# NOTICE OF PROPOSED RULE ADOPTION

## STATE OF MISSISSIPPI
## MISSISSIPPI DEPARTMENT OF WILDLIFE, FISHERIES AND PARKS

## DIVISION OF ADMINISTRAION

**MS Department of Wildlife, Fisheries and Parks**
**c/o Sam Polles, Ph.D., Executive Director**
**1505 Eastover Drive**
**Jackson, MS 39211-6374**
**(601) 432-2400**
**Sharon@mdwfp.state.ms.us**

**Specific Legal Authority authorizing the Promulgation of Rule: 41-1-29-; 25-43.3.103**

**Reference to Rules repealed, amended or suspended by the Proposed Rule: A1-3183**

**Explanation of the Purpose of the Proposed Rule and the reason(s) for proposing the rule**

**Rules for making requests before the Commission on Wildlife, Fisheries and Parks for a declaratory opinion.**

This rule is proposed as a X Final Rule, and/or a ☐ Temporary Rule (Check one or both boxers as applicable.)

**Persons may present their views on the proposed rule by addressing written comments to the agency at the above address. Persons making comments should include their name and address, as well as other contact information, and if you are an agent or attorney, the name, address and telephone number of the party or parties you represent.**

**Oral Proceeding:** Check one box below:

X An oral proceeding is scheduled on this rule on
Date: June 30, 2005
Time: 8:30 a.m.
Place: 1505 Eastover Drive, Jackson, MS 39211-6374

If you wish to be heard and present evidence at the oral proceeding you must make a written request to the agency at the above address at least five (5) days prior to the proceeding to be placed on the agenda. The request should include your name, address, telephone number as well as other contact information; and if you are an agent or attorney, the name, address and telephone number of the party or parties you represent.

☐ An oral proceeding is not scheduled on this rule. Where an oral proceeding is not scheduled, an oral proceeding will be held if a written request for an oral proceeding is submitted by a political subdivision, an agency or ten (10) persons. The written request should be submitted to the agency contact person at the above address within twenty (20) days after the filing of this notice of proposed rule adoption and should include the name, address and telephone number of the person(s) making the request; and if you are an agent or attorney, the name, address and telephone number of the party or parties you represent.

**Economic Impact Statement:** Check one box below:

X The agency has determined that an economic impact statement is not required for this rule, or

☐ The concise summary of the economic impact statement required is attached.

The entire text of the Proposed Rule including the text of any rule being amended or changed is attached.

**Date Rule Proposed:** June 30, 2005

**Proposed Effective Date of Rule:** August 30, 2005

X Sam Polles

Sam Polles, Ph.D., Executive Director

MISSISSIPPI DEPARTMENT OF WILDLIFE, FISHERIES AND PARKS
1505 Eastover Drive
Jackson, MS 39211-6374

PUBLIC NOTICE OF INTENT A2-3183 (I)

In accordance with Section 25-43-3.103, Mississippi Code of 1972, the Mississippi Commission on Wildlife, Fisheries and Parks, at a meeting in Jackson, Mississippi on June 30, 2005, made known its intent to adopt the following:

# COMMISSION AND DEPARTMENT ORGANIZATION AND OPERATION; PROCEDURES FOR APPEARING BEFORE OR CONDUCTING HEARINGS BEFORE THE MISSISSIPPI COMMISSION ON WILDLIFE, FISHERIES AND PARKS ANDTHE DEPARTMENT OF WILDLIFE, FISHERIES AND PARKS

**Public Notice A1-3183 is hereby amended.**

## ARTICLE 1. ORGANIZATION AND METHOD OF OPERATION OF THE MISSISSIPPI COMMISSION ON WILDLIFE, FISHERIES AND PARKS, AND THE DEPARTMENT OF WILDLIFE, FISHERIES AND PARKS.

Section 1. Purpose.

The following rules set forth the organization and method of operation of the Mississippi Commission on Wildlife, Fisheries and Parks and the Mississippi Department of Wildlife, Fisheries and Parks. These rules are adopted pursuant to the mandate set forth at Miss. Code Ann. Section 25-43-2.104.

Section 2. The Commission.

A. The Mississippi Commission on Wildlife, Fisheries and Parks is a five (5) member commission consisting of members appointed by the Governor, with the advise and consent of the Senate. Members are appointed from each of the five (5) Congressional districts as those Districts existed prior to the 2000 Census. Members serve five (5) year terms and the terms are staggered so that a commissioner rotates off the Commission each year.

B. The Commission has the general authority to enforce the wildlife, fisheries and natural resource conservation laws of the State of Mississippi through its regulatory powers. The Commission is the primary policy making entity for the conservation and preservation of the wildlife, fisheries and related natural resources of the state.

C. The Commission conducts its business through the holding of monthly meetings. Meetings are open to the public and are conducted according to the Mississippi Open Meetings Law and Robert's Rules of Order.

D. The day-to-day business of the Commission is conducted by the Department under the authority of the Commission. The Department also provides such administrative and clerical support to the Commission as is needed.

Section 3. The Department.

A. The Mississippi Department of Wildlife, Fisheries and Parks is an agency of the Executive Branch of Mississippi State Government. The Department is responsible for the enforcement of the wildlife, fisheries and natural resource conservation laws of the State of Mississippi and for implementing the policies and regulations of the Commission.

B. Organization.

1. Divisions. The Department is divided into two (2) macro-divisions based upon programmatic and functional differences:

a. Law Enforcement, Wildlife and Fisheries Division: consists of the Office of Law Enforcement, Office of Wildlife, and Office of Fisheries. Each Office is headed by a Chief who reports to the Director of Law Enforcement, Wildlife and Fisheries. The primary mission of the Office of Law Enforcement is to enforce the wildlife and fisheries laws, boating, and hunter safety laws of the state. The Office of Wildlife conducts research into the management of the wildlife and other natural resources of the state and manages the state's Wildlife Management Areas. The Office of Fisheries conducts research into the state's freshwater fisheries resources and manages the state's public fishing lakes.

b. Parks and Administrative Services Division: consists of all state parks and all administrative service divisions of the Department, including, but not limited to Accounting, Budget, Accounts Payable, Payroll, Property, Purchasing and Fleet Services. The Director of Parks and the directors of each support division report to the Executive Officer who is the head of the Parks and Administrative Services Division.

C. Operations.

The Department conducts its business operations Monday through Friday at the central office located at 1505 Eastover Drive, Jackson, Mississippi. Regular business hours are 8:00 A.M. to 5:00 P.M. The Department may be reached by calling (601) 432-2400.

The Department also operates six (6) district offices round the state. Contact information for the district offices, the state parks, state lakes and wildlife management areas may be found on the Internet at www.mdwfp.com or by calling the state office at the number above.

ARTICLE 2. ADMINISTRATIVE PROCEDURES FOR INFORMAL APPEARANCES BEFORE THE COMMISSION ON WILDLIFE, FISHERIES AND PARKS.

Section 1. Commission meetings are held monthly at various sites around the state. Commission meetings are open to the general public and are conducted pursuant to the Mississippi Open Meetings Act and related laws. For information regarding the time and place of Commission meetings, please contact the Mississippi Department of Wildlife, Fisheries and Parks at (601) 432-2400.

Section 2. Any person wishing to appear before the Commission to make an oral presentation may do so by sending his or her request, in writing, to the Commission, in care of the Executive Director of the Mississippi Department of Wildlife, Fisheries and Parks at 1505 Eastover Drive, Jackson, Mississippi 39211. Requests must be received no later than ten (10) days prior to the Commission meeting for the requestor to be considered to be placed on the agenda. Requests should state clearly the name, address, telephone number, subject matter to be addressed and an estimated length of time for the presentation. Any special needs such as audio/visual equipment or other needs should be addressed in the request. Requestors will be notified as soon as possible after receipt of the request as to whether or not they will be placed on the Commission's agenda.

Section 3. Persons attending a Commission meeting who may wish to comment on a topic appearing on the agenda for that meeting may request to be recognized during the "Public Comment" portion of the meeting. Such requests must be made to the Chairman, immediately prior to the meeting. Such requests will only be granted if time allows. Groups of persons with similar interests or opinions that they wish to express to the Commission are urged to put forward one (1) spokesperson for the group.

ARTICLE 3. ADMINISTRATIVE PROCEDURES FOR FORMAL HEARINGS ON AND REVIEW OF COMMISSION RULES, REGULATIONS AND PUBLIC NOTICES.

Section 1. Purpose.

The following rules shall control public hearings and hearings within the jurisdiction of the of the Mississippi Commission on Wildlife, Fisheries and Parks (hereinafter referred to as the "Commission") and, the Mississippi Department of Wildlife, Fisheries and Park ("MDWFP"), required by the Administrative Procedures Law, Section 24-43-19 of the Mississippi Code of 1972, as amended.

Section 2. Scope of Rules.

These rules govern the conduct of public hearings on proposed changes to existing Commission rules, regulations, and public notices and the contesting of proposed rules, as well as requests for the Commission to reconsider its decisions on the adoption of rules, regulations, and public notices.

Section 3. Written Comments.

Written comments on proposed rules, regulations and public notices are encouraged and they may be submitted to the Executive Director of MDWFP or to the individual designated in the Administrative Procedures Law Filing Notice as the person to contact. If public hearings are conducted, written comments may be submitted no later than ten (10) working days prior to the Commission meeting, at the last public hearing, or at such other time as set forth in the notice of the hearing. Written comments presented at the public hearings will be included as a part of the record of the public hearing.

Section 4: Public Hearings:

For the purpose of these rules, "public hearing" means a hearing that is conducted by Commission and/or MDWFP prior to the adoption of a rule,

Regulation or action on a public notice and it does not refer to a regularly scheduled Commission meeting. Public hearings shall be conducted only when required by statute or when the Commission or MDWFP determines that public hearings are warranted to provide additional public input prior to the adoption of a rule, regulation or action on a public notice.

Section 5: Notice of Public Hearings.

If the determination is made to hold public hearings, then notification to the public shall be published in a newspaper having general circulation in the county or counties affected by the proposed rules, regulations or public notices. The Commission or Executive Director of MDWFP may order such additional publication as deemed necessary and appropriate. The notice should include the reason or purpose of the hearing, references to the rules and regulations involved and the date, time, and place of the hearing and the deadline for submitting written comments. The notice should be published at least three (3) days prior to the date of the hearing. Additional notification will be provided to individuals that have personally requested notification pursuant to Miss. Cod Ann. § 25-43-7 (i).

Section 6: Conduct of Public Hearing.

A. Public hearing will be conducted at times, locations and facilities selected by MDWFP. Representatives of the Commission or employees of MDWFP will preside over the public hearing. Prior to the commencement

of the hearing, individuals in attendance will sign in on forms or registers provided by MDWFP. At that time, they will indicate whether they wish to make oral comments at the public hearing . Those individuals who indicate that they wish to make oral comments will be called on to do so before the end of the public hearing. Any individual called on to make oral comments may waive his election to do so. Individuals not indicating their election to speak at the time that they sign in at the hearing will not be called on to make oral comments will not be allowed to "pass" their remarks until later in the hearing and will not be allowed to allot any unused time to another individual.

B. Comments during the hearing must address the subject of the hearing. Comments on matters other than the subject of the hearing will not be allowed and will not be part of the consideration of the Commission or Department on the proposed rule, regulation or public notice. The representative or employee of MDWFP who is selected to preside over the public hearing will announce before the commencement of oral comments the length of time each individual will be allowed to make comments. The time limit will be set after considering the number of individuals requesting time for oral comments and the total time available to conduct the entire public hearing.

C. The presiding representative or employee will make any additional orders, decisions and ruling which in his judgment are necessary for the orderly, fair, and efficient conduct of the public hearing.

D. Presentations on proposed rules, regulations and public notices may be allowed at the discretion of the Executive Director of MDWFP or the presiding representative of the Commission or employee of the Department.

Section 7. Contesting Proposed Rules.

Persons desiring to contest the making of any rule, regulation or public notice, may do so by attending the public meetings on the proposed rule, regulation or public notice, and stating there the basis of their objection. Alternatively, persons opposed to proposed rules, regulations, or public notices may object thereto by filing a written objection to the rules, regulations, or public notices with the Commission no later than the time allowed for written comments. Only persons complying with one of the two methods of objecting to proposed rules, regulations or public notices will be allowed to petition the Commission for reconsideration of the rule, regulation, decision or public notice.

Section 8. Petition for Reconsideration Before the Commission.

A. After the Commission has acted upon a rule, regulation or public notice, any party(ies) opposed to the rule, regulation or public notice, that

complies with Section 7 above, may request reconsideration of the Commission's decision by filing a Petition for Reconsideration. The Petition for Reconsideration must be filed within fourteen (14) days of the final adoption of the rule, regulation or public notice.

B. Petitions for Reconsideration fo the issuance, denial or revocation of permits may be made by any party requesting same, being denied same, or having same revoked, and if made, the petition must be in accordance with the other terms of this document. The Petition for Reconsideration must be filed within fourteen (14) days of the decision to issue, deny or revoke the permit. Petitions for Reconsideration of decisions on permits will be conducted in accordance with the provisions of paragraph 4 below and Article II of this document. When a Petition for Reconsideration is filed by an objector to the issuance of a permit, the applicant / recipient may be required to defend the decision of the Commission.

C. The Petition shall state specifically the points of law or facts which the party requesting the reconsideration believes the Commission overlooked or misapprehended, and shall contain a statement of the action which the party wishes the Commission to take. The Petition shall contain such argument in support of the Petition as the requesting party wishes to present, but in no event shall the Petition exceed fifteen (15) pages in length (exclusive of exhibits). The Petition must be typed or double-spaced. The original and ten (10) copies of the Petition for Reconsideration must be filed with the Commission through MDWFP. Filing may be accomplished by mail, but filing shall be considered timely only if the Petition is received within the time period described above.

D The Commission will consider the Petition for Reconsideration at its next regular meeting which occurs more than ten (10) days following the Petition's filing. The Commission may (1) make a final disposition of the Petition by either granting or denying the requested action without further argument; (2) request a response from MDWFP prior to making a final disposition; (3) set the matter for an evidentiary hearing; or (4) make such further order as it deems appropriate under the circumstances. Once a Petition for Reconsideration has been considered and ruled on by the Commission, no further requests for reconsideration will be allowed.

## ARTICLE 4. PROCEDURES FOR CONDUCTING EVIDENTIARY HEARINGS

Section 1. Requesting an Evidentiary Hearing.

A. The following procedures shall govern formal hearings and requests for reconsideration.

B. Any person, firm or corporation that has a license of permit suspended or revoked may request an evidentiary hearing within fourteen (14) days

from the date of the Commission action.

C. The Commission on Wildlife, Fisheries and Parks can order and require and evidentiary hearing on any matter within its jurisdiction.

Section 2. Setting the Hearing.

A. The Commission on Wildlife, Fisheries and Parks shall fix the time and place of such hearing and shall notify all parties thereto by certified mail. Individuals coming before the Commission may appear personally, by counsel, or both, produce witnesses and cross-examine witnesses.

B. The Commission shall delegate one of its members to act as the presiding officer or obtain the services of counsel from the Attorney General's Office to act as the presiding officer for the Commission.

Section 3. Witnesses.

The Commission on Wildlife, Fisheries and Parks is not authorized to issue subpoenas. Parties to an evidentiary hearing are responsible for assuring the attendance of their witnesses.

Section 4. Pre-filing Testimony and Documents.

A. Direct testimony of each witness to be relied upon during the hearing shall be pre-filed with the Commission on Wildlife, Fisheries and Parks and copies of the same shall be mailed to all parties seven (7) days prior to the hearing, except that in the discretion of the Commission on Wildlife, Fisheries and Parks this requirement may be modified or waived. Parties which cull "adverse" witnesses shall not be required to submit pre-filed testimony as contemplated in this paragraph. At least seven (7) days prior to the hearing, all parties involved shall exchange copies of all exhibits that will be introduced during the hearing indicating the party offering and the witness who will sponsor each. The presiding officer may permit an exception to these requirements when witnesses or exhibits are necessary for rebuttal or impeachment. Failure to submit the above referenced exhibits and the pre-filed testimony of witnesses and exhibits from the hearing. Also, the presiding officer, in his discretion, may call a pre-hearing conference prior to any hearing to establish hearing guidelines and clarify issues.

B. Should the Commission on Wildlife, Fisheries and Parks waive the above mentioned requirement for pre-filed testimony, then at least seven (7) days before the hearing, all parties involved shall exchange a list of all witnesses each will call during the hearing, a brief statement of the testimony expected from each witness, and copies of all exhibits as set forth in Section 4.1 above.

Section 5. Order of Proof.

A. Statements or testimony shall be offered under oath and shall be recorded. The presiding officer shall open the hearing by identifying each of the parties thereto, describing the permit or matter that is the subject of the hearing, and, if appropriate, the prior action taken thereupon by the Commission on Wildlife, Fisheries and Parks.

B. The order of proof shall be such that the staff of MDWFP shall present a brief analysis and recommendation with regard to the permit in question, which shall be followed by presentation of proof by the non-objecting party, if any, and subsequently by presentation of proof by the objecting party and/or the staff of MDWFP.

C. Each party shall be permitted to make a brief opening statement with regard to its position. Each witness shall testify through direct testimony which shall be pre-filed with the Commission on Wildlife, Fisheries and Parks pursuant to requirements set forth in Section 4 above. The presiding officer shall permit cross-examination, redirect examination limited to matters raised on cross-examination and may permit recross-examination limited to matters raised during redirect examination. Any Commissioner may, at any time, question a witness.

D. The strict rules of evidence shall not apply; however, all objections must be made in a timely fashion. The presiding officer may limit or exclude testimony which is redundant or not relevant to the issues before the Commission on Wildlife, Fisheries and Parks.

E. At the conclusion of the testimony and introduction of documents, each party will be permitted to make a brief closing statement summarizing the evidence offered by said parties in support of their respective positions, at which time the hearing record shall be closed.

Section 6. Rules of Evidence.

The Commission Wildlife, Fisheries and Parks shall not be bound by the strict rules of evidence, but shall base all its determinations on sufficient evidence.

Section 7. Deliberations by the Commission.

A. The Commission on Wildlife, Fisheries and Parks may issue its ruling immediately at the conclusion of the presentation of evidence or may take the same under advisement until a subsequent meeting of the Commission.

B. Upon an affirmative vote of three-fifths of the members present, and in accordance with Sections 25-41-1 et. seq. of the Miss. Code of 1972 as amended, the Commission on Wildlife, Fisheries and Parks may go into

executive session to deliberate. The Commission on Wildlife, Fisheries and Parks shall enter in its Minutes the Commission's final decision affirming, modifying or reversing its prior decision to deny, modify or revoke the permit or license. Said decision shall be final and conclusive. An appeal may be taken to the appropriate court within thirty (30) days of the date of notification of the Commission's decision. The parties shall be notified in writing of the Commission's decision. Mailing notification of the Commission's decision, postage pre-paid, to the parties shall constitute sufficient notice.

Section 8. Transcript.

The Commission on Wildlife, Fisheries and Parks, in its discretion, may not require a transcription of the hearing record, except in the event of an appeal, wherein said record shall be transcribed as provided by law and the cost thereof paid by the appealing party.

Section 9. Appeals.

In the event of an appeal, the party prevailing before the Commission may be required by the Commission to defend the decision in court. Failure of the prevailing party to assist in the defense may result in the confession of the cause of action by the Commission. The prevailing party will be responsible for all costs of the defense.

Anyone wishing to comment on the above proposed action may do so by writing the Executive Director, Mississippi Department of Wildlife, Fisheries and Parks, 1505 Eastover Drive, Jackson, MS. 39211-6374 no later than July 29, 2005.

MISSISSIPPI COMMISSION ON WILDLIFE, FISHERIES AND PARKS

By: _____
Noble Lee, Chairman

MISSISSIPPI DEPARTMENT OF WILDLIFE, FISHERIES AND PARKS

By: _____
Sam Polles, Ph.D., Executive Director