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## OLR Bill Analysis

**sHB 5085 (as amended by House "A")\***

### ***AN ACT CONCERNING SHELLFISH GROUNDS LEASES BY THE DEPARTMENT OF AGRICULTURE.***

#### **SUMMARY:**

This bill makes various changes to the statutes relating to shellfish. It:

1. allows the agriculture commissioner, with 30 days' notice, to deny a shellfish grounds lease renewal if a lessee is in default in paying rent on any Connecticut shellfish grounds, under certain conditions;
2. requires the commissioner to notify lessees and sublessees of a shellfish grounds lease renewal denial and give them 90 days to vacate the area;
3. extends the penalties for stealing oysters and injuring oyster enclosures to stealing any shellfish or injuring any shellfish enclosure;
4. subjects people or companies to a penalty for failing to initiate a shellfish recall when warranted; and
5. reduces the minimum size, from three to 2.75 inches long, of eastern oysters that can be taken from Connecticut waters, and allows up to 10% of a take to include oysters between 2.5 and 2.75 inches long.

\*House Amendment "A" adds provisions regarding shellfish grounds lease renewals. Specifically, it requires the agriculture commissioner to (1) grant a one-year lease renewal up to three times if the lessee is not in default in paying rent on the specific lease in question and (2) give lessees and sublessees notice of a lease renewal

denial by first class mail and allow them 90 days to vacate the area. With respect to the size of eastern oysters that may be taken from Connecticut waters, the amendment allows up to 10%, instead of 5%, of a take to include oysters between 2.5 and 2.75 inches long. It also requires the Department of Agriculture, when determining compliance with the oyster size requirements, to inspect and measure oysters after they are processed and packaged for sale or distribution.

EFFECTIVE DATE: Upon passage

### **§ 1 — SHELLFISH GROUNDS LEASES**

By law, the agriculture commissioner leases state shellfish grounds to shellfish producers to farm underwater beds. When a lease expires, the lessee can apply for a lease renewal. The commissioner cannot renew a lease if the applicant is in arrears for rent for the ground covered by the original lease.

The bill allows the commissioner, after 30 days' notice to the lessee and sublessees, to deny a lease renewal application if the lessee is (1) in default on rent for any Connecticut shellfish grounds or (2) the principal or corporate officer of a business entity holding a lease and that entity is in default on rent for the lease. This denial option applies to shellfish grounds leases entered into or renewed after the bill's effective date.

But, under the bill, the commissioner must grant a one-year renewal of a shellfish grounds lease if that lease is not in default on rent. He must do this up to three times if the lessee is otherwise in compliance with the lease. The commissioner may deny a one-year renewal if the lessee is in default on rent for any previous renewal of that lease.

If the commissioner denies a lease renewal, the bill requires him to give lessees and sublessees (1) notice of the termination by first class mail and (2) 90 days from the notice postmark date to vacate the area.

### **§§ 2 & 3 — STEALING SHELLFISH AND INJURING SHELLFISH ENCLOSURES**

The bill extends the penalty for stealing oysters to the theft of any

shellfish. Under the bill, anyone who steals shellfish is subject to up to one year in prison or a fine of up to (1) \$300 if taken in the daytime or (2) \$500 if taken at night.

The bill also extends the penalty for wilfully injuring an oyster enclosure to anyone who wilfully injures any shellfish enclosure. Under the bill, anyone wilfully injuring a legally designated, marked shellfish enclosure; removing any buoys or stakes marking a shellfish ground; or taking shells from an enclosure is subject to a fine of up to \$250 for a first offense. Any subsequent offense is a class C misdemeanor, subject to a fine of up to \$500, up to three months in prison, or both.

#### **§ 4 — SHELLFISH RECALLS**

The bill subjects to a penalty a person, firm, or corporation who does not initiate a voluntary or mandated recall of “implicated shellfish products” in accordance with the federal Food, Drug, and Administration’s (FDA) Recall Enforcement Policy. In general, each person, firm, or corporation selling shellfish must, under federal law, have, and adhere to, a recall procedure when products make people ill or are reasonably likely to do so. The Department of Agriculture announces a recall and the affected people, firms, and corporations must initiate their recall procedure.

Under the bill, a person, firm, or corporation who fails to initiate a recall of implicated shellfish is subject to (1) a fine of \$1,000 or three times the market value of the affected shellfish, based on the quantity and type involved, whichever is greater, or (2) up to a year in prison. The agriculture commissioner may, in addition, revoke a department-issued license for up to (1) 60 days for a second violation within six months and (2) 90 days for a third violation within nine months. These penalties are in addition to other penalties the law authorizes.

#### **§ 5 — SIZE OF EASTERN OYSTERS**

This bill reduces the size, from three to 2.75 inches long, of eastern oysters that can be taken from Connecticut waters. It also allows up to 10% of a take to include oysters between 2.5 and 2.75 inches long.

When determining compliance with the size requirements, the Department of Agriculture must inspect and measure oysters after they are processed and packaged for sale or distribution.

By law, oysters cannot be taken if the agriculture commissioner determines they are not ready for harvest, unless the oysters are for sale, transplant, and relay for aquaculture purposes within state waters. The law authorizes the commissioner to adopt implementing regulations.

Violators are subject to a fine of up to \$500, up to six months in prison, or both (CGS § 26-237).

**COMMITTEE ACTION**

Environment Committee

Joint Favorable Substitute

Yea 22 Nay 5 (03/21/2014)