

By the Committees on Environmental Preservation and Conservation; and Agriculture; and Senator Dean

592-03278-16

20161318c2

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 under certain
16 circumstances; limiting the number of such dredges or
17 mechanical harvesting devices per lease; prohibiting
18 certain use and possession of such dredges or
19 mechanical harvesting devices; providing penalties;
20 removing provisions relating to shellfish harvesting
21 seasons and removal of oysters, clams, or mussels from
22 natural reefs; authorizing the department, rather than
23 requiring, to designate areas for the taking of
24 oysters and clams to be planted on public lands;
25 deleting a provision allowing such takings to be
26 planted on leases and grants; specifying that the
27 commission, rather than the department, shall
28 establish the amount of oysters, clams, and mussels
29 that may be relayed or transplanted; removing
30 provisions relating to dredging of dead shells and
31 oyster culture; making technical changes; providing an

592-03278-16

20161318c2

32 effective date.

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

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

38 597.010 Shellfish regulation; leases.-

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

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

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

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

60 (17) SHELLFISH HARVESTING FROM SOVEREIGN SUBMERGED LAND

592-03278-16

20161318c2

61 LEASES; USE OF DREDGE OR MECHANICAL HARVESTING DEVICE SEASONS;
62 SPECIAL PROVISIONS RELATING TO APALACHICOLA BAY.-

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

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

71 2. "Shellfish" means oysters, clams, mussels, 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 a mechanical
76 harvesting device as a special lease condition of a sovereign
77 submerged 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, or welfare
80 of adjacent natural resources; and

81 2. Aquaculture best management practices have been adopted
82 pursuant to chapter 120 which:

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

85 b. Provide conditions for deploying and using an approved
86 dredge or mechanical harvesting device.

87 c. Specify requirements for monitoring potential impacts
88 at, and adjacent to, the sovereign submerged land lease site by
89 the leaseholder.

592-03278-16

20161318c2

90 (d) The use of a dredge or mechanical harvesting device for
91 the harvesting of shellfish from a sovereign submerged land
92 lease is authorized if such use was previously authorized as an
93 existing condition of a perpetual shellfish lease issued
94 pursuant to former chapter 370.

95 (e) Only one dredge or mechanical harvesting device per
96 lease may be possessed or operated at any time at a lease site.

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

102 (g) This subsection does not authorize the harvesting of
103 shellfish from natural reefs.

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

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

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

592-03278-16

20161318c2

119 ~~schedule and in preparing its report, the following information~~
120 ~~shall be considered:~~

121 ~~1. Whether the bay benefits ecologically from the new~~
122 ~~harvesting schedule.~~

123 ~~2. Whether the new harvesting schedule enhances the~~
124 ~~enforcement of shellfish harvesting laws in the bay.~~

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

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

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

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

146 ~~(b) Approval by the department to harvest shellfish by~~
147 ~~dredge or other mechanical means from privately held shellfish~~

592-03278-16

20161318c2

148 ~~leases or grants in Apalachicola Bay shall include, but not be~~
149 ~~limited to, the following conditions:~~

150 ~~1. The use of any mechanical harvesting device other than~~
151 ~~ordinary hand tongs for taking shellfish for any purpose from~~
152 ~~public shellfish beds in Apalachicola Bay shall be unlawful.~~

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

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

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

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

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

175 ~~(c) Oysters may be harvested from natural or public or~~
176 ~~private leased or granted grounds by common hand tongs or by~~

592-03278-16

20161318c2

177 ~~hand, by scuba diving, free diving, leaning from vessels, or~~
178 ~~wading. In Apalachicola Bay, this provision shall apply to all~~
179 ~~shellfish.~~

180 (18)~~(19)~~ FISHING FOR RELAYING OR TRANSPLANTING PURPOSES.—

181 (a) The department may ~~shall~~ designate areas for the taking
182 of oysters and clams to be planted on ~~leases, grants, and~~ public
183 areas. Oysters, clams, and mussels may be taken for relaying or
184 transplanting at any time during the year so long as, in the
185 opinion of the department, the public health will not be
186 endangered. The amount of oysters, clams, and mussels to be
187 obtained for relaying or transplanting shall be established by
188 the Fish and Wildlife Conservation Commission.~~7~~ The area relayed
189 or transplanted to, and relaying or transplanting time periods
190 shall be established in each case by the department.

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

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

204 (19)~~(20)~~ OYSTER AND CLAM REHABILITATION.—The board of
205 county commissioners ~~of the several counties~~ may appropriate and

592-03278-16

20161318c2

206 expend such sums as it may deem proper for the purpose of
207 planting or transplanting oysters, clams, oyster shell, clam
208 shell, or cultch or to perform such other acts for the
209 enhancement of the oyster and clam industries of the state, out
210 of any sum in the county treasury not otherwise appropriated.

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

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

221 (21)~~(23)~~ OYSTER AND CLAM SHELLS PROPERTY OF DEPARTMENT.—

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

592-03278-16

20161318c2

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

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

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

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

263 (e) The department may publish notice, in a newspaper

592-03278-16

20161318c2

264 serving the county, of its intention to collect the oyster and
265 clam shells and shall notify, by certified mail, each shucking
266 establishment from which shells are to be collected. The notice
267 shall contain the period of time the department intends to
268 collect the shells in that county and the collection purpose.

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

279 (22) ~~(25)~~ REQUIREMENTS FOR OYSTER OR CLAM VESSELS.—

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

291 (b) For the purpose of this subsection, "harvesting,
292 gathering, or transporting of oysters or clams for commercial

592-03278-16

20161318c2

293 purposes" means to harvest, gather, or transport oysters or
294 clams with the intent to sell and shall apply to a quantity of
295 two or more bags of oysters per vessel or more than one 5-gallon
296 bucket of unshucked hard clams per person or more than two 5-
297 gallon buckets of unshucked hard clams per vessel.

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