

A-Engrossed House Bill 2784

Ordered by the House April 24
Including House Amendments dated April 24

Sponsored by COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

[Directs State Department of Fish and Wildlife to conduct study on health of shellfish populations in this state. Requires report to be submitted to interim legislative committees related to environment and natural resources no later than September 15, 2017.]

[Sunsets on date of convening of 2018 regular session of Legislative Assembly.]

Establishes new requirements related to plats for cultivation of oysters, clams or mussels.

Requires certain agencies to conduct certain analyses related to shellfish and submit reports to certain interim committees of Legislative Assembly.

Requires Department of Land Conservation and Development to develop standardized system for making geographic information system data related to estuaries available for certain purposes related to shellfish.

Expands and extends pilot project for increasing frequency of water quality monitoring and analysis related to closure and opening of shellfish harvesting.

Adds to State Department of Fish and Wildlife's biennial reporting requirements related to aquatic invasive species.

Requires State Department of Fish and Wildlife to research, develop and document best management practices for commercial cultivation of oysters, clams and mussels.

Requires State Department of Fish and Wildlife to adopt harmful algal bloom monitoring and alert program by rule.

Allows for fish restoration and enhancement funds to be used for access for recreational taking of shellfish.

Requires State Fish and Wildlife Commission to adopt by rule collaborative public shellfish monitoring program.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to shellfish; creating new provisions; amending ORS 496.289, 622.280 and 830.594 and
3 sections 7 and 8, chapter 814, Oregon Laws 2015; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 6 COLLABORATION AND AGENCY LEADERSHIP

7
8 (New Shellfish Plats; Preapplication Conferences)

9
10 **SECTION 1. Section 2 of this 2017 Act is added to and made a part of ORS 622.210 to**
11 **622.360.**

12 **SECTION 2. (1) A prospective applicant for a plat for the cultivation of oysters, clams**
13 **or mussels shall, no later than 30 days prior to filing an application under ORS 622.250, par-**
14 **ticipate in a preapplication conference with the State Department of Agriculture and other**
15 **appropriate local, state and federal agencies.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (2) Not less than 14 days before the preapplication conference, the prospective applicant
2 must provide the department with adequate information to prepare for the preapplication
3 conference.

4 (3) At the preapplication conference, the department and other appropriate local, state
5 and federal agencies shall:

6 (a) Inform the prospective applicant of statutes, administrative rules, local ordinances
7 and any other requirements that may apply to the application;

8 (b) Based on the information provided by the prospective applicant and other annual
9 production data and information available to the department, discuss with the prospective
10 applicant projected revenue data and related matters; and

11 (c) Assist the prospective applicant by identifying known issues that may affect the
12 likelihood that the prospective applicant will be able to meet any conditions placed on re-
13 quired permits from state agencies and local governments.

14 (4) The prospective applicant may request additional preapplication consultation with the
15 department.

16 **SECTION 3.** In addition to and not in lieu of any other appropriation, there is appropri-
17 ated to the State Department of Agriculture, for the biennium beginning July 1, 2017, out
18 of the General Fund, the amount of \$200,000, which may be expended for work related to
19 conducting preapplication conferences under section 2 of this 2017 Act.

20
21 (Withdrawal of Unproductive Shellfish Plats)

22
23 **SECTION 4.** ORS 622.280 is amended to read:

24 622.280. (1) If, for a period of three years after the filing of a plat under chapter 675, Oregon
25 Laws 1969, more than one-half the lands claimed are unproductive, the State Department of Agri-
26 culture may withdraw from a claimant and consider abandoned any portion of the unproductive
27 lands claimed by such claimant. However, the reason for such unproductiveness shall not include
28 restrictions by governmental health authorities, the unavailability of seed or infestation by pest or
29 disease.

30 (2) The department may withdraw from a claimant and consider abandoned those lands:

31 (a) On which the claimant fails to pay the fees or use taxes referred to in ORS 622.290, unless
32 the department is satisfied that there was reasonable cause for such failure.

33 (b) That are not marked in the manner provided by ORS 622.320.

34 (c) That are used or held for purposes other than oyster, clam or mussel cultivation.

35 (3) The department shall inspect plats filed under chapter 675, Oregon Laws 1969, annu-
36 ally, or at a regular frequency otherwise determined necessary by the department, for
37 enforcement of this section.

38
39 (Interagency Coordination on Removal-Fill Permitting)

40
41 **SECTION 5.** (1) The Department of State Lands shall investigate and develop recom-
42 mendations on the preferred method for updating the department's process for issuing per-
43 mits required under ORS 196.600 to 196.905 for the commercial cultivation of oysters, clams
44 or mussels. The department shall consider the following two options:

45 (a) Entering into a memorandum of understanding with the State Department of Agri-

1 culture that would provide for the State Department of Agriculture to issue the permits re-
2 quired under ORS 196.600 to 196.905 for the commercial cultivation of oysters, clams or
3 mussels; or

4 (b) Establishing by rule a general permit under ORS 196.816 for the commercial culti-
5 vation of oysters, clams or mussels.

6 (2) As part of the investigation required by subsection (1) of this section, the Department
7 of State Lands shall coordinate with the State Department of Agriculture to develop a pro-
8 posed memorandum of understanding under which:

9 (a) The Department of State Lands shall continue to participate in the review of appli-
10 cations for permits required under ORS 196.600 to 196.905 for the commercial cultivation of
11 oysters, clams or mussels; and

12 (b) The State Department of Agriculture may perform any function of the Department
13 of State Lands relating to the regulation and control of removal and filling of waters of the
14 state, including but not limited to inspection and enforcement duties, as necessary to mini-
15 mize the duplication or redundancy and cost in state agency operations related to the com-
16 mercial cultivation of oysters, clams or mussels on state lands.

17 (3) The Department of State Lands shall submit a report, in the manner provided by ORS
18 192.245, on the department's implementation of this section to an interim committee of the
19 Legislative Assembly related to natural resources no later than September 15, 2018. The re-
20 port required by this subsection may include recommendations for legislation.

21 **SECTION 6.** Section 5 of this 2017 Act is repealed on December 31, 2018.

22
23 (Statewide Digital GIS Database)

24
25 **SECTION 7.** (1) As used in this section:

26 (a) "Estuary" has the meaning given that term in ORS 196.800.

27 (b) "Local government" has the meaning given that term in ORS 197.015.

28 (2) The Department of Land Conservation and Development shall coordinate with the
29 State Service Center for Geographic Information Systems to develop and implement a system
30 that enables standardized collection, management and reporting of geographic information
31 system data and information related to estuaries, and that makes the geographic information
32 available for the purposes of:

33 (a) Providing information to local governments for use in updating or amending com-
34 prehensive plan provisions or applicable land use regulations related to estuaries, with a
35 specific focus on assisting local governments in planning related to estuaries with existing
36 potential for aquaculture operations;

37 (b) Consolidating and making available to local governments technical information about:

38 (A) Estuarine habitats;

39 (B) Native shellfish beds;

40 (C) Plats for the commercial cultivation of oysters, clams or mussels and other com-
41 mercial uses of estuaries; and

42 (D) The recreational uses of estuaries;

43 (c) Providing available information to local governments that identifies the ownership of
44 tidelands; and

45 (d) Inventorying the existing encumbrances on state-owned tidelands.

1 (3) In carrying out this section, the department shall integrate data obtained for use by
2 other state agencies and maximize the use of the State Service Center for Geographic In-
3 formation Systems. In working with the center, the department shall work to ensure that
4 information received by the center is formatted in a manner that results in an integrated
5 geographic information system that meets the requirements of subsection (2) of this section.

6 **SECTION 8.** In addition to and not in lieu of any other appropriation, there is appropri-
7 ated to the Department of Land Conservation and Development, for the biennium beginning
8 July 1, 2017, out of the General Fund, the amount of \$200,000, which may be expended for
9 work related to developing and implementing the system required under section 7 of this 2017
10 Act.

11
12 (State Department of Agriculture Administration of Commercial
13 Shellfish Mariculture; Study of Expansion of Duties)
14

15 **SECTION 9.** (1) The State Department of Agriculture shall conduct a study on actions
16 necessary for the commercial cultivation of oysters, clams or mussels on lands owned by
17 counties and port districts to be subject to the regulatory authority of the department.

18 (2) The department shall submit a report on the results of the study to the interim
19 committees of the Legislative Assembly related to natural resources no later than September
20 15, 2017.

21 **SECTION 10.** Section 9 of this 2017 Act is repealed on the date of the convening of the
22 2018 regular session of the Legislative Assembly as specified in ORS 171.010.

23 **SECTION 11.** In addition to and not in lieu of any other appropriation, there is appro-
24 priated to the State Department of Agriculture, for the biennium beginning July 1, 2017, out
25 of the General Fund, the amount of \$90,000, which may be expended for carrying out the
26 study required by section 9 of this 2017 Act.

27
28 **ENHANCED SHELLFISH PRODUCTION**

29
30 **(Identifying New Shellfish Growing Areas)**
31

32 **SECTION 12.** Section 7, chapter 814, Oregon Laws 2015, is amended to read:

33 **Sec. 7. (1)** The State Department of Agriculture shall conduct a pilot project for increasing the
34 frequency of water quality monitoring and analysis related to the closure and opening of shellfish
35 harvesting [*in Tillamook Bay.*] **on state lands classified as suitable for oyster, clam or mussel**
36 **cultivation under ORS 622.240.**

37 (2) In conducting the pilot project required by this section, the State Department of Ag-
38 riculture shall consult with the Department of Environmental Quality, other appropriate lo-
39 cal and state agencies, representatives of the commercial shellfish industry and
40 nongovernmental organizations, as necessary, to:

41 (a) Prioritize increasing water quality monitoring and analysis in areas where efforts for
42 enhancing opportunities for the commercial cultivation of oysters, clams or mussels are in
43 the highest demand; and

44 (b) Identify cost-effective methods, which may include the sharing of resources or infor-
45 mation, for increasing the frequency of water quality monitoring and analysis related to the

1 **closure and opening of shellfish harvesting.**

2 **SECTION 13.** Section 8, chapter 814, Oregon Laws 2015, is amended to read:

3 **Sec. 8.** Section 7, **chapter 814, Oregon Laws 2015**, [of this 2015 Act] is repealed on [July 1,
4 2017] **January 2, 2020.**

5 **SECTION 14.** In addition to and not in lieu of any other appropriation, there is appro-
6 priated to the State Department of Agriculture, for the biennium beginning July 1, 2017, out
7 of the General Fund, the amount of \$50,000, which may be expended for carrying out activ-
8 ities related to the pilot project required by section 7, chapter 814, Oregon Laws 2015, as
9 amended by section 12 of this 2017 Act, in estuarine areas outside Tillamook Bay.

10
11 **(Study on Cumulative Impacts of Shellfish Operations)**

12
13 **SECTION 15.** (1) The State Department of Fish and Wildlife, in coordination with the
14 State Department of Agriculture, representatives of the commercial shellfish industry and
15 members of the academic and scientific communities, shall conduct ecosystem modeling to
16 investigate:

17 (a) The cumulative impacts of the commercial cultivation of oysters, clams and mussels
18 on estuarine areas in this state; and

19 (b) The maximum capacities of estuarine areas in this state to support the commercial
20 cultivation of oysters, clams and mussels.

21 (2) The State Department of Fish and Wildlife shall submit a report on the results of the
22 ecosystem modeling required by subsection (1) of this section to the interim committees of
23 the Legislative Assembly related to natural resources no later than September 15, 2017.

24 **SECTION 16.** Section 15 of this 2017 Act is repealed on the date of the convening of the
25 2018 regular session of the Legislative Assembly as specified in ORS 171.010.

26 **SECTION 17.** In addition to and not in lieu of any other appropriation, there is appro-
27 priated to the State Department of Fish and Wildlife, for the biennium beginning July 1, 2017,
28 out of the General Fund, the amount of \$130,000 to be used for the ecosystem modeling re-
29 quired by section 15 of this 2017 Act.

30
31 **(Commercial Cultivation of Controlled Species)**

32
33 **SECTION 18.** ORS 830.594 is amended to read:

34 830.594. (1) The State Department of Fish and Wildlife, after consultation with the State Marine
35 Board, the State Department of Agriculture and the Department of State Police, shall report
36 biennially to the Legislative Assembly on efforts to prevent aquatic invasive species from entering
37 this state and may include in the report:

38 (a) Suggested legislation necessary to more effectively prevent aquatic invasive species from
39 entering this state; and

40 (b) Suggested legislation or other suggested actions necessary to allow for the effective
41 management of aquatic invasive species in a manner that may also allow for the transport
42 or movement of nonnative species important to the commercial cultivation of oysters, clams
43 and mussels as regulated by the State Department of Agriculture under ORS 622.210 to
44 622.360.

45 (2) Reports to the Legislative Assembly required under this section must be made in accordance

1 with ORS 192.245.

2
3 (Commercial Shellfish Mariculture Pilot Projects
4 in the Territorial Sea)
5

6 **SECTION 19.** The Ocean Policy Advisory Council shall develop and, on or before Decem-
7 ber 31, 2018, make recommendations to the Land Conservation and Development Commission,
8 which may include recommendations for amendments to the Territorial Sea Plan, regarding
9 the siting of viable pilot projects for the commercial cultivation of oysters, clams or mussels
10 in the territorial sea.

11 **SECTION 20.** Section 19 of this 2017 Act is repealed on January 2, 2019.
12

13 **DEVELOPMENT OF BEST MANAGEMENT PRACTICES**
14

15 **SECTION 21.** Section 22 of this 2017 Act is added to and made a part of ORS 622.210 to
16 622.360.

17 **SECTION 22.** (1) The State Department of Fish and Wildlife shall research, develop and
18 document best management practices for the commercial cultivation of oysters, clams and
19 mussels. The best management practices developed under this section shall be made available
20 as a guide for site-specific management of plats subject to the regulatory authority of the
21 State Department of Agriculture.

22 (2) In developing the best management practices required under this section, the State
23 Department of Fish and Wildlife shall coordinate and consult with the State Department of
24 Agriculture, the Department of Land Conservation and Development, appropriate represen-
25 tatives of the commercial shellfish industry and federally recognized Oregon Indian tribes
26 and members of the academic and scientific communities.

27 (3) The State Department of Fish and Wildlife may update the best management prac-
28 tices required under this section as necessary.

29 **SECTION 23.** In addition to and not in lieu of any other appropriation, there is appro-
30 priated to the State Department of Fish and Wildlife, for the biennium beginning July 1, 2017,
31 out of the General Fund, the amount of \$150,000 to be used to develop the best management
32 practices required by section 22 of this 2017 Act.
33

34 **HARMFUL ALGAL BLOOM MONITORING PROGRAM**
35

36 **SECTION 24.** The State Department of Fish and Wildlife shall adopt by rule a harmful
37 algal bloom monitoring and alert program. The purpose of the program shall be to imple-
38 ment a harmful algal bloom network that will provide information on current algal blooms
39 and facilitate information exchange in support of informed decision-making to protect public
40 health and safety and to safeguard coastal communities from harmful algal blooms.

41 **SECTION 25.** In addition to and not in lieu of any other appropriation, there is appro-
42 priated to the State Department of Fish and Wildlife, for the biennium beginning July 1, 2017,
43 out of the General Fund, the amount of \$350,000 to be used to develop the harmful algal
44 bloom monitoring and alert program required by section 24 of this 2017 Act.
45

SOCIOECONOMIC COSTS AND BENEFITS

(Baseline Shellfish Harvest Economic Survey)

SECTION 26. (1) As used in this section:

(a) "Commercial molluscan shellfish industry" includes:

(A) Persons engaged in the taking of molluscan shellfish for commercial purposes as defined in ORS 506.006; and

(B) Persons who engage in the commercial cultivation of oysters, clams and mussels subject to the regulatory authority of the State Department of Agriculture under ORS 622.210 to 622.360.

(b) "Molluscan shellfish" means oysters, clams, mussels and scallops.

(2) The State Department of Fish and Wildlife, in consultation with the State Department of Agriculture, representatives of the commercial molluscan shellfish industry and members of the academic and scientific communities, shall develop and conduct a baseline survey of the commercial molluscan shellfish industry in this state. Information gathered under this section shall include, but need not be limited to, information on:

(a) The operating and investment costs for engaging in the commercial molluscan shellfish industry in this state;

(b) The facilities in this state used for purposes related to the commercial molluscan shellfish industry;

(c) Fisheries management related to the commercial molluscan shellfish industry;

(d) Commercial molluscan shellfish industry production and sales data; and

(e) Opportunities and challenges for the commercial molluscan shellfish industry.

(3) The State Department of Fish and Wildlife shall, at least once every five years following completion of the baseline survey required by subsection (2) of this section, complete a survey developed by the department to measure the economic growth and stability of the commercial molluscan shellfish industry in this state against the baseline survey results.

SECTION 27. In addition to and not in lieu of any other appropriation, there is appropriated to the State Department of Fish and Wildlife, for the biennium beginning July 1, 2017, out of the General Fund, the amount of \$80,000, which may be expended for conducting the baseline survey required by section 26 of this 2017 Act.

(Commercial Molluscan Shellfish Marketing Study)

SECTION 28. (1) The State Department of Agriculture shall conduct a study on marketing and sales opportunities to improve the success and economic opportunities for persons engaged in the commercial molluscan shellfish industry in this state.

(2) The department shall submit a report on the results of the study to the interim committees of the Legislative Assembly related to natural resources no later than September 15, 2017.

SECTION 29. Section 28 of this 2017 Act is repealed on the date of the convening of the 2018 regular session of the Legislative Assembly as specified in ORS 171.010.

SECTION 30. In addition to and not in lieu of any other appropriation, there is appropriated to the State Department of Agriculture, for the biennium beginning July 1, 2017, out

1 of the General Fund, the amount of \$50,000, to be expended for conducting the study required
2 by section 28 of this 2017 Act.

3
4 (Shellfish Ecosystem Valuation Report)

5
6 **SECTION 31.** (1) The State Department of Fish and Wildlife shall research and develop
7 a report on the economic value of the ecosystem services provided by Oregon's estuarine
8 shellfish resources.

9 (2) The department shall submit a report on the results of the study to the interim
10 committees of the Legislative Assembly related to natural resources no later than September
11 15, 2017.

12 **SECTION 32.** Section 31 of this 2017 Act is repealed on the date of the convening of the
13 2018 regular session of the Legislative Assembly as specified in ORS 171.010.

14 **SECTION 33.** In addition to and not in lieu of any other appropriation, there is appropri-
15 ated to the State Department of Agriculture, for the biennium beginning July 1, 2017, out
16 of the General Fund, the amount of \$60,000, to be expended for conducting the research and
17 developing the report required by section 31 of this 2017 Act.

18
19 **ENHANCED RECREATIONAL OPPORTUNITIES**

20
21 **SECTION 34.** ORS 496.289 is amended to read:

22 496.289. (1) The Restoration and Enhancement Board shall meet, adopt and recommend to the
23 State Fish and Wildlife Commission, within 120 days after July 1, 1989, and at not more than 120-day
24 intervals thereafter, fish restoration and enhancement programs.

25 (2) The commission shall review such programs and may approve or disapprove any or all pro-
26 gram recommendations by the board. Funds may be expended from the subaccount referred to in
27 ORS 496.283 for projects that have been approved by the commission.

28 (3) The State Department of Fish and Wildlife and the board jointly shall submit to each odd-
29 numbered year regular session of the Legislative Assembly a report on expenditure of funds for the
30 fish restoration and enhancement program and on the status of various projects.

31 (4) In recommending fish restoration and enhancement programs, the board shall:

32 (a) Recommend a mix of projects that provide a balance between restoration and enhancement
33 benefits.

34 (b) Recommend projects that are to be implemented by the salmon and trout enhancement pro-
35 gram and nonprofit organizations engaged in approved restoration and enhancement activities.

36 (c) Encourage projects that result in obtaining matching funds from other sources.

37 (5) All moneys made available for the fish restoration and enhancement program from funds re-
38 ceived under sections 4, 6 and 8, chapter 512, Oregon Laws 1989, and from gifts and grants made
39 to carry out the fish restoration and enhancement program may be expended only if recommended
40 by the board and approved by the commission. Such amounts may be expended:

41 (a) On programs benefiting the commercial fishing industry in the same proportion as revenues
42 received from surcharges under sections 6 and 8, chapter 512, Oregon Laws 1989, bear to the total
43 amount of surcharge revenues.

44 (b) On programs benefiting recreational angling in the same proportion as revenues received
45 from the dedication under section 4, chapter 512, Oregon Laws 1989, bear to the total amount of

1 dedicated revenues.

2 (6) The board may accept, from whatever source, gifts or grants for the purposes of fish resto-
3 ration and enhancement. All moneys so accepted shall be deposited in the subaccount referred to
4 in ORS 496.283. Unless otherwise required by the terms of a gift or grant, gifts or grants shall be
5 expended as provided in subsection (5) of this section.

6 (7) As used in this section:

7 (a) "Enhancement" includes, but is not limited to, the following activities:

8 (A) Angler access.

9 **(B) Access for the recreational taking of shellfish.**

10 [~~B~~] (C) New fishways and screens.

11 [~~C~~] **(D)** Habitat.

12 [~~D~~] **(E)** New hatchery equipment and technology.

13 [~~E~~] **(F)** Public education.

14 [~~F~~] (G) Aquatic inventories.

15 (b) "Restoration" includes, but is not limited to, the following activities:

16 (A) Modification of existing fishways and existing screens.

17 (B) Hatchery restoration.

18 (C) Liberation equipment.

19
20 **COLLABORATIVE PUBLIC SHELLFISH MONITORING PROGRAM**

21
22 **SECTION 35. Section 36 of this 2017 Act is added to and made a part of the wildlife laws.**

23 **SECTION 36. The State Fish and Wildlife Commission shall adopt by rule a collaborative**
24 **public shellfish monitoring program. The program shall provide opportunities for the State**
25 **Department of Fish and Wildlife to collaborate with members of the public, federally recog-**
26 **nized Oregon Indian tribes and private and nonprofit organizations to engage in activities**
27 **including, but not limited to:**

28 (1) **Shellfish stock assessments;**

29 (2) **Data collection for habitat characterization of estuarine areas in this state;**

30 (3) **Collection of shellfish fisheries data; and**

31 (4) **Public outreach and education activities related to shellfish.**

32 **SECTION 37. In addition to and not in lieu of any other appropriation, there is appro-**
33 **priated to the State Department of Fish and Wildlife, for the biennium beginning July 1, 2017,**
34 **out of the General Fund, the amount of \$50,000, which may be expended for the program**
35 **required by section 36 of this 2017 Act.**

36
37 **RESEARCH ON IMPACTS OF NONNATIVE SHELLFISH SPECIES**

38
39 **SECTION 38. (1) The State Department of Fish and Wildlife, in collaboration with the**
40 **State Department of Agriculture and appropriate stakeholders, shall research and study the**
41 **impacts in this state of nonnative shellfish species on wild stocks of native shellfish and on**
42 **the commercial cultivation of oysters, clams and mussels.**

43 (2) **The State Department of Fish and Wildlife shall submit a report on the results of the**
44 **study to the interim committees of the Legislative Assembly related to natural resources**
45 **no later than September 15, 2021.**

