

## Selected Laws and Regulations

### Section 9-12-21

#### **"Natural oyster reef" defined.**

A natural oyster reef is declared and defined as not less than one acre in continuous area of any bottoms of any bay, sound, bayou, creek, inlet or any other body of salt or brackish water on which oysters grow naturally, or have grown naturally, in quantity sufficient to warrant fishing for them with hand tongs as a means of a livelihood within a period of five years next preceding the time at which said matter may be presented for consideration and determination by the Director, Marine Resources Division of the Department of Conservation and Natural Resources. But in no case shall an oyster bed be declared or defined to be a natural oyster reef when such bed is located within the limits where the owners of land fronting on such waters where oysters may be grown have the right to create and have created, by artificial means such as planting oysters or oyster shells or by any other means, culture grounds for the growth of oysters and have by these means caused the bottoms on which such beds are located to become hardened so that oysters will grow thereon naturally even though such bed so created exceeds one acre in continuous area and even though after these beds have been artificially created oysters grow naturally thereon, or have grown naturally thereon, in quantity sufficient to warrant fishing for them with hand tongs as a means of livelihood within the period of five years next preceding the time at which said matter may be presented for consideration and determination by the Director, Marine Resources Division of the Department of Conservation and Natural Resources.

*(Acts 1915, No. 107, p. 145, §20; Code 1923, §2734; Acts 1933, Ex. Sess., No. 115, p. 111; Code 1940, T. 8, §118.)*

### Section 9-12-22

#### **Right of owners of land fronting public waters to plant and gather oysters.**

All the beds and bottoms of the rivers, bayous, lagoons, lakes, bays, sounds and inlets within the jurisdiction of the State of Alabama are the property of the State of Alabama to be held in trust for the people thereof, but the owners of land fronting on such waters where oysters may be grown shall have the right to plant and gather same in the waters in front of their land to the distance of 600 yards from the shore measured from the average low water mark, but where the distance from shore to shore is less than 1,200 yards, the owners of either shore may plant and gather to a line equidistant between the two shores, but no person shall plant in any natural channel so as to interfere with navigation. The respective owners shall plant within lines extended into the water from points where the boundaries intersect the shore, as nearly as practicable, with a mean width corresponding with their respective frontages on the shore, but should the lines thus extended cross each other or seriously interfere with obtaining such mean width, then a line equidistant from the shore lines of the respective owners shall be the boundary between such planting grounds. No riparian right shall vest in any person to any part of the natural and public reefs; provided, that the Department of Conservation and Natural Resources shall have authority to regulate the time, manner, means or place or places for planting oysters or oyster shells.

*(Code 1896, §3155; Code 1907, §1581; Acts 1915, No. 107, p. 145, §1; Code 1923, §2724; Acts 1936-37, Ex. Sess., No. 169, p. 192, §2; Code 1940, T. 8, §113.)*

### Section 9-12-27

#### **Standard measures for oysters and shrimp; possession, use for purchase or sale, etc., of nonstandard measures for oysters or shrimp; inspections.**

- (a) A standard measure for oysters is established which shall consist of a tub or other round vessel of the following dimensions: It shall measure 17 inches in diameter, inside at the bottom, and 21 1/2 inches in diameter, inside at the top, and 14 1/2 inches, inside, from the bottom to top perpendicularly. Two of these measures filled to the top shall make one barrel, and all oysters bought and sold in this state in the shell shall be measured in a measure of these dimensions or a measure holding a fraction or multiple thereof.
- (b) A standard measure for shrimp is established which shall consist of a container holding not less than 210 pounds of raw shrimp with heads or 125 pounds of raw shrimp without heads.
- (c) It shall be unlawful for any person to have in his possession any measure for oysters in the shell or shrimp which shall differ from the measure provided for in this section or demand or require a greater or less measure in buying or selling, and no vessel, container or measure shall be used in buying or selling oysters or shrimp until it has been measured and stamped by an inspector of the Division of Marine Resources. The said inspector shall visit from time

to time each place where oysters or shrimp are bought and sold for the purpose of determining whether the terms of the provisions of this section are complied with.  
(Code 1896, §2160; Code 1907, §1585; Code 1923, §2729; Code 1940, T. 8, §116; Acts 1953, No. 711, p. 966, §1.)

#### **Section 9-12-30**

##### **Patrolling of private oyster reefs.**

The Director, Marine Resources Division, Department of Conservation and Natural Resources is hereby authorized and it shall be his duty to patrol or cause to be patrolled from time to time as he may see fit all those areas in Alabama territorial waters upon which are located private oyster reefs to prevent the illegal taking or removal by unauthorized persons of oysters on said private reefs.  
(Acts 1959, No. 509, p. 1246, §1.)

#### **Section 9-12-32**

##### **Surveys and marking of private reefs; filing of plats and lists of agents and permittees; agents and permittees to carry permits.**

It shall be the duty of each owner or lessee of any private reef to have established an accurate survey by a registered surveyor of the bottoms, beds, or reefs under his or her control, and each corner shall be clearly marked and defined with the owner's or lessee's name clearly attached. There shall also be established intermediate markers between the corners, the distance between which shall not exceed 600 feet extending from each corner of the private bed, bottom, or reef to the adjacent corner, and also from the outside corner every 600 feet to the high water mark on the associated beach, bank, or marsh edge. The plat of this area, including GPS coordinates of area corners, and any lease agreements or proof of right of ownership shall be filed with the Division of Marine Resources together with the list of any persons using the bed, bottom, or reef as the owner's agent or permittee. Plats and lease agreements shall be provided to the division in such a manner as to remain current. The director of the division may require private oyster leases to be resurveyed every five years or at any time the director determines that the private leased area has substantially changed. The agent or permittee shall have in his or her possession at all times while on the bed, bottom, or reef a written, dated permit from the owner, which permit shall extend for a period not exceeding 30 days from the date of signature of the owner or lessor. Failure of the permittee or agent to have the permit in his or her possession shall constitute a misdemeanor and, upon conviction thereof, he or she shall be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500) and may be imprisoned for a period not exceeding six months.

(Acts 1959, No. 509, p. 1246, §2; Act 2010-699, p. 1692, §1.)

#### **Section 9-12-37**

##### **Use of mechanical rake dredges, etc., dredge license.**

Owners of private oyster reefs, beds, or bottoms and the lessees or designated permittees of such reefs, beds, or bottoms may use any mechanical means at their disposal and at any time between the hours of sunrise and sunset, including the use of mechanical rake dredges, to cultivate and harvest or remove live oysters of any size upon or from such grounds. Such a person shall first obtain a dredge license as provided in Section 9-12-87. The license may be revoked by the Commissioner of Conservation and Natural Resources if any violation of any statute or rule relating to the use of the mechanical devices occurs, and the commissioner may thereafter refuse to issue a new license to the person.

(Acts 1959, No. 632, p. 1538, §1; Act 2010-699, p. 1692, §1.)

#### **Section 9-12-67**

##### **Sacking and tagging oysters; penalties.**

(a) All oysters taken from the public or private oyster bottoms of the State of Alabama for commercial purposes shall be sacked in burlap, or similar material, bags containing not more than one-quarter Alabama barrel of oysters. Oysters shall be sacked and each sack tagged and identified in accordance with the requirements of the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, as adopted by the state Department of Public Health, prior to leaving the harvest location or oyster management station. The tag shall remain attached to each sack until the sack is emptied or retagged with a certified dealer tag. Sacks shall not be emptied prior to reaching the destination where the oysters shall be opened, repacked, or processed. If less than the entire sack is to be opened at one time, the tag shall remain attached to the sack until the last oyster is removed. Upon emptying each

sack or retagging with a certified dealer's tag, the harvester tag shall immediately be removed from the sack and filed or disposed of as required by rule of the state Department of Public Health. Containers of oysters imported into this state shall be tagged and identified as required by rule of the state Department of Public Health. It shall be unlawful to possess empty sacks with oyster tags attached thereto.

(b) It shall be unlawful for any person, firm, or corporation to sell, purchase, or possess oysters in violation of this section and upon conviction, persons, firms, or corporations shall be guilty of a Class C misdemeanor.

(c) Tags shall be purchased at a cost of twenty-five cents (\$.25) per tag, plus cost of printing rounded to the nearest five cents, from the Department of Conservation and Natural Resources, Division of Marine Resources, or its duly authorized agents. Receipts shall be deposited to the credit of the Marine Resources Fund and shall be used solely for cultch planting and other oyster management purposes.

*(Acts 1987, No. 87-560, §§1-3; Act 2010-699, p. 1692, §1.)*

#### **Section 9-12-82**

#### **License required for taking of oysters for commercial purposes; penalty; disposition of proceeds from sale of licenses.**

(a) Before any person engages in the taking or catching of oysters from the waters or bottoms of the State of Alabama, he shall first purchase an annual "oyster catcher" license. Said license shall expire annually on September 30 and shall be \$25.00. However, persons may take for personal, noncommercial purposes, from waters opened to commercial oystering, up to, but not more than 100 oysters per day without purchasing an "oyster catcher" license.

(b) A violation of the provisions of this section shall be a Class C misdemeanor.

(c) The proceeds from the sale of said license shall be deposited to the credit of the Marine Resources Fund and said license shall expire on September 30 of each year.

*(Acts 1953, No. 796, p. 1089, §1; Acts 1981, No. 81-850, p. 1528, §1; Acts 1984, 2nd Ex. Sess., No. 85-48, p. 71, §1; Acts 1988, No. 88-577, p. 897, §2.)*

#### **Section 9-12-87**

#### **License for dredge.**

Every dredge authorized to be used in catching or removing oysters from the public reefs, beds or bottoms of this state shall be licensed by the Department of Conservation and Natural Resources. Before such license is issued, the applicant shall pay to the department of conservation and natural resources or its duly authorized agent a fee of \$25.00 for each and every dredge used in taking or catching oysters. The license so issued shall be dated and shall be effective only for the season issued and then only in a manner and place and at a time under regulations and authority of the Department of Conservation and Natural Resources.

*(Acts 1936-37, Ex. Sess., No. 169, p. 192, §21; Code 1940, T. 8, §140.)*

#### **Section 9-12-115.1**

#### **Landing and reporting requirements for certain saltwater finfish and other seafood products.**

All saltwater finfish commercially harvested in the State of Alabama, except those lawfully taken by purse seine, shall be landed in this state and reported through a properly licensed Alabama seafood dealer. Other seafood products commercially harvested in this state shall be landed in this state, or in lieu thereof any subject person shall comply with any reporting procedures established by regulation of the Department of Conservation and Natural Resources. The Commissioner of the Department of Conservation and Natural Resources is hereby authorized to promulgate regulations which provide for and require reporting procedures for both resident and nonresident Alabama commercial fishermen who sell or land seafood products other than finfish outside the State of Alabama. Upon determination by the Commissioner of the Department of Conservation and Natural Resources that any subject person has failed to report as required, the commissioner may revoke any relevant commercial seafood license or permit he or she deems appropriate. Any person who violates this section or any regulation promulgated pursuant to this section, shall be guilty of a Class B misdemeanor, and upon conviction, shall be punished as provided in Sections 13A-5-7 and 13A-5-12. Any person so convicted shall be fined not less than one thousand dollars (\$1,000). Any person violating this section shall be strictly liable and it shall not be necessary to prove any criminal intent for conviction.

*(Acts 1995, No. 95-287, p. 535, §5.)*

**Section 9-12-126**

**Inspection of oyster beds; closure order; relay of oysters from closed areas; promulgation of rules; penalty; enforcement.**

(a) The State Board of Health is authorized to inspect the waters of the state where oysters are grown and harvested. When the State Health Officer shall determine that the waters surrounding the oyster beds are unsafe for the harvesting of said oysters, the State Health Officer shall issue an order to close the waters around said bed, which order shall be specific as to location of the area to be closed. Orders issued pursuant to this section shall not be considered rules under the Alabama Administrative Procedure Act (Section 41-22-1 et seq.). After the issuance of such a closure order, no person shall harvest oysters in the said waters during the closure period. The State Health Officer is authorized to permit the Department of Conservation and Natural Resources to relay oysters from closed areas.

(b) The State Board of Health is authorized to adopt and promulgate reasonable rules for the enforcement of this section, which rules shall have the force and effect of law.

(c) Any person who violates any provision of this section or any rule promulgated hereunder or the order of the State Health Officer by harvesting oysters from a closed bed shall be guilty of a Class B misdemeanor.

(d) The Alabama Department of Conservation and Natural Resources shall cooperate with the State Health Officer in the enforcement of closure orders.

*(Acts 1989, No. 89-875, p. 1752, §§1-4.)*

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STATE OF ALABAMA )  
MONTGOMERY COUNTY )

REGULATION 2014-SL-2  
(State Lands Division)

MAR 15 2014  
APRIL

LEGISLATIVE REF SERVICE

By authority vested in me as Commissioner of Conservation and Natural Resources of the State of Alabama as provided for by the Code of Alabama 1975, § 9-2-7, 9-2-8, and 9-2-12, I do hereby establish, proclaim and promulgate the following regulation which has the force and effect of law:

Section 1. Rule 220-4-17, entitled "Shellfish Aquaculture Easements", is hereby adopted, to read as follows:

**"220-4-17 Shellfish Aquaculture Easements**

(a) For the purposes of this rule, "shellfish aquaculture" shall mean the off-bottom cultivation and harvesting of shellfish for commercial or research-oriented purposes. "Shellfish" for purposes of this rule shall mean all native to Alabama species of oysters, clams, or mussels and scallops.

(b) The purpose of this rule is to provide for the granting of riparian and non-riparian easements for shellfish aquaculture. For the purpose of this rule, "riparian easement" or "riparian shellfish aquaculture easement" shall mean an easement for shellfish aquaculture conducted by individuals with sufficient upland interest in riparian uplands located within an associated riparian use area as defined in Section 9-12-22, Code of Alabama 1975. "Non-riparian easement" or "non-riparian shellfish aquaculture easement" shall mean an easement for the purpose of conducting shellfish aquaculture by individuals not located within an associated riparian use area as defined in Section 9-12-22, Code of Alabama 1975.

(c) The State of Alabama, Department of Conservation and Natural Resources ("DCNR")'s biological, marine safety and navigation assessments and any other assessments or reports by other agencies with related statutory, management, or regulatory authority may be considered in evaluating specific requests to use state-owned submerged lands. Any such reports sent to the State Lands Division in a timely manner may be considered.

(d) Shellfish aquaculture activities shall not infringe upon any riparian rights existing under law.

(e) Shellfish aquaculture activities shall not unreasonably interfere with navigation. Any area made the subject of a riparian shellfish aquaculture easement shall not be closer than 100 feet from a marked navigation channel.

(f) All shellfish aquaculture easements on state-owned submerged lands shall contain such terms, conditions and restrictions as deemed necessary by DCNR to protect and manage such lands.

(g) Shellfish aquaculture activities on state-owned submerged lands shall be designed to minimize or eliminate adverse impacts on fish and wildlife habitat.

(h) Easements under this rule shall prohibit the cultivation of non-indigenous, or hybrids of non-indigenous, plants and animals.

(i) Shellfish aquaculture easements shall comply with the following:

(1) A shellfish aquaculture easement is only to be used to conduct shellfish aquaculture activities on state-owned submerged lands and the overlying water column, or for such activities associated with an on-shore shellfish aquaculture facility. Shellfish aquaculture docks shall be restricted to the immediate use for allowable shellfish aquaculture activities. Docks used for purposes not immediately associated with shellfish aquaculture activities shall not be allowed except for private recreational use by upland riparian property owners. Placement of such aquaculture related structures shall be in accordance with the provisions of Rule 220-4-.09 but will be exempt from fees associated with 220-4-.09.

(2) Shellfish aquaculture easements shall contain provisions to ensure that the easement area is marked and that markers are maintained for the term of the easement. Such marking shall be adequate to inform the public of the activity and identify potential navigation and safety hazards.

(3) The area associated with shellfish aquaculture easements shall comply with the following:

(i) For riparian shellfish aquaculture easements a setback of 10 feet from the riparian lines of adjoining riparian upland property owners' riparian use areas shall be required unless a letter of concurrence from the adjoining upland riparian property owner waives the setback requirement or the State Lands Division determines that a reduced or increased setback is required to avoid impacts to existing natural resources, reduce potential navigation hazards, or avoid potential infringement on an adjoining upland riparian property owner's riparian use area as determined in accordance with Section 9-12-22 Code of Alabama 1975;

(ii) A non-riparian shellfish aquaculture easement shall not be approved when the easement location is determined by DCNR to potentially infringe upon riparian rights or riparian use area of an adjoining riparian upland property owner as defined in Section 9-12-22, Code of Alabama 1975, unless the applicant obtains a letter of concurrence from the adjoining riparian upland property owner;

(iii) For both riparian shellfish aquaculture easements and non-riparian shellfish aquaculture easements, setbacks from other activities, channels or structures may also be required, as determined necessary, to ensure safety, facilitate enforcement capabilities and ensure resource management; and

(iv) For non-riparian shellfish aquaculture easements, an easement area larger than five acres may not be approved; provided however, that exceptions to the five acre maximum may be made at the discretion of the DCNR Commissioner based on review of mitigating or extenuating circumstances and documentation supporting the same.

(j) Shellfish aquaculture easement application and review process.

(1) Applications for shellfish aquaculture easements shall include the following:

(i) Name, address and phone number of the applicant;

(ii) Description of the shellfish aquaculture activities to be conducted, including gear type, expected density of shellfish to be cultivated and whether such activities are to be research oriented or commercial;

(iii) A statement describing the applicant's capabilities to conduct the proposed activities;

(iv) Location of the proposed activity including: county; section, township and range; water body; and a vicinity map;

(v) In the case of riparian easements, satisfactory evidence of sufficient upland interest;

(vi) Names and addresses, as shown on the latest county tax assessment roll, of each owner of property adjoining the parcel sought, prepared from current records of the county property appraiser;

(vii) A statement describing the potential impacts of the proposed use on the ecology of the area, including fish and wildlife habitat; and

(viii) A statement explaining why the easement is in the public interest, or at a minimum, not contrary to the public interest.

(2) In addition, applications for easements that include docks or other aquaculture-related structures connected to upland which require use of the water column shall include the following, as applicable:

(i) A detailed statement describing the proposed activities, including

the project design and description of all operations.

(ii) A detailed and dimensioned site plan drawing showing:

- a. The approximate mean or ordinary high water line;
- b. The location of wetland, shoreline and aquatic vegetation and other submerged resources;
- c. The location of the proposed structures and any existing structures;
- d. The location of intake and discharge pipelines, pumps, culture units, and tanks;
- e. The applicant's upland parcel property lines and zoning restrictions; and
- f. The location of the nearest natural or artificial navigation channel.

(3) Two prints of a survey of the easement area, including GPS coordinates of area corners, which shall constitute the field survey, and the accompanying legal description and acreage, shall be submitted subsequent to final approval of the application but prior to issuance of the easement of the parcel sought; prepared, signed, and sealed by a person properly licensed by the State of Alabama as a professional land surveyor, or an agent of the federal government authorized to do such surveys under federal law. Preliminary site approval can be based upon marking off the general configuration of the parcel sought, including the acreage of the parcel, latitude and longitude coordinates for the corners of the parcel identified using a Global Position System on a topographic map or a navigation chart.

(4) Original applications and renewals shall be reviewed by DCNR to determine the following:

- (i) That the proposed shellfish aquaculture activity is water dependent;
- (ii) That the proposed project and operation is directly related to shellfish aquaculture;
- (iii) Whether, in the case of proposed non-riparian easements or riparian easements associated with other state-owned riparian rights,



a competitive market exists for the easement such that it is required to be competitively bid pursuant to the provisions of Sections 9-15-70, et seq., of the Code of Alabama 1975;

(iv) The impact of the proposed shellfish aquaculture easement on natural resources, as determined by DCNR;

(v) Whether the proposed aquaculture activity adversely affects a public shellfish reef;

(vi) That the size of area requested for easement is appropriate to the use;

(vii) The suitability of the site for the granting of an easement;

(viii) The effect on public health, safety, welfare, or property of others; that the proposed construction or operations do not constitute a hazard to navigation, as determined by the State of Alabama, Department of Conservation and Natural Resources, Marine Police Division, or their successor agency, or interfere with a riparian property owner's access to navigable water; and

(ix) The need for special easement conditions.

(k) Shellfish aquaculture easements.

(1) Each shellfish aquaculture easement document shall at a minimum contain the following:

(i) The term of the easement, which shall not exceed five years with the right to renew for an additional five years upon mutual agreement, or upon such renewal provisions as provided for in a competitively bid easement for non-riparian easements and riparian easements associated with state-owned riparian rights, if applicable;

(ii) The amount of fee per acre, or fraction thereof, for the easement, which shall take the form of a fixed annual fee to be paid throughout the term of the easement and any renewal thereof, subject to annual adjustment based on the Consumer Price Index as otherwise provided herein;

(iii) A requirement that the easement holder shall comply with any special easement conditions and applicable best management practices, if any, for the specific shellfish aquacultural activity;

(iv) A provision regarding the removal or other treatment within 120

days of all improvements and disposition of any aquaculture products upon the termination or cancellation of the easement, subject to the approval of DCNR;

(v) A statement that the easement may not be assigned sublet or transferred in any manner, in whole or in part, without the prior written approval of the DCNR Commissioner. Failure of the easement holder to obtain prior written approval shall be grounds for revocation by DCNR;

(vi) A provision stating that failure of the easement holder to comply with the terms and conditions of the easement shall be grounds for revocation of the easement; and

(vii) A description of approved culture and harvesting techniques that can be used on the easement area.

(2) The easement area shall be defined by corner and intermediate markers as approved by the State Lands Division. Each corner shall be clearly marked and defined with the easement holder's name and easement number clearly attached. There shall also be established intermediate markers between the corners, the distance between which shall not exceed 600 feet extending from each corner of the easement area to the adjacent corner, and also, if applicable, from the outside corner every 600 feet to the high water mark on the associated beach, bank, or marsh edge.

(3) The obtaining of all required permits and approvals from Federal, state, and local governmental agencies, shall be a prerequisite for the issuance by DCNR of a written Notice to Proceed under the easement. No activities pursuant to any easement shall commence prior to issuance of the Notice to Proceed.

(4) The easement parcel shall not significantly restrict public access for boating, swimming, and fishing.

(l) Consideration for Shellfish Aquaculture Easements.

(1) Annual consideration for the granting of riparian shellfish aquaculture easements shall be as follows: The annual fees shall be the dollar amount of the fixed rate consideration as determined by DCNR, but not less than \$250 per acre or fraction thereof. The annual fee shall be revised March 1 of each year and increased, if required, on the basis of fluctuations of the Consumer Price Index for All Urban Consumers (CPI-U), South Urban, as published by U.S. Department of Labor, Bureau of Labor Statistics. For riparian shellfish aquaculture easements, following execution of an easement, the prorated amount of the first installment of

annual consideration shall be due and payable at such time as the easement holder submits a written request to the State Lands Division for issuance of the Notice to Proceed. The prorated amount of the first installment of annual consideration shall be calculated from the effective date of the easement through the last day of the February following the request for the Notice to Proceed. Annual consideration for each subsequent year shall thereafter be due each March 1st for the remainder of the easement term.

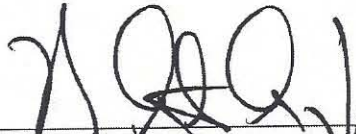

(2) Annual consideration for the granting of non-riparian shellfish aquaculture easements or riparian easements associated with other state-owned riparian rights, shall be as follows: The annual fees shall be the dollar amount of the fixed rate consideration as determined by DCNR, subject to the applicable provisions of Sections 9-15-70, et seq., of the Code of Alabama 1975, but not less than \$250 per acre or fraction thereof. Proposed non-riparian shellfish aquaculture easements or riparian easements associated with other state-owned riparian rights, that are over an area where a competitive market exists for the granting of such easements, as determined by DCNR, shall be competitively bid pursuant to the provisions of Sections 9-15-70, et seq., of the Code of Alabama 1975, which process shall determine the annual consideration, but not less than \$250 per acre, or fraction thereof. The annual fee shall be revised March 1 of each year and increased, if required, on the basis of fluctuations of the Consumer Price Index for All Urban Consumers (CPI-U), South Urban, as published by U.S. Department of Labor, Bureau of Labor Statistics. Payment shall be issued to "State of Alabama, Department of Conservation and Natural Resources, State Lands Division". For non-riparian shellfish aquaculture easements and riparian easements associated with other state-owned riparian rights, the prorated amount of the first installment of annual consideration shall be due and payable at execution of an easement by the easement holder. The prorated amount of the first installment of annual consideration shall be calculated from the effective date of the easement through the last day of February. Annual consideration for each subsequent year shall thereafter be due each March 1st for the remainder of the easement term.

(3) Public agencies and institutions engaging in shellfish aquaculture activities which are determined by the DCNR Commissioner to be primarily for a public purpose may be exempted from the payment of the otherwise applicable annual consideration amounts."

Section 2. The penalty for the violation of any of the provisions of this regulation shall be as provided by law.

Section 3. This regulation shall become effective on the 35<sup>th</sup> day after filing with the Legislative Reference Service.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the seal of my office to be affixed in the City of Montgomery on this the 14<sup>th</sup> day of April, 2014.



N. Gunter Guy, Jr., Commissioner  
Department of Conservation  
and Natural Resources

STATE OF ALABAMA )  
MONTGOMERY COUNTY )

REGULATION 2003-SL-1  
(State Lands Division)

By authority vested in me as Commissioner of Conservation and Natural Resources of the State of Alabama as provided for by §9-2-12, Code of Alabama 1975, I do hereby establish, proclaim and promulgate the following regulation, which has the force and effect of law:

Section 1. New Rule 220-4-.09, entitled "Placement and Configuration of Piers and Other Improvements on State Submerged Lands", is hereby adopted, repealing previously adopted Rule 220-4-.09, as follows:

**"220-4-.09 Placement and Configuration of Piers and Other Improvements on State Submerged Lands"**

**(1) Purpose.**

(A) To aid in fulfilling the trust and fiduciary responsibilities of the Commissioner of the Alabama Department of Conservation and Natural Resources for the administration, management and disposition of state owned submerged lands;

(B) To insure maximum benefit and use of state owned submerged lands for all the citizens of Alabama;

(C) To manage, protect, and enhance state owned submerged lands so that the public may continue to enjoy traditional uses including, but not limited to, navigation, fishing and swimming;

(D) To manage and provide maximum protection for all state owned submerged lands, especially those important to public recreation, and fish and wildlife propagation and management; and,

(E) To insure that all public and private activities on state owned submerged lands which generate revenues or exclude traditional public uses provide just compensation for such privileges.

**(2) Intent of Rules and Severability.**

(A) These rules are to implement the administrative and management responsibilities of the department regarding state owned submerged lands. Responsibility for environmental permitting of activities and water quality protection on state owned submerged and other lands is vested with the Alabama Department of Environmental Management. These rules are considered cumulative.

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(B) These rules shall not affect previous actions of the Commissioner concerning private docks or the issuance of any easement, lease or any disclaimer concerning state owned submerged lands. Fee arrangements in existing leases and easements shall not be subject to the fees of this rule until expiration of the current term unless otherwise specified in the lease or easement.

(C) Any expansion of an existing activity shall be subject to the provisions of this rule.

(D) It is declared to be the intent of the Commissioner that if any section, subsection, sentence, clause, phrase, or provision of this rule is held invalid or unconstitutional, such invalidation or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining provisions of this rule.

### **(3) Definitions.**

When used in these rules, the following definitions shall apply unless the context clearly indicates otherwise:

(A) "Artificial erosion" means the slow and imperceptible loss or washing away of sand, sediment, or other material from property caused by man-made projects and operations.

(B) "Avulsion" means the sudden or perceptible loss of or addition to land by the action of water or the sudden or perceptible change in the bed of a lake or the course of a stream.

(C) "Consent of use" means a nonpossessory interest in state owned submerged lands created by an approval which allows the applicant the right to erect specific structures or conduct specific activities on said lands.

(D) "Division" means State Lands Division.

(E) "Dock" means a fixed or floating structure, including moorings, used for the purpose of berthing buoyant vessels.

(F) "Easement" means a non-possessory interest in state owned submerged lands created by a grant or agreement which confers upon the applicant the limited right, liberty, and privilege to use said lands for a specific purpose and for a specific time.

(G) "Marginal Docks" means a fixed or floating structure placed immediately contiguous and parallel to an established seawall, bulkhead or revetment.

(H) "Marina" means a small craft harbor complex used primarily for recreational boat mooring or storage.

(I) "Multi-slip docking facility" means any marina or dock designed to moor 10 or more boats, as determined by the Alabama Department of Conservation and Natural Resources.

(J) "Ownership oriented facility" means docking facilities where the use of the docking facility requires some real property interest in one or more residential units on the adjacent upland parcel.

(K) "Preempted area" means the area of state owned submerged lands from which the traditional public uses have been or would be excluded to any extent by an activity. The area may include, but is not limited to, the state owned submerged lands occupied by the docks and other structures, the area between the docks and out to any mooring pilings, and the area between the docks and the shoreline.

(L) "Riparian rights" means those rights incident to lands bordering upon navigable waters, as recognized by the courts and common law.

(M) "Satisfactory evidence of sufficient upland interest" shall be demonstrated by documentation, such as a warranty deed; a certificate of title issued by a clerk of the court; a lease; an easement; or condominium, homeowners or similar association documents that clearly demonstrate that the holder has control and interest in the riparian uplands adjacent to the project area and the riparian rights necessary to conduct the proposed activity. Other forms of documentation shall be accepted if they clearly demonstrate that the holder has control and interest in the riparian uplands adjacent to the project area and the riparian rights necessary to conduct the proposed activity.

(N) "State owned submerged lands" means those lands including but not limited to, tidal lands, sand bars, shallow banks, and lands waterward of the mean low water line beneath navigable fresh water or the mean high tide line beneath tidally-influenced waters, to which the State of Alabama acquired title on December 14, 1819, by virtue of statehood, or thereafter and which have not been heretofore conveyed or alienated.

(O) "Water dependent activity" means an activity which can only be conducted on, in, over, or adjacent to water areas because the activity requires direct access to the water body or state owned submerged lands for transportation, recreation, energy production or transmission, or source of water, and where the use of the water or state owned submerged lands is an integral part of the activity.

#### **(4) Management Policies, Standards and Criteria.**

The following management policies, standards, and criteria shall be used in determining whether to approve, approve with conditions or modifications, or deny all requests for activities on state owned submerged lands.

(A) General Proprietary.

(1) For approval, all activities on state owned submerged lands must be not contrary to the public interest, except for sales which must be for a public purpose and in the public interest.

(2) All leases, easements, or other forms of approval for state owned submerged land activities shall contain such terms, conditions, or restrictions as deemed necessary to protect and manage state owned submerged lands.

(3) When satisfactory evidence of sufficient upland interest is not fee simple title, the term of the state owned submerged lands authorization will in no case exceed the remaining term of the sufficient upland interest unless the fee simple title holder agrees to become a co-holder of the state owned submerged lands authorization.

(4) Compensation shall be required to be paid to the State Lands Division for leases and easements which generate revenues, monies or profits for the user or that limit or preempt general public use. State or other governmental agencies may be excepted from this requirement at the discretion of the Commissioner.

(5) Activities on state owned submerged lands shall be limited to water dependent activities only. Public projects which are primarily intended to provide access to and use of the waterfront may be permitted to contain minor uses which are not water dependent if:

a. Located in areas along seawalls or other nonnatural shorelines;

b. The nonwater dependent uses are incidental to the basic purpose of the project, and constitute only minor nearshore encroachments on state owned submerged lands.

(6) Boathouses with living quarters, or other such residential structures shall be prohibited on state owned submerged lands.

(B) Resource Management.

(1) All state owned submerged lands shall be subject to navigation priority and shall be managed primarily for the maintenance of essentially natural conditions, propagation of fish and wildlife, and traditional recreational uses such as fishing, boating, and swimming. Compatible secondary purposes and uses which will not detract from or interfere with the primary purpose may be allowed.

(2) Activities which would result in significant adverse impacts to state owned submerged lands and associated resources shall not be approved unless there is no reasonable alternative and adequate mitigation is proposed and accomplished.



- (3) The Alabama Department of Conservation and Natural Resources biological, marine safety and navigation assessments and any other assessments or reports by other agencies with related statutory, management, or regulatory authority may be considered in evaluating specific requests to use state owned submerged lands. Any such reports sent to the Division in a timely manner shall be considered.
- (4) Activities shall be designed to minimize or eliminate any cutting, removal, or destruction of wetland vegetation on state owned submerged lands.
- (5) Reclamation activities on state owned submerged lands shall be approved only if avulsion or artificial erosion is affirmatively demonstrated. Other activities involving the placement of fill material below the ordinary low water line of non-tidal streams or the mean high tide line of tidal water shall not be approved.
- (6) To the maximum extent possible, shoreline stabilization should be accomplished by the establishment of appropriate native wetland vegetation. Rip-rap materials, pervious interlocking brick systems, filter mats, and other similar stabilization methods should be utilized in lieu of vertical seawalls wherever feasible.
- (7) Severance of materials from state owned submerged lands shall be approved only if the proposed dredging is the minimum amount necessary to accomplish the stated purpose and is designed to minimize the need for maintenance dredging.
- (8) Severance of materials for the primary purpose of providing upland fill shall not be approved unless the activity is determined by the Commissioner to be in the public interest.
- (9) Activities on state owned submerged lands shall be designed to minimize or eliminate adverse impacts on fish and wildlife habitat. Special attention and consideration shall be given to endangered and threatened species habitat.
- (10) To the maximum extent feasible, all beach compatible dredge materials taken from the tidal coastal system shall be placed on beaches or within the nearshore sand system.
- (11) A setback 10 feet from the riparian lines of adjacent property owners shall be required.
- (12) Setbacks from other activities, channels or structures shall also be required to ensure safety, facilitate enforcement abilities or ensure resource management.
- (13) Any area made the subject of a riparian easement shall not be closer than 100 feet from a marked navigation channel.

(14) The activity shall not be contrary to the public interest or, if within the boundary of a National Estuarine Research Reserve, that the activity must be consistent with Reserve guidelines established by the Commissioner.

(C) Riparian Rights.

(1) None of the provisions of this rule shall be implemented in a manner that would unreasonably infringe upon the traditional, common law riparian rights of upland property owners adjacent to state owned submerged lands.

(2) Satisfactory evidence of sufficient upland interest is required for activities on state owned submerged lands, riparian to uplands, unless otherwise specified in this chapter. Satisfactory evidence of sufficient upland interest is not required for activities on state owned submerged lands that are not riparian to uplands, or when a governmental entity conducts restoration and enhancement activities, provided that such activities do not unreasonably infringe on riparian rights.

(3) All structures and other activities must be designed and conducted in a manner that will not unreasonably restrict or infringe upon the riparian rights of adjacent upland riparian owners.

(4) Except as provided herein, all structures, including mooring pilings, breakwaters, jetties and groins, and activities must be set back a minimum of 10 feet inside the applicant's riparian rights lines. Exceptions to the setbacks are: private residential single-family docks or piers where such structures are shared by two adjacent single-family parcels; utility lines; bulkheads, seawalls, riprap or similar shoreline protection structures located along the shoreline; structures and activities previously authorized by the Alabama Department of Conservation and Natural Resources; structures and activities built or occurring prior to any requirement for Alabama Department of Conservation and Natural Resources authorization; when a letter of concurrence is obtained from the affected adjacent upland riparian owner; or when the Alabama Department of Conservation and Natural Resources determines that locating any portion of the structure or activity within the setback area is necessary to avoid or minimize adverse impacts to natural resources.

(D) Standards and Criteria for Docking Facilities.

(1) All Multi-slip Docking facilities and Ownership oriented facilities with 10 or more wet-slips shall conform to the following specific guidelines, design standards and criteria:

(a) The area of state owned submerged lands made subject to a riparian easement for the docking facility shall not exceed the square footage

amounting to 200 times the riparian waterfront footage along the affected waterbody of the applicant.

(b) Ownership oriented facilities which preempt an area less than or equal to ten square feet for every foot of riparian shoreline on the affected waterbody shall be exempt from the provisions of this regulation.

(c) Docks, mooring pilings or other such structures shall extend no more than 25 percent of the width of the waterbody at that particular location.

(d) Docks, mooring pilings or other such structures shall not extend within 100 feet of a federal navigation project channel.

(e) Within the standards set forth above, the design of piers and other improvements and quantity of wet slips may be further restricted by the Alabama Department of Conservation and Natural Resources in recognition of obstructions to navigation, marine safety considerations, riparian setback constraints, local land use regulations, and natural resource considerations such as potential impacts to endangered species and shellfish resources.

#### (E) Procedures - Forms of Consent.

(1) Consent of use is granted on the following activities:

a. A single residential dock which preempts no more than 1,000 square feet of state owned submerged land area for each 100 linear feet of shoreline in the applicant's ownership. Proportional increases in the 1,000 square foot threshold can be added for fractional shoreline increments over 100 linear feet.

b. Marginal docks and mooring pilings along an existing seawall, bulkhead or revetment.

c. Replacement of bulkheads or seawalls at or within two feet waterward of the mean high water line for tidally-influenced waters or at the mean low water line for non-tidal streams. New construction of bulkheads or seawalls requires the location of the structure at or landward of the mean high tide line for tidal waters and at or landward of the mean low water line for non-tidal streams or water bodies.

d. Placement of riprap at or within ten feet waterward of the mean high tide line in tidally-influenced waters.

(2) Riparian Easement – is required for:

a. Docks or other such activities which are larger than those which are granted a consent of use under these rules.

b. All revenue generating/income related activities.

## **(5) Payments and Fees.**

Fees for Riparian Easements relating to piers, docking facilities and other similar improvements on State-owned submerged lands shall be as follows:

### **(A) Fee Formula**

1. The annual fee for extended term riparian easements shall be either, six percent (6%) of the gross rental value as determined by the State Lands Division appraisal of all wet slips located on state-owned submerged lands encompassed by the easement, the base fee, or the minimum annual fee, whichever is greater.

2. For new leases, the first annual lease fee shall be the base fee or the minimum fee whichever is greater.

3. The easement grantee shall provide upon request by the Division any and all information in a certified form needed to calculate the easement fee specified above, including the total number, length and configuration of wet slips.

### **(B) Base Fees, Minimum Annual Fees and Other Payments**

1. The base fee shall be computed at a rate of 12.5 cents per square foot of riparian easement area per annum effective March 1, 2003 and shall be revised on March 1 of each year thereafter on the basis of fluctuations of the Consumer Price Index for All Urban Consumers (CPI-U), South Urban, as published by U.S. Department of Labor, Bureau of Labor Statistics.

2. There shall be a minimum annual fee of \$500. The minimum annual fee shall be adjusted annually on March 1 as specified in (a) above.

3. There shall be a late payment assessment for easement fees or other charges due under this rule which are not paid within 30 days after the due date. This assessment shall be computed at the rate of 12 percent per annum, calculated on a daily basis for every day the payment is late.