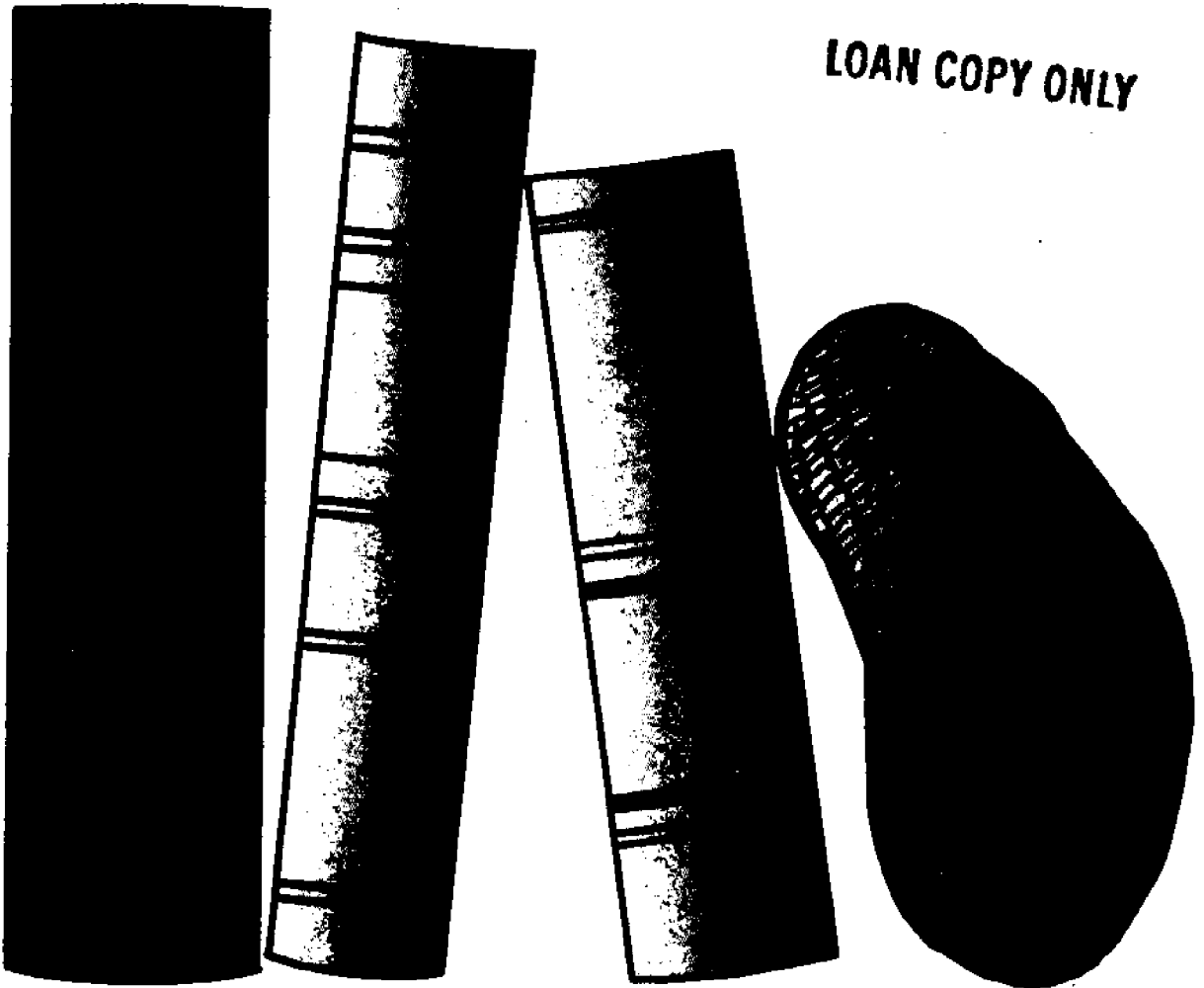


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Aquaculture and the Law: A Guidebook for Georgia

by J. Owens Smith

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Aquaculture and the Law: A Guidebook for Georgia

I. INTRODUCTION

This publication is intended to serve as a guide for persons who culture and harvest molluscan shellfish in the estuarine and coastal waters of Georgia. It is supplemental to contacts with and guidance from personnel in the Georgia Departments of Natural Resources (DNR), Agriculture (DOA), and legal counsel. Prospective applicants for various licenses, permits and certifications will expedite their progress through government regulatory processes by taking early and timely advantage of the assistance provided by personnel in these two departments. Because of the discretion the Georgia legislature has granted to these government agencies and the variability of sites available for culture and harvest, there is simply no substitute for establishing positive and cooperative interaction with the appropriate authorities. For more particular legal counsel, prospective culturists should consult an attorney.

Before considering the State statutes and regulations that control the culture, harvest, and sale of shellfish in Georgia, one must understand some basics about the larger body of law that affects intertidal and subtidal lands and the rights of landowners, the State, and their lessees in those areas. Disagreements over these rights and relationships often remain a source of tension after years of litigation and public debate.

The Georgia Department of Natural Resources regulates the culture and harvest of shellfish under the authority of a very broad statute and associated regulations. Persons who harvest shellfish for commercial purposes, or who take more than two bushels for non-commercial purposes must have a master collecting permit (MCP). [§27-4-190(a)] [This numbering system is found in the "Official Code of Georgia," Annotated, and it means: *Title 27, Article 4, Subsection 190 (a)*. Under the direction of the Georgia General Assembly, the publisher refers to this numbering scheme with the symbol, "§," which means "Section." Thus, the words "*Title*," "*Article*," and "*Subsection*" are dropped and the symbol "§" is placed at the beginning of each paragraph or grouping of paragraphs that deal with a particular part of the statute being discussed.] In order to secure an MCP, the person must show that he or she has some right in the property from which the shellfish will be taken. This "right" may be based on a turn-of-the-century statute that granted certain exclusive shellfish access rights to people who owned the land bordered by tidal waters. The "right" could also be obtained from such landowners through a lease or other agreement. Georgia law also recognizes that the State owns certain intertidal and subtidal lands and thus the oysters and clams on and in them as well.

Some tension still surrounds the issue of who owns or controls intertidal lands in the State and thus the rights to gather oysters and clams or to grant others such rights. Therefore it will be helpful to understand some of the historical background about the various property interests in these areas and how the legislature and the courts have responded over the years.

II. RIGHTS TO SHELLFISH - THE LAW OF "OWNERSHIP"

A. ORIGIN OF THE STATE'S TITLE

Before 1902, the State clearly owned the coastal tidelands and the beds of tidewaters. The State came to this exclusive "ownership" position as a result of the successful conclusion of the revolt of the original thirteen colonies against the English Crown. In other words, by right of conquest, the King's land became Georgia's land! In the mid-19th century, Georgia's highest court reaffirmed this fact and recognized that the "common law" of England had been adopted by the State at the end of our revolt against England. Among other things, this meant that the legislature did not have unfettered discretion to use or dispose of these lands without limitations similar to those that historically had been imposed on the Crown of England before the Revolution.

B. THE COMMON LAW OF ENGLAND

The "common law" of England, though ancient in origin and tedious in its detail, is still a controlling force in coastal Georgia land-use decisions. Simply stated, the government's manner of dealing with security of property as established long ago in England was adopted by Georgia and is still controlling in many tideland ownership and use conflicts today. Relationships between persons concerning their respective property rights were worked out over hundreds of years. These customary ways of dealing with each other and with the government were adopted and shaped by the courts and relied upon by everyone else so that, ultimately, the "common" solutions or resolutions of human interactions

were as accepted as if they had been adopted by a legislature. Thus, the "common law" of tidelands and water bottoms that evolved in ancient England became the law of Georgia at the end of the Revolution - and still is the law of Georgia unless and to the extent it has been changed by our legislature or our courts. It is important to emphasize that even the Georgia legislature, like the English Crown, has some restrictions upon what it can do with these intertidal and water-bottom lands which it holds as successor to the English Crown and as trustee for the people of the State.

C. LEGISLATIVE PROTECTION OF PRIVATE OYSTERING RIGHTS

In 1902 the Georgia Supreme Court reversed the conviction of an alleged oyster thief who was found guilty of taking oysters from what was thought to have been a "private oyster bed." The court said the conviction was improper because the complaining owner of adjacent high ground had no property rights in the oyster bed bordering his land - which the court said was a "public bed."

That same year, the legislature enacted a law to override the Georgia Supreme Court decision. The intention of the law was to convey certain rights in intertidal lands to the adjacent owner of high ground. It was argued for many years that this apparently gratuitous grant of State lands violated other provisions of the State constitution, but these legal infirmities were removed by a constitutional amendment in 1945 that expressly affirmed the 1902 Act.

In addition to rights granted by the 1902 Act, in *rare circumstances* there may be specific grants made by the Crown of

England before the Revolution or by the State thereafter that effectively convey lands *below* the high-water mark. To be recognizable in law, these grants must clearly and unmistakably convey intertidal lands with such specificity that there can be no reasonable doubt about the intention of the Crown or the State to divest itself of all elements of the legal title. In 1909, the Georgia Supreme Court said that no marsh or intertidal lands are conveyed by deed or by grant language stating that a tract is "bounded by" adjacent creeks and marshes. Such language results in a conveyance that stops at the boundary between marsh and high ground, i.e., the high-water mark. Thus, if one cannot prove the existence of an admittedly rare and specific Crown grant or of a similarly explicit conveyance from the State, any claim to exclusive rights to oysters and clams will have to be based on the 1902 Act. That Act grants explicit rights in navigable and nonnavigable tidal waters, but it also includes significant limitations that are intended to protect the public's interests in these areas. The following are important provisions of the Act.

D. THE 1902 ACT

(a) A navigable tidewater is any tidewater, the sea or any inlet thereof, or any other bed of water where the tide regularly ebbs and flows which is in fact used for the purposes of navigation or is capable of transporting at mean low tide boats loaded with freight in the regular course of trade. The mere rafting of timber thereon or the passage of small boats thereover, whether for the transportation of persons or freight, shall not be deemed navigation within

the meaning of this Code section and shall not make tidewaters navigable.

(b) For all purposes, including, among others, the exclusive right to the oysters and clams but not other fish therein or thereon, the boundaries and rights of the owners of land adjacent to or covered in whole or in part by navigable tidewaters shall extend to the low-water mark in the bed of the water.

The title to the beds of all nonnavigable tidewaters where the tide regularly ebbs and flows shall vest in the owner of the adjacent land for all purposes, including, among others, the exclusive right to the oysters, clams, and other shellfish therein or thereon. If the water is the dividing line between two parcels of land, each owner's boundary shall extend to the main thread or channel of the water. If the main thread or channel of the water changes gradually, the boundary line shall follow the same according to the change. If for any cause the water takes a new channel, the original line, if identifiable, remains the boundary. Gradual accretions of land on either side accrue to the owner of that side.

Nothing in Code Sections 44-8-6 and 44-8-7 [i.e., (a) and (b) above] shall be so construed as to authorize such an exclusive appropriation of any tidewater, navigable or nonnavigable, by any person as will prevent the free use of the same by other persons for the purposes of passage and for the transportation of such freights as may be capable of being carried thereon.

According to a recent Georgia Supreme Court decision, the provisions for "boundaries and rights" of owners of high land adjacent to navigable tidal waters are limited to a grant of exclusive rights to oysters and clams. The fee simple title to the soil under such tidal waters remains in the State.

E. THE "PUBLIC TRUST DOCTRINE" - WHERE CAN ONE FISH?

While courts in Georgia do not normally use the phrase, "public trust doctrine," to describe or characterize the rights reserved for the public, the rights thus protected are those usually associated with that doctrine in other states. The phrase, "public trust doctrine," is a shorthand way of saying that the State legislature and State agencies are bound by law to treat tidal waters and resources as a trust on behalf of the general public. In effect, the State and its various governing arms are obligated as trustee for the people. As trustee, the State is required to exercise a high standard of care for, or stewardship over, these resources. Even so, the State has authority to convey the fee interest or otherwise to radically alter the resource, (e.g., permit the filling of marshlands) if in doing so the purposes for which the trust lands and resources are held on behalf of the public are enhanced or advanced. While this broad discretionary authority may appear to invite abuse, such has not been the case for the most part in Georgia, especially since enactment of the Marshland Protection Act of 1970 which requires a permit to alter State marshlands. Historically, the GA DNR has proved to be a vigorous trustee of these coastal resources on behalf of the public. Also, in addition to these constraints of the public trust doctrine, significant fed-

eral regulatory controls such as endangered species, water quality, and wetlands protection overlap State areas of authority.

The apparent surrender of State interests in nonnavigable intertidal waters may be more extensive than in the navigable portions of those areas. The Georgia Supreme Court has not yet ruled on the question of whether the 1902 Act grants more to owners of high ground adjacent to *nonnavigable* tidal waters than it does to owners adjacent to *navigable* tidal waters. Whatever the ultimate answer may be to the issue of the extent of ownership in these nonnavigable tidal waters, the effect of the qualifier provision of the 1902 Act itself is to preserve navigable *and* nonnavigable tidewaters for the general public's passage and transportation. The provision effectively recognizes the "trust" aspects of these lands.

With this general background, it will be helpful to consider three of the most common factual settings in which master collecting permits are sought or required.

1. In navigable intertidal areas adjacent to high ground, who owns or controls the right to harvest shellfish?
2. If there is no "high ground," such as in the circumstances of a "marsh island," who owns or controls the right to harvest shellfish in adjacent areas?
3. When shellfish are cultured or found below the low-water mark, who owns or controls the rights of harvest in these subtidal areas?

1. Shellfishing Rights in Navigable Tidewaters Adjacent to High Ground

In answer to the first question dealing with the rights to shellfish in or on intertidal water bottoms under navigable waters that are adjacent to high ground, the Georgia Supreme Court has clearly indicated that such adjacent high ground owners have *exclusive* rights to shellfish. These rights extend down to the low-water mark, and can be conveyed to others by lease or deed. This possibility of conveyance by deed introduces the necessity of careful title examination as part of any shellfish investment planning. However, the State retains the right to regulate the private exploitation of these resources.

2. Shellfishing Rights Adjacent to Marsh Islands

With respect to "marsh islands," (i.e., those areas where marsh elevations are such that these intertidal sites are surrounded by water at low tide) the State's position is that provisions of the 1902 Act do not apply. In other words, to gain exclusive shellfish rights under the 1902 Act, one must show the existence of and an interest in *adjacent high ground*. At high tide, marsh islands are submerged. In such cases, the State retains the shellfish rights, and prospective commercial shellfish harvesters and culturists must apply to the State for a lease to use such areas.

3. Shellfishing Rights in Subtidal Waters

A determination of who has rights to harvest *subtidal* shellfish is a bit more complicated than in the first two circumstances. The question of rights to harvest in these subtidal

areas will most often arise in the context of "tidal inlets and creeks" that flow from large tidal bodies, such as sounds, into the marshes associated with coastal islands and the water's edge of the mainland.

An inquiry about rights to subtidal shellfish raises a question that has not yet been answered by Georgia's Supreme Court. That Court has not addressed the distinctions intended by the legislature between the terms "navigable" and "nonnavigable" tidewaters as used in the 1902 Act as those terms may affect use privileges between private landowners and the public. It seems certain that, if particular "tidal inlets and creeks" are considered to be part of navigable tidewaters, the shellfish rights extend only to the low-water mark, thus leaving the rights to shellfish below that line in the State. Conversely, if these "tidal inlets and creeks" are determined to be *nonnavigable tidewaters*, then shellfish rights conveyed by the 1902 Act would extend to the midline of the creek or to the whole bed if both sides of the creek are in one ownership. This interpretation of the 1902 Act will be easier to apply and less controversial where the nonnavigable creek resembles clearly defined fresh waterways and where it is bounded on both sides by high ground. However, where these nonnavigable "tidal inlets and creeks" are associated with broad tidal areas bordering barrier islands and the mainland, the likelihood of establishing exclusive rights to subtidal shellfish on the basis of the 1902 Act is greatly diminished.

One reason this difficulty arises is because the courts do not favor statutes, such as the 1902 Act, that transfer various

public interests or rights to private citizens. The courts apply a rule which provides that conveyances of public property will be interpreted so as to allow only the most limited transfer of public rights. Thus, the 1902 Act has been and will be interpreted as having transferred only those rights that are clearly, specifically, and unmistakably conveyed.

F. STATE INTERPRETATION OF ITS JURISDICTION

The State is presently implementing its shellfish harvesting law and regulations on the basis of a characterization of most "tidal inlets and creeks" as being different from rivers and creeks that flow from uplands toward the sea. Thus, tidelands and "tidal inlets and creeks" are merely arms and inlets of the Atlantic Ocean and of various sounds where rivers enter the sea. The local custom of referring to waterways along the coast as "creeks" and "rivers" does not change the legal implications that necessarily flow from the physical attributes of tide and land elevations.

When at high tide the waters of large rivers and sounds extend in a sheet across the marshes and "tidal inlets and creeks" to the high-water marks on adjacent islands and the mainland, these intertidal areas are considered as part of the shallow edge of such navigable waters just as the waters that crash onto the beaches are considered to be part of the Atlantic Ocean. Thus, the State declares, subtidal shellfish in the broad expanses of marsh are still the property of the State, from which one must secure a lease before harvesting and culture can occur. These areas, where tidal creeks and rivers are in fact arms and inlets of the ocean, sounds, and

navigable rivers, are *not* "nonnavigable tidewaters" within the 1902 Act, and thus they are owned by the State.

G. THE ROLE OF THE GEORGIA DEPARTMENT OF NATURAL RESOURCES

The GA DNR is the agency responsible for implementing State policies regarding shellfish. Personnel in the DNR's Coastal Resources Division office in Brunswick, Georgia, represent the department in several contexts that concern harvesters and culturists of molluscan shellfish. That agency has prepared several helpful printed directives for persons interested in any aspect of shellfish harvest or culture. These directives are intended as a supplement to the statutes and regulations and should be considered along with those more formal statements of State policy. The directives provide guidance for obtaining permits or authorization for several activities: leasing State water bottoms; leasing private interests in water bottoms; experimental fisheries contracts; relay of shellfish; harvesting permits and certifications; and, master collector requirements. These DNR directives or guidance documents are included in the appendices of this guide.

Contacting the DNR should be considered a prerequisite for securing the appropriate permits for any controlled activity related to shellfish harvest or culture. There is simply no substitute for early consultation with this State agency that has been granted sweeping authority over the State's shellfish resources. Biologists and other DNR personnel can facilitate an orderly permitting process that is consistent with the law and regulations they are charged to implement.

H. THE STATE LAW CONTROLLING SHELLFISH HARVESTING

Before tracing the step-by-step practical pathways or directives the DNR has published to aid prospective shellfish harvesters and culturists, some attention should be given to the relevant statutes and regulations. The following is a brief section-by-section analysis or description of the most important provisions of those legal requirements.

1. Definitions

The term "shellfish" means common bivalve mollusks including oysters and clams. [§27-1-2(65.1)] The physical water and water-bottom sites where harvest and culture practices and activities take place are called "shellfish management areas." [§27-1-2 (65.2)]

2. Private Property Rights

An ever-present concern of the DNR is that public and private use rights associated with intertidal lands and waters be protected. Thus, there is a specific provision making it illegal to "fish in the waters or from upon the lands of another" without first having obtained appropriate permission from the owner or the person in charge. (§27-4-2) This protection for private property interests is sufficiently qualified to simultaneously protect public rights of access to tidal waters for fishing, transportation, and recreation and to secure the exclusive shellfish rights of owners of high land adjacent to tidal waters.

3. Keeping Records

In order to establish the sort of comprehensive view of shellfish industry activity that is necessary for sound re-

source management, the DNR requires the maintenance of records by persons who buy or sell oysters and clams. These persons, known as "suppliers," must keep records that reveal the following: quantity or amount; identity of the harvester or culturist; date; purchase price; grade; several identifying elements of the vessel in which shellfish were delivered; harvest efforts in days; approximate location of the harvest or culture site; and other information regarding processing, volume, date, and shipment. (§27-4-136) Also, records must be kept in a form approved by the DOA.

4. The Master Collecting Permit

In 1991, the Georgia General Assembly adopted a major revision of the law regulating shellfish which included more specific language related to commercial shellfish activities. All *commercial* harvesting of shellfish must be carried out under the authority of a "master collecting permit" (MCP). (§27-4-190) After being certified by the DOA to handle shellfish, an MCP will be issued annually, without cost, to persons who can demonstrate that they have a right to the shellfish in particular areas. As explained in the introduction above, under the 1902 Act, rights to shellfish belong to owners of high ground adjacent to intertidal areas, their lessees, or to the State or its lessees in all other intertidal areas.

An authorization may also be issued to shellfish culturists to *take* and *possess* shellfish for mariculture purposes in the absence of a DOA certification. This exception

is designed to foster development of the industry in Georgia but only under almost absolute discretionary powers of the DNR. [§27-4-197 (d)] (See "Experimental Fisheries Contract," Appendix 4) The DNR has the authority to impose whatever conditions it deems necessary to be consistent with "...current, sound principles of wildlife research and management."

An MCP holder can secure authority for its employees or agents, called "pickers," to harvest shellfish, but these persons must have a personal commercial fishing license. The picker's permits must be specific about exact areas and circumstances concerning which the picker engages in harvesting activity. If the picker uses a boat, it must be properly licensed. (§27-2-8)

Part of the history of the decline of the shellfish industry in Georgia includes violations of the law such as trespass and various illegal harvesting practices. In an effort to preclude those practices, violators convicted more than two times in two years can be prohibited from holding MCP or picker permits. [§27-4-193 (b)];[§27-4-195(a), (b)]; and (§27-4-199) Violators must surrender their permits, and unauthorized retention of a permit is itself unlawful.

The General Assembly intends that the DNR be able to determine where and at what time all shellfish have been harvested. It is unlawful to take shellfish from unauthorized areas or during unauthorized periods [§27-4-190 (b)] and persons must be able to prove where and

when all shellfish were taken when asked by law enforcement authorities.

MCPs will not be issued if the applicant has violated requirements for distributing cultch materials in the previous harvesting season. As in the mariculture context, an MCP application can be denied on the grounds that the permit is not in accordance with "current sound principles of wildlife research and management," and it can be revoked under broad disciplinary powers of the DNR for violations of the law or regulations. (§27-2-5) [§27-4-190 (c)] All of these denials and revocations have to be implemented in an open, fair, and equitable manner, but applicants and permit holders need to be aware that the DNR now has the authority to move boldly to accomplish the revitalization of the shellfish industry in Georgia.

Commercial harvesters cannot collect shellfish from public recreational harvest areas. These areas, designated on publicly owned water bottoms by the DNR, are reserved generally for public shellfishers who may take up to two bushels of oysters in the shell per day per person and up to one bushel of clams in the shell per day per person. [§27-4-190(d)] Of course, owners of high land adjacent to intertidal lands have exclusive rights to shellfish in adjacent intertidal water bottoms and may also take these same recreational quantities from such lands, but they or their designees must have in their possession proof of ownership or a letter of permission from the property owner. [§27-4-190(d)] These letters of permission must be quite specific as to picking dates, spe-

cies of shellfish, and picking site or area. Private owners who give others such permission or who harvest recreational quantities themselves must notify the DNR so that the harvest time and site can be approved according to "current sound principles of wildlife research and management."

5. Harvest Methods

Unless specifically approved by the DNR, shellfish can be taken only by hand or by hand-held implements. (§27-4-192) Commercial harvesters may request permission from the DNR to use various mechanical harvesting devices, and the DNR has very broad discretionary latitude in granting such permits and in imposing whatever conditions it deems are in accordance with "current sound principles of wildlife research and management." As in all other permitting contexts, these special permits must be maintained by the operator at the site of the harvesting activity.

6. Shellfish Transplantation

Commercial or recreational harvesting can take place only in "approved growing areas." All other areas are "unapproved." [§27-4-193(a)] Transplanting oysters from unapproved to approved areas can take place only upon express permission of the DNR, and harvesting areas may be "opened" and "closed" by that agency as "current sound principles of wildlife research and management" indicate is safe. The DNR takes into consideration guidelines established by the National Shellfish

Sanitation Program in making decisions related to public health. These guidelines are also factored into DNR responses to applications to build and operate facilities for controlled purification of shellfish. [§27-4-193 (c)]

7. Shellfish Size Limitations

Without special permission, oysters must be three inches from hinge to mouth or larger before they are taken for commercial or noncommercial purposes. [§27-4-194(a)] Destructively and incidentally attached smaller oysters may be retained in quantities of up to 5 percent of the inventory of a shucking and canning plant.

Without special permission, recreational and commercial harvesters of clams must return to the water all of these shellfish that are less than 1-inch thick from one shell half to the other. [§27-4-194(b)]

8. Time and Place Designations

The DNR is guided only by "current sound principles of wildlife research and management" in its decisions regarding times and places for shellfish harvesting by commercial or recreational harvesters. [§27-4-195(a)]

Private landowners may not give valid permission for harvesting that contradicts DNR harvest dates or areas or for lands not owned or controlled by such landowner. [§27-4-195(b)]

9. Distribution of Cultch Material

Oyster spat can attach to many underwater features or structures called "cultch" that is broadly defined to include oyster, clam, and other Georgia shellfish shells, oak brush, cement-coated shingles, nongalvanized wire, small gravel, and any similar material that may be approved by the DNR. [§27-4-196(a)(1)] When a person is taking oysters from State-owned tidal water bottoms, three options are available to the harvester that are designed ultimately to rehabilitate the oyster bed base in the State: (1) distribute upon areas chosen by the State 33 percent by volume of oyster shells taken by the permittee; (2) transplant as much by volume of oysters from unapproved to approved growing areas; or, (3) distribute a volume equal to the harvest of a specified cultch material. [§27-4-196(b)] A lease agreement with the State respecting State oyster beds will require the return of oyster shells to the beds from which they were taken in the amounts specified in the lease. [§27-4-196(c)] The DNR will supervise distribution of cultch. [§27-4-196(d)]

10. Shellfish Sanitation and Shipment

The DNR and the DOA share responsibility to control or monitor every aspect of shellfish harvest and sale that may affect the public health. The DNR's primary roles are resource protection, permitting, and management. The DOA's roles are focused on product sanitation, processing, health maintenance, quality control, and ship-

ment. The two State agencies share responsibility to conduct a shellfish production and processing program sufficient to be certified by the U.S. Food and Drug Administration for interstate shipment of shellfish produced in Georgia. [§27-4-197(a)] The DOA's sphere of authority encompasses: the cleanliness of shipping containers and methods; the proper labeling and marking with mandated product and consumer information; certification of dealers and facilities; the maintenance of control over labels and tags issued to dealers; the monitoring and control of interstate shipments of shellfish; and the permitting of uncertified firms that are involved in shellfish shipments related to mariculture purposes. [§27-4-197(b)(c)(d)]

11. Leasing Shellfish Beds

Persons involved in shellfish culture and production will derive their legal access to culture sites from one of three sources: they will own the fee interest in high land bordering tidal waters, and under the 1902 Act they will thus have exclusive rights to shellfish on and in the intertidal water bottoms down to the low-water mark; they will lease shellfish rights from private landowners; or, they will lease shellfish rights from the State respecting intertidal or subtidal water bottoms. The following is a discussion of what the law prescribes for leasing shellfish beds from the State.

Prospective lessees of exclusive rights to shellfish in and on State-owned intertidal and subtidal water bottoms

must apply in writing to the DNR, the agency that acts on behalf of the State, and include the following information:

- a.** applicant's full name and legal residence
- b.** a chart, obtained from the National Oceanic and Atmospheric Administration, indicating location of the prospective lease area
- c.** the names and addresses of adjacent landowners as recorded on county tax maps
- d.** proposed plans for managing the shellfish enterprise
- e.** any other information the DNR may require [§27-4-198(a)]

It is at this early stage that prospective applicants should contact personnel in the DNR's coastal division to assure an orderly and efficient progress through the permitting process. (See Appendix 3, STATE LEASE)

Upon receipt of the lease application, the DNR will assess the probable resource value and quality of the site. If it determines that the site is suitable for lease and that the lease would otherwise be in the best interests of the State, it will offer the proposed lease site to the public for competitive bids. This is accomplished by placing an invitation to bid in the newspaper designated as the official organ for such legal notices in the county in

which the proposed lease site is situated. Among other facts of significance to prospective bidders, the DNR may state a minimum acceptable bid amount. Prior to the bid, interested parties may obtain a copy of the lease terms from DNR. Bids must be sealed and accompanied by a certified or cashier's check or money order in the amount of the annual bid.

Interested parties must also submit a detailed management plan for working the shellfish beds - a provision required by the General Assembly in an apparent effort to attract only serious bidders. The lease will include at least the following provisions: the time or term of the lease; approved harvesting methods; lease payment terms; minimum shellfish replanting or management requirements; sign placement; and other terms deemed necessary by the DNR. [§27-4-198(b)]

At the public bid opening, the State is not required to accept the highest dollar amount bid. Rather, and this is an important example of the discretionary authority the General Assembly has granted to the DNR, that agency may select the bid (and bidder) it considers "most advantageous to the State." While this is not totally unfettered and standardless discretion, it does give the DNR significant opportunity to move ahead with rehabilitating the shellfish industry in Georgia. In fact, Georgia citizens must receive preference in circumstances of competitive equality. [§27-4-198(c)]

Lessees of State water bottoms must post signs which

clearly identify where the culture and harvesting activities are taking place. The lease must be recorded within 30 days in records of the Clerk of the Superior Court in the county where the lease site is situated. [§27-4-198(d)] While the required signs will give actual notice at the site of the rights of the lessee, all persons will have legal notice of the lease because of this filing requirement.

The DNR may give citizens permission to remove State-owned shellfish that are threatened with destruction by dredging, development, or other harmful activities without a formal lease agreement. The terms are left to the discretion of the DNR, and these informal grants shall be available only to holders of master collecting permits for fees not to exceed a one-time payment of \$500.00. [§27-4-198(e)] Under this same informal, general authority, the DNR may authorize holders of master collecting permits to remove shellfish from unapproved growing areas for transfer to approved growing areas. [§27-4-198(f)]

12. Inspection of Boats and Premises

Inasmuch as unclean, contaminated or disease-bearing shellfish pose a threat to human health, the law governing this resource contains a provision which makes it easier for authorities to determine the *intention* of persons engaged in specific activities. A person distributing, selling, or possessing with the intent to distribute or sell any shellfish shall be presumed to intend their use as food *unless* such person presents prior written approval for such possession that negates the conclusion. [§27-4-199(a)]

The law grants sweeping powers to rangers and other authorized personnel to monitor almost every aspect of collecting, processing, and distributing shellfish. Thus, conservation rangers and other State personnel may enter private places of business and check for all aspects of compliance with the law, and they may monitor and inspect shellfish beds, boats, and harvest methods during normal business hours. It is unlawful to obstruct or in any way interfere with these lawful enforcement activities. [§27-4-199(b)] Further, enforcement personnel may seize, confiscate, and remove any shellfish taken or possessed in violation of the law. Such authority must be exercised prior to or at the point of landing such illegally harvested shellfish. [§27-4-199(c)]

III. STEP-BY-STEP DIRECTIONS OF THE DEPARTMENT OF NATURAL RESOURCES

The following information or directions included here as Appendices 1 - 7 are routinely distributed by the Department of Natural Resources to persons interested in various shellfish enterprises. The inclusion of these directions in this Guide should not be understood as a substitute for timely consultations with appropriate personnel of the Coastal Division of the DNR.

The author acknowledges with appreciation the review of this publication by Dr. Stuart A. Stevens, Branch Manager, Ecological Services Branch and Research Coordinator, Sapelo Island National Estuarine Research Reserve.

The author also acknowledges a legal memorandum written by then Senior Assistant Attorney General, Patricia T. Barmeyer, in February 1985, to the Commissioner of the DNR regarding master collecting permits as an authoritative source for important elements of this guidebook.

NOTE: Except for the addition of the name of Dr. Randal L. Walker to Appendix 7, "Necessary Agency Contacts," the appendices which follow are **verbatim reproductions** of the documents supplied to the author by Georgia DNR.

APPENDIX I

DEPARTMENT OF NATURAL RESOURCES REQUIREMENTS OF MASTER COLLECTING PERMITTEES

1. Provide to Department list of authorized harvesters *prior* to allowing harvesting. List should be updated throughout the harvest season.
2. Provide to Department evidence of cultch planting and/or shellfish transplanting prior to receiving Master Collecting Permit for following season. Such data is also required of State lease holders.
3. Provide to Department on forms provided to Permittees by Department landings of shellfish in any given month. These data must be received by the 5th of each month. If harvest in a given month was zero, this must be reported also. Data should be forwarded to Statistics Coordinator, CRD.
4. All shellfish containers shall be tagged with tags obtained from the Department of Agriculture.
5. In the case of private leases, notify the Department of any changes in the status of the lease.
6. Post harvest areas to inform public that the area is under commercial lease. This will allow for stricter law enforcement.
7. (NOT REQUIRED) Sign an affidavit stating who is allowed to harvest on your lease and that you would prosecute anyone caught on the property without your permission. This will allow for stricter law enforcement. Such affidavits are available at each Law Enforcement office or the CRD office in Brunswick.
8. Keep records of seafood transactions.

Special Circumstances Requiring Further Approval From The Department:

- use of any type of dredge for shellfish
- use of tongs to harvest oysters
- use of any unusual harvest techniques
- harvest of undersized shellfish
- relay of shellfish
- transporting and planting of seed clams (includes
- mariculture/farming operations)
- transporting and planting of shellfish not normally found in Georgia
- use of alternate cultch materials
- harvest in unapproved waters
- any other action not specifically allowed by Georgia law

APPENDIX 2

COMMERCIAL SHELLFISHERY LEASE (PRIVATE LEASE)

Time estimates may vary and should only be used as a guide.

STEP 1 - APPLICANT

Contact Department of Natural Resources (for charts showing approved growing areas, regulations, and areas already under Lease) and Marine Extension (for methods and suggestions for harvest).

STEP 2 - COUNTY APPLICANT

Select area for development and contact landholder. The County Tax Commissioner can provide information about land owners. If area for development is outside an approved growing area, contact the Department of Natural Resources.

STEP 3 - APPLICANT

Contact the Department of Agriculture for related permits and regulations for sale of shellfish (dependent on your plans for wholesale or retail sales, shucking, canning, etc.)

STEP 4 - APPLICANT

Provide to Department of Natural Resources:

1. A copy of the lease, signed and notarized. Lease should include a verbal description of the lease area written in terms easily transferable to the environmental setting (e.g., West bank of the Duplin River between the mouth the river emptying into Doboy Sound and the northern most boundary of highland known as Little Sapelo). Lease should also include effective dates and species to be harvested.

2. Nautical charts showing the area leased.
3. A verbal description of how you plan to develop the shellfish resources within the lease - *BE SPECIFIC*. If special gear types will be used, contact Department of Natural Resources.
4. Copies of all permits issued by the Department of Agriculture, commercial fishing licenses, and commercial boat license.
5. Names of employees authorized to harvest shellfish on your lease and names of vessels if applicable.
6. Any other information you consider necessary or requested in Step 1.

STEP 5 - STATE - (2-4 weeks)

Department of Natural Resources will evaluate the materials provided and if all materials are in order, a master (2-4 weeks) collecting permit will be issued. If harvest rights are in question, contact will be made to the Attorney General's Office for a decision on issuance of permits. This process may take considerable time.

NOTE: Laws require replenishment of the resource harvested even on private leases. Contact the Department of Natural Resources for further information and a copy of requirements of master collecting permittees.

APPENDIX 3

COMMERCIAL SHELLFISHERY LEASE (STATE LEASE)

Time estimates may vary and should only be used as a guide.

STEP 1 - APPLICANT

Contact Department of Natural Resources (for charts showing approved growing areas, regulations, and areas already under Lease) and Marine Extension (for methods and suggestions for harvest).

Step 2 - APPLICANT

Select area for development. If the area is outside an approved shellfish growing area, contact the Department of Natural Resources.

STEP 3 - APPLICANT

Contact the Department of Agriculture for related permits and regulations for sale of shellfish (dependent on your plans for wholesale or retail sales, shucking, canning, etc.)

Step 4 - APPLICANT

Provide to Department of Natural Resources:

1. Letter requesting a lease and duration for lease.
2. A verbal description of the lease area written in terms easily transferable to the environmental setting (e.g., West Bank of the Duplin River from the mouth of the River emptying into Doboy Sound to the northern extent of the high land known as Little Sapelo). Include in the lease proposal adjacent land holders

names, addresses, and phone numbers. These can be obtained from the County Tax Assessor Office. Also include in the description the species to be harvested.

3. Nautical chart showing the area proposed for lease.
4. A verbal description of how you plan to develop the shellfish resources in the proposed lease area - *BE SPECIFIC*. If special gear will be used contact the Department of Natural Resources.
5. Copies of all permits issued by the Department of Agriculture, commercial fishing license, and commercial boat license.
6. Names of employees authorized to harvest shellfish on the lease and names of vessels if applicable.
7. A \$50.00 certified check, cashiers check, or money order payable to Georgia Department of Natural Resources (returned if you fail to secure the lease).
8. Any other information you consider necessary or requested in Step 1.

STEP 5 - STATE - (8-12 weeks)

The Department of Natural Resources will evaluate your request. If approved, a draft lease will be written which may contain (8-12 weeks) special conditions. The request for a lease of State lands will be published in local newspapers for two weeks with an invitation for competitive bids to develop the resource within the lease area. The draft lease will be available for viewing during this period. If harvest rights are questioned, the Attorney General's Office will be contacted for guidance before proceeding with the lease request. This can be very time consuming.

STEP 6 - STATE (1-2 weeks)

All bids will be publicly opened and the lease will be awarded to the bidder with the best management plan.

STEP 7 - STATE (1-2 weeks)

If the draft lease requires considerable revision, move to 4. If not, the lease will be signed and notarized. It will be forwarded to the Commissioner's Office along with our recommendation for approval. If approved, you will be provided with a copy of the lease and a master collecting permit authorizing harvest of shellfish. If unapproved the applicant may resubmit their request.

APPENDIX 4

EXPERIMENTAL FISHERIES CONTRACTS (EFC) WHAT TO DO

Necessary for capture of non-utilized species, special gear types, fishing in special locations, or any other unusual activity. Time estimates may vary and should only be used as a guide.

STEP 1 - APPLICANT

Contact Department of Natural Resources (re: regulations) and and Marine Extension (re: methods or suggestions).

STEP 2 - APPLICANT

Formal application to Department of Natural Resources should include:

1. Written and signed description of your proposed venture - *BE SPECIFIC*. Include gear type to be used, fishing locations, vessel names, times and dates for fishing, and any other pertinent information (e.g., pictures are often helpful for special gear types).
2. Nautical chart showing area to be fished.
3. Photocopy of personal commercial fishing licenses, commercial fishing vessel license, and vessel documentation (registration) number.
4. Any reprints or other published materials you may have related to your request.
5. Any other information considered necessary or requested during Step 1.

STEP 3 - STATE - (2-3 weeks)

The formal application and all material provided will be reviewed and a decision will be made whether or not an EFC should be written. The applicant will be notified of our decision. If the outcome is positive, continue to Step 4.

STEP 4 - STATE - (6-8 weeks)

A legal contract will be drawn which will allow the applicant to implement his proposal. This contract will be specific and may contain special conditions.

STEP 5 - APPLICANT

The EFC will be presented to the applicant for review, approval, signature, and notarization. If alterations are necessary, move to Step 4.

STEP 6 - STATE - (1-2 weeks)

The EFC, along with our recommendation for approval, will be forwarded to the Commissioner's office for approval. The applicant will be notified of the outcome. If unapproved, the applicant may resubmit with alterations. If approved, a copy of the contract will be presented to the applicant and he may proceed with implementing his proposal. The State's involvement will continue based on special conditions within the contract.

APPENDIX 5

RELAY OF SHELLFISH

Time estimates may vary and should only be used as a guide.

STEP 1 - APPLICANT

Contact the Department of Natural Resources (re: regulations), Marine Extension (re: methods and suggestions), and the Department of Agriculture (re: possible regulations).

STEP 2 - APPLICANT

Provide to the Department of Natural Resources:

1. A letter requesting permission to relay shellfish.
2. Lease or provide proof of harvest rights of area where shellfish are to be relayed from and lease of area where shellfish will be planted. Contact Department of Natural Resources for list of State designated relay areas.
3. A verbal description of how you plan to harvest the shellfish - *BE SPECIFIC*. Include quantity, dates of movement, how transplanted shellfish will be posted, how reharvest will be done, and species to be moved.
4. Copies of all permits issued by the Department of Agriculture, commercial fishing license, commercial boat license (if applicable), and master collecting permit.

5. Names of employees authorized to harvest shellfish on your lease and names of vessels if applicable, include social security number and copy of personal commercial fishing licenses.
6. Any other information you consider necessary or requested during Step 1.

STEP 3 - STATE - (3-4 weeks)

The Department of Natural Resources will evaluate your proposal. If approved, a letter of permission will be written which may contain special conditions. If unapproved, you may review your proposal and resubmit. If relay authorization is issued, you must voluntarily relinquish your Master Collecting Permit, pickers cards, tags, and Certification. These authorizations will be returned after relaying has terminated and the shellfish relayed have had sufficient time for cleansing.

APPENDIX 6

PROCEDURES FOR HARVEST PERMITTING AND SHELLFISH CERTIFICATION OF GEORGIA SHELLFISH HARVESTERS

1. Contact Department of Natural Resources, Shellfish Program. If Department of Agriculture is contacted, Agents will refer applicant to Department of Natural Resources for initial consultation.
2. Shellfish Program will advise applicant of laws, rules, regulations and procedures for harvesting shellfish in Georgia and begin investigation of harvest rights.
3. Shellfish Program forwards application for Master Collecting Permit to applicant. Once executed copy received, a copy will be forwarded to Agriculture to advise them of pending permit.
4. Shellfish Program checks for proper Certification.
5. Shellfish Program forwards Permit to Division Director for approval and issuance of Master Collecting Permit.
6. Shellfish Program receives Permit. Issue date, expiration date, Certification number and special notes are attached. Confirmation is made with Agriculture that applicant has satisfied all requirements. Permit is mailed to Agriculture, DNR-Law Enforcement, Landing Statistics Program, and applicant. Requirement of Permittees forwarded to applicant.
7. If private lease involved, Shellfish Program notifies property owner of issuance of Permit.
8. Once Permit received from Shellfish Program, Agriculture forwards Certification number and tags to applicant.

3. Applicant will be inspected at least quarterly by Agriculture to maintain Certification and additional inspections may be made randomly.

NOTE: *If applicant is out-of-state or otherwise unfamiliar with Georgia law, rules, regulations, and procedures, contact must be made with each agency to insure an understanding of procedures prior to applying for a Permit or Certification.*

APPENDIX 7

NECESSARY AGENCY CONTACTS

Brad Williams

Department of Natural
Resources
Coastal Resources Division
1 Conservation way
Brunswick, GA 31523-8600
(912) 264-7218

Sam N. Latham

Department of Natural
Resources
Coastal Resources Division
1 Conservation Way
Brunswick, GA 31523-8600
(912) 264-7218

Tom "Frito" Shierling

UGA Marine Extension
Service
715 Bay Street
Brunswick, GA 31520
(912) 264-7268

Clarke Wiggins

Department of
Agriculture
533 N. First Street
Jesup, GA 31545
(912) 427-5768

Dr. Randal L. Walker

The University of Georgia
Marine Extension Service
Shellfish Research Lab
20 Ocean Science Circle
Savannah, GA 31411-0687
(912) 598-2348

COUNTY TAX ASSESSORS' OFFICES

Chatham County

Tax Assessor's Office
Room 108
Chatham County Courthouse
133 Montgomery Street
Savannah, GA 31402
(912) 944-4914

Bryan County

Tax Assessor's Office
Bryan County Courthouse
Pembroke, GA 31321
(912) 756-3688

Liberty County

Tax Assessor's Office
Liberty County Courthouse
P.O. Box 184
Hinesville, GA 31313
(912) 876-2823

McIntosh County

Tax Assessor's Office
County Courthouse
Darien, GA 31305
(912) 437-6663

Glynn County

Tax Assessor's Office
1803 Gloucester Street
Brunswick, GA 31520
(912) 267-5688

Camden County

Tax Assessor's Office
P.O. Box 472
Woodbine, GA 31569
(912) 576-5601