

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Agriculture

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BILL: CS/SB 1318

INTRODUCER: Agriculture Committee and Senator Dean

SUBJECT: Shellfish Regulations

DATE: February 2, 2016

REVISED: \_\_\_\_\_

|    | ANALYST  | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|--------|
| 1. | Akhavein | Becker         | AG        | Fav/CS |
| 2. |          |                | EP        |        |
| 3. |          |                | FP        |        |

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

**I. Summary:**

CS/SB 1318 authorizes the use of dredges or mechanical harvesting devices for the harvest of shellfish from submerged land leases, and it prohibits the use of dredge or mechanical harvesting devices on public shellfish beds and natural reefs. It provides an expanded definition for shellfish that may be harvested to include oysters, clams, mussels, and scallops. The bill directs the Department of Agriculture and Consumer Services (department), in cooperation with the Fish and Wildlife Conservation Commission and the Department of Environmental Protection, to protect all clam beds, oyster beds, shellfish grounds, and oyster reefs from damage or destruction resulting from improper cultivation, propagation, planting, or harvesting. The Department of Health is to cooperate with the department and to make available its laboratory testing facilities and apparatus. It authorizes the Board of Trustees of the Internal Improvement Trust Fund to permit the harvest of shellfish using a dredge or mechanical device under certain conditions, including the use of aquaculture best management practices. The bill also specifies that violations of lease agreements will result in the revocation of all leases held by the violator and denial of any future use of sovereign submerged land.

**II. Present Situation:**

Oysters were originally harvested by wading into coastal waters and picking them up from an oyster bar, but as the number of people eating the oysters increased, boats were needed to collect them from bars farther out. Hand tongs were developed to pick up the oysters from a boat. The tongs are a long scissor-like tool with metal rakes on the ends. The harvester stands on the side of his boat, opens the tongs, and reaches down in water that might be 15 or more feet deep. He

closes the tongs, scooping the oysters between the rakes. He then lifts the tongs into the boat and dumps the oysters onto the culling board. The tongs are very long, heavy, and hard to manage.<sup>1</sup>

To enhance efficiency of the harvest operation, rake-like mechanical dredges can be used to harvest planted shellfish seed or to collect naturally recruited stocks from leased beds. The type of mechanical dredge used depends on the type of shellfish harvested. Oysters may be collected by dragging a steel frame with bladed teeth behind the boat with a collection bag or by using a suction dredge. Clams may be collected by a hydraulic dredge which loosens the clams with high pressure jets and collects the clams in chain mesh bags. Harvesters collect scallops with a steel-framed structure with a cutting bar on the leading edge which rides above the surface of the submerged lands, kicking up sea scallops and collecting them into an attached bag.<sup>2</sup> Historically, opinions on the best methods for shellfish harvest have varied widely. Fishermen who use hand tongs or rakes often consider dredging detrimental to shellfish, while those who operate mechanical dredges believe that dredging of the seafloor enhances the environment for clam and oyster recruitment.<sup>3</sup>

The Florida Legislature and the Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund, have recognized that it is in the state's economic, resource, and food production interest to promote aquacultural production by leasing sovereign submerged lands. These are state waters in the Atlantic Ocean three nautical miles seaward from shore and in the Gulf of Mexico, nine nautical miles seaward from shore. Florida's Aquaculture Lease Program for sovereignty submerged state lands and the overlying water column is administered by the Division of Aquaculture's Bureau of Aquaculture Development. The policies, conditions, and criteria for using sovereign state lands for aquacultural production are provided in the Florida Aquaculture Policy Act and ch. 18-21, F.A.C., with authorization for their use from the Governor and Cabinet.<sup>4</sup> Currently, all ch. 253, F.S., submerged land aquaculture leases prohibit the use of dredges or mechanical harvesting devices. Some ch. 379, F.S., shellfish leases (in perpetuity leases) do allow the use of dredges or mechanical harvesting devices, but only if the lease document specifically allows such harvesting devices. Several "in perpetuity leases" located in Franklin County have the ability to use dredges as the result of a court ruling.<sup>5</sup>

Individuals who propose to use a dredge or mechanical harvesting device will be required to obtain authorization from the Army Corp of Engineers pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.<sup>6</sup> Individuals who commercially harvest, possess, or sell shellfish must obtain a Saltwater Products License<sup>7</sup> and a shellfish endorsement<sup>8</sup> or Apalachicola Bay Oyster Harvesting License from the Florida Fish and Wildlife Conservation Commission, unless they are harvesting from an aquaculture lease under the

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<sup>1</sup> <http://www.marinersmuseum.org/sites/micro/cbhf/waterman/wat009.html>, (last visited January 12, 2016).

<sup>2</sup> National Oceanic and Atmospheric Administration, Review of the Ecological Effects of Dredging in the Cultivation and Harvest of Molluscan Shellfish, <http://www.nefsc.noaa.gov/publications/tm/tm220/>, (last visited January 12, 2016).

<sup>3</sup> National Oceanic and Atmospheric Administration, Review of the Ecological Effects of Dredging in the Cultivation and Harvest of Molluscan Shellfish, <http://www.nefsc.noaa.gov/publications/tm/tm220/>, (last visited January 12, 2016).

<sup>4</sup> [Http://www.freshfromflorida.com/Divisions-Offices/Aquaculture/Business-Services/Aquafarm-Proram/Aquaculture-Leasing](http://www.freshfromflorida.com/Divisions-Offices/Aquaculture/Business-Services/Aquafarm-Proram/Aquaculture-Leasing), (last visited January 25, 2016).

<sup>5</sup> Analysis by the Department of Agriculture and Consumer Services for SB 1318, p. 1 (January 19, 2016).

<sup>6</sup> Ibid.

<sup>7</sup> Section 379.361, F.S.

<sup>8</sup> [Rules 68B-17.009](#) and [68B-27.018\(1\), F.A.C.](#)

authority of an Aquaculture Certificate of Registration issued by the department.<sup>9</sup> Individuals may not commercially harvest bay scallops or freshwater mussels.<sup>10</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 597.010, F.S., to:

- Repeal an outdated provision relating to duties of the department and the Fish and Wildlife Conservation Commission relating to shellfish development. It replaces the provision with language requiring interagency coordination to protect shellfish beds, grounds, and reefs.
- Define “dredge or mechanical harvesting device” to mean a dredge, scrape, rake, drag, or other device, that is towed by a vessel or self-propelled and that is used to harvest shellfish. The bill specifically excludes handheld or hand drawn hydraulically or mechanically operated devices used to harvest cultured clams from leased sovereign submerged lands.
- Define the term “shellfish” to mean oysters, clams, mussels, and scallops.
- Authorize the harvesting of shellfish from a sovereign submerged land lease pursuant to ch. 253, F.S.
- Authorize the Board of Trustees of the Internal Improvement Trust Fund to allow the use of a dredge or mechanical harvesting device as a special lease condition of a sovereign submerged land lease if:
  - The use of the dredge or mechanical harvesting device does not adversely impact the public health, safety, and welfare of adjacent natural resources.
  - The use of the dredge or mechanical harvesting device is an existing condition of a perpetual shellfish lease issued pursuant to former ch. 370, F.S.
  - Aquaculture best management practices have been adopted which:
    - Describe the approved size and specification of the dredge or mechanical harvesting device to be used.
    - Provide conditions for deploying and using an approved dredge or mechanical harvesting device.
    - Specify the requirements for monitoring potential impacts at, and adjacent to, the sovereign submerged land lease site by the leaseholder; limit the number of dredges or mechanical harvesting devices per lease.
    - Prohibit the use of dredge or mechanical harvesting devices on public shellfish beds.
    - Prohibit the possession of any dredges or mechanical devices on the waters of the state from 5 pm until sunrise.
    - Prohibit harvesting shellfish from natural reefs.
- Provide that violations of shellfish harvesting statutes, rules, or lease conditions will result in the revocation of all leases held by the violator and denial of any future use of sovereign submerged land.
- Repeal a provision relating to shellfish harvesting seasons.
- Delete a prohibition against harvesting oysters by means other than hand tongs in certain areas of Apalachicola Bay.

<sup>9</sup> FWC, *Shellfish*, available at: <http://myfwc.com/fishing/saltwater/commercial/shellfish/> (last visited January 26, 2016).

<sup>10</sup> [Rules 68B-18.004](#) and [68A-23.015](#), F.A.C.

- Remove the requirement that the harvester must notify the Fish and Wildlife Conservation Commission 48 hours in advance of any dredging or mechanical harvesting activity and that each vessel display its lease number in 12-inch high numbering.
- Remove a provision that authorizes harvesting oysters from natural or public or private leased or granted grounds by hand tongs or by hand, by scuba diving, free diving, leaning from vessels, or wading.
- Authorize, rather than require, the department to designate areas for the taking of oysters and clams to be planted on public areas.
- Specify that the amount of oysters, clams, and mussels to be obtained for relaying or transplanting shall be established by the Fish and Wildlife Conservation Commission rather than the department.
- Remove provisions relating to dredging of dead shells and oyster culture.

**Section 2** provides that this act shall take effect July 1, 2016.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The ability to use dredges or other mechanical devices could have a positive fiscal impact on individuals or companies who traditionally hire employees to harvest shellfish by hand.

C. Government Sector Impact:

None.

#### **VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 597.010 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**Cs by Agriculture on February 1, 2016:**

The committee substitute:

- Repeals an outdated provision regarding shellfish development and replace it with language regarding interagency coordination to protect shellfish beds, grounds, and reefs.
- Defines “dredge or mechanical harvesting device.”
- Specifies that best management practices must be used to dredge or mechanically harvest shellfish.
- Authorizes the use of only one dredge or mechanical harvesting device per lease to be possessed or operated at any one time.
- Prohibits the use of dredge or mechanical harvesting devices on public shellfish beds.
- Prohibits the possession of any dredges or mechanical devices on the waters of the state from 5 pm until sunrise.
- Prohibits harvesting shellfish from natural reefs.
- Removes the requirement that a harvester must notify the Fish and Wildlife Conservation Commission 48 hours in advance of any dredging or mechanical harvesting activity and that each vessel display its lease number in 12-inch high numbering.
- Provides that violations of shellfish harvesting statutes, rules, or lease conditions will result in the revocation of all leases held by the violator and denial of any future use of sovereign submerged land.
- Authorizes, rather than requires the department to designate areas for the taking of oysters and clams to be planted on public areas.
- Removes provisions relating to dredging of dead shells and oyster culture.

**B. Amendments:**

None.