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Aquaculture and the Law

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THE DEPARTMENT OF NATURAL RESOURCES is charged by law with development as well as management of Florida's resources. Only Alaska has more shoreline or more estuarine area than Florida, but with our marine grasses, warm temperatures and access to the markets, we possess tremendous potential for aquaculture. Particularly in the Division of Marine Resources, we hope to see this potential grow into reality. In dealing with aquaculture leases, we are dealing with public lands, public waters, public resources and private riparian rights. We are charged with the protection of the public interest, including their access to and use of our marine resources for both commercial and recreational purposes. It might appear that our responsibility to develop the resource and to protect the statutory and traditional rights of the citizens are incompatable. We do not believe that to be true. I will have more to say on this point.

The state has been leasing bay bottoms for oyster and clam culture since 1881. Obviously the leasing of the vertical water column presents problems not encountered in the bottom leasing.

The Department of Natural Resources and the Trustees of the Internal Improvement Fund worked closely with the Legislature in the formulation of Section 1, Chapter 253 of the Florida Statutes. This new law defines "Aquaculture" as the cultivation of animal and plant life in a water environment, and the "water column" as the extent of water, including the surface, above the designated area of submerged bottom land. It authorizes the Trustees of the Internal Improvement Fund to lease submerged land and the water column, and charges the Department of Natural Resources with certain responsibilities in relation to these leases. Obviously the Trustees are empowered to lease only areas to which they have title and the leases must not be contrary to public interest.

In applying for such a lease the applicant must give name and address, a precise description of the area to be leased and either a map or plat of survey,

or a sum to cover the cost of such survey. He must describe the use to which the lease will be put, specify whether it will be experimental or commercial, and provide an assessment of his capability to carry out the program. The application must then be published in a newspaper each week for 3 weeks in the county in which the lease is requested, and riparian owners within 1,000 feet of the lease must be notified by registered mail. If the application is in the public interest and no objections are filed within 30 days of the first advertisement, then the Trustees can proceed to negotiate the lease. If objections are filed, a notice with at least one advertisement in the paper and a second letter to the riparian owners must precede a public hearing in that county.

Once these requirements are met and negotiation of the lease commences, the law makes certain stipulations. It provides a 10-year limit on the length of the lease and provides for renewal. The rental fees are to be agreed among the parties and can either be a fixed rate or a base rate plus royalties.

In considering the rates, the Trustees are instructed to take into consideration productivity, marketability and value of the cultivated product. The rent shall be paid by January 1 for one year in advance—there is a 30 day grace period. If the rent is not paid within 30 days of January 1, the lease shall be cancelled and the lessee forfeits any improvements he has made. The law protects the lessee by stating that the rent is to be the only tax and that no levies by any government bodies will be added. The size of the lease is determined by two factors—the public interest and the capability to utilize the area. A performance bond is required, and the contract must stipulate disposition at termination. The lease can be assigned, but only with the approval of the Trustees.

The lessee is required to mark off the leased areas with appropriate signs stating any restriction of public use, to provide adequate ingress and egress for the public and to allow public use except when such use would harm the product under cultivation. A penalty is provided for violators. The law further requires that the Department of Natural Resources and the Game and Fresh Water Fish Commission conduct studies and make recommendations as they relate to riparian rights, conservation, navigation and to designate in advance prospective aquaculture areas. The statute also provides that the Trustees draw up a set of guidelines. The Department of Natural Resources and the Internal Improvement Fund have worked diligently to develop this set of guidelines which we feel will be the minimum acceptable to the people and yet will not impose a great hardship on new aggressive industry.

The proposed use of the leased land shall have no appreciable detrimental effect on existing industry and shall have no permanent effect on the wildlife or ecology of the leased lands and surrounding areas. The wildlife and ecology of the leased land must be able to be naturally restored within 1 year of the termination of the lease. The guidelines provide for competitive bidding among prospective lessees. The Department of Natural Resources is required to survey each site, estimating the quantity of marine resources that would be forfeited by the general public. Where such forfeiture by the general public is substantial, require the lessee to provide restitution, rehabilitation, stocking or other necessary remedial action to restore the diminished marine productivity of the lease. I will refer again to this provision.

The findings and conclusions of these surveys become public information to be kept on file by the Board of Trustees. The guidelines permit the Trustees to determine the amount of submerged bottom that would be reasonable and

fair and again stipulate a maximum of 10 years for each lease. All leases must contain a clause holding the Trustees and the State of Florida harmless and are subject to cancellation if leased areas are not actively used for the purpose of cultivation. In addition to the laws requiring notification of riparian owners, the guidelines require that written approval from the upland riparian owner(s) be filed with the Trustees prior to the issuance of the lease. Signs are required along the shoreline boundary of the leased area at least every 1,000 feet, and also at every point along the shoreline where the public is afforded access to sovereign waters under lease. If the leased area is enclosed by a net, fence or other means, then there must be a sign every 1,000 feet on the enclosure, and if the enclosure is less than 1,000 feet there must be signs at each end and in the middle. Also, if there is a net or fence or other enclosure, there must be at least one entrance for egress and ingress by the public and this must be appropriately marked and identified. All of these signs are to be a minimum of 4 feet in height and 6 feet in length, of durable material erected high enough above average high water to be clearly visible. They are to be conspicuously lettered with the words "RESTRICTED AQUACULTURE AREA" with a statement that the area is leased to "so and so" by the State of Florida Board of Trustees of the Internal and Improvement Trust Fund. If there are any restrictions as to the public use of the waters, these must also be posted on the signs. And, of course, signs must conform to regulations of the United States Coast Guard and U.S. Army Corps of Engineers concerning structures in navigable waters.

It is sometimes important to note what a statement does not say. In this case I would like to point out that neither the law nor the guidelines stipulate minimum or maximum rents or royalties. It must therefore follow that each application must be considered on its individual circumstances and the rate of rent and/or royalty individually negotiated.

Twice I have indicated that I would have more to say about a particular point. The first instance occured when I stated that we do not feel that our responsibilities to develop the resource and to protect the public are incompatable. We feel that in most instances a reasonable accommodation can be achieved. But, let me call your attention again to the provision of law which calls for local public hearings in case of objections to an application. This county commission holds the power to veto approval of any application. This may be the stumbling block for many applications. Local feelings sometimes run high and it will take a great deal of public education to calm the fears of those who will feel they are being cheated of their birthright.

The second instance referred to the responsibility of the Department of Natural Resources in the event that an aquaculture lease deprived the citizens of a natural resource. This is an area that will require a great deal of study and the application not only of scientific knowledge and methods but of common sense and a reasonable approach. We have every intention to survey prospective lease areas thoroughly for their animal and plant life and the use to which the area has been put by the public. If the public will be deprived of a substantial resource or use of a resource, we must see that restitution is made. On the other hand, we do not wish to ask the impossible of the prospective lessor. For instance, if a 2,000-acre lease were to be used for raising shrimp, it is reasonable to expect the lessee to, in some manner, eliminate most of the predators from his enclosed area. This deprives commercial and sports

fishermen of 2,000 acres of traditional fishing area. It would, of course, be unreasonable to ask the shrimp farmer to set up another 2,000 acres and stock it with trout, redfish and snook. But it is not unreasonable to have the shrimp farmer release quantities of post larval shrimp in nearby estuarine areas at intervals, not only to increase the local shrimp catch, but to act as an attractant to trout, redfish and snook. Naturally, in such an instance, the department would continue to survey the surrounding area using tagging, sampling and all available means to determine the ongoing effects of the rehabilitation or restitution program.

Florida has a vast potential for aquaculture which can be realized without the undue deprivation of the citizens at large. The Legislature has proven its support of these statements by the passage of the Aquaculture Bill. The Trustees of the Internal Improvement Fund and the Department of Natural Resources have expressed their concurrence by their diligent efforts in helping to create the act and the guidelines. The Division of Marine Resources intends to carry out the forward looking policy.