

APA-1
Revised 4/2018

**TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION**

Control No. 220 Department or Agency Conservation and Natural Resources

Rule No.: 220-3-.02

Rule Title: 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 action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? NO

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 _____

Ryan D. Corley
Secretary of Administrative Procedure

Date _____

6/19/18

Department of Conservation and Natural Resources
Marine Resources

NOTICE OF INTENDED ACTION

AGENCY NAME: Department of Conservation and Natural Resources

RULE NO. & TITLE: 220-3-.02 Oystering

INTENDED ACTION: Amendment.

SUBSTANCE OF PROPOSED ACTION: To require those issued an oyster aquaculture licenses and those working on a licensed aquaculture site to obtain Marine Resources Division/Alabama Department of Public Health approved training every 5 years; to require proof of this training shall be presented to the Marine Resources Division prior to the issuance of an oyster aquaculture license; to require All oysters taken from public bottoms to be placed in sacks or containers according to the standard Alabama measure of one quarter (1/4) Alabama barrel and to make it unlawful to land any oysters for commercial purposes which have not been stored or contained in this manner.

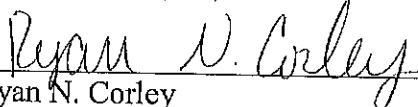
TIME, PLACE, MANNER OF PRESENTING VIEWS: Interested persons may present their views in writing to the Director of Marine Resources at any time during the period stated below, or orally if requested in writing 48 hours in advance to the Director of Marine Resources, and then by personally appearing at Room 474, Folsom Administrative Building, 64 North Union Street, Montgomery, Alabama, at 10:00 a.m., Friday, August 3, 2018.

If ADA accommodations are needed, please contact Daisy Perry at (334) 242-3165 or daisy.perry@dcnr.alabama.gov. Requests should be made as soon as possible but at least seven days prior to the date of a personal appearance to present views regarding the proposed rules.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Friday, August 3, 2018.

CONTACT PERSON AT AGENCY: Colonel Scott Bannon, Director, Marine Resources Division, P.O. Box 189, Dauphin Island, Alabama, 36528. (251) 861-2882.



Ryan N. Corley
Secretary of Administrative Procedure

Christopher M. Blankenship

220-3-.02 Oystering.

- (1) The taking of oysters from public reefs is regulated by both the Department of Conservation and Natural Resources, Marine Resources Division and the Alabama Department of Public Health.
- (2) Prior to being issued an oyster catcher's license, oyster aquaculture license or working on a licensed aquaculture site, each harvesterperson shall obtain Marine Resources Division/Alabama Department of Public Health approved training every five (5) years. The training shall include required harvest, handling, and transportation practices as determined by the Marine Resources Division and the Alabama Department of Public Health;
 - (a) A harvester shall obtain proof of completion of the required training.
 - (b) Proof of training obtained by the harvester within the past five (5) years shall be presented to the Marine Resources Division prior to the issuance of an oyster aquaculture license, oyster harvester or oyster dredge license.
- (3) 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 or container. Oysters shall be culled upon the reef from which they were taken.
- (4) 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.
- (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 Director of the Marine Resources Division 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 Code of Ala. 1975. 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 hisa 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 oysters on board a vessel or in the waters of the State of Alabama. 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. Person's possessing more than 100 oysters shall be deemed to possess those oysters for commercial purposes. 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 Alabama 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 Alabama Department of Public Health.

(10) All oysters harvested from public and private harvest areas must be placed in containers or sacks that can be cleaned and allow for drainage.

(11) All oysters taken from public bottoms shall be placed in sacks or containers according to the standard Alabama measure of one quarter (1/4) Alabama barrel and it shall be unlawful to land any oysters for commercial purposes which have not been sacked or stored or contained in this manner. The volume of a 1/4 Alabama barrel 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 standard Alabama measure one quarter (1/4) Alabama barrel 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.

(12) 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 with "HUMAN WASTE" indelibly written in 3 inch block lettering. No cats, dogs or other animals may be aboard any vessels taking, possessing or transporting oysters.

(13) It shall be unlawful for any person to take or attempt to take oysters, for commercial purposes, 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 the close of business on the day of harvest will be considered a violation.

(14) Oyster Management Stations shall be established by the Director of the Marine Resources Division. 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.

Author: Christopher M. Blankenship

Statutory Authority: Code of Ala. 1975, §§9-2-4, 9-2-7, 9-2-8, 9-2-12, 9-12-27, 9-12-33, 9-12-36, 9-12-41, 9-12-61, 9-12-67

Penalty: As provided by law.

History: September 30, 1982. **Amended:** Effective June 13, 1986; August 28, 1987(E); October 28, 1988; April 4, 1989; April 19, 1989; October 15, 1990(E); November 20, 1990(E). **Amended:** November 24, 2010; effective December 29, 2010. **Amended:** Filed June 15, 2012; effective July 20, 2012. **Amended:** Filed July 6, 2015; effective July 10, 2015. **Amended:** Filed June 14, 2016; effective July 29, 2016. **Amended:** Filed May 9, 2017; effective June 23, 2017. June 19, 2018.

ECONOMIC IMPACT
STATEMENT FOR APA RULE
(Section 41-22-23(f))

Control No. 220 Department or Agency Conservation

Rule No: 220-3-.02

Rule Title: Oystering

New Amend Repeal Adopt by Reference

This rule has no economic impact.

This rule has an economic impact, as explained below:

1. NEED/EXPECTED BENEFIT OF RULE:
2. COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:
3. EFFECT OF THIS RULE ON COMPETITION:
4. EFFECT OF THIS RULE ON COST-OF-LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:
5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:
6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:

7. THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:
8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON:
9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:
10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED: