

# Board of Trustees – September 15, 2009

## Notice of Meeting

General Subject Matter: To discuss issues regarding aquaculture leases in the state.

Date and Time: Tuesday, September 15, 2009 at 9:00 AM

Location: Cabinet Meeting Room, Lower Level, Capitol

Agenda (pdf)

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting Mark Berrigan. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

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**AGENDA  
BOARD OF TRUSTEES  
DEPARTMENT OF AGRICULTURE & CONSUMER SERVICES  
SEPTEMBER 15, 2009**

~~Attachments to the items below can be viewed at the following link:~~

~~<http://www.floridaaquaculture.com/notices.htm>~~

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**Item 1 Minutes**

Submittal of the Minutes from the July 28, 2009 Cabinet Meeting.

(See Attachment 1, Pages 1-6)

**RECOMMEND APPROVAL**

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**Item 2 Gary Lavine (Live Rock, Inc.) Live Rock Aquaculture Lease**

**REQUEST:** Authorization to issue a one-acre, ten-year sovereignty submerged lands aquaculture lease for the purpose of culturing live rock.

**COUNTY:** Monroe

**APPLICANT:** Gary Levine, Live Rock, Inc., Application No. 44-AQ-1065

**LOCATION:** The requested parcel is located approximately 2.8 miles southeast of Plantation Point in the Atlantic Ocean, in the Florida Keys National Marine Sanctuary (FKNMS), at the following coordinates: 24°55.911'N / 80°31.479'W (center point in latitude and longitude; decimal minutes).

**CONSIDERATION:** \$42.66 annually, representing (1) an initial lease fee of \$32.66, at a rate of \$32.66 per acre or fraction thereof, including the water column; and (2) an annual surcharge of \$10.00, representing \$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.

**STAFF REMARKS:** The applicant requests consideration by the Board of Trustees to authorize an aquaculture lease to cultivate and harvest live rock within a parcel of sovereignty submerged land in the Atlantic Ocean. The requested parcel includes one acre of state-owned land in about 17 feet of water. The area covers a circle with a 117-foot radius containing sand and shell fragments overlying a lime rock substrate. The proposed project includes activities designed for the commercial production of marine life referred to as "live rock". Proposed activities involve the placement of substrate (quarried-limestone) on the seafloor to encourage the recruitment and growth of live rock and corals species. Limestone will be placed on the seafloor to act as substrate to attract larval marine organisms to colonize the rock and mimic natural reef communities. The culture of sedentary marine life has become an integral part of the marine life aquarium trade, since federal and state regulations were enacted to prohibit the harvest of natural live rock communities.

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**Item 2, cont.**

The proposed lease is located within FKNMS. The Department of Agriculture and Consumer Services (DACS), in cooperation with FKNMS staff assessed the marine resources within and adjacent to the proposed areas, determined that the area was suitable for the proposed live rock aquaculture activities, and determined that the activities would not result in adverse impacts to existing marine species or habitats. The Florida Aquatic Preserve Act specifically provides that no further sale, lease or transfer of sovereignty submerged lands shall be approved within an aquatic preserve, unless the sale, lease, or transfer is in the public interest. The Aquatic Preserve Act specifically provides that “aquaculture is in the public interest and aquaculture leases may be authorized in aquatic preserves...” {Section 258.42(1)(b), F.S.}. Accordingly, DACS recommends that the Board of Trustees find that the requested lease is in the public interest, as set forth in statute.

The aquaculture lease will be subject to the terms and conditions applied to other aquaculture leases issued throughout the state for the same purposes. DACS has reviewed the application for completeness, evaluated the business plan, and completed background checks to ensure that applicants have had no public health or marine resource violations or felonies. The application has been noticed pursuant to section 253.70, F.S. If the Board of Trustees approves the requested aquaculture lease, DACS will execute a new lease instrument which will be recorded with Monroe County, with a copy of the lease provided to the Department of Environmental Protection’s Division of State Lands.

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 2, Pages 1-29)

**RECOMMEND APPROVAL**

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**Item 3 Craig Watson/University of Florida Tropical Aquaculture Laboratory/Live Rock and Coral Aquaculture Lease/Lease Fee Waiver**

**REQUEST:** Authorization to (1) issue a one-acre, ten-year sovereignty submerged lands aquaculture management agreement for the purpose of culturing live rock and corals for experimental, research and demonstration purposes; and (2) waive the lease fees.

**COUNTY:** Monroe

**APPLICANT:** Craig Watson, University of Florida Tropical Aquaculture Laboratory, Application No. 44-AQ-1072

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**Item 3, cont.**

**LOCATION:** The requested parcel is located approximately three miles southeast of Tavernier Key in the Atlantic Ocean, in the Florida Keys National Marine Sanctuary (FKNMS), at the following coordinates: 24°59.141'N / 80°26.798'W (center point in latitude and longitude; decimal minutes).

**CONSIDERATION:** The applicant is requesting the application fee and the annual rental fees be waived, since the primary purposes for the activities involve education and research. If the fees are required, the consideration will be \$42.66 annually, representing (1) an initial annual fee of \$32.66, at a rate of \$32.66 per acre or fraction thereof, including the water column; and (2) an annual surcharge of \$10.00, representing \$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.

**STAFF REMARKS:** The applicant requests consideration by the Board of Trustees to authorize an aquaculture management agreement to cultivate and harvest live rock within a parcel of sovereignty submerged land in the Atlantic Ocean. The applicant and the Department of Agriculture and Consumer Services (DACS) agreed that an aquaculture management agreement is the most appropriate form of authorization, considering the primary use and purpose. The requested parcel includes one acre of state-owned land in about 21 feet of water. The area covers a circle with a 117-foot radius containing sand and shell fragments overlying a lime rock substrate.

The proposed project includes activities designed to further public interest in marine resource management and education in culturing live rock and corals. The aquaculture lease will be the in-water site for educational, research, and demonstration activities associated with the culturing of live rock and corals. Culture of various forms of marine life will provide hands-on-training in production and restoration techniques which will increase our understanding of production parameters and methods for restoring damaged and impaired natural coral reef habitats. Proposed activities involve the placement of substrate (quarried-limestone) and seed stocks (coral fragments) on the seafloor to encourage the recruitment and growth of coral reef species. Coral seed stocks will be selected following National Oceanic and Atmospheric Administration (NOAA) and Florida Fish and Wildlife Conservation Commission (FWCC) guidelines. Cultured coral fragments will be attached to concrete pedestals and placed atop anchored concrete blocks to encourage growth under natural conditions. Limestone will also be placed on the seafloor to act as substrate to attract larval marine organisms to colonize the rock and mimic natural reef communities. The proposed activities are also expected to provide information regarding the production of live rock and corals, including economic and market parameters, to inform and educate marine life businesses. The culture of sedentary marine life, referred to as "live rock", has become an integral part of the marine life aquarium trade, since federal and state regulations were enacted to prohibit the harvest of natural live rock communities.

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**Item 3, cont.**

The proposed parcel is located within FKNMS. DACS, in cooperation with FKNMS staff assessed the marine resources within and adjacent to the proposed areas, determined that the area was suitable for the proposed live rock aquaculture activities, and determined that the activities would not result in adverse impacts to existing marine species or habitats. The Florida Aquatic Preserve Act specifically provides that no further sale, lease or transfer of sovereignty submerged lands shall be approved within an aquatic preserve, unless the sale, lease, or transfer is in the public interest. The Aquatic Preserve Act specifically provides that “aquaculture is in the public interest and aquaculture leases may be authorized in aquatic preserves...” {Section 258.42(1)(b), F.S.}. Accordingly, DACS recommends that the Board of Trustees find that the requested lease is in the public interest, as set forth in statute.

The aquaculture management agreement will be subject to similar terms and conditions which are applied to aquaculture leases issued throughout the state for similar purposes. DACS has reviewed the application for completeness and completed a background check to ensure that the applicant has had no marine resource violations or felonies. The application will be noticed pursuant to section 253.70, F.S. If the Board of Trustees approves the requested aquaculture management agreement, DACS will execute the agreement which will be recorded with Monroe County, with a copy provided to the Department of Environmental Protection’s Division of State Lands.

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 1-32)

**RECOMMEND APPROVAL**

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**Item 4 Hemmel/Brinkley Shellfish Aquaculture Lease**

**REQUEST:** Authorization to issue two independent four-acre, ten-year sovereignty submerged lands aquaculture leases for the purpose of shellfish aquaculture.

**COUNTY:** Manatee

**APPLICANTS:** Curtis D. Hemmel d/b/a Bay Shellfish Company (41-AQ-1068) and Kyle Brinkley (41-AQ-1069).

**LOCATION:** Two parcels in a tract of sovereignty submerged lands in Township 33 South, Range 17 East, in Tampa Bay, Manatee County, Florida. The proposed parcels are located within the Terra Ceia Aquatic Preserve.

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**Item 4, cont.**

**CONSIDERATION:** An annual fee of \$105.32 for each four-acre 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.

**STAFF REMARKS:** The applicants request consideration by the Board of Trustees to authorize two independent aquaculture leases; each parcel includes four acres of sovereignty submerged lands, and both parcels are located adjacent to each other in the same tract. Because both applications request neighboring parcels of sovereignty submerged lands, staff combined both applications into one agenda item for consideration by the Board of Trustees. The requested parcels will be used for the purpose of farming indigenous bivalve species, primarily hard clams, *Mercenaria mercenaria* and *Mercenaria campecheinsis*, oysters, *Crassostrea virginica*, and bay scallops, *Argopecten irradians*.

In their meeting on July 29, 2008 the Board of Trustees authorized the issuance of two ten-year sovereignty submerged lands aquaculture leases to the same applicants. Also, the Board of Trustees authorized the issuance of two sovereignty submerged lands aquaculture leases to these applicants in 2005. Each applicant currently farms shellfish on two aquaculture leases which contain a total of six acres. The current request will increase the total area to ten acres for each leaseholder. Two of the previously authorized leases (41-AQ-1060 and 41-AQ-1061) occupy the same tract of submerged lands as the newly requested parcels; the two original parcels are situated adjacent to each other in Tampa Bay, a short distance from where the requested parcels are located. The applicants' request for additional acreage is based on their businesses growing and their need for additional area to growout clams to market size.

The proposed leases are located within the Terra Ceia Aquatic Preserve. The Department of Agriculture and Consumer Services (DACS), in cooperation with the Department of Environmental Protection's (DEP) Office of Coastal and Aquatic Managed Areas, assessed the marine resources within and adjacent to 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. The Florida Aquatic Preserve Act specifically provides that no further sale, lease or transfer of sovereignty submerged lands shall be approved within an aquatic preserve, unless the sale, lease, or transfer is in the public interest. The Aquatic Preserve Act specifically provides that "aquaculture is in the public interest and aquaculture leases may be authorized in aquatic preserves..." {Section 258.42(1)(b), F.S.}. Accordingly, DACS recommends that the Board of Trustees find that the leases are in the public interest, as set forth in statute.

The aquaculture leases will be subject to the terms and conditions applied to other aquaculture leases issued throughout the state for the same purposes, including the provision that the transfer or sale of the lease will not be approved during the first three years of the lease term. DACS has

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**Item 4, cont.**

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.

If the Board of Trustees approves the requested aquaculture leases, then the applicants will have their individual lease parcels surveyed and submit the survey to DEP's Bureau of Surveying and Mapping for approval. After DACS receives the approved survey and legal descriptions of the lease parcels, new lease instruments will be executed. The lessees will then record the leases with Manatee County, provide DEP's Division of State Lands with a copy of the lease, mark the leases according to the lease agreements, and begin production.

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 4, Pages 1-42)

**RECOMMEND APPROVAL**