reefs and bottoms of the State of Alabama by means of oyster dredges except as follows:

(a) The Commissioner of Conservation may issue a written permit allowing oyster dredges to be used for taking or removing oysters from public or private oyster reefs or from those water bottoms which have been leased from the State of Alabama pursuant to the authority contained in Section 9-12-24 of the 1975 Code of Alabama. The permittee must use the oyster dredge only upon such days, at such times and within such areas as shall be specified in the permit.

(b) No permittee may allow the craft on which his dredge is carried to be anchored at night. Said craft must return to a dock before sunset.

(c) Dredges used on the public or private reefs shall not exceed a weight of 125 pounds, including self dumping basket. Dredges will be restricted to no more than 16 teeth, maximum 3 inches apart with self dumping baskets. All dredges must be inspected and tagged by the Marine Resources Division. A rope no shorter than 15 feet with a floating buoy no less than six inches in diameter bearing the operators permit number shall be permanently affixed to the dredge at all times when the dredge is in use or in transit aboard a vessel. No more than one dredge may be aboard a vessel at any time. It shall be unlawful for any person, firm, association or corporation

to carry or transport any oyster dredges on board of or attached to any vessel, boat, or other water craft unless it has been inspected and tagged by the Marine Resources Division.

(6) It shall be unlawful for any person, firm, association or corporation to carry or transport any oyster dredges on board of or attached to any vessel, boat, or other water craft unless the dredge has been inspected by the Marine Resources Division and the operator of the vessel has a permit for the dredge.

(7) It shall be unlawful between the hours of sunset and sunrise to take, attempt to take or possess ~~transport~~ oysters on board a vessel or in the waters of the State of Alabama by ~~watercraft through any areas closed to the taking of oysters by regulation of the Department of Public Health or the Department of Conservation and Natural Resources.~~ All oysters taken from the public reefs shall be landed within one hour of the water bottom closure each day.

(8) It shall be unlawful for persons to take for noncommercial purposes more than 100 oysters per person per day from the public reefs, beds or bottoms in the water of this State. However, this limitation does not apply to persons having a commercial oyster license. Recreational and commercial oysters cannot be taken or possessed on board a vessel in the same trip.

(9) Certain waters in the vicinity of sewage discharges and other locations are permanently closed to oystering by the Department of Public Health. These areas are subject to change and the latest closure orders should be obtained from the Marine Resources Division or the Department of Public Health.

(10) All oysters shall be sacked according to the standard Alabama measure of four (4) sacks per barrel and it shall be unlawful to land any oysters for commercial purposes which have not been sacked in this manner. The volume of a ¼ Alabama barrel sack shall consist of a tub of oysters measuring 17 inches in diameter on the top, 13 inches in diameter on the bottom and 12 inches in height. It shall be unlawful to transfer oysters from one boat to another for purposes of avoiding the requirement of this regulation or to transfer any oysters to any unlicensed oyster catcher. Any person or persons cited for exceeding the sack size limit provided for herein shall be required to immediately transport and redistribute any said excess oysters on the nearest public reef. Failure to so transport and redistribute shall be considered a violation of this regulation.

(11) All vessels engaged in the taking, possession or transport of oysters from the private and public reefs of Alabama shall have aboard the vessel an approved marine sanitation device (MSD), portable toilet or other sewage disposal receptacle. The MSD, portable toilet or other sewage disposal receptacle shall be used only for the purpose intended, be emptied only in a sewage disposal system, and be cleaned before being returned to the vessel. Sewage disposal receptacles must be constructed of impervious, cleanable materials and have tight fitting lids. No cats, dogs or other animals may be aboard any vessels taking, possessing or transporting oysters.

(12) It shall be unlawful for any person to take or attempt to take oysters from the public reefs of the State of Alabama without first having registered (checked in) on the day of harvest at the Oyster Management Station drop box in the area where the harvest shall be attempted. All fishermen must check out at the same designated Oyster Management Station where they checked in within one hour of the water bottom closure for that day. Oyster tags will be purchased at the Oyster Management Station and no oysters shall be landed before being tagged. The oyster harvester will provide the following information at the Oyster Management Station in order to complete an oyster harvest record: Harvester's name, harvester's license number, harvest location, gear used, fishing time, and name of certified dealer where the oysters will be sold, and any other information required. At least one copy of the oyster harvest record must remain with the shell stock while it is in transit to a certified dealer and a copy must be given to the certified dealer upon delivery. Failure to present oysters to the declared shop without notifying the Marine Resources Division by close of business on the day of harvest will be considered a violation.

(13) Oyster Management Stations shall be established at the Heron Bay Cut-off, Coden, Bayou La Batre, Fowl River, Dauphin Island, Cedar Point, Bon Secour, Weeks Bay and other locations established by the Director of the Marine Resources Division and approved by the Commissioner of Conservation and Natural Resources. Areas opened for oyster harvest and Oyster Management Stations that will be opened near those harvest areas will be publicized using an Opening Order. The Opening Order will include the date harvest shall be opened, a description of the shellfish harvest locations and reefs to open, a description of the location of the Oyster Management Stations that will be open, and a map of areas where dredging will be allowed (if applicable). The Opening Order will be issued by the Director of the Marine Resources Division in the form of a news release. Areas will be closed by the issuance of a news release.

~~(14) Harvest areas are as follows: Harvest Location 1: Portersville Bay/Grand Bay, Harvest Location 2: Cedar Point West, Harvest Location 3: Heron Bay, Harvest Location 4: Cedar Point East/Buoy Reef, Harvest Location 5: Relay Reef/Whitehouse Reef, Harvest Location 6: Dauphin Island Bay, Harvest Location 7: Bon Secour Bay.~~

Statutory Authority: Code of Alabama 1975, §§ 9-2-4, 9-2-7, 9-2-8, 9-2-12, 9-12-33, and 9-12-87

Penalty: As provided by law.

9/30/82;6/13/86;8/28/87(E);10/28/88;4/4/89;4/19/89;10/15/90(E);11/20/90(E);10/13/99(ER);
12/30/2010;