

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1118

SPONSOR: Natural Resources Committee and Senators Laurent and Kirkpatrick

SUBJECT: Aquaculture

DATE: March 30, 1999

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhavein</u>	<u>Poole</u>	<u>AG</u>	<u>Fav/l amendment</u>
2.	<u>Green</u>	<u>Voigt</u>	<u>NR</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill exempts marine aquaculture products from Fish and Wildlife Conservation Commission (FWCC) rules. Deletes language subjecting marine aquaculture producers to FWCC resource management rules that govern snook, red drum, and spotted sea trout. Authorizes the Department of Environmental Protection to issue special activity licenses for the importation of wild anadromous sturgeon and requires best management practices to be incorporated into those licenses. Allows reasonable quantities of saltwater species to be taken for brood stock for aquacultural purposes.

Redefines "marine aquaculture producer" as a person holding a certificate pursuant to s. 597.004, F.S., to produce aquaculture products. Clarifies that the FWCC's Division of Freshwater Fisheries responsibilities do not supersede those of the Department of Agricultural and Consumer Services. Exempts individuals or businesses holding a certificate under s. 597.004, F.S., from the requirements of chapter 372, F.S. Eliminates the Game and Fresh Water Fish Commission requirement that cultured game fish be tagged before being sold. Exempts freshwater species identified in FWCC rules from aquaculture products that may be sold without restriction as long as the origin is known. Provides for restrictions on and revocation of aquaculture certificates. Provides an effective date.

The bill amends sections 370.027, 370.06, 370.10, 370.26, 372.0025, 372.65, and 597.004, Florida Statutes, 1998 Supplement, and sections 597.0015, 597.0041, Florida Statutes.

II. Present Situation:

Aquaculture Regulation

Aquaculture is the cultivation of aquatic organisms. Although the Department of Agriculture and Consumer Services (DACS) is currently designated as the lead agency in encouraging the development of aquaculture in the state, numerous other state agencies have been or still are involved in aquaculture activities. Most of these activities involve developmental assistance or

regulation. Developmental assistance involves those activities that are intended to promote the growth of the aquaculture industry and includes aquaculture research, demonstration of aquaculture production and management techniques, dissemination of aquaculture information, and marketing. Regulation involves activities that are intended to protect the state's natural resources. Since potential environmental risks associated with aquacultural activities have significant consequences, the aquaculture industry has been subject to a number of regulations designed to protect natural and environmental resources.

In 1996, the Legislature passed legislation which required the Department of Environmental Protection (DEP) to streamline complex and duplicative state regulations and permitting procedures for aquaculture activities. In 1998, the Legislature transferred the regulatory authority for aquaculture to the Department of Agriculture and Consumer Services, with the exception of those areas required by federal law, rule, or cooperative agreement to be regulated by another agency. Since this transfer, staff from the affected agencies, including the DEP, the Game and Fresh Water Fish Commission (GFC), and the five water management districts have met to work on the transfer of regulation to the DACS.

Game and Fresh Water Fish Commission

Passage of Article IV, Section 9 of the Florida Constitution in 1974 created the GFC which has regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life. In 1983, the Florida Legislature created the Marine Fisheries Commission (MFC) with full rulemaking authority over marine life, with the exception of endangered species and the type of gear used in residential, manmade saltwater canals. On November 3, 1998, the voters approved Constitutional Revision #5 which establishes the Fish and Wildlife Conservation Commission on July 1, 1999. The GFC and the MFC will be dissolved on that same date.

Sturgeon

Sturgeon are fish that are and have traditionally been highly valued in world markets for meat and roe (caviar). Reportedly, the roe alone can sell for between \$200 and \$300 per pound. Sturgeon offer significant potential for aquaculture as has been demonstrated in California and Europe which have successfully commercialized cultured sturgeon. The Institute of Food and Agricultural Sciences of the University of Florida has developed technology to commercially produce sturgeon aquaculturally in Florida. This technology is internationally sought.

Though the technology exists to commercially produce sturgeon meat and roe, there are a host of complex federal policies, permits, and regulations to sort through before such production is possible. Currently, chapter 370, F.S., prohibits the importation, possession, and aquaculture of anadromous sturgeon without a special activity license issued by the Department of Environmental Protection. The purpose of this license is to provide for specific management practices to prevent the release and escape of cultured anadromous sturgeon and to protect indigenous populations of saltwater species.

The DEP, the GFC, and the U.S. Fish and Wildlife Service currently have a cooperative agreement under Section 6 of the Endangered Species Act (ESA), allowing the state agencies to regulate listed species under their jurisdiction. Because the ESA allows flexibility for "threatened species," a special rule was promulgated to allow the taking of Gulf Sturgeon for certain purposes without a federal permit provided the taking is consistent with applicable state law. 50 C.F.R. s.

17.44. The DEP contends the cultivation of Gulf sturgeon will contribute to the enhancement of propagation or the survival of the species and, therefore, is consistent with the ESA's intent.

Sale of Aquaculture Products

Currently, aquaculture products may be sold without restriction so long as product origin can be identified, with the exception of shellfish, snook, spotted sea trout, red drum, and freshwater aquatic species identified in chapter 372, F.S., and rules of the GFC. The Commission requires that a tag be attached to cultured game fish before they are sold. The tags are 5 cents each and are furnished by the Commission.

In recent years, significant harvest restrictions have been placed on native populations of snook, red drum, and spotted sea trout. While snook and red drum populations have shown signs of recovery, the spotted sea trout have not recovered as quickly.

III. Effect of Proposed Changes:

Section 1. Amends s. 370.027, F.S., 1998 Supplement, to exempt marine aquaculture products produced by an aquaculture producer certified under s. 597.004, F.S., from FWCC resource management rules. Deletes language subjecting marine aquaculture producers to FWCC resource management rules that govern red drum and spotted sea trout.

The Fish and Wildlife Conservation Commission shall adopt rules by March 1, 2000 to regulate the sale of farmed red drum and spotted sea trout. These rules shall specifically provide for the protection of the wild resource, without restricting a certified aquaculture producer pursuant to s. 597.004, from being able to sell farmed fish. To that extent, these rules must only require that farmed fish be kept separate from wild fish, be fed commercial feed, that farmed fish be placed in sealed containers, that these sealed containers must have the name, address, telephone number, and aquaculture certificate number, issued pursuant to s. 597.004, of the farmer clearly and indelibly placed on the container, and that this information must accompany the fish to the ultimate point of sale.

By July 1, 2000 the Fish and Wildlife Conservation Commission shall develop procedures to allow persons possessing a valid aquaculture certificate of registration to sell and transport live snook produced in private ponds or private hatcheries as brood stock to stock private ponds, or for aquarium display consistent with the provisions of rule 39-23.009, F.A.C.

Section 2. Amends s. 370.06, F.S., 1998 Supplement, to allow the FWCC to issue special activity licenses for the importation and possession of wild anadromous sturgeon, until best management practices are implemented for the cultivation of anadromous sturgeon pursuant to chapter 597.004.

Section 3. Amends s. 370.081, F.S., 1998 Supplement, to specify that aquaculture producers certified pursuant to s. 597.004 may import and possess nonindigenous marine plants and marine animals, except those specifically listed in subsection (2) or prohibited by rule of the Fish and Wildlife Conservation Commission.

Section 4. Amends s. 370.10, F.S., 1998 Supplement, to allow reasonable quantities of saltwater species to be taken for brood stock for aquacultural purposes.

Section 5. Amends s. 370.1107, F.S., to make it unlawful for any person, firm, or corporation to possess, attempt to possess, interfere with or remove live bait from a live bait trap. Such a violation is a misdemeanor of the first degree and punishable as provided in s. 773.082 or s. 775.083.

Section 6. Amends s. 370.26, F.S., 1998 Supplement, to change the term “marine product facility” to “marine aquaculture facility.” Redefines the term “marine aquaculture producer” to mean a person holding an aquaculture certificate pursuant to s. 597.004, F.S., to produce marine aquaculture products.

Section 7. Amends s. 370.31, F.S., to redefine the responsibilities of the Sturgeon Production Working Group and the sturgeon production management plan to:

1. Provide the regulatory policies for the commercial production of sturgeon meat and roe, including a strategy for obtaining the required permits, licenses, authorizations, or certificates.
2. Provide the management practices for culturing sturgeon and ensure that aquacultural development does not impede the recovery and conservation of wild sturgeon populations.
3. Establish priorities for research needed to support the commercial production of sturgeon and the recovery of native stocks in the state.
4. Support management strategies to permit the commercial production of native and non-native sturgeon, including the distribution of captive-bred Gulf sturgeon to approved certified aquaculture facilities.
5. Support the development of a cooperative sturgeon conservation program to coordinate conservation, habitat, and resource management programs for native sturgeon; including an evaluation of how stock enhancement can facilitate the conservation and recovery of native sturgeon populations.
6. Seek federal cooperation to implement the sturgeon production management plan; including federal designation of captive-bred sturgeon as distinct population segments to distinguish cultivated stocks from wild native populations.
7. Develop enforcement guidelines to ensure continued protection of wild native sturgeon populations.
8. In furtherance of the purposes and responsibilities of the Sturgeon Production Working Group, the State of Florida shall:
 - a. Establish a program to coordinate conservation and aquaculture activities for native sturgeon.

- b. Develop a conservation plan for native sturgeon.
- c. Initiate the process to petition for delisting captive-bred shortnose sturgeon.
- d. Initiate the process to petition for delisting captive-bred Gulf sturgeon.
- e. Establish a sturgeon broodstock committee composed of fishery scientists, fish farmers, and agency representatives to manage the taking of wild sturgeon for brood fish and spawning.
- f. Establish the Cooperative Broodstock Development and Husbandry Board composed of fishery scientists, fish farmers, and agency representatives to establish standards and criteria for the management and maintenance of captive-reared sturgeon to collect biological data, and to administer the Cooperative Broodstock Development and Husbandry Program.

Section 8. Amends s. 372.0225, F.S., 1998 Supplement, to clarify that the responsibilities of the FWCC's Division of Fisheries does not supersede the responsibilities of the DACS under the Florida Food Safety Act (chapter 500, F.S.) or the Florida Aquaculture Policy Act (chapter 597, F.S.).

Section 9. Amends s. 372.65, F.S., 1998 Supplement, to exempt any individual or business issued an aquaculture certificate under s. 597.004, F.S., from the requirements of chapter 372, F.S., with respect to aquaculture products authorized under such certificate. Eliminates GFC's authorization to require cultured game fish that are sold to be tagged and to assess a fee of not more than 5 cents for each tag.

Section 10. Amends s. 597.0015, F.S., to redefine the term "aquaculture producers" to mean those persons engaging in the production of aquaculture products and certified under s. 597.004, F.S.

Section 11. Amends s. 597.004, F.S., 1998 Supplement, to clarify the requirement of best management practices to be implemented by holders of aquaculture certificates of registration. Interim measures may include the continuation of regulatory requirements in effect on June 30, 1998. There is a presumption of compliance with state groundwater and surface water standards if the holder of the aquaculture certificate of registration implements best management practices that have been verified by the Department of Environmental Protection.

Nothing in chapter 597, F.S., supersedes the authority under chapter 372, chapter 373, or chapter 403 to regulate alligator farms and alligator farmers.

Aquaculture products, except shellfish, snook, and large mouth bass and prohibited restricted freshwater and marine species may be sold by an aquaculture producer certified pursuant to s. 597.004.

Any person whose certificate of registration has been revoked or suspended must reapply to the department for certification.

Section 12. Amends s. 597.0041, F.S., to provide for a 5-year-revocation of an aquaculture certificate when a person has been convicted of taking aquaculture species raised at a certified facility.

Section 13. Section 597.0045, Florida Statutes, is created to establish 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.

Each person who provides information leading to the arrest and conviction of an individual or individuals for illegally possessing, harvesting, or attempting to harvest cultured shellfish and for whom the respective state attorney notifies the department of such assistance, in writing, shall be eligible for a reward of up to \$2,500; except that law enforcement officers and department personnel, and members of their immediate families, shall not be eligible for rewards under the program. The department shall, by rule, establish a graduated reward payout schedule.

Funds in the General Inspection Trust Fund of the department may be used for the Cultured Shellfish Theft Reward program for deposit of general revenue funds and donations received from interested individuals and for granting rewards to persons who provide information leading to the arrest and conviction of persons illegally possessing, harvesting, or attempting to harvest cultured shellfish. The grant of rewards shall be subject to legislative appropriations to fund the program.

The department may promote the cultured shellfish theft reward program to provide for public recognition of the rewards and to improve compliance with laws prohibiting illegal possession and harvesting of cultured shellfish.

Section 14. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 15. Provides that this act shall take effect July 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article IV, Section 9 of the State Constitution, as amended by Revision #5, provides the Fish and Wildlife Conservation Commission shall exercise “regulatory and executive powers of the state with respect to marine life. . .” The FWCC has broad constitutional authority with relation to marine species. However, section 1 of this bill exempts marine aquaculture producers from FWCC resource management rules governing snook, red drum, and spotted sea trout.

Article XII, Section 22 of the State Constitution, created by Revision #5, provides the “jurisdiction of the marine fisheries commission as set forth in statutes in effect on March 1, 1998, shall be transferred to the fish and wildlife conservation commission.” On March 1, 1998, marine aquaculture producers were subject to the Marine Fisheries Commission’s (MFC’s) resource management rules governing snook, red drum, and spotted sea trout . An encroachment on the constitutional authority transferred from the MFC to the FWCC on March 1, 1998, as contained in section 1 of this bill, may be vulnerable to a constitutional challenge.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

This bill eliminates the handling and attaching of tags to aquacultured game fish. The private sector will no longer be required to obtain tags from the Game and Fresh Water Fish Commission at a cost of 5 cents per tag

Persons who interfere with or remove live bait from a trap or cage of another person may be charged with a misdemeanor of the first degree.

C. Government Sector Impact:

Provisions that establish a Cultured Shellfish Theft Reward Program in the Department of Agriculture and Consumer Services does not provide funding or staffing for the new program. Requirements to establish a Cooperative Broodstock Development and Husbandry Board do not specify whether members of the board may receive per diem for their responsibilities and no funding is provided.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
