

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control No.: 220

Department or Agency: Conservation and Natural Resources

Rule No.: 220-4-.18

Rule Title: Submerged Log Recovery – Submerged Lands

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? NO

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

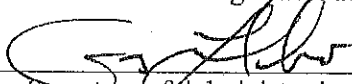
Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? YES

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 
Secretary of Administrative Procedure

Date 5/22/17

Department of Conservation and Natural Resources

NOTICE OF INTENDED ACTION

AGENCY NAME: Department of Conservation and Natural Resources
RULE NO. & TITLE: 220-4-.18 Submerged Log Recovery – Submerged Lands
INTENDED ACTION: To adopt new rule

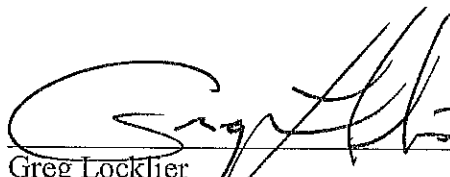
SUBSTANCE OF PROPOSED ACTION: To establish a process for retrieving and selling submerged logs from certain state-owned water bottoms.

TIME, PLACE, MANNER OF PRESENTING VIEWS: Interested persons may present their views in writing to the contact person listed below at any time following the publication of this notice through the close of business on July 13, 2017. Views and comments may also be presented in person by appearing at Room 474, Folsom Administrative Building, 64 North Union Street, Montgomery, Alabama, at 10:00 a.m. on Thursday, July 13, 2017. If ADA accommodations are needed, please contact Daisy Perry at (334) 242-3165 or daisy.perry@dcnr.alabama.gov. Copies of the proposed rule may be obtained at www.outdooralabama.com/proposed-dcnr-rules.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: July 13, 2017

CONTACT PERSON AT AGENCY:

Patricia J. Powell, Director
State Lands Division
4th Floor, 64 N. Union Street
Montgomery, AL 36130
(334) 242-3484


Greg Locklier
Secretary of Administrative Procedure

220-4-.18 Submerged Log Recovery – Submerged Lands.

(1) Definitions.

(a) Approved Area. The area approved for the recovery of submerged logs after being nominated pursuant to the requirements of this rule.

(b) Cant. A log or portion of a log which has been squared or partially squared and recovered in such condition.

(c) Commissioner. The Commissioner of the Department of Conservation and Natural Resources.

(d) Contractor. The individual or entity to which a contract was awarded for the recovery of submerged logs in an Approved Area.

(e) Cultural Resources. As defined in Section 41-9-291(3) of the Code of Alabama 1975 which is hereby adopted and incorporated by reference. This law can be accessed through the Secretary of State's Website: <http://sos.alabama.gov/>.

(f) Department. The Department of Conservation and Natural Resources.

(g) Nominator. The individual or entity nominating an area for the recovery of submerged logs.

(h) Recovery (Recovered). The removal of submerged logs or cants.

(i) Submerged log. For purposes of this regulation, a submerged log is a log or cant that is submerged or buried in the sediments of state-owned water bottoms under the jurisdiction of the Department. Logs or cants fully or partially exposed from the sediments of state-owned water bottoms are not submerged logs for purposes of this rule, and they may not be moved, recovered, or sold.

(2) Recovery from Approved Areas Only. Submerged logs may only be recovered from areas that have been properly nominated and which have been approved by the Department.

(3) Contract Required. No individual or entity may recover submerged logs without a valid contract with the Department. All contracts for the exclusive right to recover submerged logs in an Approved Area will be awarded through an invitation to bid process described in these rules.

(4) Nomination Process.

(a) A nomination of an area for the recovery of submerged logs must be

submitted on a form provided by the Department. The nomination form shall require the following information:

1. The name, mailing address, email address, and telephone number of the person or entity nominating an area for the removal of submerged logs.
2. The name of the nominated waterbody; the county or counties covering the nominated area; the township, range and sections which encompass the nominated area; and the length in miles of the nominated area. The nominated area must be a minimum of five (5) miles in length and not exceed a maximum of ten (10) miles in length.
3. The latitude and longitude, expressed in degrees, minutes and decimal seconds (xx° yy' zz.zz'') of the upstream and downstream ends of the nominated area.
4. A map clearly depicting the waterbody and the starting and ending points of the nominated area.
5. Such supplemental information as the Department may deem necessary for a thorough evaluation of the nomination.

(b) A nomination form shall be submitted to:

State Lands Division
Alabama Department of Conservation and Natural Resources
64 North Union Street, Room 464
Montgomery, Alabama 36130

(c) An incomplete nomination form may be returned to the Nominator with an explanation of its deficiencies. The nomination form may be resubmitted after deficiencies are corrected.

(d) The Lands Division of the Department will review the nomination. The Fisheries Section of the Wildlife and Freshwater Fisheries Division will also provide assistance by determining if there are any biologically sensitive sites in the nominated area.

(e) The Commissioner or his designee may approve, deny, or approve with conditions, the nominated area for the recovery of submerged logs. If the nomination is denied, the Nominator will be notified in writing of the denial with reasons supporting the denial.

(f) If the nominated area is approved or approved with conditions, the Nominator will be notified in writing of the approval and that a bid notice will be published concerning the recovery of submerged logs from the Approved Area.

(5) Public Bid Process.

(a) Upon approval of a nominated area, the State Lands Division will prepare and publish a public bid notice setting forth the terms for bidding on the exclusive right to recover submerged logs within the Approved Area.

(b) The bid notice will include the following:

1. A description of the Approved Area including:

(i) The name of the waterbody approved in the nomination process;

(ii) The county or counties encompassing the Approved Area;

(iii) The township, range and sections which encompass the Approved Area;

(iv) The length in miles of the Approved Area; and

(v) The latitude and longitude of the upstream and downstream end of the Approved Area.

2. The date, time, and location of the bid opening.

3. Method for receiving bids.

4. Length of the contract.

5. Amount of the required performance bond.

6. Applicable insurance requirements.

7. Amount of the annual administrative fee.

8. Amount of the minimum guaranteed advance royalty.

9. Production royalty variable. The production royalty bid variable shall be dollars per board foot using the Doyle Log Rule. The Doyle Log Rule and Table are hereby adopted and incorporated by reference as published in the U.S. Department of Agriculture Farmer's Bulletin No. 1210, "*Measuring and Marketing Farm Timber*", (1930), as revised, pages 18 and 19. The Doyle Log Rule and Table are included as Appendix A to this rule.

10. The minimum production royalty bid price.

11. Other information as deemed appropriate or necessary.

(c) A bid deposit of \$500.00 in the form of a cashier's or certified check must accompany each bid. The \$500.00 bid deposit shall be forfeited if the successful bidder does not enter into a contract with the Department for the recovery of submerged logs within 30 days of the award, unless the Department agrees to additional time to enter into a contract.

(d) A bid notice shall be advertised for at least two successive weeks prior to the date of the bid opening in a newspaper of general circulation in each county comprising all or part of the Approved Area. If no newspaper of general circulation exists in a county which encompasses all or part of an Approved Area, then the notice shall be published in a newspaper of general circulation in an adjoining county. Bid notices shall also be posted in the courthouse of each county encompassing the Approved Area and shall be published on the Department's website: www.outdooralabama.com/. The successful bidder shall reimburse the Department for the cost of publishing the bid notice in newspapers.

(e) Bids must be submitted in the manner specified in the bid notice.

(f) All bids will be publicly opened and read on the date and at the time and location specified in the bid notice.

(g) No bids will be accepted for any reason after the advertised deadline.

(h) The Department may reject any bid and may negotiate a higher sale price with the highest bidder. No sale may be made at a price less than the highest bid received.

(6) Contract, Notice to Proceed, and Operational Requirements.

(a) The successful bidder is required to enter into a contract with the Department for a term not to exceed 24 months for the recovery of submerged logs in the Approved Area.

(b) The Contractor shall be responsible for obtaining all required licenses, permits, or approvals from local, state, and/or federal governmental agencies or offices that relate to the Contractor's submerged log recovery operations. Such offices or agencies include, but may not be limited to, the U.S. Army Corps of Engineers and the Alabama Department of Environmental Management. The Contractor shall submit proof of such licenses, permits, or approvals prior to the issuance of the Notice to Proceed.

(c) If the Contractor fails to provide proof of permits and approvals within the time prescribed, the contract may be terminated and the bid deposit forfeited.

(d) The Contractor shall not begin the recovery of submerged logs until a Notice to Proceed has been received by Contractor. Upon the receipt of the Notice to Proceed, the Contractor shall provide at least 48 hours' notice prior to commencing any

submerged log recovery operations and shall thereafter provide regular activity notifications as may be required by the Department.

(e) Prior to the issuance of the Notice to Proceed, the Contractor shall deliver to the Department a bond, satisfactory to the Department, for the faithful performance of all the terms and conditions of the contract. The bond shall be in the amount of \$5,000.00 and shall be executed by a bonding company legally authorized to transact business under the laws of the State of Alabama, or shall be in the form of a certified check made payable to the State Lands Division or an irrevocable letter of credit with a bank approved by the State Lands Division. This performance bond must be for the entire term of the contract to be valid. The performance bond may be returned after all obligations under the contract are completed to the Department's satisfaction and upon written notice that the Contractor wishes to cease operations and close out the contract.

(f) Contractor shall maintain liability insurance as prescribed in the Contract.

(g) The Contractor shall avoid any disturbance to live plants, fisheries, mollusks, and fish and mollusk habitat while recovering submerged logs.

(h) The Contractor shall not conduct recovery operations within 30 feet of any man-made infrastructure.

(i) All Contractor operations shall be conducted so as not to impede or constitute a hazard to navigation or to recreational use of the waterbody.

(j) The Contractor shall comply with the Alabama Underwater Cultural Resources Act (§41-9-290 through 299.2, Ala. Code 1975). In the course of the Contractor's operations, if there is any disturbance or discovery of a Cultural Resource, the Contractor shall leave the object in place, stop all operations in the area, minimize the disturbance, and contact the State Lands Division and the Alabama Historical Commission immediately. The Contractor shall not conduct further operations in the area of the discovery of the Cultural Resource until authorized to do so by the State Lands Division, after consulting with the Historical Commission.

(k) The Contractor is and shall be responsible for any obligation with regard to any applicable Department of Revenue severance tax for wood products. This tax shall be considered a cost of doing business and shall not be deducted from the total production royalty calculation.

(7) Fees and Royalties.

(a) The Contractor is subject to reasonable administrative fees as specified in the invitation to bid and contract for each year of the term of the contract to mitigate the administrative costs associated with the oversight of Contractor's compliance with regulations and contract terms.

(b) The bid deposit of the successful bidder will become the annual administrative fee for the first year of the contract.

(c) The annual administrative fee for the second year of the term of the contract is due upon the one-year anniversary of the execution date of the contract.

(d) The minimum guaranteed advance royalty, as specified in the bid notice and contract, is due prior to the issuance of the Notice to Proceed. This advance royalty will be depleted against production royalties due as the recovery of submerged logs proceed.

(e) The Contractor shall pay the Department production royalties on any merchantable logs or cants recovered from any Approved Area, whether or not sold or used.

(f) Monthly production royalty payments shall be delivered to the Department by the tenth (10th) calendar day of each month following recovery of submerged logs. However, production royalty payments are not required to be paid until the aggregate amount of the production royalties due the Department exceed the total amount of the minimum guaranteed advance royalty paid to the Department.

(8) Tagging and Photographing Logs and Cants. A unique numerical tag made of plastic or metal shall be affixed to each recovered submerged log until the log or cant is unloaded at the facility or location where the log or cant will be processed. The tag will be affixed to the small end of the log so the tag is visible in a photograph that includes the small end of the log as well as the entire length of the log. The tag must be large enough to be visible in such a photograph. A digital photograph of each log will be transmitted to the Department prior to the submittal of monthly royalty payments. In each photo, a 12-inch ruler shall be affixed to the small end of the log for scale.

(9) Reports. The Contractor shall deliver a monthly report to the Department by the 10th calendar day of the month following recovery of the logs or cants on a form provided by the Department. This report will include the following for each log or cant recovered: log or cant tag numbers; dates of recovery; species; digital photo of each log or cant; dimensions; total board foot volume calculated by the Doyle Log Rule; and the royalty due for the log or cant. In the event there are no log or cant recoveries during the reporting period, the Contractor shall indicate such in the report. The Contractor shall certify that the information provided in each report is true, complete, and correct, and the Department is entitled to rely on the representations made in each report.

(10) Records and Inspections.

(a) The Contractor shall keep proper books of account of the quantity and dimensions of all recovered logs and cants. The Department may independently confirm the information set forth in the Contractor's reports. Such records shall be available for review by the Department, or an agent of the Department, upon giving at least 48 hours

notice to the Contractor. The Contractor shall retain records for three years following termination or expiration of the Contract.

(b) The Contractor authorizes representatives of the Department to access areas and facilities where recovered logs and cants are being recovered or stored at reasonable times to inspect logs and cants. The Contractor shall secure permission, as may be necessary, for an employee or agent of the Department to enter locations for inspections of recovered logs and cants, books, and operations of the Contractor.

Author: N. Gunter Guy, Jr.

Statutory Authority: §9-2-12, Code of Alabama 1975

History: Original rule filed:

Rule 220-4-.18, APPENDIX A

DOYLE LOG RULE, BOARD FEET

Diameter of log, small end, inside bark (in)	Length of Log in Feet												
	6	7	8	9	10	11	12	13	14	15	16	17	18
	Contents of log in board feet												
6	1	2	2	2	2	3	3	3	3	4	4	4	4
7	3	4	4	5	5	6	7	7	8	8	9	10	10
8	6	7	8	9	10	11	12	13	14	15	16	17	18
9	9	11	12	14	16	17	19	20	22	23	25	27	28
10	13	16	18	20	22	25	27	29	31	34	36	38	40
11	18	21	24	28	31	34	37	40	43	46	49	52	55
12	24	28	32	36	40	44	48	52	56	60	64	68	72
13	30	35	40	46	51	56	61	66	71	76	81	86	91
14	37	44	50	56	62	69	75	81	87	94	100	106	112
15	45	53	60	68	76	83	91	98	106	113	121	129	136
16	54	63	72	81	90	99	108	117	126	135	144	153	162
17	63	74	84	95	106	116	127	137	148	158	169	180	190
18	73	86	98	110	122	135	147	159	171	184	196	208	220
19	84	98	112	127	141	155	169	183	197	211	225	239	253
20	96	112	128	144	160	176	192	208	224	240	256	272	288
21	108	126	144	163	181	199	217	235	253	271	289	307	325
22	121	142	162	182	202	223	243	263	283	304	324	344	364
23	135	158	180	203	226	248	271	293	316	338	361	384	406
24	150	175	200	225	250	275	300	325	350	375	400	425	450
25	165	193	220	248	276	303	331	358	386	413	441	469	496
26	181	212	242	272	302	333	363	393	423	454	484	514	544
27	198	231	264	298	331	364	397	430	463	496	529	562	595
28	216	252	288	324	360	396	432	468	504	540	576	612	648
29	234	273	312	352	391	430	469	508	547	586	625	664	702
30	253	296	338	380	422	465	507	549	591	634	676	718	760
31	273	319	364	410	456	501	547	592	638	683	729	775	820
32	294	343	392	441	490	539	588	636	686	735	784	833	882
33	315	368	420	473	526	578	631	683	736	788	841	894	946
34	337	394	450	506	562	619	675	731	787	844	900	956	1012
35	360	420	480	541	601	661	721	781	841	901	961	1021	1081
36	384	448	512	576	640	704	768	832	896	960	1024	1088	1152
37	408	476	544	613	681	749	817	885	953	1021	1089	1157	1225
38	433	506	578	650	722	795	867	939	1011	1084	1156	1228	1300
39	459	536	612	689	766	842	919	995	1072	1148	1225	1302	1378
40	486	567	648	729	810	891	972	1053	1134	1215	1296	1377	1458

To find the number of board feet in a log according to the Doyle rule: Deduct 4 from the diameter (in inches) of the small end and square the remainder. This gives the contents of a 16-foot log in board feet. The number of board feet in logs of other lengths is in proportion to their lengths.

Formula = $(D-4)^2 \times (L/16)$

D = Diameter inside bark at the small end in inches

L = Log length in feet