

APA-1
6/93

**TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION**

Control No. 220 Department or Agency Conservation and Natural Resources

Rule No.: **220-2-.158**

Rule Title: **Guntersville Reservoir Paddlefish Management Area and Season Established**

x New Amend Repeal (of Existing Rule) Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? YES

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? YES

Is there another, less restrictive method of regulation available that could adequately protect the public? NO

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? NO

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the rule? N/A

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

Does the proposed rule have any economic impact? NO

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975 and that it conforms to all applicable filing requirements of the Alabama Administrative Procedure Division of the Legislative Reference Service.

Signature of Certifying Officer _____

Jennifer Wilbur
Secretary of Administrative Procedure

Date _____

10-12-16

APA-2
6/93

Department of Conservation and Natural Resources
Division of Wildlife and Freshwater Fisheries

NOTICE OF INTENDED ACTION

AGENCY NAME: Department of Conservation and Natural Resources

RULE NO. & TITLE: 220-2-.158 Guntersville Reservoir Paddlefish Management Area and Season Established

INTENDED ACTION: New Rule

SUBSTANCE OF PROPOSED ACTION: To create a regulation to establish an experimental one-year commercial fishing season for paddlefish in the upper portion of Guntersville Reservoir in Jackson County, Alabama in order for WFF to collect reliable fishery-dependent harvest data.

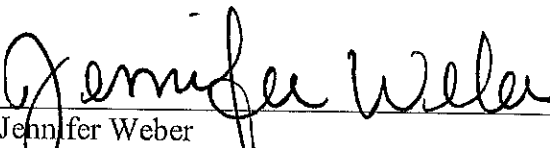
TIME, PLACE, MANNER OF PRESENTING VIEWS: Interested persons may present their views in writing to the Director of the Division of Wildlife and Freshwater Fisheries at any time during the period stated below, or orally if requested in writing 48 hours in advance to the Director of the Division of Wildlife and Freshwater Fisheries, by personally appearing at Room 474, Folsom Administrative Building, 64 North Union Street, Montgomery, Alabama, at 10:00 a.m., Monday, December 5, 2016.

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

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

December 5, 2016.

CONTACT PERSON AT AGENCY: Chuck Sykes, Director, Division of Wildlife and Freshwater Fisheries, 5th Floor, 64 N. Union Street, Montgomery, Alabama 36130, 334-242-3465.


Jennifer Weber
Secretary of Administrative Procedure

N. Gunter Guy, Jr.

**220-2-.158 Guntersville Reservoir Paddlefish Management Area and Season
Established**

- (1) An experimental one-year commercial fishing season for paddlefish (*Polyodon spathula*) is hereby established for one area in Guntersville Reservoir, Alabama, in 2017, as provided for below. This area is hereafter referred to as a Paddlefish Management Area (PMA), and is hereby established as, and shall constitute, a special fishery "wildlife management area", in accordance with Sections 9-11-300 and 9-11-301 of the Code of Alabama, 1975. This PMA will occur in the upper portion of Guntersville Reservoir in Jackson County, as described below. These rules shall govern according to the following restrictions and regulations:
- (2) **Location.**
 - (a) **Upper Guntersville Reservoir Paddlefish Management Area (UGR) (Jackson County):** The public waters of the mainstem portion (tributaries excluded) of the Tennessee River (Upper Guntersville Reservoir) from TRM 414.5 (34.9532382°N 85.7019227°W) to TRM 385.9 (34.6402099°N 85.9757707°W). This is from the railroad bridge at Bridgeport that crosses Long Island to the HWY 35 Bridge at Scottsboro. A total of 28.6 river miles will be open for commercial harvest of paddlefish.
- (3) **Season.**
 - (a) **UGR:** February 1 (Wednesday) - March 21 (Wednesday), 2017. Weekend (Saturday and Sunday) commercial paddlefish fishing is not permitted.
- (4) **Fishing Hours.**
 - (a) **UGR:** Gill nets can be set, checked, and handled between legal sunrise and sunset hours; Monday - Friday. Gill nets can be set overnight; however, it is illegal to set, check, or handle gill nets between legal sunset and sunrise hours. Gill nets must be removed from the water by legal sunset hour each Friday.
- (5) **Persons Eligible.** Due to the need for the Alabama Division of Wildlife and Freshwater Fisheries (ADWFF) to collect reliable fishery-dependent harvest data from this experimental one-year season, only Alabama residents and non-residents that have held a valid paddlefish harvester permit for the previous 2013 through 2016 Alabama River Paddlefish Management Area seasons are eligible to enter the drawing for a separate harvester permit for the UGR Paddlefish Management Area. Not less than fifty percent (50%) of the available permits shall be made available to eligible Alabama residents. In no event shall the percentage of available permits for nonresidents of any other state exceed any percentage restriction placed on that

state's nonresidents to commercially harvest paddlefish in that state.

- (6) **Harvest Permits.** The following permits and tags are established and required to commercially harvest paddlefish in Alabama:
- (a) **Alabama Residents.** Commercial Paddlefish Harvester Permit [\$750.00]. This permit is required for the holder to fish and take paddlefish in a designated paddlefish management area for the purpose of harvesting flesh and roe during designated commercial paddlefish seasons. This permit also allows one commercial fishing helper per permit holder. An Alabama Commercial Freshwater Fishing License is required in addition to the Commercial Paddlefish Harvester Permit to harvest and possess paddlefish.
 - (b) **Nonresidents.** Nonresident Commercial Paddlefish Harvester Permit—The cost for the permit will be same as what the applicant's State of residency would charge an Alabama resident to commercially fish for paddlefish in that State but in no event shall the cost be less than the fee charged to a resident of Alabama. This permit is required for the holder to fish and take paddlefish in a designated paddlefish management area for the purpose of harvesting flesh and roe during designated seasons. This permit also allows one commercial fishing helper per permit holder. An Alabama Commercial Freshwater Nonresident Fishing License is required in addition to the Nonresident Commercial Paddlefish Harvester Permit to harvest and possess paddlefish.
 - (c) **Carcass Tags.** It shall be required that all harvested paddlefish possess an Alabama Division of Wildlife and Freshwater Fisheries (ADWFF) issued serial tag attached through the dorsal fin. Paddlefish harvesters will tag each harvested paddlefish after the fish is removed from the net and placed in their fishing vessel. The tag is to remain on the fish until the flesh is processed and packaged for retail sale.
- (7) **Dealer's Licenses. (Required by Section 9-11-153, Code of Alabama, 1975, as amended by Act No. 2012-471).**
- (a) **Alabama Residents.** Commercial Paddlefish Dealer's License [\$750.00]. This license is required of every resident person, firm, association, or corporation to buy, sell, process, or ship paddlefish roe or flesh acquired from a permitted paddlefish harvester. Any employee or agent of a dealer shall be required to possess a copy of the dealer license, signed by the dealer, at all times he is performing any activities pursuant to such license. This license is not required for a permitted paddlefish harvester to sell or ship within Alabama paddlefish roe or flesh that the harvester has caught, to an Alabama licensed commercial paddlefish dealer. An Alabama wholesale freshwater fish dealer license is required in addition to the Commercial Paddlefish Dealer's License to buy, process, sell, or ship paddlefish roe and flesh.

(b) **Nonresidents.** Commercial Paddlefish Dealer's License—The cost for this license will be same as what the applicant's State of residency would charge an Alabama resident to buy, sell, process, or ship paddlefish roe or flesh within that State but in no event shall the cost be less than the fee charged to a resident of Alabama. This license is required of every nonresident person, firm, association, or corporation to buy, sell, process, or ship paddlefish roe or flesh acquired from a permitted paddlefish harvester. Any employee or agent of a dealer shall be required to possess a copy of the dealer license, signed by the dealer, at all times he is performing any activities pursuant to such license. This license is not required for a permitted paddlefish harvester to sell or ship within Alabama paddlefish roe or flesh that the harvester has caught, to an Alabama licensed commercial paddlefish dealer. An Alabama wholesale freshwater fish dealer license is required in addition to the Commercial Paddlefish Dealer's License to buy, process, sell, or ship paddlefish roe and flesh.

(8) **Size Limit.**

- (a) The minimum length to possess and harvest paddlefish is 38" (965.2 mm) eye-to-fork (EFL) and only egg-bearing females are legal. The EFL is the length from the anterior portion of the eye (front of eye) to the fork of the tail measured with a flexible tape measured along curvature of the body. The possession and harvest of any male paddlefish, female paddlefish with no eggs, and female paddlefish under 38" EFL is prohibited.
- (b) Prior to sale to a commercial paddlefish dealer, paddlefish carcasses may not be altered in a manner that the length of the fish cannot be determined. If a paddlefish has been altered to not allow the minimum length determination, then the carcass and roe are subject to confiscation.

(9) **Applications.**

- (a) Commercial paddlefish harvester permit applications for all of the 2017 Paddlefish Management Areas will automatically be sent to all commercial freshwater fishers who held an Alabama commercial freshwater fishing license from October 1, to September 30, of the previous year. Eligible nonresident commercial freshwater fishers that wish to apply for an Alabama commercial paddlefish permit may obtain the necessary forms and information by contacting ADWFF at (334) 242-3471.
- (b) A total of 5 separate eligible applicants will be randomly selected for the opportunity to purchase a permit for the UGR Paddlefish Management Area.
- (c) Commercial paddlefish harvester permits are non-refundable and non-transferable.

- (10) **Mandatory Training Course.** All permitted commercial paddlefish harvesters will be required to attend a pre-season briefing and instruction meeting prior to the paddlefish fishing season. This meeting will be held for commercial paddlefish harvester permit holders with the date, time, and location to be announced prior to the season opening. This meeting will only be open to valid commercial paddlefish harvester permit holders and not to the public. Each commercial paddlefish harvester permit will be endorsed by a fisheries biologist after the meeting. This endorsement is required and must be shown to a Conservation Officer or ADWFF fisheries biologist if requested.
- (11) **Designated Boat Ramp and Mandatory Check Station.** All commercial paddlefish harvesters and helpers can only launch and take out from the designated boat ramp and all harvested fish are to be checked by an ADWFF biologist before the fish is processed at the following designated ramp:
- (a) **UGR Paddlefish Management Area.**
1. State boat ramp off of HWY 117 bridge west side of the Tennessee River.
- (12) **Gear and Fishing Restrictions: UGR Paddlefish Management Area.**
- (a) Paddlefish may only be harvested by the use of gill nets, as provided for below.
 - (b) A gill net (may be referred to hereafter within as “net” or “nets”) is defined as a single net attached to float and lead lines.
 - (c) The use of tied-down gill nets (hobbled) is prohibited.
 - (d) The use of monofilament and multifilament (nylon) nets are permitted.
 - (e) The maximum number of gill nets permitted to fish concurrently is five and only five gill nets may be in possession on the water and during commercial paddlefish fishing.
 - (f) The use of mechanical gear (rollers) to deploy and retrieve gill nets is permitted.
 - (g) A fluorescent orange float is required on each float end. The float size must be approximately the size of a 1-gallon milk container or similar to a bullet-type float measuring 5” in diameter and 11” in length.
 - (h) Total length of each gill net cannot exceed 300 feet.
 - (i) There is no restriction on gill net depth.

- (j) Gill nets must have a minimum mesh size of 6-inch bar measure (knot to knot).
- (k) Gill nets (i.e., beginning with the float line) must be submerged three feet or more beneath the surface. Clip on floats (buoys) are not considered part of the net for depth purposes only.
- (l) Gill nets must be checked at least 2 times in a 24-hour period to prevent bycatch mortality.
- (m) The “tying up” of any harvested paddlefish to a tree or limb is prohibited.
- (n) A large live well is permitted if the harvesters wish to keep the fish alive while on the water.
- (o) All harvested paddlefish must be kept in the harvester’s boat until they reach land for processing.
- (p) Paddlefish eggs may not be removed outside of the fish’s body cavity while on the water or adjacent bank. Eggs can only be removed at the boat ramp (on land) or processing facility after the fish has been checked by a ADWFF fisheries biologist.
- (q) No processed paddlefish and/or eggs outside of the body cavity can be in possession while on the water.
- (r) A 12-gauge needle may be inserted into the abdomen between the pectoral and pelvic fins to determine the presence of eggs in paddlefish over 38 inch EFL. Paddlefish may be checked once with a needle on either side of the abdomen for a total of 2 times per paddlefish season. Repeated checking of paddlefish is not permitted. This needle and syringe device must be on board every commercial paddlefish harvester fishing vessel and kept in a sanitary manner. Paddlefish less than 38 inch EFL must be returned immediately to the water without being checked. It shall be illegal to harvest or possess any paddlefish with more than 2 punctures.
- (s) A 2-inch portion of ovary (including some eggs) must remain attached to each harvested paddlefish until the fish and eggs are received by a licensed commercial paddlefish dealer.
- (t) Paddlefish eggs removed from the fish must be kept in separate containers—eggs from one fish per container. Each container must be labeled with the paddlefish tag number and as paddlefish roe. One container must match one harvested paddlefish.
- (u) Blocking of harvested paddlefish is not permitted.

- (v) Paddlefish may not be possessed alive away from harvested waters.
- (w) The gill rakers inside the mouth can be cut to bleed the fish.
- (x) The harvest of Asian carp species is permitted. These species include: Bighead Carp (*Hypophthalmichthys nobilis*), Silver Carp (*Hypophthalmichthys molitrix*), Black Carp (*Mylopharyngodon piceus*) and Grass Carp (*Ctenopharyngodon idella*). If not harvested, the release of live bighead, silver, and black carps is not permitted. Each fish should be dispatched in a humane manner.
- (y) Commercially harvested paddlefish (or parts thereof) taken from an authorized PMA and sold must be marketed to a licensed wholesale fish dealer who has a valid Alabama commercial paddlefish dealer license; provided however, that all parts other than roe may be sold within Alabama by the harvester to other individuals for their personal consumption.
- (z) All commercial paddlefish harvester permit holders are required to allow boarding of their vessel if requested by an ADWFF conservation officer, agent, or biologist to examine their catch.
- (aa) Citations for the violation of any commercial fishing laws or regulations during the paddlefish season may result in confiscation of fishing equipment (i.e., boat, boat motor, boat trailer, gillnets and associated gear) and paddlefish roe and flesh as evidence.
- (bb) Conviction of any laws or regulations from a paddlefish season may result in the loss of opportunity to apply for a future commercial paddlefish harvester permit and forfeiture of confiscated fish equipment, paddlefish roe and flesh.
- (cc) Each gill net must be fished independent of other nets and cannot be tied together.
- (dd) During the commercial paddlefish season it is prohibited for any person to possess, buy, sell, or ship across Alabama state lines whole paddlefish, paddlefish parts or eggs without proper permits and documentation as determined by the ADWFF.

1. Exceptions:

- (i) Persons who have purchased paddlefish flesh or processed and packaged paddlefish eggs for consumption.
- (ii) Restaurants, grocery stores, hotels, retail fish markets, and wholesale food suppliers selling paddlefish roe or paddlefish parts

fully processed, packaged and ready for retail sale in sealed containers.

- (iii) Commercial shipping firms or authorized agents may possess legally taken paddlefish and/or paddlefish eggs or flesh shipped by person having an Alabama commercial roe dealer/buyer license.

(13) Informational Note. Regulations Already in Effect that Apply to the Commercial Harvest of Paddlefish: Tennessee River

- (a) All gill nets shall be affixed with a tag which has the name, address, and license number of the commercial paddlefish harvester on the tag.
- (b) At least one buoy per gill net must bear the name, address, and license number of the commercial paddlefish harvester.
- (c) Nets must be staggered when set and cannot be placed closer than 50' to any other net.
- (d) Nets must be fished in a stationary manner.
- (e) Nets cannot be placed 25' or closer to the water's edge.
- (f) Nets cannot be set in a way that the net extends more than half way across any river.
- (g) All fish species designated as game fish must be immediately returned to the waters from whence they were taken.
- (h) Other fish species designated as commercial or non-game caught in permitted paddlefish gill nets can be harvested during the paddlefish season.
- (i) The cutting or mutilating of paddlefish to check for eggs is prohibited. Except by the use of a 12-gauge needle to check for eggs (see 12 r).

(14) Harvest, Sale and Shipping Reporting. Commercial paddlefish harvesters and commercial paddlefish dealers will be required to submit paddlefish daily catch and harvest reports, commercial paddlefish roe buyer's weekly reports, and/or other reports as determined by the ADWFF. Falsification of, or failure to submit by the specified time or date, the required paddlefish reports to the ADWFF is a violation of this regulation and subjects the person to denial of future fishing privileges.

(15) License Requirements. Holders of a commercial paddlefish harvester permit and commercial paddlefish dealer's license must have government issued picture identification on their person during the commercial paddlefish season and while possessing paddlefish eggs, flesh, and parts. The aforementioned permit and license

must also be on their person during the season while possessing paddlefish eggs, flesh, and parts.

AUTHOR: N. Gunter Guy, Jr.

STATUTORY AUTHORITY: §§9-2-7, 9-2-8, 9-11-140, 9-11-300, 9-11-301
Code of Alabama, 1975.

HISTORY:

PENALTY: As provided by law.