

**AGENDA
BOARD OF TRUSTEES
DEPARTMENT OF AGRICULTURE & CONSUMER SERVICES
JUNE 9, 2009**

Item 1 Chapter 18-21, F.A.C., Final Rule Adoption/Aquaculture Activities

REQUEST: Final adoption of proposed amendments to chapter 18-21, F.A.C., which will implement legislative changes and will clarify the Department of Agriculture and Consumer Services' responsibilities related to aquaculture on sovereignty submerged lands, permission to publish the Notice of Change, and authorize the Commissioner to execute and submit the certification documents to the Secretary of State.

COUNTY: Statewide

APPLICANT: Department of Agriculture and Consumer Services, Division of Aquaculture

STAFF REMARKS: The Department of Agriculture and Consumer Services (DACS) is requesting that the Board of Trustees adopt proposed amendments to chapter 18-21, F.A.C., Sovereignty Submerged Lands Management, to clarify the DACS' duties and functions related to managing aquacultural activities on sovereignty submerged lands, and incorporate legislative changes adopted in chapter 2005-157, Laws of Florida. This request seeks to have the Board of Trustees adopt the proposed rule, as attached. If adopted, DACS staff will publish the attached Notice of Change and then file the rule with the Department of State. The rule will become effective 20 days from that filing.

On March 10, 2009, the Board of Trustees approved DACS' request to publish a Notice of Proposed Rulemaking to amend chapter 18-21, F.A.C. A Notice of Proposed Rule was published in the Florida Administrative weekly on March 27, 2009. The Notice of Proposed Rulemaking included the proposed rule amendments, as well as scheduling a public hearing, which was conducted on April 28, 2009. Comments were received from the public, aquaculture producers and the Department of Environmental Protection (DEP). The Joint Administrative Procedures Committee (JAPC) sent a letter with comments. DACS staff reviewed all comments and incorporated changes resulting from those comments in the rule now being considered for adoption.

The amended rule reflects the legislative changes, clarifies DACS' responsibilities related to aquaculture on sovereignty submerged lands, and reorganizes sections of the existing rule. The amended rule incorporates the same general standards and criteria for aquaculture leases that are provided in the existing rule and includes new standards and criteria for aquaculture letters of consent and aquaculture management agreements. Two new forms of authorization, including (1) an aquaculture letter of consent and (2) an aquaculture management agreement, are established to provide authorization for aquaculture activities which require the use of sovereignty submerged lands, but do not require an aquaculture lease. The amended rule also includes criteria, procedures and processes for applications and authorizations to use sovereignty submerged lands for aquacultural purposes. The amended rule is restructured by partitioning the provisions specifically relating to aquaculture into three new rule sections (ss. 18-21.020 through 18-21.022). The rule includes substantially the same provisions for fees and payments: no new or increased fees have been proposed.

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As a result of comments received, the amended rule before the Board of Trustees differs slightly from the rule considered by the Board of Trustees on March 10, 2009. Those differences are set forth in the Notice of Change and are also highlighted in the attached amended final rule.

JAPC reviewed DACS' proposed amendments to chapter 18-21, F.A.C., and identified eight rule subsections for consideration and response. In summary, JAPC's comments concerned subsections where 1) specific criteria for approval or denial were absent or vague; 2) where references in the rule were absent or vague; and 3) where specific laws authorizing certain requirements were absent. In response to JAPC's comments, staff revised rule sections to provide standards and criteria for the approval process where they were lacking, referenced specific sections of the rule to clarify requirements, and deleted requirements where there was no specific statutory authority for the requirement. The most substantial revision involved the language specifying violations of the lease agreement, enforcement actions, and revocation of the lease in subsection 18-21.021(2)(c). This subsection was substantially revised to clarify that violation of the lease agreement shall be grounds for enforcement actions, and failure of the lessee to comply with the lease agreement shall result in termination of the lease and forfeiture to the state of all works on the lease. Additionally, the rule was revised to eliminate the "non-refundable" language applied to the application fee, and the requirement for notarization was removed from the applicable forms. In response to comments from the aquaculture producers and DEP, DACS has added specifications for structures that are allowed on aquaculture docks that receive a Letter of Consent. The proposed Notice of Change, the letter from JAPC, and the DACS' draft response to JAPC are attached.

DACS recommends that the Board of Trustees approve the proposed amendments to chapter 18-21, F.A.C., direct DACS to publish the Notice of Change, and authorize the Commissioner to execute and submit the certification documents to the Secretary of State in accordance with chapter 120, F.S.

(See Attachment 1, Pages 1-40)

RECOMMEND APPROVAL