ALABAMA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES ADMINISTRATIVE CODE

CHAPTER 220-4
STATE LANDS DIVISION

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220-4-.01 Geophysical Exploration Of State Of Alabama Lands.

(1) Purpose.

(a) The purpose of this regulation is to prevent the destruction of, or injury to State-owned lands, including the beds of navigable waters, under the jurisdiction of the Department of Conservation and Natural Resources; to protect wildlife and other natural resources on such lands; and to prescribe policies, procedures, and requirements for conducting geological and geophysical activities on State-

owned lands. These activities may occur on unleased lands or on lands under lease to a third party. Activities are limited to geological and geophysical exploration for mineral resources whether involving the use of explosives or not, on such lands.

(b) No exploration activities shall be commenced upon State lands under the jurisdiction of the Department of Conservation and Natural Resources, without the written approval of the Commissioner.

(2) Definitions.

(a) When used in this regulation, the following terms shall have the indicated meanings:

1. "Commissioner" means the commissioner of the Department of Conservation and Natural Resources of the State of Alabama or a subordinate authorized to act on the Commissioner's behalf.

2. "Department" means the Department of Conservation and Natural Resources of the State of Alabama.

3. "Director" means the director of the Department's State Lands Division.

4. "Exploration" means the process of searching for minerals, including but not limited to geophysical surveys, where magnetic, gravity, seismic or other systems are used to detect or imply the presence of minerals.

5. "Geophysical Exploration for Mineral Resources" means any operation conducted upon lands owned by the State of Alabama and under the jurisdiction of the Department of Conservation and Natural Resources, which utilizes geophysical techniques, including, but not limited to gravity, magnetic, and various seismic methods, to produce information and data in support of possible exploration and development activity.

6. "Lease" means any form of authorization of exploration, development and production of minerals from lands owned by the State of Alabama and under the jurisdiction of the Department.

7. "Lessee" means the party authorized by a lease, or an approved assignment thereof, to explore for, develop, and produce the leased mineral deposits in accordance with the terms thereof.

8. "Minerals" includes oil, gas, sulfur, geopressured-geothermal and associated resources, and all other minerals which may be produced from lands owned by the State of Alabama and subject to the jurisdiction of the Department.

9. "Permit" means the contract or agreement, other than a lease, approved for a specified period of not more than 120 days under which a permittee acquires the right to conduct geological or geophysical exploration for mineral resources.

10. "Permittee" means the person authorized by a permit issued pursuant to this regulation.

11. "State Representative" means an employee of the Department or other person as approved by the Commissioner.

12. "Violation" means a failure to comply with any provision of this regulation or any order issued in connection therewith.

(3) General Requirements of Notices and Permits.

(a) Geophysical exploration for mineral resources shall be conducted so that those activities do not:

1. interfere with or endanger operations under any lease.

2. cause harm or damage to aquatic life;

3. cause pollution;

4. create hazardous or unsafe conditions;

5. unreasonably interfere with or harm other uses of the area; or

6. disturb cultural resources.

(b) Any person conducting geological or geophysical activities for mineral exploration pursuant hereto shall immediately report to the Director when these activities:

1. encounter environmental hazards which constitute an eminent threat to human activity; or

2. adversely affect the environment, aquatic life, cultural resources, or other uses of the area in which the exploration activity is conducted.

(4) Geological and Geophysical Activities Requiring Permits. Geological and geophysical exploration for mineral resources may not be commenced nor conducted upon State lands under the jurisdiction of the Department without an approved permit.

(5) Application for Permits.

(a) Applications for permits to conduct geological or geophysical exploration for mineral resources shall be submitted in a form and manner prescribed and approved by the Director. Each application for a permit shall include:

1. the name of the principal for whom the exploration company will conduct the geophysical exploration;

2. the name of the party chief and the name of the exploration company who will participate in the proposed exploration;

3. the type of exploration and the manner in which the activity will be conducted;

4. the legal description of the property upon which exploration is to be conducted, together with the approximate acreage thereof;

5. the dates on which the exploration is proposed to be commenced and completed;

6. a detailed map, in duplicate, reflecting the exact area in which the exploration activity is to be conducted;

7. such other relevant information and data as the Director may require.

(b) Applications shall confine the desired exploration area within one township, or, if the area involves submerged lands in the coastal area of Alabama south of U.S. Highway 90 (Battleship Parkway), to one offshore tract. If the desired acreage extends into another township or tract, a separate application must be submitted.

(c) Each application for a permit must be filed with the State Lands Division of the Department and accompanied by an application fee, payable to the "Director, State Lands Division" in an amount computed from the following schedule:

CATEGORY	**RATE**
Administrative fee	$100 (all applications)
Non-explosive	$400 per tract or fraction thereof
	$100 per shot ($400 minimum)

Dynamite or other explosive agent (except "mini-hole")	
Mini-hole program	$500 per mile or fraction thereof

(d) A lessee shall be exempt from payment of the application fee, but shall otherwise comply with the provisions of this regulation.

(6) Inspection and Observation of Exploration Activities.

(a) Each permittee conducting exploration activities on State lands subject to the jurisdiction of the Department shall be accompanied by a State representative unless an exception has been granted by the Commissioner. A permittee, upon request by the Director, shall provide to the State representative, transportation to facilitate inspection and observation of exploration activities. The State representative shall observe or inspect operations conducted pursuant to the permit and determine whether operations are being conducted in accordance with the provisions thereof. When a permittee employs more than one shooting component and activities are at such a distance apart that it is impossible for the State representative to travel from one component to the other in time to observe the shots of such units, an additional State representative, or State representatives may be required and assigned to each shooting component. A State representative may be required to be present at all times if exploratory activities consist of shooting operations in environmentally sensitive areas.

(b) The State representative assigned to a permittee shall be under the supervision of the Division of the Department to which the State representative is regularly assigned.

(c) The State representative, supervisor and the Director, on request shall have access to all records, such as shot point location maps, shooters logs and tracings, but only to the extent necessary to determine compliance with the provisions of this regulation.

(d) The permittee party chief shall assist the State representative in completing any required forms or reports by furnishing all necessary data and shall familiarize members of the exploration party with the provisions of this regulation and the duty and authority of the State representative in connection with inspection and observation of exploration activities.

(7) Inspection Fees. Each permittee shall submit payment upon a calendar monthly basis an inspection fee for furnishing State representatives assigned to the permittee conducting exploration activities on State lands. The inspection fee shall be assessed at

the rate of $160 per day for the actual duration of exploration activities. Payments shall be made by the permittee directly to the Department division to which the State representative is regularly assigned, such funds to be deposited to the credit of the subject division.

(8) Use of Explosives in Connection with Exploration Activities.

(a) No explosives shall be discharged within 1,000 feet of any habitation or within 300 feet of any highway without the written permission of the Commissioner.

(b) Charges in excess of fifty (50) pounds on land or twenty (20) pounds on State water bottoms shall not be used except pursuant to express written authorization by the Commissioner. Requests for the use of such charges shall be made in writing, justifying the reason for the use of such charges and giving the proposed size of charges to be used and the depth at which they are to be suspended or buried. Should multiple charges be used, the total amount of explosives shall not exceed twenty (20) pounds per hole without express written permission from the Commissioner.

(c) Minimum required depths of charges in all water areas shall be as follows for shots detonated in holes:

CHARGE	DEPTH
5 lbs. or less	50 feet
6 to 10 lbs.	75 feet
11 to 20 lbs.	100 feet

No part of the charge shall be above the minimum required depth.

(d) Except during inclement weather conditions, capped explosives shall not be left in shot holes for periods exceeding two (2) days unless a crew member is stationed within the immediate work area.

(e) The placing of explosive charges on all water bottoms is prohibited.

(f) When more than one shot is fired in the same hole, the State representative may require redetermination of the legal depth of the hole after the shot is fired before reloading to assure compliance with the requirements reflected in the table of charges and depths.

(g) All pipe used in geophysical operations must be removed to at least six (6) feet below the bottom in water areas before finally abandoning the shot point. No pipes shall remain in the water during crew off days except as otherwise provided herein.

(h) All parties using pipe in water areas must have clearly stamped at each end of each joint, the name or abbreviation of the name, of the company using the pipe.

(i) All pipes, buoys and other markers used in connection with exploration activities in water areas shall be flagged properly during daylight hours. Flagging shall be clearly visible from the adjacent buoy or marker. During the hours of darkness, pipes, buoys and other markers shall be lighted in accordance with U.S. Coast Guard navigation rules.

(j) No explosives shall be discharged within 250 feet of any oyster reef or bed.

(k) No explosives in suspended charges shall be discharged within 1,000 feet of any boat other than that of the permittee without first having given notice to such other boat and providing a reasonable opportunity for it to move from the area.

(l) Primacord may not be used in the salt and brackish waters of the State of Alabama.

(m) No shooting will be allowed in heavy fog due to danger to boats in close proximity.

(n) No shooting will be allowed except in daylight hours in order to facilitate inspection by the State representative, except pursuant to written exception of the Commissioner.

(o) Air gun arrays shall not exceed a total of 1,500 cubic inches or 2000 pounds per square inch in inshore waters except pursuant to express written authorization by the Commissioner. Requests for exception shall be made in writing, justifying the reason for such exception and giving the proposed configuration.

(9) Resource Protection.

(a) Boats, marsh buggies or other types of marsh vehicles used in connection with exploration activities must be so used as to cause minimum disturbance or injury to the lands, water bottoms and wildlife and fisheries thereon.

(b) Permittees conducting seismic operations shall use reasonable precaution in accordance with approved and accepted methods to prevent destruction of, or injury to, fish, oysters, shrimp and other aquatic life, wildlife or other natural resources of the State.

(c) No geophysical exploration activity shall be conducted in any wildlife refuge, waterfowl refuge, game preserve, fish preserve or hatchery or oyster seed ground reservation without

written permission from the agency in charge of such refuge, preserve, hatchery or reservation. No geophysical exploration activity shall be conducted in inshore waters during the first two weeks immediately following the opening of the summer shrimping season. All buoys, cable markers, and other such materials shall be removed from the water prior to the opening day of such season.

(10) Equipment Identification. All markers used for land based survey lines must be stamped clearly with the name of the company using the stakes at approximately 3-foot intervals. All stakes must be removed upon completion of exploration on the prospect.

(11) Progress Report on Activities Conducted Under a Permit. Each permittee shall notify the State representative of the beginning, interruption or cessation of work and shall keep the State representative informed of the name and address of the party chief and location and movements of permittee's exploratory crew.

(12) Suspension and Cancellation of Authority to Conduct Activities Under Permit.

(a) The Commissioner may suspend or temporarily prohibit the permittee's authority to conduct exploration activities under a permit by notifying the permittee either orally or in writing when the Commissioner determines that there is a threat of serious, irreparable or immediate harm or damage to life, including fish and other aquatic life, to property, to any mineral deposits (in areas leased or not leased), or to the marine, coastal, or human environment. Such suspension shall be effective immediately upon receipt of the notice. Suspensions issued orally shall be followed by written notice confirming the action, and all written notices will be sent by certified mail. Suspension shall remain in effect until the basis for the suspension has been corrected to the satisfaction of the Commissioner.

(b) Either the Commissioner, the Director or the State Representative may suspend or temporarily prohibit the permittee's authority to conduct exploration under a permit either orally or in writing when such individual determines the permittee fails to comply with the provisions of the permit or of these regulations, or otherwise damage State lands. Such suspension shall be effective immediately upon receipt of the notice. Suspensions issued orally shall be followed by written notice confirming the action and all written notices shall be sent by certified mail. A suspension shall remain in effect until the basis for the suspension has been corrected to the satisfaction of the Commissioner.

(c) The Commissioner may cancel, or a permittee may relinquish, a permit to conduct exploration activities at any time by sending a notice of cancellation or a notice of

relinquishment. Such notices shall state the reason for the cancellation or relinquishment and shall be sent by certified mail to the other party at least five (5) days in advance of the effective date.

(13) Exceptions.

(a) Exceptions to the provisions of this regulation may be granted only by the Commissioner upon written application therefor setting forth detailed reasons for the requested exception. Any exception shall be reflected in writing which specifically designates the particular area or rule affected, details the exception, and specifies the procedure to be followed in lieu of the established regulation.

(b) No State representative shall have the authority to release any permittee from any obligation imposed by this regulation.

(14) Permit Assignment. No transfer or assignment of any geophysical exploration permit issued pursuant to the provisions hereof shall be valid unless approved in writing by the Commissioner.

(15) Indemnification of the State of Alabama. In obtaining a permit to conduct geophysical exploration activities pursuant to the terms hereof, the permittee, by acceptance of such permit specifically agrees to indemnify the State for any and all damages which may occur as a result of such exploration activities on State lands and which arise or are caused by the permittee's activities. Permittee further agrees to save and hold the State harmless from any and all damages or actions for damages which may occur or arise from permittee's activities while on State land.

(16) Interpretation of Regulation and Appeals. The interpretation of these rules and regulations by the Director or Supervisor of the State representative shall be accepted by the permittee; provided, however, the permittee shall have the right to make a written appeal to the Commissioner on any interpretation thereof. In the event such an appeal is filed, the Commissioner shall render a decision thereon within five (5) days after receipt of the written appeal. At the discretion of the Commissioner, all interested parties may be required to submit written arguments or in the alternative a hearing may be scheduled with all interested parties being present. In the event of a hearing, the Commissioner may appoint an official of the Department to conduct the hearing in his absence.

(17) Penalty.

(a) Violation of the provisions of this regulation or the refusal of any permittee to comply fully with all orders and requirements which may be made by the Department at the time

exploration activities are conducted, or any attempt to unduly influence any State representative to abstain from the enforcement of this regulation shall constitute cause for terminating all seismic operations of permittee upon State lands and may result in the permittee's party chief, party manager or field manager being barred from conducting future exploration activities on state Lands.

(b) The penalties prescribed in this paragraph entitled "Penalty" shall be in addition to those penalties afforded by any other law or regulation.

(18) Conflicting Provisions Repealed and Specific Repeal of 82-SL-1 (Previous Version of 220-4-.01). All previous geophysical exploration regulations or parts thereof in conflict with this regulation, as well as 82-SL-1 (previous version of 220-4-.01), are hereby expressly repealed.

(19) Effective Date. This regulation shall become effective on the 36th day after filing with the Legislative Reference Service.
Author: James D. Martin
Statutory Authority: Code of Ala. 1975, §9-2-12.
History: Filed September 30, 1982. **Amended:** Effective May 11, 1990.

Penalty: As provided by law and as provided herein.

Ed. Note: Previous Rule 220-4-.01 entitled "Seismic Permits" repealed in its entirety and new Rule 220-4-.01 entitled "Geophysical Exploration of State of Alabama Lands" adopted in lieu thereof. Filed April 5, 1990.

220-4-.02 Pipeline Right-Of-Way Contracts - Submerged Lands.

(1) Any person, firm or corporation desiring a right-of-way for submerged pipeline construction purposes across state-owned water bottoms under the jurisdiction of the Department of Conservation and Natural Resources shall make application to the Commissioner of Conservation and Natural Resources by submitting a completely executed application on the form provided by the State Lands Division. Any right-of-way granted hereunder shall be on a non-exclusive basis.

(a) The application shall include all of the following unless specifically waived by the Commissioner:

1. The name, address, and telephone number of the person, firm or corporation desiring the right-of-way.

2. A description of the size and purpose of the proposed pipeline, including product to be transported or equipment to be contained therein.

3. An adequate description of the land through which the pipeline is to be constructed.

4. A statement of the term for which the subject right-of-way contract is desired.

5. The length, in rods, of the proposed pipeline.

6. The width, in feet, of the proposed right-of-way both during construction and after construction.

7. The consideration proposed to be paid for the use of the state lands in accordance with the rate schedule hereinafter prescribed.

8. A nonrefundable $250.00 filing fee per right-of-way contract, or renewal thereof, made payable to the Division of State Lands.

9. A map showing the location of the proposed pipeline. When applicable, the state tract number of submerged land or the name of the river, stream, bay or other body of water must be shown.

10. A cross-sectional drawing of the proposed work showing depth of the proposed pipeline relative to existing ground level, mean low water and mean high water, or ordinary low water line for a riverbed right-of-way.

11. Such additional information as the Commissioner may deem necessary.

(b) There is no limit to the number of parallel lines which may be included in a single right-of-way contract.

(c) Upon receipt of all necessary application information the Commissioner may grant, deny, or grant with qualifications the requested right-of-way. The Commissioner may postpone a decision on the application until 30 days after receipt of the Corps of Engineers' public notice for the prescribed work.

(d) The term for all right-of-way contracts executed pursuant to this regulation shall not exceed 10 years, with an option to renew for additional terms, none of which shall exceed 10 years. The option to renew shall be on the same terms and conditions as the original agreement except that the consideration shall be adjusted to the rate in effect at the time of the effective date of renewal.

(2) The consideration payable for each 10-year term of any right-of-way contract granted or renewed pursuant to this regulation shall be as follows for each pipeline:

Class 1 Up to 12" (o.d.) $24.00 per rod

Class 2 More than 12" and up to 24"(o.d.) $36.00 per rod

Class 3 More than 24" and up to 36"(o.d.) $48.00 per rod

Class 4 More than 36" (o.d.) $60.00 per rod

Notwithstanding the above-stated fee schedule, there shall be a minimum fee of five hundred dollars ($500.00) per year.

Effective January 1, 2001, and on January 1 each year thereafter, the rates for each Class shall be adjusted on the basis of the annual percentage increase or decrease of the Consumer Price Index for All Urban Consumers (CPI-U), South Urban. All Items, (1982-84=100), for the one year period for which the said Index is released in the immediately preceding November.

(3) Any right-of-way granted by the Commissioner will be subject to the rules contained herein and will bind the grantee to comply with the following provisions:

To comply with all existing rules and with all existing and future rules or orders which the Commissioner determines to be necessary and proper in order to provide for the protection and conservation of the natural resources of public lands and waters;

To indemnify the grantor against any and all liability for damages to life, person, or property arising from the grantee's occupation and use of the area covered by the interest granted;

That the granting of the right-of-way shall be subject to the express condition that the rights granted will not unduly prevent or interfere in any way with the management, administration of, or the granting, either prior or subsequent thereto, of other rights by the Commissioner of any part of the area included in the right-of-way; and To pay when due the consideration herein prescribed.

(a) An applicant, by accepting a right-of-way, further agrees and consents to comply with and be bound by the following additional terms and conditions, excepting those which the Commissioner may waive in a particular case:

1. To bury the pipeline below the bottom of the gulf, bay, inlet, river or stream crossing at a depth of not less than 24 inches;

2. To water-pressure test all lines before use to 1-1/2 times the anticipated working pressure;

3. To construct a steel line from new or reconditioned pipe in first class condition;

4. To electrically test or x-ray any steel field weld to insure reasonable safety from leaks;

5. To dope and treat in such manner any steel line, before it is submerged, to offer reasonable resistance to the corrosive effect of salt water, but it shall not be necessary to dope and treat the portion of a steel line which is not submerged.

6. To bury a pipeline in such a manner so as to evenly backfill the sand, gravel, soil, or other material excavated during construction onto the disturbed area to conform as much as is reasonably possible with the bottom profile of the adjacent natural submerged land;

7. To undertake erosion preventative measures at the shoreline by either terracing or excavating cuts, fills, or other disturbed areas so that they naturally vegetate, seeding cuts and fills as soon as possible to prevent erosion, or placing gravel, stone, or rock in cuts or on fills where site factors make it unusually difficult to establish a protective vegetative cover;

8. To select a right-of-way, when feasible, which avoids shell reefs, submerged grass beds, and marshes; and

9. To avoid or minimize clearing of natural vegetation from river or stream banks so that a screen of natural vegetation is left in the right-of-way or when feasible to cross a river or stream via existing bridges subject to safety restrictions or through an area already cleared.

(b) The grantee shall not construct or maintain any oil pipelines, gas pipelines, sulphur pipelines, or other pipelines unless the same is specifically provided for in the granting clause of the right-of-way contract; however, the grantee shall have the right to replace said pipeline with a larger or smaller pipe, or pipe of the same size, installed alongside the line to be replaced provided the line being replaced is promptly removed upon completion of the replacement line; but grantee may not build another pipeline alongside its first pipeline or at any other location without a right-of-way contract authorizing same.

(4) An application for renewal of an existing right-of-way shall be made using the State Lands Division contract form, and shall adhere to the rules in effect at the time renewal is requested.

(a) The grantee shall apply to the Commissioner in accordance with paragraph (1) of this regulation (relating to Application), except that the location and cross-sectional drawings need not be submitted unless specifically requested by the Commissioner. The application should also include the right-of-way contract number and the date of expiration of said contract.

(b) Assignment may be made of any interest or rights granted in whole or in part subject to the written approval of the Commissioner. Any such assignment must be filed in triplicate accompanied by a written request for approval in which the assignee agrees to comply with all rules and regulations contained herein and in the contractual agreement. The application should also include the existing contract number and the date of expiration of said contract. An assignment fee of $250.00 payable to the Division of State Lands must accompany the application for approval of an assignment. No assignment shall be effective to transfer any rights until approved by the Commissioner, the grantee, and the assignee.

(c) Failure to comply with these rules subject the contract to termination by the Commissioner. Upon termination of any contract which is not reinstated by the Commissioner, the grantee shall, within 120 days from said termination, remove all of its personal property and all structures and manmade improvements authorized in the right-of-way contract, provided all monies due have been paid. The Commissioner at his option, may permit the grantee to leave in place all or a portion of grantee's personal property and any structures and manmade improvements authorized in the right-of-way contract. The grantee shall take whatever measures as necessary to restore the area involved as nearly as practicable to the same condition that existed prior to placement of any structure thereon, except as otherwise approved in writing by the Commissioner.

(5)(a) The provisions of this regulation, except the payment of consideration provided for in paragraph (2), are applicable to the activities of a submerged lands mineral interest holder on a leased tract on which a producing well is located as well as to the activities of a submerged lands mineral interest holder on a tract leased by the Commissioner in which the lease authorizes the lessee to lay pipelines.

(b) Upon application by a public governmental agency or authority, the Commissioner may waive the payment of consideration (but not the application fee).

(6) Notwithstanding any provision herein, in the event the Commissioner determines, in his sole discretion, that the location of a pipeline is so proximate to an inland area that an appraisal would better represent the fair market value of the said pipeline

location that would the otherwise applicable fee schedule, the Commissioner shall base the consideration upon the greater of (a) the otherwise applicable fee schedule or (b) fifty percent (50%) of the appraised fair market value of the immediately adjacent upland (the minimum width of the right-of-way shall be 50 feet) as determined by a licensed Alabama (M.A.I. certified) real estate appraiser selected by the State Lands Director.
Author: Christopher M. Blankenship
Statutory Authority: Code of Ala. 1975, §9-2-12.
History: Filed September 30, 1982. **Amended:** August 11, 1989.
Amended: Filed February 23, 2000; effective March 29, 2000.
Amended: Filed March 16, 2006; effective April 20, 2006.
Amended: Filed September 5, 2018; effective October 20, 2018.

Penalty: As provided by law.

220-4-.03 Alabama Forever Wild Program - Confidentiality Of Appraisal Information.

All appraisals obtained by the State Lands Division of the Department of Conservation and Natural Resources whether paid for by the State or in part by others and relating to the State Lands Division's administration of the Forever Wild program shall remain temporarily confidential until:

(1) It is determined that the property is unavailable for acquisition within the constraints of the Forever Wild amendment;

(2) A vote by the Board of Trustees of the Alabama Forever Wild Land Trust to purchase the property in accordance with said appraisal;

(3) The landowner withdrawals the parcel of property from consideration; or

(4) The Board of Trustees of the Alabama Forever Wild Land Trust otherwise determines that the property is not to be acquired.

Upon the occurrence of any of the above, the appraisal shall become public information. During the period of temporary confidentiality, the appraisals and any information contained therein may only be disclosed to the members to the Board of Trustees of the Alabama Forever Wild Land Trust and to the staff of the State Lands Division of the Department of Conservation and Natural Resources; provided, however, that neither the board members, nor the staff of the State Lands Division, nor the appraiser or his staff or agents shall, during the period of temporary confidentiality, disclose to

any other person(s) any information contained in the appraisals.
Author: James D. Martin
Statutory Authority: Code of Ala. 1975, §9-2-12 (1987 Repl. Volume); Ala. Const. Amend. 543, §5(b).
History: **New Rule:** July 28, 1997; effective September 2, 1997.

220-4-.04 State Of Alabama Natural Heritage Program - Establishment Within State Lands Division.

Amendment 543 to the Constitution of Alabama (proclamation date February 2, 1993) establishes the State of Alabama Natural Heritage Program within the Lands Division of the Department. In accordance with that constitutional directive, these regulations recognize that the State of Alabama Natural Heritage Program ("SNHP") is a section of the State Lands Division of the Department, or its duly designated successor, which may be funded from the Forever Wild Land Trust, the Forever Wild Land Trust Stewardship Account and from private donations.
Author: James D. Martin
Statutory Authority: Code of Ala. 1975, §9-2-12 (1987 Repl. Volume); Ala. Const. Amend. 543, §§5(b), 11(a).
History: **New Rule:** July 28, 1997; effective September 2, 1997.

220-4-.05 State Of Alabama Natural Heritage Program - Purpose.

The purposes of the State of Alabama Natural Heritage Program include:

(1) producing an inventory of Alabama's natural heritage resources, including their location and ecological status;

(2) maintaining a natural heritage data bank of inventory data and other relevant information for ecologically significant sites supporting natural heritage resources;

(3) encouraging the use of the information in the natural heritage data bank by public agencies and private organizations and individuals in planning or conducting their activities; and

(4) developing a Natural Heritage Plan which suggests priorities for the protection, acquisition and management of dedicated natural area preserves.

Author: James D. Martin
Statutory Authority: Code of Ala. 1975, §9-2-12 (1987 Repl. Volume); Ala. Const. Amend. 543, §§5(b), 11(b).
History: **New Rule:** July 28, 1997; effective September 2, 1997.

220-4-.06 State Of Alabama Natural Heritage Program - General Policies.

(1) Requests for Information.

(a) Persons wishing to obtain information from the natural heritage data bank may do so by filing a written request with the State Lands Division in the form specified by the Department and agreeing to pay reasonable fees associated with responding to that request.

(b) Written requests shall be filed at the following address: State Lands Division 64 North Union Street, Room 464 Montgomery, Alabama 36130

(2) Sources and Reliability of Data; Entry Upon Private Property; Limitations.

(a) The SNHP receives biological data from many sources, including its own personnel, private consultants, scientists from other state and federal agencies, scientists employed by or associated with institutions of higher learning, and any other person with relevant information. In many cases, this information is not the result of comprehensive or site-specific field surveys. Many natural areas in Alabama have never been thoroughly surveyed, and new occurrences of plants and animals are still being discovered. Consequently, SNHP is not able to provide a definite statement on the presence, absence or condition of biological elements in any part of Alabama. A SNHP response to a request for information summarizes the existing information known to the Department at the time of the request and is not a substitute for on-site surveys.

(b) Employees and contractors of the SNHP shall obtain oral or written informed consent from the owner of the property prior to entering private land for the purpose of obtaining or verifying biological data. Oral permission received from the landowner shall be documented contemporaneously in writing by the SNHP employee or contractor.

(c) SNHP responses to requests for information shall be limited to biological observations of species and communities in the study area specified in the written request for information. The SNHP will not provide opinions on the possible impacts of specific activities on these species and communities to anyone other than the landowner.

Author: Christopher M. Blankenship
Statutory Authority: Code of Ala. 1975, §9-2-12 (1987 Repl. Volume); Ala. Const. Amend. 543, §§5(b), 11(b).

History: New Rule: July 28, 1997; effective September 2, 1997.
Amended: Filed September 5, 2018; effective October 20, 2018.

220-4-.07 State Of Alabama Natural Heritage Program - Confidentiality Of Information.

(1) Purpose. In general, information contained in the natural heritage data bank is public information. However, Amendment 543 to the Constitution of Alabama requires the Department to establish procedures relating to the confidentiality of data and inquiries for information in order to protect natural resources and encourage use of the natural heritage data bank by public agencies and private organizations and individuals in planning or conducting their activities. Information on the specific location of rare species is sensitive information, and shall not be disclosed except in accordance with the procedures established below. Similarly, the fact that a public agency, private organization or individual has requested information from SNHP on a specific site or sites is sensitive information, and employees or contractors of the Department shall not disclose any information about such a request except in accordance with the procedures established below.

(2) Confidentiality of Information.

(a) General. Except as provided below and as provided by other applicable statute or regulation, all information contained in the natural heritage data bank and SNHP records shall be considered public information.

(b) Information Requests. When a public agency, private organization or individual has requested information from SNHP on one or more specific sites, employees or contractors of the Department shall not reveal any details of that inquiry without the prior written permission of the requesting party. However, SNHP employees may disclose such information to the Forever Wild Board, to the extent reasonably necessary, upon request of the Chairman of the Forever Wild Board. The Chairman shall ensure that such information is not inadvertently disclosed to any other person without the prior written permission of the requesting party.

(c) Location Information and Other Data. When entering data into the natural heritage data bank, the State Lands Division will make a determination as to whether that information is confidential. Each page or data field of these records shall be clearly marked "CONFIDENTIAL". For purposes of this rule, it is presumed that information on the specific location of a rare species, whether or not protected by state or federal law or regulation, is confidential. Information other than location data may be classified as confidential by the State

Lands Division if such classification is reasonably necessary to ensure the protection of a rare species or biological community.

(d) Data Obtained Under Contract or from Survey Work Performed on Private Land. Biological information obtained by the SNHP as a result of a contract between the SNHP and a private organization or individual shall be considered confidential and shall not be disclosed without the prior written consent of the private organization or individual. Similarly, biological information obtained from survey work performed by SNHP on private land with the permission of the landowner shall be considered confidential and shall not be disclosed without the prior written consent of the landowner.

(e) Disclosure of Confidential Information. In responding to a request for information, the Department shall first provide all responsive non-confidential information, along with a notation of whether the database contains confidential information relating to the subject inquiry. The requesting party may obtain confidential information relating to the location of a rare species or biological community on the following conditions: (1) the recipient of the information agrees in writing not to disclose the information; (2) the recipient of the information agrees in writing to take reasonable precautions to ensure the security of the information; an (3) the State Lands Division determines from written justification presented by the requesting party that said party's reasons for requesting the information are consistent with the purposes of the SNHP as stated in 220-4-.05.

Author: Christopher M. Blankenship
Statutory Authority: Code of Ala. 1975, §9-2-12 (1987 Repl. Volume); Ala. Const. Amend. 543, §§5(b), 11(b).
History: **New Rule:** July 28, 1997; effective September 2, 1997.
Amended: Filed September 5, 2018; effective October 20, 2018.

220-4-.08 **Vessel Mooring Restrictions.**

Vessel operators without riparian access rights are prohibited from mooring on state-owned submerged water bottoms adjacent to corresponding upland locations for any period of time beyond any immediate water transit needs necessitating a temporary cessation in such transit. Indefinite mooring of such vessels shall be prohibited. The penalty for the violation of this rule is as provided in §9-1-4, Code of Ala. 1975.

Author: James D. Martin
Statutory Authority: Code of Ala. 1975, §9-2-12.
History: **New Rule:** August 3, 1998; effective September 8, 1998.

Penalty: As provided in §9-1-4, Code of Ala. 1975.

220-4-.09 Placement And Configuration Of Piers And Other Improvements On State Owned Submerged Lands.

(1) Purpose.

(a) To aid in fulfilling the duties and responsibilities of the Commissioner of the Alabama Department of Conservation and Natural Resources (Department) for the administration, management and control of State Owned Submerged Lands;

(b) To manage State Owned Submerged Lands so that the public may continue to enjoy traditional uses including, but not limited to, public recreation, navigation, fishing and swimming;

(c) To manage State Owned Submerged Lands, important for fish, shellfish and wildlife propagation and conservation; and,

(d) To insure that all public and private activities on State Owned Submerged Lands which generate revenues, exclude or preempt traditional public uses and/or which sever materials from State Owned Submerged Lands 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.

(b) These rules shall not affect previous actions of the Commissioner concerning structures or the prior 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. Renewals will be done under the fee schedule in place at the time of the renewal.

(c) Any structures that are substantially modified, altered or rebuilt, and any expansion of an existing activity shall be subject to the provisions of this Rule. Substantially modified, altered or rebuilt for purposes of this paragraph shall mean more than 50% of the existing structure or any modification or alteration of the existing pilings.

(d) Any structures constructed after 2003 shall be subject to the provisions of this Rule.

(e) 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.

(f) The Commissioner may grant a waiver from any portion of this rule when the implementation of said portion of the rule may result in an unreasonable infringement upon the Riparian Rights of an upland riparian owner, or the proposed activity is determined to have a de minimis impact on natural resources under the jurisdiction of the Department.

(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 loss of or addition to land by the action of water or the sudden or perceptible change in the bed of a water bottom 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) "Commercial Facility" means any facility with monthly cash producing potential related to structures or improvements placed upon State Owned Submerged Lands associated with collection of usage fees from parties not possessing a real property or leasehold interest in the adjacent upland parcel including, but not limited to, Marinas, restaurants and retail operations constructed over State Owned Submerged Lands.

(e) "Commissioner" means the Commissioner of the Alabama Department of Conservation and Natural Resources.

(f) "Department" means the Alabama Department of Conservation and Natural Resources.

(g) "Division" means the State Lands Division of the Alabama Department of Conservation and Natural Resources.

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

(i) "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.

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

(k) "Marina" means a watercraft harbor complex offering amenities including, but not limited to, recreational (including charter) watercraft mooring, docking, fueling, or storage.

(l) "Ownership Oriented Facility" means Dock or other structures or improvements where the use of the Dock or other structures or improvements requires some real property or leasehold interest in one or more residential units on the adjacent upland parcel and such use does not include operations or activities described for a Commercial Facility.

(m) "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 Docks and other structures or improvements, the area between the Docks and other structures or improvements and out to any mooring pilings, and the area between the Docks and other structures or improvements and the shoreline.

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

(o) "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.

(p) "State Owned Submerged Lands" means those lands including but not limited to, tidal lands, sand bars, shallow banks, and lands waterward of the ordinary low water line beneath navigable non-tidal streams 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.

(q) "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 not be contrary to the public interest.

2. All leases, Easements, permits, 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 Division for leases and Easements which generate revenues, monies or profits for the user or that limit or preempt general public use. Compensation shall also be required to be paid to the Division for Dredge Permits issued in relation to activities severing materials from State Owned Submerged Lands whether subsequently placed below mean high tide line or above mean high tide line 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:

(i) Located in areas along seawalls or other nonnatural shorelines;

(ii) 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 Department 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 by the upland riparian property owner. In reviewing a request for approval of a proposed reclamation project, the Department may consider information including data and imagery from a period of five (5) years prior to submission of such a request by the upland riparian property owner. The placement of fill material below the ordinary low water line of non-tidal

streams or the mean high tide line of tidal water not associated with an approved reclamation project or the implementation of a shoreline restoration project compliant with paragraph (7) below 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, wave attenuation units and other similar stabilization methods should be utilized in lieu of vertical seawalls wherever feasible.

7. Shoreline restoration, including the use of "living shorelines" techniques for shoreline stabilization, may be permitted upon such terms and conditions as the Commissioner acting through the Division may require. Such techniques may include, but are not limited to, the planting of native vegetation, the placement of wave attenuation structures, the placement of fill materials, and/or other techniques. Fill material placed and/or sediments accreted below the ordinary low water line of non-tidal streams or the mean high tide line of tidal water through the implementation of shoreline restoration shall not be construed as reclamation nor cause a change in the title to State Owned Submerged Lands.

8. Severance of materials is any separation of material from State Owned Submerged Lands whether subsequently placed above mean high tide line (or ordinary low water line) or below mean high tide line (or ordinary low water line) and 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.

9. 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.

10. 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.

11. 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.

12. A minimum setback of 10 feet from the riparian lines of adjacent property owners shall be required except as otherwise provided herein, Division may require submission of a survey to ensure compliance with the provision. The costs of the survey will be the responsibility of the riparian owner.

13. Setbacks from other activities, channels, structures, or natural resources may also be required to ensure safety, facilitate enforcement abilities or ensure resource management. Submission of a survey may be required to ensure compliance with this provision, as determined by Division. The costs of the survey will be the responsibility of the riparian owner.

14. Any area made the subject of a riparian Easement shall not be closer than 100 feet from a marked navigation channel.

15. 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.

16. Submission of a survey may be required to ensure compliance with this Rule, as determined by Division. The costs of the survey will be the responsibility of the riparian owner.

17. A binding determination of riparian boundaries can only be made by agreements of the affected parties or by a final adjudication of a court of competent jurisdiction. Accordingly, acceptance of a survey and/or issuance of a lease or Easement shall not in and of itself prevent the Department from requiring the removal or the relocation of any structure which may later be determined to encroach upon or interfere with adjacent upland owners' Riparian Rights or otherwise not be in compliance with this Rule.

(c) Riparian Rights and Setbacks.

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. Submission of a survey may be required to ensure compliance with this Rule, as determined by Division. The costs of the survey will be the responsibility of the riparian owner.

4. Except as provided herein, all structures and improvements and activities such as mooring pilings, breakwaters, jetties and groins must be set back a minimum of 10 feet inside the applicant's Riparian Rights lines. Exceptions to the setbacks include: Ownership Oriented Facilities or single-family residential Docks or piers where such structures are shared by two adjacent parcels; utility lines; bulkheads, seawalls, riprap or such additional structures as determined by the Division to be connected to the shoreline protection structures; structures and activities previously authorized by the Department; structures and activities built or occurring prior to any requirement for Department authorization; when a letter of concurrence is obtained from the affected adjacent upland riparian owner; or when the Department 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 Placement of Structures or Improvements on State Owned Submerged Lands.

1. Structures or improvements placed upon State Owned Submerged Lands shall conform to the following specific guidelines, design standards and criteria:

(i) The area of State Owned Submerged Lands made subject to a riparian Easement shall not exceed the square footage amounting to 200 times the riparian waterfront footage along the affected waterbody of the applicant.

(ii)(iii) Structures or improvements shall extend no more than 25 percent of the width of the waterbody at that particular location.

(iv) Structures or improvements shall not extend within 100 feet of a federal navigation project channel.

(v) Within the standards set forth above, the design of structures or improvements may be further restricted by the Department 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) Forms of Approval for Placement of Structures or Improvements on State Owned Submerged Lands.

1. Request to Impact State Owned Submerged Lands (RTI) application must be completed for any of the activities listed in paragraphs 2., 3., and 4. below. There is a $100 application fee for RTI applications.

2. Consent of Use may be granted as to the following activities:

(i) Docks, piers, boathouses, and/or improvements serving a single family residential parcel where the Preempted Area is less than 5,000 sq. ft. or similar structure(s) shared by two adjacent single family residential parcels where the Preempted Area is less than 5,000 sq. ft.

(ii) Docks, piers, boathouses, and/or improvements serving an Ownership Oriented Facility where the Preempted Area is less than 5,000 sq. ft. or similar structure(s) shared by Ownership Oriented Facilities on two adjacent parcels where the Preempted Area is less than 5,000 sq. ft.

(iii) Marginal Docks and mooring pilings along an existing seawall, bulkhead or revetment.

(iv) Replacement of bulkheads or seawalls at or within two feet waterward of the mean high tide line for tidally-influenced waters or at the ordinary 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 ordinary low water line for non-tidal streams or water bodies.

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

(vi) Reclamation projects as approved in writing by the Department. All final reclamation documents, including but not limited to a survey, are to be recorded in the applicable county by the riparian owner.

3. Riparian Easement covering the Preempted Area is required for the following structures, improvements and/or activities:

(i) Structures, improvements or other such activities not granted a Consent of Use under these rules.

(ii) All revenue generating/income related activities.

4. Dredge Permit is required for the severance of materials from State Owned Submerged Lands as provided below.

5. A Shellfish Aquaculture Easement is required for the off-bottom cultivation and harvesting of shellfish as provided in Ala. Admin. r. 220-4-.17.

6. To obtain one of the forms listed above, contact the Division at 251-621-1216 or via email at Submerged.Lands@dcnr.alabama.gov.

(5) Payments and Fees. Fees for riparian Easements relating to structures, improvements, and other activities not granted a Consent of Use shall be as follows:

(a) Fee Formula

1. The annual fee for riparian Easements shall be either the lease rental value of the Preempted Area of State Owned Submerged Lands on a per square foot basis as determined by the Division appraisal ("Preempted Area Fee"), or the minimum annual fee, whichever is greater.

2. For new riparian Easements, the initial annual fee shall be calculated on a prorated basis from the effective date of the new Easement to the last day of the following February.

3. The Easement grantee shall provide upon request by the Division at the time of application or thereafter any and all information in a certified form needed to calculate the Easement fee specified above, including, but not limited to, the total square footage of the Easement area, any structures proposed to be placed on the Easement area, and, if applicable, the total number, length and configuration of wet slips.

(b) Appraisal-Based Fees, Minimum Annual Fees and Other Payments

1. Appraisal-Based Fees.

(i) The Preempted Area Fee shall be calculated annually on a per square foot basis according to the geographic Zone as reflected on the Zone Map and further designated by the Easement holder qualifying as a Commercial Facility or an Ownership Oriented Facility. The Preempted Area Fee effective as of July 15, 2022, is a follows:

Zone 1

Commercial Facility - $0.42 per sq. ft.

Ownership Oriented Facility - $0.28 per sq ft.

Zone 2

Commercial Facility – $0.30 per sq. ft.

Ownership Oriented Facility - $0.20 per sq. ft

Zone 3

Commercial Facility - $0.17 per sq. ft.

Ownership Oriented Facility - $0.11 per sq. ft.

Zone 4

Commercial Facility - $0.13 sq. ft.

Ownership Oriented Facility - $0.08 sq. ft.

To obtain a copy of the Zone Map, contact the Division at 251-621-1216 or via email at Submerged.Lands@dcnr.alabama.gov.

The Preempted Area Fee 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, All Items, as published by U.S. Department of Labor, Bureau of Labor Statistics.

2. Minimum Annual Fees.

(i) There shall be a minimum annual fee of $775 effective as of July 15, 2022. The minimum annual fee shall be revised annually on March 1 as specified in (5)(b)1.(i) above.

(c) Late Payments. 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 10 percent per annum, calculated on a daily basis for every day the payment is late.

(6) Dredge Permit Payments and Fees. Fees for Dredge Permits relating to severance of materials from State Owned Submerged Lands shall be as follows:

(a) Fee Formula

1. The fee for Dredge Permits shall be either the valuation of the dredged materials as determined on a per cubic yard basis by Division appraisal ("Per Unit Fee"), or the minimum fee, whichever is greater.

(b) Fees and Other Payments

1. Payment of the Per Unit Fee or minimum fee, whichever is greater, shall be due prior to issuance of the Dredge Permit.

2. The Per Unit Fee shall be calculated according to the cubic yards of material to be severed and further designated by the placement of the severed materials. The calculation will be delineated based on the volume of materials stored above the mean high tide line and/or below the mean high tide line. The Per Unit Fee effective as of July 15, 2022, is as follows.

First 10,000 cubic yards:

$1.25 per cubic yard of material stored below the mean high tide line

$2.25 per cubic yard of material stored above the mean high tide line

10,001 to 29,999 cubic yards:

$0.75 per cubic yard of material stored below the mean high tide line

$1.25 per cubic yard of material stored above the mean high tide line

30,000 cubic yards or more:

$0.25 per cubic yard of material stored below the mean high tide line

$0.75 per cubic yard of material stored above the mean high tide line

The Per Unit Fee 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, All Items, as published by the U.S. Department of Labor, Bureau of Labor Statistics.

3. There shall be a minimum fee of $500 effective as of July 15, 2022. The minimum fee shall be revised annually on March 1 as specified in (6)(b)2. above.

Author:
Statutory Authority: Code of Ala. 1975, §9-2-12.
History: **New Rule:** August 3, 1998; effective September 8, 1998. **Repealed and New Rule:** Filed July 29, 2003; effective September 2, 2003. **Amended:** Filed April 15, 2014; effective May 20, 2014. **Amended:** Filed July 19, 2017; effective September 2, 2017. **Amended:** Published May 31, 2022; effective July 15, 2022.

Penalty: As provided by law.

220-4-.10 Vessel Mooring Buoys Or Pilings.

The construction, maintenance, or use of vessel mooring buoys in waters over state-owned submerged lands is prohibited. The construction, maintenance, or use of pilings in waters over state-owned submerged lands by persons without riparian access rights at such locations is prohibited. The penalty for the violation of this rule is as provided in §9-1-4, Code of Ala. 1975.
Author: James D. Martin
Statutory Authority: Code of Ala. 1975, §9-2-12.
History: **New Rule:** August 3, 1998; effective September 8, 1998.

Penalty: As provided in §9-1-4, Code of Ala. 1975.

220-4-.11 Regulation Of Vehicles.

The State Lands Division may, at such locations as determined by said division, prohibit the use of off-road vehicles or vehicles of any type, on any state-owned lands under the jurisdiction of said division. It shall be a violation of this rule to operate a prohibited vehicle on any lands subject to such prohibition. The penalty for the violation of this rule is as provided in §9-1-4, Code of Ala. 1975.
Author: Riley Boykin Smith
Statutory Authority: Code of Ala. 1975, §9-2-12.
History: **New Rule:** Filed March 19, 1999; effective April 23, 1999.

Penalty: As provided in §9-1-4, Code of Ala. 1975.

220-4-.12 Regulation Of Fishing.

The State Lands Division may, at such locations as determined by said division, prohibit fishing on any state-owned lands under the jurisdiction of said division. It shall be a violation of this rule to fish on any lands subject to such prohibition. The penalty for the violation of this rule is as provided in §9-1-4, Code of Ala. 1975.
Author: Riley Boykin Smith
Statutory Authority: Code of Ala. 1975, §9-2-12.
History: New Rule: Filed March 19, 1999; effective April 23, 1999.

Penalty: As provided in §9-1-4, Code of Ala. 1975.

220-4-.13 Regulation Of Swimming.

The State Lands Division may, at such locations as determined by said division, prohibit swimming on any state-owned lands under the jurisdiction of said division. It shall be a violation of this rule to swim on any lands subject to such prohibition. The penalty for the violation of this rule is as provided in §9-1-4, Code of Ala. 1975.
Author: Riley Boykin Smith
Statutory Authority: Code of Ala. 1975, §9-2-12.
History: New Rule: Filed March 19, 1999; effective April 23, 1999.

Penalty: As provided in §9-1-4, Code of Ala. 1975.

220-4-.14 Pipeline Right-Of-Way Contracts - Non-Submerged Lands.

(1) Any person, firm or corporation desiring a right-of-way for pipeline construction purposes across non-submerged state-owned lands under the jurisdiction of the State Lands Division of the Department of Conservation and Natural Resources shall make application to the Commissioner of Conservation and Natural Resources by submitting a completely executed application on the form provided by the State Lands Division. Any right-of-way granted hereunder shall be on a non-exclusive basis.

(a) The application shall include all of the following unless specifically waived by the Commissioner:

1. The name, address, and telephone number of the person, firm or corporation desiring the right- of-way.

2. A description of the size and purpose of the proposed pipeline, including product to be transported or equipment to be contained therein.

3. An adequate description of the land through which the pipeline is to be constructed.

4. A statement of the term for which the subject right-of-way contract is desired.

5. The length, in rods, of the proposed pipeline.

6. The width, in feet, of the proposed right-of-way both during construction and after construction.

7. A nonrefundable $250.00 filing fee per right-of-way contract, or renewal thereof, made payable to the Division of State Lands.

8. A map showing the location of the proposed pipeline.

9. A cross-sectional drawing of the proposed work showing depth of the proposed pipeline relative to existing ground level.

10. Such additional information as the Commissioner may deem necessary.

(b) There is no limit to the number of parallel lines which may be included in a single right-of-way contract.

(c) Upon receipt of all necessary application information the Commissioner may grant, deny, or grant with qualifications the requested right-of-way.

(d) The term for all right-of-way contracts executed pursuant to this regulation shall not exceed 10 years, with an option to renew for additional terms, none of which shall exceed 10 years. The option to renew shall be on the same terms and conditions as the original agreement except that the consideration shall be redetermined based on the provisions of paragraph (2).

(2) The consideration payable for each 10-year term of any right-of-way contract granted or renewed pursuant to this regulation shall be the following:

(a) For pipelines less than 25 rods in length, a fee of five hundred dollars ($500) per year; or

(b) For pipelines equal to or greater than 25 rods in length, the following rates per pipeline: The greater of five hundred dollars ($500) per year or the appraised fair market value of the non-submerged state lands involved as determined by a licensed Alabama (M.A.I. certified) real estate appraiser selected by the State Lands Director.

(3) Any right-of-way granted by the Commissioner will be subject to the rules contained herein and will bind the grantee to comply with the following provisions:

To comply with all existing rules and with all existing and future rules or orders which the Commissioner determines to be necessary and proper in order to provide for the protection and conservation of the natural resources of public lands and waters;

To indemnify the grantor against any and all liability for damages to life, person, or property arising from the grantee's occupation and use of the area covered by the interest granted;

That the granting of the right-of-way shall be subject to the express condition that the rights granted will not unduly prevent or interfere in any way with the management, administration of, or the granting, either prior or subsequent thereto, of other rights by the Commissioner of any part of the area included in the right-of-way; and

To pay when due the consideration herein prescribed.

(a) An applicant, by accepting a right-of-way, further agrees and consents to comply with and be bound by the following additional terms and conditions, excepting those which the

Commissioner may waive in a particular case:

1. To bury the pipeline at a depth of not less than 24 inches;

2. To water-pressure test all lines before use to 1-1/2 times the anticipated working pressure;

3. To construct a steel line from new or reconditioned pipe in first class condition.

4. To electrically test or x-ray any steel field weld to insure reasonable safety from leaks;

5. To bury a pipeline in such a manner so as to evenly backfill the sand, gravel, soil, or other material excavated during construction onto the disturbed area to

conform as much as is reasonably possible with the profile of the adjacent natural land.

(b) The grantee shall not construct or maintain any oil pipelines, gas pipelines, sulphur pipelines, or other pipelines unless the same is specifically provided for in the granting clause of the right-of-way contract; however, the grantee shall have the right to replace said pipeline with a larger or smaller pipe, or pipe of the same size, installed alongside the line to be replaced provided the line being replaced is promptly removed upon completion of the replacement line; but grantee may not build another pipeline alongside its first pipeline or at any other location without a right-of-way contract authorizing same.

(4) An application for renewal of an existing right-of-way shall be made using the State Lands Division contract form, and shall adhere to the rules in effect at the time renewal is requested.

(a) The grantee shall apply to the Commissioner in accordance with paragraph (1) of this regulation (relating to Application), except that the location and cross-sectional drawings need not be submitted unless specifically requested by the Commissioner. The application should also include the right-of-way contract number and the date of expiration of said contract.

(b) Assignment may be made of any interest or rights granted in whole or in part subject to the written approval of the Commissioner. Any such assignment must be filed in triplicate accompanied by a written request for approval in which the assignee agrees to comply with all rules and regulations contained herein and in the contractual agreement. The application should also include the existing contract number and the date of expiration of said contract. An assignment fee of $250.00 payable to the Division of State Lands must accompany the application for approval of an assignment. No assignment shall be effective to transfer any rights until approved by the Commissioner, the grantee, and the assignee.

(c) Failure to comply with these rules subject the contract to termination by the Commissioner. Upon termination of any contract which is not reinstated by the Commissioner, the grantee shall, within 120 days from said termination, remove all of its personal property and all structures and manmade improvements authorized in the right-of-way contract, provided all monies due have been paid. The Commissioner at his option, may permit the grantee to leave in place all or portion of grantee's personal property and any structures and manmade improvements authorized in the right-of-way contract. The grantee shall take whatever measures as necessary to restore the area involved as nearly as practicable to the same condition that existed prior to placement of any structure

thereon, except as otherwise approved in writing by the Commissioner.

(5) The provisions of this regulation, except the payment of consideration provided for in paragraph (2), are applicable to the activities of a non-submerged lands mineral interest holder of a state-owned leased tract on which a producing well is located as well as to the activities of a non-submerged lands mineral interest holder on a tract leased by the Commissioner in which the lease authorizes the lessee to lay pipelines.
Author: Christopher M. Blankenship
Statutory Authority: Code of Ala. 1975, §9-2-12.
History: **New Rule:** Filed February 23, 2000; effective March 29, 2000. **Amended:** Filed March 16, 2006; effective April 20, 2006. **Amended:** Filed September 5, 2018; effective October 20, 2018.

Penalty: As provided by law.

220-4-.15 Regulation Of Certain Conduct On Lands Under State Lands Division Jurisdiction.

(1) Except as otherwise authorized in writing by the Director of the State Lands Division, it shall be unlawful on any state-owned lands under the jurisdiction of the State Lands Division:

(a) To hunt, trap, use dogs, possess firearms, traps, or bow and arrow, without a proper license. See (1)(r) for limited exception for certain lawfully authorized handguns possessed for personal protection.

(b) For any person to carry in or on a vehicle, any of the following: any firearms [including pistols/handguns, except as described in (1)(r)] with ammunition in the magazine, breech or clip attached to firearms, or black powder weapons with primer, cap or flash powder in place, or cocked crossbows. See (1)(r) for limited exception for certain lawfully authorized handguns possessed for personal protection.

(c) To camp except in designated areas. Campers using generators must camp in an area designated for generator use. Individuals or groups may camp for a period not to exceed nine (9) days in any thirty (30) day period. Campfires must be extinguished before departing. No warming fires shall be permitted away from camping area.

(d) To kill, collect or willfully molest any species of wildlife except those designated for hunting.

(e) To discharge fireworks at any time.

(f) To discharge firearms or archery equipment for target practice.

(g) To hunt or discharge firearms or shoot a bow and arrow or crossbow within 150 yards of any designated camping area, dwelling, dam or timber operation, 100 yards of any paved public road or highway, or within a posted safety zone or on Sunday within one/half mile of any church.

(h) For any person except authorized personnel to operate any motor driven vehicle behind, under or around any locked gate, barricaded road, or sign which prohibits vehicular traffic.

(i) For any unauthorized person at any time to operate a motor scooter, ATV, motorcycle, motorized trail bike, or any motor driven vehicle except on regularly used roads or trails designated as allowing public use of specific motor driven vehicles; or for any unauthorized person to ride or possess horses except: (1) on roads open to four-wheel motorized vehicles; and (2) in areas, roads, and trails, designated as open to horses.

(j) For any person except authorized personnel to block or otherwise stop traffic on any road or at any gate by any means including by parking a vehicle in such a way that passage around the vehicle is impossible.

(k) For any person to deposit, distribute or scatter grain, salt, litter, or any other materials.

(l) To damage or remove any trees, embedded submerged logs, crops, plants or other vegetation, minerals, precious metals, dirt, gravel, stones, artifacts, fossils, firewood, mulch, leaf litter, sod, or pine straw.

(m) To erect or use a permanent tree stand or scaffold.

(n) To cast a light of any kind, either handheld, affixed to a vehicle, or otherwise, between the hours of sunset and sunrise except in areas where the state law is more restrictive. This paragraph does not apply to the headlights of vehicles traveling in a normal manner on an open established road.

(o) To hunt from an elevated stand or platform without attaching themselves to the tree or platform with a full-body safety harness, capable of supporting their weight.

(p) To violate any posted restrictions on entry, hunting, fishing, or other conduct.

(q) To release any animal, bird, fish, other wildlife, or introduce any plant or other vegetative material.

(r) Nothing in this regulation prohibits the possession of handguns by lawfully authorized persons for personal protection, provided the handguns are not used to hunt or take or to attempt to take wildlife in violation of law.

(s) To possess any open alcoholic beverages outside a designated camping area, a lodging accommodation, a dining facility, or other special event areas as may be designated by the Commissioner or his designee.

(t) For any unauthorized person, at any time, to operate a motor scooter, ATV, UTV, motorcycle, motorized trail bike, or any motor driven vehicle (NOT to include vessels) on state-owned submerged lands.

(u) For any unauthorized person to launch, land, possess, or use any unmanned aerial vehicle (UAV)/drone without first obtaining written permission from the Alabama State Lands Division.

Author: Christopher M. Blankenship
Statutory Authority: Code of Ala. 1975, §9-2-12.
History: **New Rule:** Filed May 22, 2007; effective June 26, 2007. **Amended:** Filed October 12, 2011; effective November 16, 2011. **Amended:** Filed August 11, 2014; effective September 15, 2014. **Amended:** Filed September 8, 2015; effective September 13, 2015. **Amended:** Filed August 11, 2016; effective September 25, 2016. **Amended:** Filed March 6, 2018; effective April 20, 2018. **Amended:** Published September 30, 2019; effective November 14, 2019. **Amended:** Published August 29, 2025; effective October 13, 2025.

Penalty: As provided by law.

220-4-.17 Shellfish Aquaculture Easements.

(1) 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.

(2) 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 Ala. 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 Ala. 1975.

(3) 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.

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

(5) 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.

(6) 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.

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

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

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

(a) 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.

(b) 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.

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

1. 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 Ala. 1975;

2. 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 Ala. 1975, unless the applicant obtains a letter of concurrence from the adjoining riparian upland property owner;

3. 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

4. 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.

(10) Shellfish aquaculture easement application and review process.

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

1. Name, address and phone number of the applicant;

2. 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;

3. A statement describing the applicant's capabilities to conduct the proposed activities;

4. Location of the proposed activity including: county; section, township and range; water body; and a vicinity map;

5. In the case of riparian easements, satisfactory evidence of sufficient upland interest;

6. 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; 7

7. A statement describing the potential impacts of the proposed use on the ecology of the area, including fish and wildlife habitat; and

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

(b) 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:

1. A detailed statement describing the proposed activities, including the project design and description of all operations.

2. A detailed and dimensioned site plan drawing showing:

(i) The approximate mean or ordinary high water line;

(ii) The location of wetland, shoreline and aquatic vegetation and other submerged resources;

(iii) The location of the proposed structures and any existing structures;

(iv) The location of intake and discharge pipelines, pumps, culture units, and tanks;

(v) The applicant's upland parcel property lines and zoning restrictions; and

(vi) The location of the nearest natural or artificial navigation channel.

(c) 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.

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

1. That the proposed shellfish aquaculture activity is water dependent;

2. That the proposed project and operation is directly related to shellfish aquaculture;

3. 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 Ala. 1975;

4. The impact of the proposed shellfish aquaculture easement on natural resources, as determined by DCNR;

5. Whether the proposed aquaculture activity adversely affects a public shellfish reef;

6. That the size of area requested for easement is appropriate to the use;

7. The suitability of the site for the granting of an easement;

8. 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

9. The need for special easement conditions.

(11) Shellfish aquaculture easements.

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

1. 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;

2. 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;

3. 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;

4. 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;

5. 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;

6. 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

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

(b) 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.

(c) 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.

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

(12) Consideration for Shellfish Aquaculture Easements.

(a) 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.

(b) 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 Ala. 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 Ala. 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.

(c) 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.

Author: N. Gunter Guy
Statutory Authority: Code of Ala. 1975, §§9-2-7, 9-2-8, 9-2-12.
History: **New Rule:** Filed April 15, 2014; effective May 20, 2014.

Penalty: As provided by law.

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 Ala. 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, Code of Ala. 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: Christopher M. Blankenship
Statutory Authority: Code of Ala. 1975, §9-2-12.
History: **New Rule:** Filed July 31, 2017; effective September 14, 2017.

Penalty: As provided by law.

220-4-A **Appendix A**.

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.

$$Formula = (D-4)^2 x\left(L/16\right)$$

D = Diameter inside bark at the small end in inches

L = Log length in feet
Author: N. Gunter Guy
Statutory Authority: Code of Ala. 1975, §§9-2-7, 9-2-8, 9-2-12.
History: New Rule: Filed July 31, 2017; effective September 14, 2017.

Penalty: As provided by law.