

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 and to control water pollution in
9 such areas; defining the terms "dredge or mechanical
10 harvesting devices" and "shellfish"; providing for the
11 harvesting of shellfish from sovereign submerged land
12 leases; providing for the Board of Trustees of the
13 Internal Improvement Trust Fund to authorize the use
14 of dredges or mechanical harvesting devices as special
15 lease conditions of sovereign submerged land leases;
16 limiting the number of such dredges or mechanical
17 harvesting devices per lease; prohibiting certain use
18 and possession of such dredges or mechanical
19 harvesting devices; providing penalties; removing
20 provisions relating to shellfish harvesting seasons,
21 removal of oysters, clams, or mussels from natural
22 reefs, dredging of dead shells, and oyster culture;
23 making technical changes; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:
26

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

29 597.010 Shellfish regulation; leases.—

30 (14) SHELLFISH DEVELOPMENT.—The department, in cooperation
 31 with the Fish and Wildlife Conservation Commission and the
 32 Department of Environmental Protection, shall protect all clam
 33 beds, oyster beds, shellfish grounds, and oyster reefs from
 34 damage or destruction resulting from improper cultivation,
 35 propagation, planting, or harvesting and shall control the
 36 pollution of the waters over or surrounding such beds, grounds,
 37 and reefs. The Department of Health is authorized and directed
 38 to cooperate with the department and to make available its
 39 laboratory testing facilities and apparatus.

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

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

47 ~~(c) The department, in cooperation with the commission,~~
 48 ~~shall provide the Legislature with recommendations as needed for~~
 49 ~~the development and the proper protection of the rights of the~~
 50 ~~state and private holders therein with respect to the oyster and~~
 51 ~~clam business.~~

52 (17) SHELLFISH HARVESTING FROM SOVEREIGN SUBMERGED LAND

53 LEASES; USE OF DREDGE OR MECHANICAL HARVESTING DEVICE SEASONS;
 54 SPECIAL PROVISIONS RELATING TO APALACHICOLA BAY.—

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

56 1. "Dredge or mechanical harvesting device" means a
 57 dredge, scrape, rake, drag, or other device that is towed by a
 58 vessel or self propelled and that is used to harvest shellfish.
 59 The term does not include handheld or handdrawn hydraulically or
 60 mechanically operated devices used to harvest cultured clams
 61 leased sovereign submerged lands, and this subsection does not
 62 apply to such handheld or handdrawn devices.

63 2. "Shellfish" means aquaculture oysters, clams, mussels,
 64 and scallops.

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

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

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

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

77 3. Aquaculture best management practices have been adopted
 78 pursuant to chapter 120 which:

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

81 b. Provide conditions for deploying and using an approved
 82 dredge or mechanical harvesting device.

83 c. Specify requirements for monitoring potential impacts
 84 at, and adjacent to, the sovereign submerged land lease site by
 85 the leaseholder.

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

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

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

95
 96 A violation of this subsection or of any law, rule, or condition
 97 referenced in a sovereign submerged lease is a violation of the
 98 lease agreement and will result in the revocation of all leases
 99 held by the violator and denial of any future use of sovereign
 100 submerged land.

101 ~~(a) The Fish and Wildlife Conservation Commission shall by~~
 102 ~~rule set the noncultured shellfish harvesting seasons in~~
 103 ~~Apalachicola Bay.~~

104 ~~(b) If the commission changes the harvesting seasons by~~

105 ~~rule as set forth in this subsection, for 3 years after the new~~
106 ~~rule takes effect, the commission, in cooperation with the~~
107 ~~department, shall monitor the impacts of the new harvesting~~
108 ~~schedule on the bay and on local shellfish harvesters to~~
109 ~~determine whether the new harvesting schedule should be~~
110 ~~discontinued, retained, or modified. In monitoring the new~~
111 ~~schedule and in preparing its report, the following information~~
112 ~~shall be considered:~~

113 ~~1. Whether the bay benefits ecologically from the new~~
114 ~~harvesting schedule.~~

115 ~~2. Whether the new harvesting schedule enhances the~~
116 ~~enforcement of shellfish harvesting laws in the bay.~~

117 ~~3. Whether the new harvesting schedule enhances natural~~
118 ~~shellfish production, oyster relay and planting programs, and~~
119 ~~shell planting programs in the bay.~~

120 ~~4. Whether the new harvesting schedule has more than a~~
121 ~~short-term adverse economic impact, if any, on local shellfish~~
122 ~~harvesters.~~

123 ~~(18) REMOVING OYSTERS, CLAMS, OR MUSSELS FROM NATURAL~~
124 ~~REEFS; LICENSES, ETC.; PENALTY.~~

125 ~~(a) It is unlawful to use a dredge or any means or~~
126 ~~implement other than hand tongs in removing oysters from the~~
127 ~~natural or artificial state reefs or beds. This restriction~~
128 ~~shall apply to all areas of Apalachicola Bay for all shellfish~~
129 ~~harvesting, excluding private grounds leased or granted by the~~
130 ~~state prior to July 1, 1989, if the lease or grant specifically~~

131 ~~authorizes the use of implements other than hand tongs for~~
132 ~~harvesting. Except in Apalachicola Bay, upon the payment of \$25~~
133 ~~annually, for each vessel or boat using a dredge or machinery in~~
134 ~~the gathering of clams or mussels, a special activity license~~
135 ~~may be issued by the Fish and Wildlife Conservation Commission~~
136 ~~pursuant to subsection (15) or s. 379.361 for such use to such~~
137 ~~person.~~

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

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

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

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

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

155 ~~5. Each vessel used for the transport or deployment of a~~
156 ~~dredge or scrape shall prominently display the lease or grant~~

157 ~~number or numbers, in numerals which are at least 12 inches high~~
158 ~~and 6 inches wide, in such a manner that the lease or grant~~
159 ~~number or numbers are readily identifiable from both the air and~~
160 ~~the water.~~

161
162 ~~Any violation of this paragraph or of any other statutes, rules,~~
163 ~~or conditions referenced in the lease agreement shall be~~
164 ~~considered a violation of the license and shall result in~~
165 ~~revocation of the lease or a denial of use or future use of a~~
166 ~~mechanical harvesting device.~~

167 ~~(c) Oysters may be harvested from natural or public or~~
168 ~~private leased or granted grounds by common hand tongs or by~~
169 ~~hand, by scuba diving, free diving, leaning from vessels, or~~
170 ~~wading. In Apalachicola Bay, this provision shall apply to all~~
171 ~~shellfish.~~

172 ~~(18)(19) FISHING FOR RELAYING OR TRANSPLANTING PURPOSES.-~~

173 (a) The department may ~~shall~~ designate areas for the
174 taking of oysters and clams to be planted on leases, grants, and
175 public areas. Oysters, clams, and mussels may be taken for
176 relaying or transplanting at any time during the year so long
177 as, in the opinion of the department, the public health will not
178 be endangered. The amount of oysters, clams, and mussels to be
179 obtained for relaying or transplanting, the area relayed or
180 transplanted to, and relaying or transplanting time periods
181 shall be established in each case by the department.

182 (b) Application for a special activity license issued

183 pursuant to subsection (15) for obtaining oysters, clams, or
 184 mussels for relaying from closed public shellfish harvesting
 185 areas to open areas or certified controlled purification plants
 186 or for transplanting sublegal-sized oysters, clams, or mussels
 187 must be made to the department. In return, the department may
 188 assign an area and a period of time for the oysters, clams, or
 189 mussels to be relayed or transplanted to be taken. All relaying
 190 and transplanting operations shall take place under the
 191 direction of the department.

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

195 (19)~~(20)~~ OYSTER AND CLAM REHABILITATION.—The board of
 196 county commissioners ~~of the several counties~~ may appropriate and
 197 expend such sums as it may deem proper for the purpose of
 198 planting or transplanting oysters, clams, oyster shell, clam
 199 shell, or cultch or to perform such other acts for the
 200 enhancement of the oyster and clam industries of the state, out
 201 of any sum in the county treasury not otherwise appropriated.

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

204 (20)~~(22)~~ COOPERATION WITH UNITED STATES FISH AND WILDLIFE
 205 SERVICE.—The department shall cooperate with the United States
 206 Fish and Wildlife Service, under existing federal laws, rules,
 207 and regulations, and is authorized to accept donations, grants,
 208 and matching funds from the Federal Government in order to carry

209 out its oyster resource and development responsibilities. The
 210 department is further authorized to accept any and all donations
 211 including funds, oysters, or oyster shells.

212 ~~(21)-(23)~~ OYSTER AND CLAM SHELLS PROPERTY OF DEPARTMENT.—

213 (a) Except for oysters used directly in the half-shell
 214 trade, 50 percent of all shells from oysters and clams shucked
 215 commercially in the state shall be and remain the property of
 216 the department when such shells are needed and required for
 217 rehabilitation projects and planting operations, in cooperation
 218 with the Fish and Wildlife Conservation Commission, when
 219 sufficient resources and facilities exist for handling and
 220 planting such shells ~~shell~~, and when the collection and handling
 221 of such shells ~~shell~~ is practicable and useful, except that bona
 222 fide holders of leases and grants may retain 75 percent of such
 223 shells ~~shell~~ as they produce for aquacultural purposes. Storage,
 224 transportation, and planting of shells so retained by lessees
 225 and grantees shall be carried out under the conditions of the
 226 lease agreement or with the written approval of the department
 227 and shall be subject to such reasonable time limits as the
 228 department may fix. In the event of an accumulation of an excess
 229 of shells, the department is authorized to sell shells only to
 230 private growers for use in oyster or clam cultivation on bona
 231 fide leases and grants. No profit shall accrue to the department
 232 in these transactions, and shells are to be sold for the
 233 estimated moneys spent by the department to gather and stockpile
 234 the shells. Planting of shells obtained from the department by

235 purchase shall be subject to the conditions set forth in the
 236 lease agreement or in the written approval as issued by the
 237 department. Any shells not claimed and used by private oyster
 238 cultivators 10 years after shells are gathered and stockpiled
 239 may be sold at auction to the highest bidder for any private
 240 use.

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

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

251 (d) Moneys derived from the sale of shell shall be
 252 deposited in the General Inspection Trust Fund for shellfish
 253 programs.

254 (e) The department may publish notice, in a newspaper
 255 serving the county, of its intention to collect the oyster and
 256 clam shells and shall notify, by certified mail, each shucking
 257 establishment from which shells are to be collected. The notice
 258 shall contain the period of time the department intends to
 259 collect the shells in that county and the collection purpose.

260 ~~(24) OYSTER CULTURE. The department, in cooperation with~~

261 ~~the Fish and Wildlife Conservation Commission and the Department~~
 262 ~~of Environmental Protection, shall protect all clam beds, oyster~~
 263 ~~beds, shellfish grounds, and oyster reefs from damage or~~
 264 ~~destruction resulting from improper cultivation, propagation,~~
 265 ~~planting, or harvesting and control the pollution of the waters~~
 266 ~~over or surrounding beds, grounds, or reefs, and to this end the~~
 267 ~~Department of Health is authorized and directed to lend its~~
 268 ~~cooperation to the department, to make available its laboratory~~
 269 ~~testing facilities and apparatus.~~

270 (22) ~~(25)~~ REQUIREMENTS FOR OYSTER OR CLAM VESSELS.—

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

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

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287 | bucket of unshucked hard clams per person or more than two 5-
288 | gallon buckets of unshucked hard clams per vessel.

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