

STORAGE NAME: h1143s1b.wrm

DATE: April 7, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
WATER & RESOURCE MANAGEMENT
ANALYSIS**

BILL #: CS/HB 1143

RELATING TO: Aquaculture

SPONSOR(S): Committee on Agriculture and Representative Bronson

COMPANION BILL(S): SB 1118 (s) Senator Laurent

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) AGRICULTURE YEAS 9 NAYS 0
- (2) WATER & RESOURCE MANAGEMENT YEAS 11 NAYS 0
- (3) GENERAL GOVERNMENT APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

In 1998, the Florida Legislature transferred regulatory authority for aquaculture to the Department of Agriculture and Consumer Services (department), with the exception of those areas required by federal law, rule or cooperative agreement to be regulated by another agency. As with any transfer of regulations, some oversights occurred. CS/HB 1143 addresses some of these oversights, as well as making other changes in the law.

The bill removes the exceptions for snook, red fish and spotted sea trout and allows these fish, when cultured, to be treated like all other aquatic species. Also removed is the requirement for a Special Activity License (SAL) for farm-raised sturgeon.

The bill allows certified aquaculture producers to import and possess nonindigenous marine plants and animals, with some exceptions. Reasonable quantities of brood stock may be taken, using special gear, for aquacultural purposes.

The bill clarifies terminology to specifically cover aquaculture activities and not all marine products under the requirements of the Department of Environmental Protection (DEP). The jurisdictional responsibilities of the Division of Fisheries of the Game and Fresh Water Fish Commission (GFWFC) and the department, as they relate to freshwater organisms, are clarified. Cultured game fish are no longer required to be tagged.

The bill revises the definition of aquaculture producers to include certification requirements. The bill clarifies the aquaculture certificate of registration holder is responsible for adhering to the best management practices (BMPs).

The bill allows aquaculture products to be sold by certified aquaculture producers. Persons who have had an aquaculture certificate revoked or suspended must reapply to the department for certification. The bill clarifies the certificate, rather than the license, will be revoked if a certified aquaculture producer is convicted of taking aquaculture species raised at a certified facility. The bill clarifies the Legislature's intent to continue with the regulatory requirements in effect on June 30, 1998, until BMPs are in place.

The bill includes a provision prohibiting interference with live bait traps or cages of another person, firm, corporation, or association. Violation of this provision constitutes a misdemeanor of the first degree.

A Cultured Shellfish Theft Reward Program is established, to be administered by the department, for the purpose of granting rewards to persons who provide information leading to the arrest and conviction of individuals illegally possessing, harvesting, or attempting to harvest cultured shellfish.

And lastly, due to the merger of GFWFC and the Marine Fisheries Commission and the effect that merger may have on some of the provisions of this act, a severability clause is included to allow passage of the provisions independently of one another in the event any of the provisions are found to be unconstitutional.

This bill does not have a significant fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Through legislation passed in 1996 and 1998, the Department of Agriculture and Consumer Services (department) has been designated as the primary agency responsible for the regulation of aquaculture. However, other state agencies are still involved in aquaculture activities. Some sections of the statutes are unclear as to who has jurisdictional authority over the various aspects of aquaculture and the differentiation between aquaculture activities and marine products.

Currently, aquacultural production of snook, red drum, spotted sea trout, and anadromous sturgeon are permitted, but with certain restrictions. While these restrictions are designed to protect natural and environmental resources, they also limit the growth of the aquaculture industry. Sturgeon, in particular, offer a significant potential for aquaculture as has been demonstrated in California and Europe, where sturgeon have been successfully commercialized.

Presently, aquaculture products, except shellfish, snook, spotted sea trout, red drum, and freshwater aquatic species identified in ch. 372, F.S., and rules of the GFWFC, may be sold without restriction so long as product origin can be identified. The GFWFC is authorized to tag farm-raised game fish at a cost of 5 cents each, even though a lipid test can determine whether the fish is farm-raised or wild.

The current definition of an aquaculture producer does not reflect the need to be certified. Also, current law states that property owners and leaseholders, rather than the aquaculture certificate holder, must adhere to best management practices (BMPs).

The law provides for revocation of a certified aquaculture producer's license if the producer is convicted of taking aquaculture species raised at a certified facility.

B. EFFECT OF PROPOSED CHANGES:

The bill removes the snook, red drum, and spotted sea trout exception to the Marine Fisheries Commission resource management rules and allows these fish, when cultured, to be treated like all other aquaculture species. The bill also allows for sturgeon to be farm-raised. The bill allows for reasonable amounts of brood stock to be taken, with special gear, from the wild for aquacultural purposes.

The bill requires incorporation of conditions and specific management practices into permits under separate statutory authority, to consolidate aquaculture permit procedures.

The bill revises the terms "marine product facility" and "marine aquaculture producer" to specifically cover aquaculture activities and not all marine products under the requirements of the Department of Environmental Protection (DEP).

The bill clarifies the respective responsibilities of the Division of Fisheries of the GFWFC and the department, relating to freshwater organisms, aquaculture products, and regulation of persons with aquaculture certificates of registration. The bill clarifies that alligator producers are subject to the rules of the GFWFC.

The bill requires anyone whose aquaculture certificate of registration has been revoked or suspended to reapply to the department for certification. The bill clarifies the Legislature's intent to continue with the regulatory requirements in effect on June 30, 1998, until BMPs are in place.

The bill creates a Cultured Shellfish Theft Reward Program, to be administered by the department, for the purpose of granting rewards to persons who provide information leading to the arrest and conviction of individuals illegally possessing, harvesting, or attempting to harvest cultured shellfish.

The bill includes a provision prohibiting interference with live bait traps or cages of another person, firm, corporation, or association. Violation of this provision constitutes a misdemeanor of the first degree.

And lastly, a severability clause is included to allow passage of the provisions of this act independently of one another in the event one of the provisions is challenged. This is included as a precautionary measure due to the merger of GFWFC and the Marine Fisheries Commission and the effect that merger may have on some of the provisions of this act.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. CS/HB 1143 clarifies the respective responsibilities of the various agencies involved in aquaculture production. The bill also reduces the authority of the MFC to develop resource management rules governing snook, red drum, and spotted sea trout.

Also, CS/HB 1143 creates a Cultured Shellfish Theft Reward Program to be administered by the Department of Agriculture & Consumer Services (DACS) which must establish a graduated reward payout schedule by rule.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. Section 370.1107, F.S. is amended in the bill to create new misdemeanor penalties for unlawful possession of one or more live bait traps, thus increasing the enforcement responsibilities of the Division of Law Enforcement at the Department of Environmental Protection.

(3) any entitlement to a government service or benefit?

Possibly. Section 372.65, F.S. provides that any individual or business issued an aquaculture certificate pursuant to s. 597.004, is exempt from certain licenses and fees imposed by the Game and Fresh Water Fish Commission for aquaculture products authorized under that certificate. CS/HB 1143 amends s. 372.65, F.S. to provide that any individual or business issued an aquaculture certificate pursuant to s. 597.004, F.S., shall be exempt from any of the provisions of chapter 372.

b. If an agency or program is eliminated or reduced: **Not Applicable.**

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

(2) what is the cost of such responsibility at the new level/agency?

(3) how is the new agency accountable to the people governed?

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. By lifting the restrictions on snook, red drum, spotted sea trout, and sturgeon, aquaculturists, using Best Management Practices (BMPs), can expand their scope of production.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment: **Not Applicable.**

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 370.027, 370.06, 370.081, 370.10, 370.1107, 370.26, 372.0225, 372.65, 597.0015, 597.004, 597.0041, and 597.0045, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 370.027, F.S., to allow snook, red drum, and spotted sea trout to be treated the same as other marine aquaculture products.

Section 2: Amends s. 370.06, F.S., to allow wild anadromous sturgeon to be farm-raised.

Section 3: Amends s. 370.081, F.S., to allow aquaculture producers to import and possess nonindigenous marine plants and animals, with some exceptions.

Section 4: Amends s. 370.10, F.S., to allow for reasonable quantities of brood stock to be taken, using special gear, for aquacultural purposes.

Section 5: Amends s. 370.1107, F.S., to prohibit the interference with the live bait cages or traps of any person, firm, corporation, or association; provides penalties for violation.

Section 6: Amends s. 370.26, F.S., to revise terminology distinguishing aquaculture activities from marine products under the requirements of DEP.

Section 7: Amends s. 372.0225, F.S., to clarify the respective responsibilities of the Division of Fisheries of the GFWFC and the department as they relate to freshwater organisms, aquaculture products, and regulation of persons with aquaculture certificates of registration.

Section 8: Amends s. 372.65, F.S., waiving the requirement for aquaculture products to be tagged.

Section 9: Amends s. 597.0015, F.S., clarifying the definition of an aquaculture producer.

Section 10: Amends s. 597.004, F.S., clarifying who is responsible for adhering to the best-management practices; clarifies the department is not the primary agency of jurisdiction over alligator farms and farmers; allows the sale of aquaculture products by a certified aquaculture producer; provides for reapplication for certification for anyone whose aquaculture certificate of registration is revoked or suspended; and, clarifies that regulatory requirements in effect on June 30, 1998 will continue until the best management practices are developed.

Section 11: Amends s. 597.0041, F.S., clarifying the penalty for a certified aquaculture producer convicted of taking aquaculture species raised at a certified facility.

Section 12: Amends s. 597.0045, F.S., creating a Cultured Shellfish Theft Reward Program, to be administered by the department, for the purpose of granting rewards to persons who provide information leading to the arrest and conviction of individuals illegally possessing, harvesting, or attempting to harvest cultured shellfish. The department is given the authority to, by rule, establish a graduated reward payout schedule.

Section 13: Provides a severability clause for the provisions of this act in the event any of the provisions are found to be unconstitutional.

Section 14: Provides an effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Since the bill eliminates the handling and tagging of aquacultured game fish, the private sector cost savings would be approximately five cents for each tag acquired from the Florida Game and Fresh Water Fish Commission.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

The Cultured Shellfish Theft Reward Program is subject to funding donations and legislative spending authority. Therefore, the fiscal impact is undeterminable at this time.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

CS/HB 1143 makes changes to s. 370.027, F.S., removing the Marine Fisheries Commission's (MFC) rulemaking authority over snook, red drum, and spotted sea trout. This provision appears to be inconsistent with the intent of Revision #5 to the State Constitution which was passed on November 3, 1998. Revision #5 specifically provides that the functions of the MFC as of March 1, 1998, will become functions of the FWCC on July 1, 1999. Since the MFC had jurisdiction over these species as of March 1, 1998, that jurisdiction will transfer to the FWCC as a constitutional responsibility and may not be limited in statutory law.

Other provisions of the bill also should be amended to conform to the transfer of responsibility for marine life from the Department of Environmental Protection to the FWCC.

It is expected that the bill sponsor will offer one or more amendments that will allow the FWCC to promulgate rules regulating the sale of farmed red drum and spotted sea trout, and to develop procedures allowing persons possessing a valid aquaculture certificate of registration to sell and transport live snook under certain conditions and for certain purposes.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

There were five amendments offered on HB 1143. Four of the amendments were adopted and one was withdrawn. A brief summary of the adopted amendments follows.

- The word "cultured" was added to the Shellfish Theft Reward Program in Section 12 of the bill, clarifying that the reward program applies to the theft of cultured shellfish and not wild shellfish.
- A severability clause was included in the bill to allow passage of the provisions independently of one another in the event any of the provisions are found to be unconstitutional.
- A provision prohibiting interference with live bait traps or cages of another person, firm, corporation, or association was added to the bill. Violation of this provision constitutes a misdemeanor of the first degree.
- An amendment was added clarifying the Legislature's intent to continue with the regulatory requirements in effect on June 30, 1998, until best management practices are in place.

Committee on Water & Resource Management:

At the Water & Resource Management Committee meeting on April 9, 1999, Representative Bronson offered a strike-everything amendment to the CS/HB 1143 that, among other issues, provided the following:

- Requires the FWCC to adopt rules by March 1, 2000, to regulate the sale of farmed red drum and sea trout.
- Provides that marine aquaculture products produced by a certified aquaculture producer are exempt from FWCC resource management rules, except for snook.
- Authorizes the FWCC to issue special activity licenses to permit the importation and possession of wild anadromous sturgeon.
- Deletes provisions in the CS/HB 1143 regarding the illegal importation or possession of nonindigenous marine plants and animals.
- Provides the purpose of and sets requirements for the Sturgeon Production Working Group.
- Provides that notwithstanding the passage of any other legislation signed into law by the Governor, or allowed to become law without a signature, this bill establishes the Legislature's full and total intent.

The strike amendment was adopted unanimously by the committee and is traveling with CS/HB 1143.

VII. SIGNATURES:

COMMITTEE ON AGRICULTURE:

Prepared by:

Debbi Kaiser

Staff Director:

Susan D. Reese

AS REVISED BY THE COMMITTEE ON WATER & RESOURCE MANAGEMENT:

Prepared by:

Karon A. Molloy

Staff Director:

Joyce Pugh