

Fish and Wildlife Conservation Commission, vessels

Number: INFORMAL

Date: April 26, 2001

Mr. Allan L. Egbert, Ph.D.
Executive Director
Florida Fish and Wildlife Conservation Commission
620 South Meridian Street
Tallahassee, Florida 32399-1600

Dear Dr. Egbert:

You ask for this office's opinion on whether the Florida Fish and Wildlife Conservation Commission has the authority to accept title to the U.S.S. Spiegel Grove from the United States Government pursuant to 16 United States Code 1220 *et seq.*

I am of the view that the Florida Fish and Wildlife Conservation Commission has the authority to accept title to a vessel from the United States Government pursuant to 16 United States Code 1220 *et seq.*

Federal law permits a state to apply to the Secretary of Transportation for obsolete ships for use as offshore reefs.[1] Pursuant to 16 United States Code 1220a,

"If, after consideration of such comments and views as are received pursuant to section 1220(c) of this title, the Secretary finds that the use of obsolete ships proposed by a State will not violate any Federal law, contribute to degradation of the marine environment, create undue interference with commercial fishing or navigation, and is not frivolous, he may transfer without consideration to the State all right, title, and interest of the United States in and to any obsolete ships which are available for transfer under this chapter if--

(1) the State gives to the Secretary such assurances as he deems necessary that such ships will be utilized and maintained only for the purposes stated in the application and, when sunk, will be charted and marked as a hazard to navigation;

(2) the State agrees to secure any licenses or permits which may be required under the provisions of any other applicable Federal law;

(3) the State agrees to such other terms and conditions as the Secretary shall require in order to protect the marine environment and other interests of the United States; and

(4) the transfer would be at no cost to the Government with the State taking delivery of such obsolete ships at fleetside of the National Defense Reserve Fleet in an 'as is--where is' condition."

Thus, federal law requires that an application be made by a state and that the state accept title to such vessels.

In 1996, the Department of Environmental Protection (DEP) filed an application with the federal government for acquisition of the U.S.S. Spiegel Grove.[2] At that time, DEP was charged with

the administration of the state's artificial reef program as prescribed in section 370.25, Florida Statutes. In 2000, administration of the program was transferred to the Florida Fish and Wildlife Conservation Commission (Commission).[3]

This office has been advised that prior to the transfer of the program to the Commission, at least four vessels had been transferred to DEP (or its predecessor) under the artificial reef program. The pertinent language of section 370.25, Florida Statutes, has remained relatively unchanged since that time.

Section 370.25, Florida Statutes, creates the artificial reef program to enhance saltwater opportunities and to promote proper management of fisheries resources associated with artificial reefs for the public interest. Under the program, the Commission may provide grants and financial and technical assistance to coastal local governments and nonprofit corporations qualified under section 501(c)(3) of the Internal Revenue Code for the siting and development of artificial reefs, as well as for monitoring and evaluating their recreational, economic, and biological effectiveness.

While the statute may lack clear direction for the Commission, the authority formerly exercised by DEP under the artificial reef program has been transferred to the Commission. It has long been the interpretation of DEP that the statute provided sufficient authorization for the department to accept vessels from the U.S. government pursuant to 16 United States Code 1220 *et seq.*[4]

Section 370.25, Florida Statutes, provides that the program may be funded from state, federal, and private contributions. Nothing in the statute limits the term "contributions" to monetary contributions. For example, section 375.021(4), Florida Statutes, which the Commission has cited as possible authority for DEP to accept the vessel, uses the term "contributions" to refer to money, property or labor.[5] In addition, the Commission is constitutionally empowered to exercise "regulatory and executive powers" with respect to marine life.[6]

Federal law requires an interested state to apply for and accept title to U.S. obsolete vessels for its artificial reef program. The Commission has been designated by the Florida Legislature as the entity to administer this state's artificial reef program and to accept contributions for said program. Accordingly, it appears that the Commission possesses sufficient authority to accept title to a vessel from the U.S. government pursuant to 16 United States Code 1220 *et seq.* The Commission, however, has a responsibility to assess the fiscal soundness of the proposed acceptance of the U.S.S. Spiegel Grove.[7] Further, in light of the questions raised by the Commission, it may be appropriate for the Legislature to revisit the provisions of section 370.25, Florida Statutes, to clarify the authority of the Commission to participate in this program.

Sincerely,

Robert A. Butterworth
Attorney General

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[1] See 16 U.S.C. s. 1220. *And see* 16 U.S.C. s. 1220d defining "obsolete ship" as "any vessel owned by the Department of Transportation that has been determined to be of insufficient value for commercial or national defense purposes to warrant its maintenance and preservation in the national defense reserve fleet and has been designated as an artificial reef candidate."

[2] See letter from Mr. Jon Dodrill, Environmental Programs Administrator, DEP, to Mr. M. Delpercio, Jr., Acting Associate Administrator for National Security, U.S. Department of Transportation, dated March 4, 1996.

[3] See s. 45, Ch. 2000-364, Laws of Florida.

[4] See, e.g., *Gulf Coast Electric Cooperative, Inc. v. Johnson*, 727 So. 2d 259 (Fla. 1999) (agency's interpretation of a statute it is charged with enforcing is entitled to great deference); *Department of Health & Rehabilitative Services v. A.S.*, 648 So. 2d 128 (Fla. 1995) (administrative construction of statute by agency charged with its administration should not be disregarded or overturned by reviewing court except for most cogent reasons and unless clearly erroneous); *Pringle v. Marine Fisheries Commission*, 732 So. 2d 395 (Fla. 1st DCA 1999); *Velez v. Commission on Ethics, State of Florida*, 739 So. 2d 686 (Fla. 5th DCA 1999) (reviewing court must defer to any statutory interpretation by an agency which is within the range of possible and reasonable).

[5] See s. 375.021(4), Fla. Stat., which refers to "aid, contributions, or loans from any other source of money, property, labor, or other things of value to be held, used, and applied only for the purpose for which such aid, grants, or loans were made."

[6] Article IV, s. 9, Fla. Const.

[7] *Cf.* Rule 62R-9.003(1)(e), F.A.C., stating that other considerations for program financial assistance include costs of constructing the proposed reef.