

1 HB315  
2 116050-1  
3 By Representative Collier  
4 RFD: Agriculture and Forestry  
5 First Read: 19-JAN-10

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8 SYNOPSIS: Under existing law, the Commissioner of  
9 Conservation and Natural Resources may establish  
10 certain designated ports to be used for the landing  
11 of oysters and shrimp by water.

12 This bill would authorize the Commissioner  
13 of Conservation and Natural Resources to establish  
14 by regulation oyster management stations for  
15 collecting harvest information and landing oysters  
16 and to delete the reference to the designated  
17 ports. This bill would establish the only locations  
18 at which certain oysters may be landed and require  
19 certain checking in and out by certain commercial  
20 oyster harvesters. This bill would delete the  
21 provision for the designation of ports for landing  
22 shrimp and the prohibition on landing shrimp at any  
23 port not designated. This bill would also provide  
24 for oyster harvest trip tickets to be issued by the  
25 Marine Resources Division and would further provide  
26 for penalties.

1                   Also under existing law, the owners or  
2                   lessees of any private oyster reef are required to  
3                   establish an accurate survey and each corner of the  
4                   private reef is required to be clearly marked and  
5                   defined and a copy of the lease and plat is  
6                   required to be filed with the Marine Resources  
7                   Division.

8                   This bill would require the lease and plat  
9                   information on file with the Marine Resources  
10                  Division to be in a GPS format and to be current.  
11                  This bill would also authorize the Director of  
12                  Marine Resources to require that the reefs be  
13                  resurveyed every five years or when the private  
14                  leased area has substantially changed and would  
15                  further provide for penalties.

16                  Also under existing law, all oysters taken  
17                  from the public reefs are to be culled where taken,  
18                  with an overall tolerance of five percent.

19                  This bill would further provide for the  
20                  culling, sacking, tagging, and identification of  
21                  certain oysters; would further provide for the  
22                  replacement of oysters; would prohibit any  
23                  individual sack of oysters from containing more  
24                  than 10 percent of dead shells and undersize  
25                  oysters; would delete the provisions which allow  
26                  for the taking of certain undersized oysters under  
27                  certain conditions and which allow for the

1 designation of certain reefs for the taking of 25  
2 percent of undersize oysters; and would further  
3 provide for penalties and certain license  
4 suspension.

5 This bill would repeal the provisions  
6 authorizing owners or lessees of private bedding  
7 grounds to take seed oysters from the public reefs  
8 or authorizing the purchase of seed oysters taken  
9 from the public reefs.

10 Also under existing law, the Department of  
11 Conservation and Natural Resources is authorized to  
12 employ boats, crews, and laborers to cultivate the  
13 public reefs.

14 This bill would authorize the Director of  
15 Marine Resources or his or her agents to cultivate,  
16 transplant, or replant the public oyster reefs or  
17 to dredge oysters from places where they are too  
18 thick and replant them in places that are too thin.

19 Also under existing law, owners of private  
20 oyster reefs and the lessees of the reefs are  
21 required to post a bond conditioned upon compliance  
22 with all statutes and regulations relating to the  
23 use of mechanical dredge devices.

24 This bill would delete the requirements for  
25 the posting of bonds and would further provide for  
26 certain license revocation for violations.

1           Also under existing law, any person, firm,  
2           corporation, or association taking oysters from any  
3           public reef is required to replant 50 percent of  
4           all oyster shells removed from the public reefs and  
5           the duty to replant the oyster shells is  
6           specifically imposed upon the dealer who purchased  
7           the oysters. Under existing law, the dealer, in  
8           lieu of replanting the shells, may pay to the  
9           Department of Conservation and Natural Resources  
10          the reasonable market value of the shells and the  
11          cost of replanting the shells.

12           This bill would establish a shell fee to be  
13          paid by the dealers to pay for the replanting of  
14          oyster cultch material or to otherwise manage the  
15          oyster resources of this state. This bill would  
16          establish an oyster management fund and would  
17          require that all fees collected pursuant to this  
18          bill be deposited in this fund.

19           Under existing law, the owners of private  
20          oyster leases are required to pay a tax per barrel  
21          of oysters harvested.

22           This bill would remove this requirement from  
23          the private oyster lease holders.

24           Also under existing law, oysters taken for  
25          commercial purposes are required to be sacked and  
26          tagged prior to landing.

1                   This bill would further provide for certain  
2                   sacking, tagging, and identification prior to  
3                   leaving the harvest location; would require certain  
4                   tagging until emptied or retagged; would provide  
5                   for the repacking of certain oysters; would further  
6                   provide for the continued tagging of oyster sacks,  
7                   and the removal and disposition of certain tags;  
8                   would prohibit the possession of empty oyster sacks  
9                   with tags attached; would further provide for the  
10                  cost of and disposition of funds received from the  
11                  sale of oyster tags.

12                  This bill would further provide for the  
13                  penalty and the minimum fine for certain violations  
14                  of Article 2 of Chapter 12, Title 9, Code of  
15                  Alabama 1975, when a penalty is not otherwise  
16                  provided.

17                  Amendment 621 of the Constitution of Alabama  
18                  of 1901, now appearing as Section 111.05 of the  
19                  Official Recompilation of the Constitution of  
20                  Alabama of 1901, as amended, prohibits a general  
21                  law whose purpose or effect would be to require a  
22                  new or increased expenditure of local funds from  
23                  becoming effective with regard to a local  
24                  governmental entity without enactment by a 2/3 vote  
25                  unless: it comes within one of a number of  
26                  specified exceptions; it is approved by the  
27                  affected entity; or the Legislature appropriates

1 funds, or provides a local source of revenue, to  
2 the entity for the purpose.

3 The purpose or effect of this bill would be  
4 to require a new or increased expenditure of local  
5 funds within the meaning of the amendment. However,  
6 the bill does not require approval of a local  
7 governmental entity or enactment by a 2/3 vote to  
8 become effective because it comes within one of the  
9 specified exceptions contained in the amendment.

10  
11 A BILL  
12 TO BE ENTITLED  
13 AN ACT  
14

15 Relating to the Department of Conservation and  
16 Natural Resources, Division of Marine Resources, and the  
17 regulation of the harvesting oysters and other seafoods; to  
18 amend Sections 9-12-28, 9-12-32, 9-12-33, 9-12-35, 9-12-37,  
19 9-12-42, 9-12-67, and 9-12-121, Code of Alabama 1975; to  
20 further provide for penalties; to repeal Sections 9-12-34,  
21 9-12-38, 9-12-39, 9-12-43, and 9-12-44, Code of Alabama 1975;  
22 and in connection therewith would have as its purpose or  
23 effect the requirement of a new or increased expenditure of  
24 local funds within the meaning of Amendment 621 of the  
25 Constitution of Alabama of 1901, now appearing as Section  
26 111.05 of the Official Recompilation of the Constitution of  
27 Alabama of 1901, as amended.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Sections 9-12-28, 9-12-32, 9-12-33,  
3 9-12-35, 9-12-37, 9-12-42, 9-12-67, and 9-12-121, Code of  
4 Alabama 1975, are amended to read as follows:

5 "§9-12-28.

6 "The Commissioner of Conservation and Natural  
7 Resources ~~shall have power to~~ may establish ~~ports of entry~~  
8 ~~which shall include Alabama Port, Cedar Point, Mobile, Dauphin~~  
9 ~~Island and Bayou La Batre, and such ports~~ by rule oyster  
10 management stations to be used by persons or boats harvesting  
11 or landing oysters taken from the public reefs or public water  
12 bottoms of this state. The oyster management stations so  
13 established in conjunction with other locations designated by  
14 the Director of the Marine Resources Division and approved in  
15 writing by the Commissioner of Conservation and Natural  
16 Resources shall be the only ports used by persons or boats  
17 landing such oysters ~~or shrimp~~ in Alabama by water. ~~It and it~~  
18 is unlawful to so use any other port ~~than those regularly~~  
19 ~~established by the said Commissioner of Conservation and~~  
20 ~~Natural Resources~~ for landing oysters. When oyster management  
21 stations are opened, all oyster catchers taking oysters from  
22 the public reefs shall be required to check out and check in  
23 at a management station. The regulation establishing oyster  
24 management stations may also provide for the Marine Resources  
25 Division to require oyster harvest records. A commercial  
26 oyster catcher shall record all information required for the  
27 completion of the oyster harvest records and shall retain the



1 original of the oyster harvest record in his or her possession  
2 while transporting oysters taken from the public reefs or  
3 water bottoms of this state. Oysters shall only be sold to  
4 seafood dealers certified by the state Department of Public  
5 Health and licensed by the division. The oyster harvest record  
6 shall be available for inspection upon request by any agent of  
7 the Department of Conservation and Natural Resources or the  
8 state Department of Public Health. A violation of this section  
9 or any regulation promulgated hereunder shall constitute a  
10 Class B misdemeanor, punishable as provided by Sections  
11 13A-5-7 and 13A-5-12.

12 "§9-12-32.

13 "It shall be the duty of each owner or lessee of any  
14 private reef to have established an accurate survey by a  
15 registered surveyor of the bottoms, beds or reefs under his  
16 control, and each corner shall be clearly marked and defined  
17 with the owner's or lessee's name clearly attached. There  
18 shall also be established intermediate markers between said  
19 corners, the distance between which shall not exceed 600 feet  
20 extending from each corner of the private bed, bottom or reef  
21 to the adjacent corner, and also from the outside corner every  
22 600 feet to the high water mark on the associated beach, bank  
23 or marsh edge. The plat of this area, including GPS  
24 coordinates of area corners, and any lease agreements or proof  
25 of right of ownership shall be filed with the Division of  
26 Marine Resources together with the list of any persons using  
27 said the bed, bottom, or reef as the owner's agent or

1        permittee. Plats and lease agreements shall be provided to the  
2        division in such a manner as to remain current. The director  
3        of the division may require private oyster leases to be  
4        resurveyed every five years or at any times the director  
5        determines that the private leased area has substantially  
6        changed. ~~Said~~ The agent or permittee shall have in his or her  
7        possession at all times while on ~~said the~~ bed, bottom, or reef  
8        a written, dated permit from the owner, ~~said which~~ permit to  
9        shall extend for a period not exceeding 30 days from the date  
10       of signature of the owner or lessor. Failure of the permittee  
11       or agent to have ~~said the~~ permit in his or her possession  
12       shall constitute a misdemeanor and, upon conviction thereof,  
13       he or she shall be fined not less than ~~\$25.00~~ twenty-five  
14       dollars (\$25) nor more than ~~\$100.00~~ five hundred dollars  
15       (\$500) and may be imprisoned for a period not exceeding six  
16       months.

17                    "§9-12-33.

18                    "(a) All oysters taken from the public reefs of this  
19       state shall be culled upon their natural and sacked, and each  
20       sack tagged and identified in accordance with the requirements  
21       of the rules of the state Department of Public Health, prior  
22       to leaving the public reefs or ~~beds as~~ water bottoms where  
23       taken or oyster management stations, and all oysters which  
24       measure less than three inches in length and all ~~dead shells~~  
25       cultch material shall be immediately replaced ~~and scattered by~~  
26       scattering and ~~broadcast~~ broadcasting upon the natural public  
27       reefs or ~~beds~~ water bottoms from which they have been taken,

1 ~~and it.~~ It shall be unlawful for any captain or person in  
2 charge of any vessel or any canner, packer, commission man,  
3 dealer, or other person to purchase, sell, or have in his or  
4 her possession or under his or her control any oysters off the  
5 public reefs or ~~bedding grounds~~ water bottoms not culled  
6 according to ~~the provisions of~~ this section, or any oysters  
7 from ~~such the~~ reefs or ~~bedding grounds~~ water bottoms under the  
8 legal size ~~aforsaid~~. Any excess of over five percent of ~~dead~~  
9 ~~shells~~ cultch material and oysters under the size prescribed  
10 in this section shall be considered a violation of this  
11 section. In order that the ~~inspector~~ conservation enforcement  
12 officer may arrive at the percentage of unculted oysters ~~he~~  
13 ~~shall~~ the officer may cause to be culled according to law all  
14 or any part of cargo or stock on hand, ~~and~~ provided that if  
15 any sack in the cargo or stock on hand is found to contain  
16 more than ~~five~~ 10 percent of ~~dead shells~~ cultch material and  
17 oysters under three inches in length, it is a violation of  
18 this section and the ~~inspector shall~~ officer may condemn ~~said~~  
19 ~~the~~ cargo and stock on hand and cause the same to be reculled  
20 and cause the shells and young oysters to be taken to some  
21 place designated by an agent of the Division of Marine  
22 Resources, ~~provided, however, that the Commissioner of~~  
23 ~~Conservation and Natural Resources shall have the authority by~~  
24 ~~duly promulgated regulations to reduce the legal measure of~~  
25 ~~oysters to be culled to a length of not less than two and~~  
26 ~~five-eighths inches, with an allowance of not more than five~~  
27 ~~percent for undersized oysters and not more than five percent~~

1 ~~for dead shells, when the said Commissioner of Conservation~~  
2 ~~and Natural Resources so deems the said reductions expedient~~  
3 ~~or necessary; and provided further, that the Commissioner of~~  
4 ~~Conservation and Natural Resources may in his discretion~~  
5 ~~designate certain public reefs as to which an allowance of not~~  
6 ~~more than 25 percent for undersized oysters may be provided~~  
7 ~~from January 1 through May 31 in each year.~~

8 " (b) Any person who violates any of the provisions  
9 of this section or any rule promulgated hereunder shall be  
10 guilty of a misdemeanor and, upon conviction for his or her  
11 first offense, he or she shall be punished by a fine of not  
12 less than ~~\$50.00~~ one hundred dollars (\$100) nor more than  
13 ~~\$100.00;~~ upon his two hundred dollars (\$200). Upon a second  
14 conviction thereof, he or she shall be punished by a fine of  
15 not less than ~~\$100.00~~ two hundred dollars (\$200) nor more than  
16 ~~\$150.00;~~ and, upon three hundred dollars (\$300). Upon a third  
17 conviction ~~of a third offense thereof,~~ within two years of the  
18 first conviction he or she shall be punished by a fine of not  
19 less than ~~\$100.00~~ three hundred dollars (\$300) nor more than  
20 ~~\$200.00~~ five hundred dollars (\$500) and by the ~~revocation~~  
21 suspension of his or her commercial oyster license privileges  
22 for six months.

23 "§9-12-35.

24 ~~"During the closed season, as defined by order of~~  
25 ~~the Department of Conservation and Natural Resources, the The~~  
26 ~~Director of the Marine Resources Division, or his or her~~  
27 ~~agents, under the direction and control of the Department of~~

1 Conservation and Natural Resources, ~~shall~~ may cultivate,  
2 transplant, or replant the public reefs of the state or may  
3 employ boats, crews, and laborers ~~and shall~~ to cultivate or  
4 replant the public reefs of the state and ~~shall~~ may employ  
5 boats, crews, and laborers to dredge the oysters in the  
6 Alabama waters from places where they are too thick and shall  
7 spread them on reefs where they are too thin, and the  
8 Department of Conservation and Natural Resources, in  
9 cultivating the reefs, transplanting and spreading oysters and  
10 shells, may expend such sums as it may deem proper. ~~In taking~~  
11 ~~seed oysters, care shall, however, be used so as not to injure~~  
12 ~~or destroy the merchantable oysters on the reefs from which~~  
13 ~~they are taken, and the same shall, unless it is practicable~~  
14 ~~and safe to dredge, be tonged from the "cooner" or seed reefs.~~

15 "§9-12-37.

16 "Owners of private oyster reefs, beds, or bottoms  
17 and the lessees or designated permittees of such reefs, beds,  
18 or bottoms may use any mechanical means at their disposal and  
19 at any time between the hours of sunrise and sunset, including  
20 the use of mechanical rake dredges, to cultivate and harvest  
21 or remove live oysters of any size upon or from such grounds.  
22 Such a person shall first obtain a dredge license as provided  
23 in Section 9-12-87, ~~which the Commissioner of Conservation and~~  
24 ~~Natural Resources shall issue if the applicant pays the~~  
25 ~~required fee and posts bond payable to the state Department of~~  
26 ~~Conservation and Natural Resources in the penal sum of~~  
27 ~~\$1,000.00, conditioned upon his faithful and strict observance~~

1 ~~of all statutes and regulations relating to the use of such~~  
2 ~~mechanical devices in taking live oysters. Such, The license~~  
3 may be revoked by the Commissioner of Conservation and Natural  
4 Resources if any ~~condition of the bond is breached, violation~~  
5 ~~of any statute or regulation relating to the use of the~~  
6 ~~mechanical devices occurs, and the Commissioner of~~  
7 Conservation and Natural Resources may thereafter refuse to  
8 issue a new license to ~~such the person.~~

9 "§9-12-42.

10 ~~"Any person, firm, corporation or association~~  
11 ~~taking, catching or removing oysters from any of the public~~  
12 ~~reefs, beds or bottoms in the waters of this state, except for~~  
13 ~~the purpose of replanting such oysters in this state, shall~~  
14 ~~replant 50 percent of all oyster shells so removed upon the~~  
15 ~~public reefs, beds or bottoms in the waters of the State of~~  
16 ~~Alabama. This duty for replanting such oysters is specifically~~  
17 ~~imposed upon any purchaser, dealer, wholesaler, packing or~~  
18 ~~canning factory which purchases such oysters for resale from~~  
19 ~~any source whatsoever.~~

20 ~~"The person, firm, corporation or association~~  
21 ~~obligated under this section to replant such shells shall have~~  
22 ~~the option, in lieu of replanting such shells, of paying to~~  
23 ~~the Department of Conservation and Natural Resources the then~~  
24 ~~reasonable market value of such shells, plus the cost of~~  
25 ~~replanting the same, provided such option is exercised prior~~  
26 ~~to May 1 of each year, and notice of the exercise of such~~  
27 ~~option is given to the Department of Conservation and Natural~~

1 ~~Resources accompanied by the amount due on the cost of such~~  
2 ~~shells and the cost of replanting same as computed by the~~  
3 ~~Department of Conservation and Natural Resources.~~

4 "(a) The Marine Resources Division may establish by  
5 rule a shell fee to be used for the replanting of oyster  
6 cultch material on the public reefs of this state or to  
7 otherwise manage the oyster resources of this state. This fee  
8 shall be charged on a per sack basis to all seafood dealers  
9 who are purchasing oysters directly from the harvester. The  
10 fee shall be calculated and paid quarterly. The payment will  
11 be due no later than one month after the end of the previous  
12 quarter.

13 "(b) The division shall establish an oyster  
14 management fund and all monies paid to the department pursuant  
15 to this shell fee shall be deposited in this fund. The monies  
16 in this oyster management fund shall be used by the division  
17 to replant cultch material on the public reefs of this state,  
18 to cultivate the public reefs of this state, or to otherwise  
19 manage the oyster resources of this state.

20 "(c) Should the person, firm, corporation, or  
21 association obligated to replant such shells pay the shell  
22 fees fail to exercise the hereinabove given option and fail to  
23 replant such shells or any part thereof by June 1 of each year  
24 remit the fees to the division by the prescribed date, the  
25 Department of Conservation and Natural Resources may  
26 immediately institute in its name appropriate legal  
27 proceedings in any court having jurisdiction thereof to

1 enforce the collection and payment of such amount as may be  
2 due ~~as the cost of such shells and of replanting same~~ as  
3 computed by the Department of Conservation and Natural  
4 Resources, and the seafood dealers license of such person,  
5 firm, corporation, or association so in default ~~shall~~  
6 ~~automatically~~ may be revoked, nor shall any license for any  
7 subsequent year or years be issued to any ~~such~~ the person,  
8 firm, corporation, or association as long as ~~such~~ the default  
9 continues; and, in addition, ~~such~~ the person, firm,  
10 corporation, or association ~~so~~ in default shall be guilty of a  
11 misdemeanor and, upon conviction thereof, shall be fined not  
12 less than ~~\$50.00~~ fifty dollars (\$50) nor more than ~~\$500.00~~  
13 five hundred dollars (\$500).

14 ~~"All shell collected by the Department of~~  
15 ~~Conservation and Natural Resources as provided for in this~~  
16 ~~section shall be replanted by the Department of Conservation~~  
17 ~~and Natural Resources on the public reefs, beds or bottoms in~~  
18 ~~the same year the shell is collected by the Department of~~  
19 ~~Conservation and Natural Resources. Any shell collected by the~~  
20 ~~Department of Conservation and Natural Resources shall not be~~  
21 ~~sold to any person, firm, corporation or association.~~

22 "§9-12-67.

23 "(a) All oysters taken from the public or private  
24 oyster bottoms of the State of Alabama for commercial purposes  
25 shall be sacked in burlap, or similar material, bags  
26 containing not more than one-quarter Alabama barrel of  
27 oysters. Oysters shall be sacked and each sack tagged and



1 identified in accordance with the requirements of the National  
2 Shellfish Sanitation Program Guide for the Control of  
3 Molluscan Shellfish, as adopted by the state Department of  
4 Public Health, prior to landing at any dock, wharf, ramp or  
5 other place of unloading leaving the harvest location or  
6 oyster management station. A The tag shall remain attached to  
7 each sack until the sack is emptied and the oysters are opened  
8 by a licensed oyster processor, or in a restaurant or other  
9 establishment selling half-shell oysters or by the final  
10 consumer or retagged with a certified dealer tag. Sacks shall  
11 not be emptied prior to reaching the destination where ~~said~~  
12 the oysters shall be opened, repacked, or processed. If less  
13 than the entire sack is to be opened at one time, the tag  
14 shall remain attached to the sack until the last oyster is  
15 removed. Upon emptying each sack, ~~the~~ or retagging with a  
16 certified dealer's tag, the harvester tag shall immediately be  
17 destroyed by first cutting it in two pieces and then by  
18 cutting it removed from the sack and filed or disposed of as  
19 required by rules of the state Department of Public Health.  
20 Containers of oysters imported into this state shall be tagged  
21 and identified as required by the rules of the state  
22 Department of Public Health. It shall be unlawful to possess  
23 empty sacks with oyster tags attached thereto.

24 "(b) It shall be unlawful for any person, firm, or  
25 corporation to sell, purchase, or possess oysters in violation  
26 of ~~the provision of~~ this section and upon conviction, persons,

1 firms, or corporations shall be guilty of a Class C  
2 misdemeanor.

3 "(c) Tags shall be purchased at a cost of ~~\$.25~~  
4 twenty-five cents (\$.25) per tag plus cost of printing  
5 (rounded to the nearest five cents) from the Department of  
6 Conservation and Natural Resources, Division of Marine  
7 Resources, or its duly authorized agents. Receipts shall be  
8 deposited to the credit of the Marine Resources Fund and shall  
9 be used solely for ~~shell~~ cultch planting and other oyster ~~reef~~  
10 improvements management purposes.

11 "§9-12-121.

12 "~~A~~ Unless otherwise provided specifically in this  
13 article, a violation of any of the provisions of this article  
14 shall be a Class C misdemeanor, and the person so violating,  
15 unless otherwise provided by this article, shall be punished  
16 by a fine of not less than \$25.00 nor more than \$100.00  
17 punishable as provided by law except that the minimum fine  
18 shall not be less than one hundred dollars (\$100)."

19 Section 2. Sections 9-12-34, 9-12-38, 9-12-39,  
20 9-12-43, and 9-12-44, Code of Alabama 1975, are repealed.

21 Section 3. Although this bill would have as its  
22 purpose or effect the requirement of a new or increased  
23 expenditure of local funds, the bill is excluded from further  
24 requirements and application under Amendment 621, now  
25 appearing as Section 111.05 of the Official Recompilation of  
26 the Constitution of Alabama of 1901, as amended, because the

1 bill defines a new crime or amends the definition of an  
2 existing crime.

3 Section 4. This act shall become effective on the  
4 first day of the third month following its passage and  
5 approval by the Governor, or its otherwise becoming law.