

By the Committee on Agriculture; and Senator Dean

575-02898-16

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1 A bill to be entitled
2 An act relating to shellfish harvesting; amending s.
3 597.010, F.S.; revising provisions directing the
4 Department of Agriculture and Consumer Services, in
5 cooperation with the Fish and Wildlife Conservation
6 Commission and the Department of Environmental
7 Protection, to protect specified shellfish beds,
8 grounds, and reefs; defining the terms "dredge or
9 mechanical harvesting devices" and "shellfish";
10 providing for the harvesting of shellfish from
11 sovereign submerged land leases; providing for the
12 Board of Trustees of the Internal Improvement Trust
13 Fund to authorize the use of dredges or mechanical
14 harvesting devices as special lease conditions of
15 sovereign submerged land leases; limiting the number
16 of such dredges or mechanical harvesting devices per
17 lease; prohibiting certain use and possession of such
18 dredges or mechanical harvesting devices; providing
19 penalties; removing provisions relating to shellfish
20 harvesting seasons and removal of oysters, clams, or
21 mussels from natural reefs; authorizing the
22 department, rather than requiring, to designate areas
23 for the taking of oysters and clams to be planted on
24 public lands; deleting a provision allowing such
25 takings to be planted on leases and grants; specifying
26 that the commission, rather than the department, shall
27 establish the amount of oysters, clams, and mussels
28 that may be relayed or transplanted; removing
29 provisions relating to dredging of dead shells and
30 oyster culture; making technical changes; providing an
31 effective date.
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575-02898-16

20161318c1

33 Be It Enacted by the Legislature of the State of Florida:

34
35 Section 1. Subsections (14) and (17) through (25) of
36 section 597.010, Florida Statutes, are amended to read:

37 597.010 Shellfish regulation; leases.-

38 (14) SHELLFISH DEVELOPMENT.-The department, in cooperation
39 with the Fish and Wildlife Conservation Commission and the
40 Department of Environmental Protection, shall protect all clam
41 beds, oyster beds, shellfish grounds, and oyster reefs from
42 damage or destruction resulting from improper cultivation,
43 propagation, planting, or harvesting. To this end, the
44 Department of Health is authorized and directed to cooperate
45 with the department and to make available its laboratory testing
46 facilities and apparatus.

47 ~~(a) The department shall improve, enlarge, and protect the~~
48 ~~natural oyster and clam reefs and beds of this state to the~~
49 ~~extent it may deem advisable and the means at its disposal will~~
50 ~~permit.~~

51 ~~(b) The Fish and Wildlife Conservation Commission shall, to~~
52 ~~the same extent, assist in protecting shellfish aquaculture~~
53 ~~products produced on leased or granted reefs and beds.~~

54 ~~(c) The department, in cooperation with the commission,~~
55 ~~shall provide the Legislature with recommendations as needed for~~
56 ~~the development and the proper protection of the rights of the~~
57 ~~state and private holders therein with respect to the oyster and~~
58 ~~clam business.~~

59 (17) SHELLFISH HARVESTING FROM SOVEREIGN SUBMERGED LAND
60 LEASES; USE OF DREDGE OR MECHANICAL HARVESTING DEVICE SEASONS;
61 SPECIAL PROVISIONS RELATING TO APALACHICOLA BAY.-

575-02898-16

20161318c1

62 (a) As used in this subsection, the term:

63 1. "Dredge or mechanical harvesting device" means a dredge,
64 scrape, rake, drag, or other device that is towed by a vessel or
65 self-propelled and that is used to harvest shellfish. The term
66 does not include handheld or handdrawn hydraulically or
67 mechanically operated devices used to harvest cultured clams
68 from leased sovereign submerged lands, and this subsection does
69 not apply to such handheld or handdrawn devices.

70 2. "Shellfish" means aquaculture oysters, clams, mussels,
71 and scallops.

72 (b) The harvesting of shellfish from a sovereign submerged
73 land lease may be authorized pursuant to chapter 253.

74 (c) The Board of Trustees of the Internal Improvement Trust
75 Fund may authorize the use of a dredge or mechanical harvesting
76 device as a special lease condition of a sovereign submerged
77 land lease issued under chapter 253 if:

78 1. The use of the dredge or mechanical harvesting device
79 does not adversely impact the public health, safety, and welfare
80 of adjacent natural resources.

81 2. The use of the dredge or mechanical harvesting device is
82 an existing condition of a perpetual shellfish lease issued
83 pursuant to former chapter 370.

84 3. Aquaculture best management practices have been adopted
85 pursuant to chapter 120 which:

86 a. Describe the approved size and specifications of the
87 dredge or mechanical harvesting device to be used.

88 b. Provide conditions for deploying and using an approved
89 dredge or mechanical harvesting device.

90 c. Specify requirements for monitoring potential impacts

575-02898-16

20161318c1

91 at, and adjacent to, the sovereign submerged land lease site by
92 the leaseholder.

93 (d) Only one dredge or mechanical harvesting device per
94 lease may be possessed or operated at any time at a lease site.

95 (e) A dredge or mechanical harvesting device authorized by
96 this subsection may not be used for taking shellfish for any
97 purpose from public shellfish beds in waters of the state, and
98 such dredge or mechanical harvesting device may not be possessed
99 on the waters of the state from 5 p.m. until sunrise.

100 (f) This subsection does not authorize the harvesting of
101 shellfish from natural reefs.

102
103 A violation of this subsection is a violation of the lease
104 agreement and will result in the revocation of all leases held
105 by the violator and denial of any future use of sovereign
106 submerged land.

107 ~~(a) The Fish and Wildlife Conservation Commission shall by~~
108 ~~rule set the noncultured shellfish harvesting seasons in~~
109 ~~Apalachicola Bay.~~

110 ~~(b) If the commission changes the harvesting seasons by~~
111 ~~rule as set forth in this subsection, for 3 years after the new~~
112 ~~rule takes effect, the commission, in cooperation with the~~
113 ~~department, shall monitor the impacts of the new harvesting~~
114 ~~schedule on the bay and on local shellfish harvesters to~~
115 ~~determine whether the new harvesting schedule should be~~
116 ~~discontinued, retained, or modified. In monitoring the new~~
117 ~~schedule and in preparing its report, the following information~~
118 ~~shall be considered:~~

119 ~~1. Whether the bay benefits ecologically from the new~~

575-02898-16

20161318c1

120 ~~harvesting schedule.~~

121 ~~2. Whether the new harvesting schedule enhances the~~
122 ~~enforcement of shellfish harvesting laws in the bay.~~

123 ~~3. Whether the new harvesting schedule enhances natural~~
124 ~~shellfish production, oyster relay and planting programs, and~~
125 ~~shell planting programs in the bay.~~

126 ~~4. Whether the new harvesting schedule has more than a~~
127 ~~short term adverse economic impact, if any, on local shellfish~~
128 ~~harvesters.~~

129 ~~(18) REMOVING OYSTERS, CLAMS, OR MUSSELS FROM NATURAL~~
130 ~~REEFS; LICENSES, ETC.; PENALTY.—~~

131 ~~(a) It is unlawful to use a dredge or any means or~~
132 ~~implement other than hand tongs in removing oysters from the~~
133 ~~natural or artificial state reefs or beds. This restriction~~
134 ~~shall apply to all areas of Apalachicola Bay for all shellfish~~
135 ~~harvesting, excluding private grounds leased or granted by the~~
136 ~~state prior to July 1, 1989, if the lease or grant specifically~~
137 ~~authorizes the use of implements other than hand tongs for~~
138 ~~harvesting. Except in Apalachicola Bay, upon the payment of \$25~~
139 ~~annually, for each vessel or boat using a dredge or machinery in~~
140 ~~the gathering of clams or mussels, a special activity license~~
141 ~~may be issued by the Fish and Wildlife Conservation Commission~~
142 ~~pursuant to subsection (15) or s. 379.361 for such use to such~~
143 ~~person.~~

144 ~~(b) Approval by the department to harvest shellfish by~~
145 ~~dredge or other mechanical means from privately held shellfish~~
146 ~~leases or grants in Apalachicola Bay shall include, but not be~~
147 ~~limited to, the following conditions:~~

148 ~~1. The use of any mechanical harvesting device other than~~

575-02898-16

20161318c1

149 ~~ordinary hand tongs for taking shellfish for any purpose from~~
150 ~~public shellfish beds in Apalachicola Bay shall be unlawful.~~

151 ~~2. The possession of any mechanical harvesting device on~~
152 ~~the waters of Apalachicola Bay from 5 p.m. until sunrise shall~~
153 ~~be unlawful.~~

154 ~~3. Leaseholders or grantees shall notify the department no~~
155 ~~less than 48 hours prior to each day's use of a dredge or scrape~~
156 ~~in order for the department to notify the Fish and Wildlife~~
157 ~~Conservation Commission that a mechanical harvesting device will~~
158 ~~be deployed.~~

159 ~~4. Only two dredges or scrapes per lease or grant may be~~
160 ~~possessed or operated at any time.~~

161 ~~5. Each vessel used for the transport or deployment of a~~
162 ~~dredge or scrape shall prominently display the lease or grant~~
163 ~~number or numbers, in numerals which are at least 12 inches high~~
164 ~~and 6 inches wide, in such a manner that the lease or grant~~
165 ~~number or numbers are readily identifiable from both the air and~~
166 ~~the water.~~

167
168 ~~Any violation of this paragraph or of any other statutes, rules,~~
169 ~~or conditions referenced in the lease agreement shall be~~
170 ~~considered a violation of the license and shall result in~~
171 ~~revocation of the lease or a denial of use or future use of a~~
172 ~~mechanical harvesting device.~~

173 ~~(c) Oysters may be harvested from natural or public or~~
174 ~~private leased or granted grounds by common hand tongs or by~~
175 ~~hand, by scuba diving, free diving, leaning from vessels, or~~
176 ~~wading. In Apalachicola Bay, this provision shall apply to all~~
177 ~~shellfish.~~

575-02898-16

20161318c1

178 ~~(18)(19)~~ FISHING FOR RELAYING OR TRANSPLANTING PURPOSES.—

179 (a) The department may ~~shall~~ designate areas for the taking
180 of oysters and clams to be planted on ~~leases, grants, and~~ public
181 areas. Oysters, clams, and mussels may be taken for relaying or
182 transplanting at any time during the year so long as, in the
183 opinion of the department, the public health will not be
184 endangered. The amount of oysters, clams, and mussels to be
185 obtained for relaying or transplanting shall be established by
186 the Fish and Wildlife Conservation Commission. The area relayed
187 or transplanted to, and relaying or transplanting time periods
188 shall be established in each case by the department.

189 (b) Application for a special activity license issued
190 pursuant to subsection (15) for obtaining oysters, clams, or
191 mussels for relaying from closed public shellfish harvesting
192 areas to open areas or certified controlled purification plants
193 or for transplanting sublegal-sized oysters, clams, or mussels
194 must be made to the department. In return, the department may
195 assign an area and a period of time for the oysters, clams, or
196 mussels to be relayed or transplanted to be taken. All relaying
197 and transplanting operations shall take place under the
198 direction of the department.

199 (c) Relayed oysters, clams, or mussels shall not be
200 subsequently harvested for any reason without written permission
201 or public notice from the department.

202 ~~(19)(20)~~ OYSTER AND CLAM REHABILITATION.—The board of
203 county commissioners ~~of the several counties~~ may appropriate and
204 expend such sums as it may deem proper for the purpose of
205 planting or transplanting oysters, clams, oyster shell, clam
206 shell, or cultch or to perform such other acts for the

575-02898-16

20161318c1

207 enhancement of the oyster and clam industries of the state, out
208 of any sum in the county treasury not otherwise appropriated.

209 ~~(21) DREDGING OF DEAD SHELLS PROHIBITED.—The dredging of~~
210 ~~dead shell deposits is prohibited in the state.~~

211 (20) ~~(22)~~ COOPERATION WITH UNITED STATES FISH AND WILDLIFE
212 SERVICE.—The department shall cooperate with the United States
213 Fish and Wildlife Service, under existing federal laws, rules,
214 and regulations, and is authorized to accept donations, grants,
215 and matching funds from the Federal Government in order to carry
216 out its oyster resource and development responsibilities. The
217 department is further authorized to accept any and all donations
218 including funds, oysters, or oyster shells.

219 (21) ~~(23)~~ OYSTER AND CLAM SHELLS PROPERTY OF DEPARTMENT.—

220 (a) Except for oysters used directly in the half-shell
221 trade, 50 percent of all shells from oysters and clams shucked
222 commercially in the state shall be and remain the property of
223 the department when such shells are needed and required for
224 rehabilitation projects and planting operations, in cooperation
225 with the Fish and Wildlife Conservation Commission, when
226 sufficient resources and facilities exist for handling and
227 planting such shells ~~shell~~, and when the collection and handling
228 of such shells ~~shell~~ is practicable and useful, except that bona
229 fide holders of leases and grants may retain 75 percent of such
230 shells ~~shell~~ as they produce for aquacultural purposes. Storage,
231 transportation, and planting of shells so retained by lessees
232 and grantees shall be carried out under the conditions of the
233 lease agreement or with the written approval of the department
234 and shall be subject to such reasonable time limits as the
235 department may fix. In the event of an accumulation of an excess

575-02898-16

20161318c1

236 of shells, the department is authorized to sell shells only to
237 private growers for use in oyster or clam cultivation on bona
238 fide leases and grants. No profit shall accrue to the department
239 in these transactions, and shells are to be sold for the
240 estimated moneys spent by the department to gather and stockpile
241 the shells. Planting of shells obtained from the department by
242 purchase shall be subject to the conditions set forth in the
243 lease agreement or in the written approval as issued by the
244 department. Any shells not claimed and used by private oyster
245 cultivators 10 years after shells are gathered and stockpiled
246 may be sold at auction to the highest bidder for any private
247 use.

248 (b) If ~~Whenever~~ the department determines that it is
249 unfeasible to collect oyster or clam shells, the shells become
250 the property of the producer.

251 (c) If ~~Whenever~~ oyster or clam shells are owned by the
252 department and it is not useful or feasible to use them in the
253 rehabilitation projects, and if a ~~when no~~ leaseholder has not
254 exercised his or her option to acquire them, the department may
255 sell such shells for the highest price obtainable. Such ~~The~~
256 shells ~~thus sold~~ may be used in any manner and for any purpose
257 at the discretion of the purchaser.

258 (d) Moneys derived from the sale of shell shall be
259 deposited in the General Inspection Trust Fund for shellfish
260 programs.

261 (e) The department may publish notice, in a newspaper
262 serving the county, of its intention to collect the oyster and
263 clam shells and shall notify, by certified mail, each shucking
264 establishment from which shells are to be collected. The notice

575-02898-16

20161318c1

265 shall contain the period of time the department intends to
266 collect the shells in that county and the collection purpose.

267 ~~(24) OYSTER CULTURE. The department, in cooperation with~~
268 ~~the Fish and Wildlife Conservation Commission and the Department~~
269 ~~of Environmental Protection, shall protect all clam beds, oyster~~
270 ~~beds, shellfish grounds, and oyster reefs from damage or~~
271 ~~destruction resulting from improper cultivation, propagation,~~
272 ~~planting, or harvesting and control the pollution of the waters~~
273 ~~over or surrounding beds, grounds, or reefs, and to this end the~~
274 ~~Department of Health is authorized and directed to lend its~~
275 ~~cooperation to the department, to make available its laboratory~~
276 ~~testing facilities and apparatus.~~

277 ~~(22)~~ (25) REQUIREMENTS FOR OYSTER OR CLAM VESSELS.—

278 (a) All vessels used for the harvesting, gathering, or
279 transporting of oysters or clams for commercial purposes shall
280 be constructed and maintained to prevent contamination or
281 deterioration of shellfish. To this end, all such vessels shall
282 have ~~be provided with~~ false bottoms and bulkheads fore and aft
283 to prevent onboard shellfish from coming in contact with any
284 bilge water. ~~No~~ Dogs or other animals are not ~~shall be~~ allowed
285 at any time on vessels used to harvest or transport shellfish. A
286 violation of ~~any provision of~~ this subsection will, at a
287 minimum, ~~shall~~ result in ~~at least~~ the revocation of the
288 violator's license.

289 (b) For the purpose of this subsection, "harvesting,
290 gathering, or transporting of oysters or clams for commercial
291 purposes" means to harvest, gather, or transport oysters or
292 clams with the intent to sell and shall apply to a quantity of
293 two or more bags of oysters per vessel or more than one 5-gallon

575-02898-16

20161318c1

294 bucket of unshucked hard clams per person or more than two 5-
295 gallon buckets of unshucked hard clams per vessel.

296 Section 2. This act shall take effect July 1, 2016.

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