



Office of Program Policy Analysis And Government Accountability



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Follow-Up Report on the Division of State Lands of the Department of Environmental Protection

Report Abstract

The Department has improved some procedures and recordkeeping to address documentation needed in the lease and enforcement files. However, the Department has not addressed more significant findings related to maximizing the revenues derived from submerged land leases, recovering the costs of processing lease applications, and reducing the large backlog of submerged lands violations. By not addressing these recommendations, the Department has limited its ability to assess appropriate fees and adequately ensure the protection of sovereign submerged lands.

Purpose of Review

Section 11.45(7)(f), F.S., requires agencies to inform us of actions they have taken in response to our recommendations within 18 months of the release of our reports. This follow-up report presents our assessment of the status of recommendations we made to the Department of Environmental Protection in Report No. 12295, dated May 11, 1994.

Background

Sovereign submerged lands are those public trust lands below navigable waters that Congress transferred to the state of Florida in 1845 as Florida was granted statehood. Section 1301(a)(1), Title 43, United States Code Annotated, of the Submerged Lands Act, states "lands beneath navigable waters" means all lands within the boundaries of each of the respective states which are covered by nontidal waters that were navigable under the laws of the United States at the time such state became a member of the Union, or acquired sovereignty over such lands and waters thereafter, up to the ordinary high watermark as modified by accretion, erosion, and reliction (recession of water).

Submerged lands are held in trust for the use and benefit of the people of the state, as set forth in the state constitution. Section 11, Article X, of the State of Florida Constitution recognizes the title to lands under navigable waters, within the boundaries of the state, is held by the state in trust for all the people. The sale of such lands may be authorized by law, but only when in the public interest; private use may be authorized when not contrary to the public interest. Further, s. 253.034(2), F.S., provides that all lands owned by the Board of Trustees of the Internal Improvement Trust Fund shall be managed in a manner that will provide the greatest combination of benefits to the people of the state. Florida consists of approximately 37.5 million acres. According to Department staff, sovereign submerged lands comprise an estimated 7.7 million acres.

Prior Findings

Although the Division of State Lands of the Department of Environmental Protection (DEP) requires commercial marina lessees to submit rental wet slip certification worksheets, we found that the agency neither systematically received such worksheets and supporting information nor regularly followed-up on unsubmitted information. By not receiving the worksheets and supporting information, the Department could not ensure that it was collecting the correct fees from commercial marina lessees. Additionally, the Department had not implemented a regional average fee system for commercial non-wet slip rental operations leases. Lack of a regional average fee system reduces the revenue that could be collected for submerged lands leases in geographic areas with higher land value.

We also found that the Division had not produced a reliable assessment of lease application processing costs. An appropriate application fee cannot be established until such a cost determination is made. Further, we found that the Department had inconsistent documentation, untimely resolution of violations, and a backlog of unresolved violations.

Actions Taken

The Department has taken actions recommended by our report. These actions have produced some improvement in compliance and enforcement.

Lease Fees. As we recommended, the Department has complied with the requirement that all commercial marina lessees submit their rental wet slip certification worksheets to the Department. The Department has developed a procedure to ensure that a complete and legible wet slip certification is submitted. From our review of 20 commercial marina lease files, we found that all 20 lease files contained wet slip certification worksheets.

Enforcement. As we recommended, the Department has revised its operations manual to include time standards or guidelines to encourage and monitor timely resolution of violations. Additionally, the Department has revised the Violation Tracking System field form to identify the type of violation and resolution, the date of enforcement action and the enforcement action taken by investigators or legal staff.

Actions Not Taken

While the Department has taken some of the actions we recommended, other actions have not been taken that could increase revenue and better ensure that violations are corrected.

Lease Fees. In our previous report, we recommended that the Department establish fees based on regional averages as required by its own procedures. Fees based on regional averages would allow the Department to charge regions with higher land values higher lease fees. The Department has not made any progress in developing these regional averages. However, the Department has initiated some discussions with its Division of State Lands concerning the possibility of conducting appraisals of sovereign submerged lands for the purpose of increasing fees on lands of higher value. The Department should pursue whatever method it determines will provide an efficient and valid method for assessing lease fees to better reflect land values and maximize state revenues.

We also recommended that DEP collect rental rate schedules as required by its procedures. Of the 20 lease files we randomly checked, only 4 contained rental rate schedules. Rental rate schedules enable the Department to verify whether the rental wet slip certification worksheets are filled out correctly.

Application Processing Fee. Although we recommended the Department assess the current application process to

establish the appropriate fees, the Department has not conducted an analysis of the application process. According to Department staff, merger and reorganization between the Division of Water Management and Division of State Lands has inhibited analysis of how much it costs to process lease applications. Analysis of the current application process would allow the Department to establish fees that will recover its costs for processing applications.

Lease Inspection Efforts. Although we recommended the Department takes steps to ensure that investigative personnel inspect all leases on the one-year compliance inspection list, the Department does not perform one-year compliance inspections. According to Department staff, the merger and reorganization between the Department of Natural Resources and the Department of Environmental Regulations have reduced the need to implement one-year inspections. The Department should now update the compliance and enforcement procedures manual to reflect the change in policy.

Enforcement. The backlog of unresolved violations appears to be even larger now than during our prior review. We reported that the Department's Violation Tracking System showed 865 unresolved violations originating between April 1990 and April 1993. Current tracking system reports show 991 unresolved violations. Our assessment of the Department's efforts to address enforcement issues was impeded by several factors: enforcement and compliance responsibilities have been decentralized since our review with no clear delineation of how those responsibilities were to be carried out or monitored by the central office; district staff expressed some confusion over the types and numbers of cases being transferred to the districts; and both central office and district staff question the accuracy of the data in the tracking system, yet neither could produce accurate or verifiable counts. The Department has not effectively addressed significant problems in meeting its compliance and enforcement responsibilities for violations not referred for legal action.

Performance Measures. Although we recommended the Department develop measures that will allow it to determine if it protects sovereign submerged lands, the Department has not established a means of evaluating the effects of activities occurring through the use of sovereign submerged lands and whether current efforts provide sufficient protection. According to Department staff, personnel reduction and reorganization activity have inhibited defining program outcomes or measures for assessing the impact or results of submerged land activities.

This project was conducted in accordance with applicable evaluation standards. Copies of this report may be obtained by telephone (904/488-1023 or 800/531-2477), by FAX (904/487-3804), in person (Claude Pepper Building, Room 312, 111 W. Madison St.), or by mail (OPPAGA Report Production, P.O. Box 1735, Tallahassee, FL 32302).

Web site: <http://www.state.fl.us/oppaga/>

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