

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-.03 Use of Nets and Harvest of Mullet

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 L. Davis*
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.

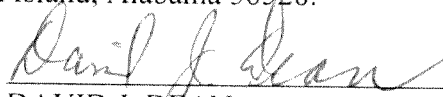
SUBSTANCE OF PROPOSED ACTION: (1) 220-3-.01 -To further provide for shrimping; to further provide for the taking of shrimp for recreational purposes; to provide certain location information; to further define certain shrimp nursery areas; and to further provide for the use of certain trawls or seines; (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-.03 Use of Nets and Harvest of Mullet

(1) Any person possessing, transporting, or using any seine, gill net, trammel net, or other entangling net more than 300 feet in length as measured along the cork line or main top line, or possessing, transporting, or using for commercial purposes a seine, gill net, trammel net, or other entangling net 300 feet or less as measured along the cork line or main top line, on or in the waters of Alabama under the jurisdiction of the Marine Resources Division as provided by Rule 220-2-.42, shall be validly licensed or permitted under Ala. Code 1975 § 9-12-113 and shall have such license or permit in possession. Except that any person possessing a valid Federal Fisheries Permit that allows the use of a seine, gill net, trammel net or other entangling net in federal waters may transport such net on board a boat without an Alabama commercial gill net license in the following waters of the State of Alabama: in a marked navigational channel, due south of the charted position of Bayou La Batre Channel Marker "5", in the Gulf of Mexico due south of Perdido Pass, and for vessels leaving from Billy Goat Hole on Dauphin Island or Fort Morgan Ramp, lower Mobile Bay. All vessels using this Lower Mobile Bay transport exception shall proceed as directly, continuously and expeditiously as possible to or from the Mobile Ship Channel. All vessels using any transport exception shall proceed as directly, continuously and expeditiously as possible to or from Federal waters.

Provided further, any person possessing, transporting, or using for recreational purposes a gill net 300 feet or less as measured along the cork line or main top line, on or in the waters of Alabama under the jurisdiction of the Marine Resources Division as provided by Rule 220-2-.42 shall be validly licensed under Ala. Code 1975 § 9-12-123 and shall have such license in possession.

(2) *Roe mullet permit requirements:* Any person possessing, using, or attempting to use, any commercial gill net, trammel net, or other entangling net with a mesh size of two (2) inches knot to knot or larger to take or attempt to take any fish during the period of October 24 through December 31 of each year in the waters of Alabama must have a roe mullet permit as provided by Ala. Code, § 9-12-113; provided further, during the period of October 24 through December 31 that any person in possession of mullet while possessing, using, or attempting to use any commercial gill net, trammel net, or other entangling net is also required to have said roe mullet permit.

(3) *Spanish mackerel permit requirements:* Any person possessing, using, or attempting to use, any commercial seine, gill net, trammel net, or other entangling net in the waters of Alabama, including the territorial waters in the Gulf of Mexico, who possesses any Spanish mackerel must have a Spanish mackerel permit as provided by Ala. Code, § 9-12-113. Except that any person possessing a valid Federal Fisheries Permit that allows the use of a seine, gill net, trammel net or other entangling net in federal waters may transport such net on board a boat and possess Spanish Mackerel without an Alabama commercial gill net Spanish mackerel

permit in the following waters of the State of Alabama: in a marked navigational channel, due south of the charted position of Bayou La Batre Channel Marker "5", in the Gulf of Mexico due south of Perdido Pass, and for vessels leaving from Billy Goat Hole on Dauphin Island or Fort Morgan Ramp, lower Mobile Bay. All vessels using this Lower Mobile Bay transport exception shall proceed as directly, continuously and expeditiously as possible to or from the Mobile Ship Channel. All vessels using any transport exception shall proceed as directly, continuously and expeditiously as possible to or from Federal waters.

(4) *Display of placard:* The placard issued by the Department of Conservation and Natural Resources as provided for in Ala. Code, § 9-12-113(d), shall be visibly displayed on the permittee's designated vessel in a location on the port side of the vessel between the bow and amidship. It shall be unlawful to display an invalid gill net placard on a vessel.

(5)(a) *General minimum mesh size for "inside waters" for fish other than menhaden:* Except as otherwise provided in paragraph (5)(c), it shall be unlawful to use or attempt to use any gill net, trammel net or other entangling net to take or attempt to take fish other than menhaden from the "inside waters" under the jurisdiction of the Marine Resources Division as provided by Rule 220-2-.42 and as defined by Rule 220-3-.04(1) the mesh of which is smaller than one and one-half (1-1/2) inches knot to knot.

(b) *Minimum mesh size for menhaden:* The mesh size for commercial gill nets, trammel nets, or other entangling nets used for the taking of menhaden shall be one and one quarter (1-1/4) inches knot to knot or larger provided that not more than 5 percent bycatch of other species by number (excluding game fish) may be in possession.

(c) *Special October 24 - December 31 mesh size provisions:* ~~Except as otherwise provided in paragraphs (7)(a) and (7)(b),~~ From October 24 through December 31 of each year a mesh size of two (2) inches knot to knot or larger shall be required for commercial gill, trammel, or other entangling nets used to take or attempt to take fish other than menhaden in the waters under the jurisdiction of the Marine Resources Division as provided by Rule 220-2-.42, except that a mesh size of one and one-half (1-1/2) inches knot to knot or larger, but less than two (2) inches knot to knot, may be used for the taking of fishes other than mullet. Possession of mullet and a gill net with less than a minimum mesh size of two (2) inches knot to knot on board a boat in the waters of Alabama from October 24 through December 31 shall be prohibited.

(6)(a) *Special provisions for certain rivers, bayous, creeks, or streams:* It shall be unlawful to use any net or seine in any rivers (except in those portions of the Blakely and Apalachee Rivers south of the I-10 Causeway), streams, creeks, bayous or tributaries under the jurisdiction of the Marine Resources Division as provided by Rule 220-2-.42; provided, a seine, commonly known as a minnow seine, the length of which shall not exceed 25 feet and the width or depth of which shall not exceed 4 feet, may be used for the taking of shad or minnows for the

exclusive use as fish bait; and provided further, a cast net may be used to take fish other than gamefish. All other fish and seafood taken by a cast net or seine, as allowed under this paragraph, shall be immediately returned to the water from whence they came with the least possible injury. Rivers, streams, creeks, bayous, and tributaries shall be considered closed areas for the purposes of Ala. Code 1975 § 9-12-113(j)(2).

(b) From September 1 through December 31, it shall be unlawful to possess a gill net, trammel net, any other entangling net, or seine, except a minnow seine as described in paragraph (a), aboard a boat in Fowl River or its tributaries north of Bellingrath Garden boat dock, in Dog River or its tributaries north and west of a line running from the west bank of the mouth of Perch Creek to the east bank of the mouth of Alligator Bayou, or in Theodore Industrial Canal west of a line running north and south at Cedar Point Road (088° -06.50'W) (~~where old middle Deer River bridge was located~~). Any person convicted of the violation of possession of a gill net, trammel net, any other entangling net, or seine aboard a boat as provided by this paragraph shall receive two (2) points toward the 10-point system provided by Ala. Code § 9-12-113. Provided further, it shall be illegal to possess fish, except menhaden, in, or in contact with, a net or seine aboard a boat in East or West Fowl River or their tributaries west of Highway 193 and north of Highway 188, Fish River or its tributaries, Magnolia River or its tributaries, or Bon Secour River or its tributaries. Any person convicted of the violation of possession of fish, except menhaden, in, or in contact with, a net or seine aboard a boat as provided by this paragraph, shall receive three (3) points toward the 10-point system provided by Ala. Code 1975 § 9-12-113.

~~(7)(a)~~ *Special Gulf waters provisions on closures, openings, and mesh size:*

~~(1)~~ (a) From 12:01 a.m. May 15 to 12:01 a.m. the day after Labor Day each year thereafter, all waters of the Gulf of Mexico, from Old Little Lagoon Pass East to the Florida line shall be closed to the commercial use of gill nets, trammel nets, other entangling nets, seines, and haul seines.

~~(2)~~ (b) It shall be unlawful to use or possess a gill net, trammel net, other entangling net or seine in Alabama waters in the Gulf of Mexico, including Pelican Bay, from March 15 through Labor Day each year from 12:00 noon each Friday through 7:00 pm each Sunday. Except that any person possessing a valid Federal Fisheries Permit that allows the use of a seine, gill net, trammel net or other entangling net in federal waters may transport such net on board a boat in the following waters of the State of Alabama in the Gulf of Mexico: in a marked navigational channel, due south of the charted position of Bayou La Batre Channel Marker "5", and due south of Perdido Pass. All vessels using any transport exception shall proceed as directly, continuously and expeditiously as possible to or from Federal waters.

~~(3)~~ (c) In addition, all waters of the Gulf of Mexico including Pelican Bay, from the shoreline (including Pelican/Sand Island) out to 0.25 miles shall be closed year round to the

commercial use of gill nets, trammel nets, other entangling nets, seines, and haul seines, except as follows:

~~(a) (i)~~ From ~~12:01 a.m. March 15, 2009 to 12:00 noon June 12, 2009,~~ and from 12:01 a.m. March 15 to 12:01 a.m. May 15, each year thereafter, the following portion of said waters shall be open to such use from 6:00 p.m. to 6:00 a.m. Monday through Thursday, 12:00 midnight to 12:00 noon on Friday and from 7:00 p.m. to 12:00 midnight on Sunday: From Old Little Lagoon Pass, East to the Florida Line;

~~(b) (ii)~~ From 12:01 a.m. October 2 to 12:01 a.m. January 1 each year, the following portion of said waters shall be open to such use 24 hours per day: From Old Little Lagoon Pass, East to the Florida line;

~~(c) (iii)~~ From 12:01 a.m. on the day after Labor Day through March 14 each year, the following portion of said waters shall be open to such use 24 hours per day: West of Old Little Lagoon Pass in Mobile and Baldwin Counties; and

~~(d) (iv)~~ From March 15 through Labor Day each year, the following portion of said waters shall be open to such use from 6:00 p.m. to 6:00 a.m. Monday through Thursday, 12:00 midnight to 12:00 noon on Friday and from 7:00 p.m. to 12:00 midnight on Sunday: West of Old Little Lagoon Pass to the last house on Dauphin Island (located at Longitude 88°11.500W).

~~(e) (v)~~ From March 15 through Labor Day each year, the following portion of said waters shall be open to such use from 7:00 p.m. Sunday through 12:00 noon Friday each week: Those waters west of the last house on Dauphin Island (located at Longitude 88°11.500W).

(4) (d) For the purposes of this regulation, Old Little Lagoon Pass is located at Longitude 087°- 47'.826" ' W.

(5) (e) All Gulf waters including Pelican Bay shall be closed to the use of recreational gill nets.

(6) (f) The minimum mesh size for gill nets permitted under Ala. Code, § 9-12-113 used to take or attempt to take fish in the Gulf of Mexico, shall be one and one-half (1 ½) inches knot to knot, except as otherwise provided in paragraphs (2) (roe mullet) and (5)(b) (menhaden). Provided further, it shall be unlawful to possess a gill net in the waters of the Gulf of Mexico including Pelican Bay the mesh of which is smaller than one and one half (1 ½) inches knot to knot, except as provided in (5)(b)(menhaden).

(8)(a) Except as otherwise provided by law or regulation, it shall be unlawful to take or attempt to take any fish in the waters of Alabama under the jurisdiction of the Marine Resources Division as provided by Rule 220-2-.42 with any seine or purse seine over twenty-five (25) feet in length with a mesh size smaller than three-fourths (3/4) inch knot to knot.

(b) From October 24 through December 31 of each year, it shall be unlawful to use, or attempt to use, any seine to take, or attempt to take, mullet in the waters of Alabama under the jurisdiction of the Marine Resources Division as provided by Rule 220-2-.42.

(9) There are no mesh size requirements for trawls and cast nets.

(10) It shall be unlawful to use, to take, or attempt to take fish with, or to possess on board a boat, in the waters of Alabama, any gill nets, trammel nets, or any other entangling net, greater than 80 meshes in depth north of a line running in an eastwardly direction from the north bank of East Fowl River to Middle Bay Light to Great Point Clear.

(11) From October 24 through December 31 of each year it shall be unlawful to use any set nets (gill nets, trammel nets, or other entangling nets, etc.) in the waters of Bon Secour Bay south of the Gulf Intracoastal Waterway from Oyster Bay west to the last Waterway navigational marker and from that point southwestward to the northwestern tip of the Fort Morgan Peninsula. During this time period, this area shall be open to strike nets but these nets cannot be used within 300 feet of any pier, wharf, dock, or boat launching ramp in this area. "Strike net" means a gill net, trammel net, or other entangling net, that is set and used from a boat in a circular pattern and is not anchored or secured to the water bottom or shore and which is immediately and actively retrieved.

(12) From January 1 through 12:01 a.m. the day after Labor Day of each year it shall be unlawful to use any seine, gill net, trammel net, or other entangling net to take or attempt to take any fish in all waters inside of a meandering line beginning at the east end of Dauphin Island at the Park and Beach Board pier and running in a northwestwardly direction along the northern shore of Little Dauphin Island to its intersection with the Dauphin Island Bridge, and then northwardly along the east side of the Dauphin Island Bridge to its intersection with the Gulf Intracoastal Waterway, then westwardly along the southern edge of the Gulf Intracoastal Waterway to Aloe Bay Channel marker "BA, F1 (2+1) G 6s," then southwardly to Aloe Bay Channel marker number "2" and then to the western end of the Dauphin Island Airport runway, then eastwardly along the northern shore of Dauphin Island to the east end of Dauphin Island at the Park and Beach Board Pier.

(13) It shall be unlawful for any person, firm, or corporation to use any gill net, trammel net, seine or purse seine, or other entangling net to take or attempt to take fish in any marked navigational channel, Theodore Industrial Canal, Little Lagoon Pass, Perdido Pass, or any man-made canal (including but not limited to the following bays and canals on Dauphin Island: Quivera Bay, Polaris Lagoon, Port Royal Lagoon, Lafitte Bay, Indian Bay, Indian Canal,

Buchanan Bay, Columbia Bay, Colony Cove, Spanish Bay, Barcelona Bay, Salt Creek, Government Cut, and Billy Goat Hole); provided further, it shall be unlawful to use any gill net, trammel net, seine or purse seine, or other entangling net to take or attempt to take fish within 300 feet of the mouth of Dog River, Theodore Industrial Canal, East Fowl River, Old East Fowl River (both entrances), West Fowl River, Bayou Coden, Bayou La Batre, and the Mobile Bay entrance to Billy Goat Hole/Government Cut in Mobile County, or Fly Creek, Fish River, Magnolia River, Graham Bayou, Wolf Creek, Miflin Creek, Roberts Bayou, Palmetto Creek, Soldier Creek, Perdido Pass, and Little Lagoon Pass in Baldwin County.

(14) It shall be unlawful to use any seine, gill net, trammel net, or other entangling net required to be licensed or permitted under Ala. Code, § 9-12-113, to take or attempt to take fish within 300 feet of any pier, marina, or boat launching ramp. It shall be unlawful to use any seine, gill net, trammel net, or other entangling net to take or attempt to take fish within 300 feet of any of the following "relic" piers: Zundel's, Old Daphne Steamship, Battles, and Quarantine, or within 300 feet of artificial reef areas established and marked by the Marine Resources Division, within the jurisdiction of the Marine Resources Division as provided by Rule 220-2-.42; provided further, it shall be unlawful to use any seines or nets in any manner so as to prevent ingress or egress to or from any pier, wharf, dock, marina, or boat launching ramp. The prohibited use areas referred to herein shall be considered closed areas for the purposes of Ala. Code 1975 § 9-12-113 (j)(2).

(15) Gill nets and seines permitted under Ala. Code, § 9-12-113, shall be marked with the permittee's name and shall be marked at intervals of 100 feet or less along the float line with colored floats that contrast with any other floats used on the float line. Such gill nets shall be marked at intervals of 300 feet or less along the float line with the fisherman's permit number. Permit numbers will remain the same for each year. Any person convicted of the violation of possession on board a boat or use of an unmarked gill net(s) (without the fisherman's permit number marked along the float line as required by this paragraph) shall receive four (4) points toward the 10-point system provided by Ala. Code 1975 § 9-12-113. Any person convicted of the violation of possession on board a boat or use of an improperly marked gill net(s) (with the fisherman's permit number being marked along the float line in a manner other than as required by this paragraph) shall receive one (1) point toward the 10-point system provided by Ala. Code 1975 § 9-12-113.

(16) Gill, trammel, and other entangling nets, and seines operated in the waters of Alabama under the jurisdiction of the Marine Resources Division as provided by Rule 220-2-.42 must be constantly attended by the person licensed or permitted to operate the net. Any person convicted of the violation of an unattended gill, trammel, or other entangling net or seine required to be licensed or permitted under Alabama Code § 9-12-113, shall receive three (3) points toward the 10-point system provided for by Alabama Code § 9-12-113.

(17) There is hereby established a possession limit on mullet caught by cast net or snagging of 25 fish per boat per day or 25 fish per person per day from the shore during the period of October 24 through December 31 of each year. During the period of October 24 through December 31 it shall be unlawful to possess on board a boat more than 25 mullet while cast netting or snagging in waters closed to the use of gill nets. Notwithstanding any provision herein to the contrary, however, from October 24 through December 31, it shall be unlawful to take mullet by snagging (a method of taking fish with one or more hooks attached to a line or artificial lure used in a manner to foul hook a fish. A fish is foul hooked when caught by a hook in an area other than the fish's mouth), or by the use of a cast net in Theodore Industrial Canal, Dog River, Fowl River, or tributaries thereof.

(18) It shall be unlawful to remove roe of mullet or otherwise process roe mullet aboard any boat or vessel within the territorial waters of this State.

(19)(a) A recreational gill net licensee shall have only one net in use at any time and shall possess only one net on board a boat in the waters of Alabama. A recreational gill net shall not be possessed more than 300 feet from shore and, it shall be unlawful to use a recreational gill net required to be licensed under Ala. Code, § 9-12-123 to take or attempt to take fish beyond 300 feet from any shoreline. It shall be unlawful for a recreational gill net to be on board a boat with a net, seine, or purse seine, required to be licensed or permitted under Ala. Code, § 9-12-113. It shall be unlawful to use or possess a recreational gill net in conjunction with the use or possession of any net, seine, or purse seine, required to be licensed or permitted under Ala. Code, § 9-12-113.

(b) A recreational gill net licensee shall take or possess only one standard fish box of whole fish per day. A standard fish box measures 15 inches by 15 inches by 24 inches.

(c) Recreational gill nets licensed under Ala. Code, § 9-12-123, shall bear a tag or float provided by the Marine Resources Division showing the name and license number of the licensee. This tag shall be affixed to the net any time it is in use or in transit aboard a vessel.

(20) It shall be unlawful to possess game fish in conjunction with the use or possession of any net, seine, or purse seine, required to be licensed or permitted under Ala. Code, § 9-12-113, or required to be licensed under Ala. Code, § 9-12-123. Commercial hook and line fishermen shall not possess game fish. Any person convicted of the violation of possession of game fish in conjunction with the use or possession of any net, seine, or purse seine required to be licensed or permitted under Ala. Code, § 9-12-113, shall receive four (4) points toward the 10-point system provided for by Ala. Code, § 9-12-113.

(21) It shall be unlawful to use or possess on board a vessel a gill, trammel, or other entangling net or seine that does not have one float or cork at least two (2) inches in diameter at intervals of five feet or less along the float line; or a bouy with a diameter of at least six (6) inches at intervals of fifty feet or less along the float line.

Statutory Authority: §§ 9-2-4, 9-2-7, 9-2-8, 9-2-12, 9-12-110, and 9-12-113
Code of Alabama 1975

PENALTY: As provided by law.

3/7/96; 8/18/97(ER); 9/23/97; 11/25/97; 8/25/98(ER); 12/15/98; 8/31/2000(ER); 8/30/2001(ER);
6/4/2002(ER); 8/21/2002; 10/17/2002(ER); 2/11/2003; 5/21/2003(E); 6/9/2003(E); 9/23/2004;
9/28/2004(ER);6/28/05(E); 9/6/2005(ER); 4/12/2007(ER); 7/19/2007; 10/17/2007 (ER);
5/29/2008; 9/23/2008(ER); 2/25/2009; 5/12/2009(ER); 6/17/2009; 8/28/2009; 5/6/2010(ER);
5/10/2010(ER);6/19/2010;