

CHAPTER 2016-200

Committee Substitute for Committee Substitute for Senate Bill No. 1318

An act relating to shellfish harvesting; amending s. 597.010, F.S.; revising provisions directing the Department of Agriculture and Consumer Services, in cooperation with the Fish and Wildlife Conservation Commission and the Department of Environmental Protection, to protect specified shellfish beds, grounds, and reefs; defining the terms “dredge or mechanical harvesting devices” and “shellfish”; providing for the harvesting of shellfish from sovereign submerged land leases; providing for the Board of Trustees of the Internal Improvement Trust Fund to authorize the use of dredges or mechanical harvesting devices as special lease conditions of sovereign submerged land leases under certain circumstances; limiting the number of such dredges or mechanical harvesting devices per lease; prohibiting certain use and possession of such dredges or mechanical harvesting devices; providing penalties; removing provisions relating to shellfish harvesting seasons and removal of oysters, clams, or mussels from natural reefs; authorizing the department, rather than requiring, to designate areas for the taking of oysters and clams to be planted on public lands; deleting a provision allowing such takings to be planted on leases and grants; specifying that the commission, rather than the department, shall establish the amount of oysters, clams, and mussels that may be relayed or transplanted; removing provisions relating to dredging of dead shells and oyster culture; making technical changes; providing an effective date.

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

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

597.010 Shellfish regulation; leases.—

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

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

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

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

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

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

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

2. “Shellfish” means oysters, clams, mussels, and scallops.

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

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

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

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

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

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

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

(d) The use of a dredge or mechanical harvesting device for the harvesting of shellfish from a sovereign submerged land lease is authorized

if such use was previously authorized as an existing condition of a perpetual shellfish lease issued pursuant to former chapter 370.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) ~~The department may shall designate areas for the taking of oysters and clams to be planted on leases, grants, and public areas. Oysters, clams, and mussels may be taken for relaying or transplanting at any time during the year so long as, in the opinion of the department, the public health will not be endangered. The amount of oysters, clams, and mussels to be obtained for relaying or transplanting shall be established by the Fish and Wildlife~~

Conservation Commission., The area relayed or transplanted to, and relaying or transplanting time periods shall be established in each case by the department.

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

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

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

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

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

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

(a) Except for oysters used directly in the half-shell trade, 50 percent of all shells from oysters and clams shucked commercially in the state shall be and remain the property of the department when such shells are needed and required for rehabilitation projects and planting operations, in cooperation with the Fish and Wildlife Conservation Commission, when sufficient resources and facilities exist for handling and planting such shells shell, and when the collection and handling of such shells shell is practicable and useful, except that bona fide holders of leases and grants may retain 75 percent of such shells shell as they produce for aquacultural purposes. Storage, transportation, and planting of shells so retained by lessees and grantees shall be carried out under the conditions of the lease agreement or with the written approval of the department and shall be subject to such

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

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

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

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

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

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

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

(a) All vessels used for the harvesting, gathering, or transporting of oysters or clams for commercial purposes shall be constructed and maintained to prevent contamination or deterioration of shellfish. To this end, all such vessels shall have ~~be provided with~~ false bottoms and bulkheads fore and aft to prevent onboard shellfish from coming in contact with any bilge water. ~~No~~ Dogs or other animals are not ~~shall be~~ allowed at any time on vessels used to harvest or transport shellfish. ~~A violation of any provision of~~

this subsection will, at a minimum, ~~shall~~ result in at least the revocation of the violator’s license.

(b) For the purpose of this subsection, “harvesting, gathering, or transporting of oysters or clams for commercial purposes” means to harvest, gather, or transport oysters or clams with the intent to sell and shall apply to a quantity of two or more bags of oysters per vessel or more than one 5-gallon bucket of unshucked hard clams per person or more than two 5-gallon buckets of unshucked hard clams per vessel.

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

Approved by the Governor April 6, 2016.

Filed in Office Secretary of State April 6, 2016.