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Reference to Rules repealed, amended or suspended by the Proposed Rule: A-3762 / new rule

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:

☐ 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

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 A-3762 (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:

DECLARATORY OPINIONS: PROCEDURE FOR REQUESTING

Purpose. The purpose of the following rules is to provide procedures for making a request of the Mississippi Commission on Wildlife, Fisheries and Parks, acting by and through the Mississippi Department of Wildlife, Fisheries and Parks, for a declaratory opinion as per the provisions set forth in Miss. Code Ann., Section 25-43-2.103(2).

1. Scope. These rules set forth the Mississippi Department of Wildlife, Fisheries and Parks' (hereinafter "MDWFP") rules governing the form and content of requests for declaratory opinions, and the MDWFP's procedures regarding the requests, as required by Mississippi Code § 25-43-2.103. These rules are intended to supplement and be read in conjunction with the provisions of the Mississippi Administrative Procedures Law, which may contain additional information regarding the issuance of declaratory opinions. In the event of any conflict between these rules and the Mississippi Administrative Procedures Law, the latter shall govern.

2. Persons Who May Request Declaratory Opinions.

Any person with a substantial interest in the subject matter may request a declaratory opinion from the MDWFP by following the specified procedures. "Substantial interest in the subject matter" means: an individual, business, group or other entity that is directly affected by the MDWFP's administration of the laws within its primary jurisdiction. "Primary jurisdiction of the agency" means the agency has a constitutional or statutory grant of authority in the subject matter at issue.

3. Subjects Which May Be Addressed In Declaratory Opinions.

The MDWFP will issue declaratory opinions regarding the applicability to specified facts of: (1) a statute administered or enforceable by the MDWFP or (2) a rule promulgated by the Commission. The MDWFP will not issue a declaratory opinion regarding a statute or rule which is outside the primary jurisdiction of the agency.

4. Circumstances In which Declaratory Opinions Will Not Be Issued.

The MDWFP may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:

(a) lack of clarity concerning the question presented;

(b) there is pending or anticipated litigation, administrative action, or other adjudication which may either answer the question presented by the request or otherwise make an answer unnecessary;

(c) the statute or rule on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;

(d) the facts presented in the request are not sufficient to answer the question presented;

(e) the request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;

(f) the request seeks to resolve issues which have become moot, or are abstract or hypothetical such that the requestor is not substantially affected by the statute or rule on which a declaratory opinion is sought;

(g) no controversy exists concerning the issue as the requestor is not faced with existing facts or those certain to arise which raise a question concerning the application of the statute or rule;

(h) the question presented by the request concerns the legal validity of a statute or rule;

(i) the request is not based upon facts calculated to aid in the planning of future conduct but is, instead, based on past conduct in an effort to establish the effect of that conduct;

(j) no clear answer is determinable;

(k) the question presented by the request involves the application of a criminal statute or a sets of facts which may constitute a crime;

(l) the answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;

(m) The question is currently the subject of an Attorney General's opinion request or has been answered by an Attorney General's opinion;

(n) A similar request is pending before this agency or any other agency or a proceeding

is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such a opinion would constitute the unauthorized practice of law.

(o) Where issuance of a declaratory opinion may adversely affect the interests of the State, the MDWFP or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise;

(p) The question involves eligibility for a license, permit, certificate or other approval by the MDWFP or some other agency, and there is a statutory or regulatory application process by which eligibility for said license, permit, certificate or other approval would be determined.

5. Written Request Required.

Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8-1/2 inches by 11 inches). Requests may be in the form of a letter addressed to the MDWFP, in care of the Executive Director.

6. Where to Send Requests.

All requests must be mailed, delivered or transmitted via facsimile to the MDWFP, at its principal place of business being 1505 Eastover Drive, Jackson, Mississippi 39211, or by facsimile to (601) 432-2024. The request shall clearly state that it is a request for a declaratory opinion. No oral, telephone requests or email requests will be accepted for official opinions.

7. Name, Address and Signature of Requestor.

Each request must include the full name, telephone number, and mailing address of the requestor. All requests shall be signed by the person filing the request, who shall attest that the request complies with the requirements set forth in these rules, including but not limited to a full, complete, and accurate statement of relevant facts and that there are no related proceedings pending before any other administrative or judicial tribunal.

8. Question Presented. Each request shall contain the following:

(a) a clear and concise statement of all facts on which the opinion is requested;

(b) a citation to the statute or rule at issue;

(c) the question(s) sought to be answered in the opinion, stated clearly;

(d) a suggested proposed opinion from the requestor, stating the answers desired by

petitioner and a summary of the reasons in support of those answers;

(e) the identity of all other known persons involved in or impacted by the described factual situation, including their relationship to the facts, name, mailing address and telephone number; and

(f) a statement to show that the person seeking the opinion has a substantial interest in the subject matter.

9. Time for the MDWFP's Response.

Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the MDWFP shall, in writing:

(a) issue a declaratory opinion regarding the specified statute or rule as applied to the specified circumstances;

(b) decline to issue a declaratory opinion, stating the reasons for its action; or

(c) agree to issue a declaratory opinion by a specified time but not later than ninety (90) days after receipt of the written request;

The forty-five (45) day period shall begin running on the first State of Mississippi business day on or after the request is received by the MDWFP, whichever is sooner.

10. Opinion Not Final for Sixty Days.

A declaratory opinion shall not become final until the expiration of sixty (60) days after the issuance of the opinion. Prior to the expiration of sixty (60) days, the MDWFP may, in its discretion, withdraw or amend the declaratory opinion for any reason which is not arbitrary or capricious. Reasons for withdrawing or amending an opinion include, but are not limited to, a determination that the request failed to meet the requirements of these rules or that the opinion issued contains a legal or factual error.

11. Notice by the MDWFP to third parties.

The MDWFP may give notice to any person, agency or entity that a declaratory opinion has been requested and may receive and consider data, facts, arguments and opinions from other persons, agencies or other entities other than the requestor.

12. Public Availability of Requests and Declaratory Opinions.

Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying in accordance with the Public Records Act and the MDWFP's public records request procedure. All declaratory opinions and requests shall be indexed by name and subject. Declaratory opinions and requests which contain information

which is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from this requirement and shall remain confidential.

13. Effect of a Declaratory Opinion.

The MDWFP will not pursue any civil, criminal or administrative action against a person who is issued a declaratory opinion from the MDWFP and who, in good faith, follows the direction of the opinion and acts in accordance therewith unless a court of competent jurisdiction holds that the opinion is manifestly wrong. Any declaratory opinion rendered by the MDWFP shall be binding only on the MDWFP and the person to whom the opinion is issued. No declaratory opinion will be used as precedent for any other transaction or occurrence beyond that set forth by the requesting person.

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