ALABAMA State Owned Submerged Land Leasing


General SSL Leasing Provisions:

- “State owned submerged lands” means those lands including but not limited to, tidal lands, sand bars, shallow banks, and lands waterward of the mean low water line beneath navigable fresh water or the mean high tide line beneath tidally-influenced waters, to which the State of Alabama acquired title on December 14, 1819, by virtue of statehood, or thereafter and which have not been heretofore conveyed or alienated. Ala. Admin. Code r. 220-4-.09
- Any revenue-generating use or use that excludes traditional public uses (including navigation, fishing and swimming) must pay just compensation for the use of SSL. Ala. Admin. Code r. 220-4-.09(1)(e).
- Permission to use SSL may be referred to as a “lease” or a “riparian easement.”

Activities in the Near-shore Area:

- Waterfront property owners may exercise riparian rights over waters abutting their shoreline. Riparian rights include the right to access the water, the right to construct piers, and the right to harvest oysters. Riparian owners may plant and gather oysters on submerged lands adjacent to their property extending 600 yards offshore. Ala. Code § 9-12-22.
- Activities on SSL cannot unreasonably infringe on the riparian rights of upland property owners.
- Riparian easements are required for all revenue-generating activities.

  o To lease SSL nearshore, the applicant must demonstrate “satisfactory evidence of sufficient upland interest.” This can be done through documentation, such as a warranty deed; a certificate of title; a lease; an easement; or condominium, homeowners or similar association documents that clearly demonstrate that the holder has control and interest in the riparian uplands adjacent to the project area and the riparian rights necessary to conduct the proposed activity. Other forms of documentation shall be accepted if they clearly demonstrate that the holder has control and interest in the riparian uplands adjacent to the project area and the riparian rights necessary to conduct the proposed activity. Ala. Admin. Code r. 220-4-.09.

  • Single residential docks that use less than 1000 square feet of state owned submerged lands for each 100 linear feet of shoreline ownership are exempt from leasing requirements.

Leasing of the Water Column:
Alabama does not have specific provisions for leasing the water column. A shellfish aquaculture easement includes use of the overlying water column.

**Allowable Leasing Activities:**

Activities on state-owned submerged lands must meet the following criteria:

- Be in the public interest;
- Include sufficient upland interest;
- Be a water-dependent activity;
- Pay compensation for revenue generating uses that limit or preempt public use.

In addition to provisions addressing oil and gas development, Alabama has submerged lands leasing provisions specific to shellfish aquaculture, marinas, natural oyster reefs, and a “catch-all” provision for other activities that generate revenue and limit public use.

- **Shellfish Aquaculture Easements:** Alabama regulations include a newly created process for seeking a shellfish aquaculture easement. Easements applications are reviewed by the ADCNR – State Lands Division. Ala. Admin. Code r. 220-4-.17.

- **Water bottoms under Natural Oyster Reefs:** Alabama regulations distinguish between natural and artificial oyster reefs. Natural oyster reefs are generally open to public harvest unless they have been leased to private parties. These reefs are managed by the ADCNR – Marine Resources Division. Ala. Code § 9-12-21. Submerged lands underlying natural oyster reefs may be leased by the Commissioner of the ADCNR. Ala. Code § 9-12-24.

- **Marinas/Docking Facilities:** Facilities with 10 or more wetslips require a riparian easement. The facilities riparian easement cannot be larger than 200 times the riparian waterfront footage. Facilities which use less than 10 square feet for every foot of riparian shoreline are exempt. Ala. Admin. Code r. 220-4-.09.

- **Geophysical Exploration:** Alabama regulations include provisions for leasing submerged lands for geophysical exploration. Ala. Admin. Code r. 220-4-.01. Activities may not: cause harm or damage to aquatic life; cause pollution; create hazardous or unsafe conditions; unreasonably interfere with or harm other uses of the area; or disturb cultural resources.

  - In addition, (1) Exploration cannot occur in any wildlife refuge, waterfowl refuge, game preserve, fish preserve or hatchery or oyster seed ground reservation without written permission from the agency in charge of such refuge, preserve, hatchery or reservation; (2) No geophysical exploration activity shall be conducted in inshore waters during the first two weeks immediately following the opening of the summer shrimping season.
Aquaculture Provisions:

Definition of Aquaculture: Alabama defines shellfish aquaculture as “the off-bottom cultivation and harvesting of shellfish for commercial or research-oriented purposes.” For the purposes of shellfish aquaculture, the term shellfish is limited to Alabama native species of oysters, clams, or mussels and scallops. Ala. Admin. Code r. 220-4-.17. Alabama regulations also distinguish between natural and artificial oyster reefs. Natural oyster reefs are generally open to public harvest unless otherwise leased. These reefs are managed by the ADCNR – Marine Resources Division. Ala. Code § 9-12-21. Submerged lands underlying natural oyster reefs may be leased by the Commissioner of the ADCNR.

Leasing of SSL for Shellfish Aquaculture:

The Ala. Admin. Code r. 220-4-.17 lays out the specific information for shellfish aquaculture easement applications. In general, to obtain activity must be water-dependent and directly related to shellfish aquaculture;

- Activity shall not significantly restrict public access for boating, swimming, and fishing;
- Activity shall be designed to minimize or eliminate adverse impacts on fish and wildlife habitat;
- Applicant must demonstrate capabilities to conduct the proposed activities;
- Applicant must describe potential impacts of project on the ecology of the area, including fish and wildlife habitat;
- Applicant must explain why the easement is in the public interest, or at a minimum, not contrary to the public interest.

Cultivation of non-indigenous, or hybrids of nonindigenous, plants and animals is prohibited. Easement must be marked adequately to inform the public of the activity and identify potential navigational and safety hazards. Markers must be maintained for the life of the easement.

Additional requirements apply to applications for easements that include docks or other related structures connected to the upland that use the water column. Ala. Admin. Code r. 220-4-.17.

Geographic Restrictions on Aquaculture Activities:

Shellfish aquaculture easements cannot be larger than five acres, though exceptions for mitigating or extenuating circumstances may be granted at the discretion of ADCNR.
Riparian shellfish aquaculture easements must be setback 10 feet from the riparian lines of adjoining property owners unless the easement holder has a letter of concurrence from the neighboring property owner waiving this requirement.

Shellfish aquaculture cannot unreasonably interfere with navigation. An easement will not be granted for any area closer than 100 feet from a marked navigation channel. Ala. Admin. Code r. 220-4-.17.

The Department of Public Health has authority to close waters to oystering where it deems the waters unsafe. Ala. Code § 9-12-126.

Oystering is not allowed in certain waters near sewage discharges and other locations that are permanently closed to oystering by the Department of Public Health. These areas are subject to change and the latest closure orders should be obtained from the Marine Resources Division or the Department of Public Health. Ala. Admin. Code r. 220-3-.02.

**Lease Fee**

**Application Fee:** $100 for a Riparian Easement

**Annual Rental Payments:**

- **Shellfish Aquaculture Easement (Riparian and Non-Riparian):**
  
  - Annual fee set by ADCNR.
  
  - Where ADCNR determines that a competitive market exists for the easement, the easement may be competitively bid pursuant to Ala. Code § 9-15-70.
  
  - Minimum fee: $250 per acre per year.

- **Other Riparian (Near-shore) Area:**
  
  - Base Fee: the base fee for a riparian easement/lease is TBD per square foot of easement annually (tied to the consumer price index, fluctuates)
  
  - Minimum fee: minimum annual fee of $626.91

- **Other Non-Riparian Area:**
  
  - Competitive bidding process based on appraisal values for land. The Alabama Land Sales and Lease Act applies to state owned land valued over $20,000. Leasing of submerged lands under this provision is subject to a competitive bidding process. Through the services of an appraiser, the ADCNR – State Lands Division sets the minimum bid and advertises the parcel’s availability. Applicants may submit sealed bids. The lease will be awarded to the highest bidder. Ala. Code §9-15-70.