

**AGENDA  
BOARD OF TRUSTEES  
DEPARTMENT OF AGRICULTURE & CONSUMER SERVICES  
FEBRUARY 1, 2005**

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**Item 1        Minutes**

Submittal of the Minutes from the November 23, 2004 Cabinet Meeting.

(See Attachment 1, Pages 1-4)

**RECOMMEND    APPROVAL**

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**Item 2        Aquaculture Leases Annual Rental Fees**

**REQUEST:** (1) Because of the hurricanes this past summer, the Division of Aquaculture proposes that the new rate of \$16.33 per acre for a bottom lease and \$32.66 per acre for a water column lease is reasonable, given the current economic situation and fee structure for similar types of upland agricultural leases. (2) However, the Division would propose raising the fee in 2007 to \$35 per acre for a bottom lease and \$70 per acre for a water column lease to cover the cost of the program.

**STAFF REMARKS:** Staff provides the following summary, in response to the Board's request for information regarding annual rental fees for aquaculture leases and other state-owned land leases.

The annual rental fees, starting in January 2005, for aquaculture leases are set at a minimum of \$16.33 per acre, or fraction thereof, for leases that require the use of the bottom only. Annual fees for aquaculture leases that use the overlying water column are \$32.66 per acre, or fraction thereof. Annual lease fees are adjusted every five years to reflect changes in the Consumer Price Index (CPI) over the last 15 years, the annual rental fees have increased from \$15.00 to \$16.33. Annual lease rental fees are deposited in the General Inspection Trust Fund pursuant to section 597.010, Florida Statutes (F.S.).

The first aquaculture lease was issued in 1988 for clam aquaculture in the Indian River. Since then, the number of aquaculture leases has grown to 657 leases, which include 1,552 acres of sovereignty submerged lands. Aquaculture leases are authorized under the provisions of Chapter 253, F.S., and administered under the provisions of Chapter 18-21, Florida Administrative Code (F.A.C.). Additionally, staff administers 78 shellfish leases which were issued under the provisions of Chapter 370, F.S.

Annual lease fees were established at the minimum of \$15.00 for typical aquaculture leases for culturing hard clams and oysters (bottom leases) and \$30.00 for aquaculture leases that include the use of the water column (live rock leases and some hard clam facilities). The Board has held the position that it best serves the aquaculture industry by establishing low rental fees during the startup years of these businesses. By establishing low rental fees, new aquafarmers were able to invest their capital into purchasing seed stocks and production equipment instead of paying higher rent. This strategy has been successful in assisting new aquafarmers during their startup years.

Subsection 235.71(2), F.S., provides that the lease contract shall specify the amount of a fixed rental fee per acre, that the rental fee shall be agreed to by both parties, and that the fees are to be paid throughout the term of the lease. Subsection 18-21.011(4)(b)4, F.A.C., establishes a minimum fixed rate of \$15.00 per acre for a bottom lease and \$30.00 per acre when the lease includes the water column. The lease fees can also be set by negotiation or determined by competitive bidding. Lease rental fees are customarily established at the minimum rate, but the Board, at its discretion, has the authority to negotiate higher annual rental fees.

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**Item 2, cont.**

In 2001, staff evaluated the possibility of increasing annual lease rental fees for aquaculture leases. Under the proposal, annual lease fees would be adjusted when a lease was renewed for a second term and would apply to each succeeding term. The proposed annual lease fee was set at \$100.00 per acre, or fraction thereof, for leases using the bottom only and \$200.00 per acre, or fraction thereof, for aquaculture leases that include the water column. The proposal to increase annual rental fees was presented to the Aquaculture Review Council and the aquaculture industry in 2001. Public comment received at public workshops and discussions with industry representatives over the years have provided varying viewpoints regarding increased lease fees. The overall impression is that increased lease fees are inevitable, the amount of the proposed increase should be fair, and raising the lease fees on renewal was the best approach. Obviously, most leaseholders are not happy to see fees increased and some were concerned by the amount of any increase, but they agreed that there is a need and that there were some advantages. Among the advantages cited was the likelihood that non-productive leases would be returned to the state, making these leases available to other potential aqua-farmers. There was some concern that a rate of increase (from \$15.00 to \$100.00) was too large to do at one time.

Staff has never determined a "fair market value" for aquaculture leases, but has simply established an annual rental fee that is considered to be reasonable without placing a burden on producers. In the past, certain leases that were terminated and returned to the state were offered by competitive bid; successful bids ranged from \$25.00 to \$299.00 per acre. The bidder paying \$299.00 per acre has since cancelled the lease.

**Current and projected revenues**

Current aquaculture leasing program costs, including salary, benefits and expenses total about \$100,000 per year. Three FTEs {Planning Consultant (100%), Administrative Assistant (50%), and Environmental Specialist (25%)} account for about \$85,000 in salaries and benefits, and program expenses account for about \$15,000. Current revenues total \$66,000; annual rental fees account for \$46,000 and the surcharge accounts for \$20,000. Current revenues do not cover program costs. Revenues, based on the proposed increase of annual rental fees to \$100.00 per acre for bottom leases and \$200.00 per acre for water column leases, were estimated at \$305,000. An increase to \$50.00 per acre will generate revenues of \$162,250. These revenues could be generated within one year by increasing annual rental fees across the board, or they could be generated over a longer cycle by increasing the annual rental fees during the second term of existing leases.

**Rental fees for aquaculture leases compared to other state-owned land leases.**

Generally, lease rental fees for aquaculture leases and shellfish leases are established based on the number of acres included within the lease; for example, the typical rental fee for aquaculture leases growing hard clams is \$16.33 per acre, or fraction thereof. These types of leases are considered to be bottom leases, since only the seafloor and less than six inches of the water column are preempted during culture operations. In the case where the cultivation activity preempts all or a substantial portion of the water column, then the minimum annual rental fee is established at \$32.66.

The Board also authorizes the leasing of state-owned lands for other agricultural purposes, including grazing cattle and growing sugar cane. Rental fees for grazing leases are based on the number of acres included in the lease. Rental fees for grazing leases range from \$9.05 to \$11.47 per acre. Rental fees for lands used to grow sugar cane are based on fixed fees (\$0.31/acre) or on revenues generated by the production of sugar cane. The highest rental fees paid for lands supporting sugar cane production was estimated at \$3,630 per acre based on production values.

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**Item 2, cont.**

In contrast to rental fees based on a rate per acre, most rental fees for marina leases are established based on a rate per square foot. Base rates for marinas are also adjusted based on the location of the facility within or outside of aquatic preserves; the rate per square foot is doubled for leases located in certain qualified areas within aquatic preserves. Discount rates may also be applied to specific facilities based on slip use. Annual rental fees for marina leases ranged from about \$3,990 to \$11,400 per acre.

Aquaculture leases for clam farming or live rock production are more closely affiliated with upland grazing leases. Neither clam farmers nor live rock producers add anything to the lease, other than clams or rocks. No inputs like feed, fertilizer, or other substances are added to feed these commodities. The commodity feeds and grows using whatever comes over the lease in the water. Aquaculture lessees, unless otherwise authorized, can only harvest their commodity off of their leases.

An aquaculture lessee cannot sell or transfer the lease without approval by the board via the Department. Marina leases, on the other hand, provide high use areas where the lessee can lease not only space, but can also sell items such as fuel, ice, food, and marine supplies. Marina leases are multi-use leases, whereas aquaculture leases are for single use like grazing leases.

**Conclusion**

Last summer's hurricanes destroyed most of the clams growing on aquaculture leases by either covering them with sand or washing clam bags off the leases and into open waters. Since clams take from 12 to 18 months to grow to market size and planting clams is done in the spring, it will be the summer of 2006 before most farmers will have any production to sell again. Many farmers will be operating with only negative cash flow for at least one full production cycle.

(See Attachment 2, Pages 1-2)

**RECOMMEND    APPROVAL**

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**Item 3        Hemmel/Brinkley Aquaculture Leases/Establish/Authorization**

**REQUEST:** Consideration to (1) establish two, four-acre aquaculture leases in Manatee County for shellfish aquaculture; and (2) authorize the issuance of two ten-year sovereignty submerged land aquaculture leases to Mr. Curt Hemmel and Kyle Brinkley.

**COUNTY:** Manatee

**APPLICANTS:** Curt Hemmel (41-AQ-1021) and Kyle Brinkley (41-AQ-1022).

**LOCATION:** Two tracts of sovereignty submerged lands in Tampa Bay, Terra Ceia Aquatic Preserve, Manatee County, Florida.

**CONSIDERATION:** An annual fee of \$105.32 for each lease parcel, representing a base annual rental fee of \$16.33 per acre or fraction thereof; and an annual surcharge of \$10.00 per acre or fraction thereof, for deposit in the General Inspection Trust Fund pursuant to section 597.010, Florida Statutes (F.S.). On January 1, 2005, the annual rental fee was adjusted, based upon the five-year average change in the Consumer Price Index and will be adjusted accordingly every five years of the lease term.

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**Item 3, cont.**

**STAFF REMARKS:** The applicants request consideration by the Board of Trustees to authorize two aquaculture leases; each lease includes approximately four acres of sovereignty submerged lands. The proposed acreage will be used for the purpose of farming hard clams. Staff has combined the two requests, since both proposed parcels are located adjacent to each other in the same tract of submerged lands. The two applicants completed the application process as required in section 253.69, F.S., and section 18-21.008(3), Florida Administrative Code (F.A.C.), as a coordinated effort. Individual aquaculture leases will be subject to the terms and conditions applied to other aquaculture leases issued throughout the state for the same purposes, except the transfer or sale of the lease will not be approved during the first three years of the lease term. Upon approval from the Board of Trustees, the applicants will have their individual lease parcels surveyed, and submit the survey to the Department of Environmental Protection's (DEP) Bureau of Surveying and Mapping for approval. After the Department of Agriculture and Consumer Services (DACS) receives the approved survey and legal descriptions of the lease parcels, the lease instrument will be executed. The lessees will then record the lease with Manatee County and with DEP's Division of State Lands, mark the leases according to the lease agreements, and begin production.

Staff, in cooperation with DEP's aquatic preserve staff, assessed the marine resources within the proposed areas, determined that the area was suitable for commercial shellfish aquaculture activities, and determined that the activities would not result in adverse impacts to seagrasses, existing shellfish beds, or other sensitive habitats. Staff has reviewed the applications for completeness, evaluated the business plans, and completed background checks to ensure that applicants have had no public health or marine resource violations or felonies. The applications were noticed pursuant to section 253.70, F.S., and no objections were filed for these applications.

A consideration of the status of any local government comprehensive plans was not made for this item. DACS has determined that the proposed action is not subject to the local government planning process.

(See Attachment 3, Pages 1-50)

**RECOMMEND APPROVAL**