

**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 Fiscal Policy

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BILL: CS/CS/SB 1318

INTRODUCER: Environmental Preservation and Conservation Committee; Agriculture Committee; and Senator Dean

SUBJECT: Shellfish Harvesting

DATE: February 16, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhavein</u>	<u>Becker</u>	<u>AG</u>	<u>Fav/CS</u>
2.	<u>Hinton</u>	<u>Rogers</u>	<u>EP</u>	<u>Fav/CS</u>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Favorable</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1318 amends s. 597.010, F.S., concerning shellfish harvesting, by:

- Authorizing the harvesting of shellfish from a sovereign submerged land lease;
- Authorizing individuals to use one dredge or mechanical harvesting device per lease at any one time;
- Defining the terms “shellfish” and “dredge or mechanical harvesting device”;
- Authorizing the Board of Trustees of the Internal Improvement Trust Fund to permit the harvest of shellfish using a dredge or mechanical harvesting device in a submerged lands lease under certain conditions;
- Prohibiting the use of dredge or mechanical harvesting devices on public shellfish beds;
- Providing that violations of shellfish harvesting statutes, rules, or lease conditions will result in revocation of the violator’s lease and denial of any future application to use sovereign submerged lands;
- Shifting the responsibility for setting the amount of oysters, clams, and mussels to be obtained for relaying or transplanting from the Department of Agriculture and Consumer Services (DACS) to the Fish and Wildlife Conservation Commission (FWC); and
- The bill repeals duplicative provisions that are contained in s. 379.2525, F.S., and the requirement for the FWC to set the noncultured shellfish harvesting seasons in Apalachicola Bay by rule and the related reporting requirements.

The bill does not have a fiscal impact on state government.

The bill is effective July 1, 2016.

## II. Present Situation:

### History of Shellfishing

Shellfish, such as oysters, scallops, clams, and mussels occur throughout Florida waters. Evidence suggests that humans harvested shellfish as far back as 150,000 years ago. Native Americans hand collected clams and oysters in shallow coastal waters and later fished with rakes and tongs from canoes and skiffs to access deeper waters.<sup>1</sup>

### Shellfish Aquaculture

Over the past century, aquacultural cultivation of shellfish has increasingly replaced direct harvest of natural stocks. Shellfish aquaculture often involves “planting” empty shells on the beds of submerged lands and “seeding” the shells with larva. The shellfish grow to maturity and are then harvested.<sup>2</sup>

Currently, there are two main approaches to commercial aquaculture cultivation for production in the United States. The first is spatially-intensive, where shallow-water operations cultivate hatchery-reared seed by using bags, cages, or nets to exclude predators. The other more spatially-extensive operation relies on natural set or hatchery seed that are planted on leased beds, which are eventually dredge harvested.<sup>3</sup>

### Methods of Harvest

“Contemporary on-bottom shellfish cultivation uses rake-like dredges to harvest planted shellfish seed or to collect naturally recruited stocks from leased beds.”<sup>4</sup> 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 and a collection bag behind the boat or using a suction dredge that lifts the oysters off the beds. Clams may be collected by a hydraulic dredge which loosens the clams with high pressure jets and collects the clams in chain mesh bags. Hydraulic escalator dredges are also used to collect clams by dislodging the clams with water pressure. Harvesters collect scallops with a steel-framed structure with a cutting bar on the leading edge that rides above the surface of the substrate, kicking up sea scallops and collecting them into an attached bag.<sup>5</sup>

### National Pollutant Discharge Elimination System Permit

Aquaculture is subject to industrial waste water rules under the Clean Water Act. The Clean Water Act prohibits the discharge of pollutants through a point source into a water of the United

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<sup>1</sup> National Oceanic and Atmospheric Administration (NOAA), *Technical Memorandum NMFS-NE-220, Review of the Ecological Effects of Dredging in the Cultivation and Harvest of Molluscan Shellfish*, (Dec. 23, 2011) available at <http://www.nefsc.noaa.gov/publications/tm/tm220/> (last visited Feb. 12, 2016).

<sup>2</sup> University of Florida Institute of Food and Agricultural Sciences, Online Resource Guide for Florida Shellfish Aquaculture, *About the Industry*, (last updated Feb. 2, 2016) available at <http://shellfish.ifas.ufl.edu/industry/> (last visited Feb. 12, 2016).

<sup>3</sup> *Supra* note 1.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

States unless the person has a National Pollutant Discharge Elimination System (NPDES) permit.<sup>6</sup> A NPDES permit is required for an aquaculture facility that produces more than 100,000 pounds of live weight per year and discharge 30 or more days from a farm, excluding rainfall events. Otherwise, following aquaculture best management practices (BMPs) is required.<sup>7</sup>

### **Requirements for Engaging in Aquaculture on Sovereign Submerged Lands**

Sovereign submerged lands are lands in Florida that include tidal lands, islands, sand bars, shallow banks, and lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally-influenced waters.<sup>8</sup>

To conduct aquaculture activities on sovereign submerged lands in Florida, an individual must obtain a lease from the Board of Trustees of the Internal Improvement Trust Fund (BOT).<sup>9</sup> The Department of Agriculture and Consumer Services (DACS) accepts and reviews applications and provides recommendations to the BOT. The BOT may approve, approve with modifications, or deny the application.<sup>10</sup> Individuals are not allowed to remove oysters from natural or artificial reefs by dredge or other mechanical devices.<sup>11</sup>

Certified aquaculture activities that apply appropriate BMPs adopted by the DACS are exempt from obtaining an environmental resource permit from the Department of Environmental Protection or a water management district.<sup>12</sup> The following are examples of BMPs for aquaculture:

- Land-based facilities must be designed and operated in a manner which minimizes adverse impacts to the receiving waters, adjacent wetlands, and uplands.
- Sediment removal and disposal must be conducted in a manner that eliminates or minimizes adverse impacts to the receiving waters.
- Prior to commencement of the aquaculture activities on the approved grow-out site, the grow-out boundaries are posted to delineate the corners and perimeters, per the lease agreement.
- No vessel of any description shall be moored on or adjacent to the grow-out premises for a period exceeding 24 hours, regardless of whether the vessel is periodically moved.
- Culture materials placed on the grow-out area must be a suitable substrate for attachment of oyster larvae.

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<sup>6</sup> EPA, *National Pollutant Discharge Elimination System (NPDES): NPDES Frequent Questions*, available at <http://www.epa.gov/npdes/npdes-frequent-questions#pane-1> (last visited Feb. 12, 2016).

<sup>7</sup> Florida Department of Agriculture and Consumer Services, Division of Aquaculture, *Aquaculture Best Management Practices Manual September 2015*, pg. 5, available at [https://www.flrules.org/gateway/readRefFile.asp?refId=5760&filename=BMP%20RULE%20AND%20MANUAL\\_FINAL.docx](https://www.flrules.org/gateway/readRefFile.asp?refId=5760&filename=BMP%20RULE%20AND%20MANUAL_FINAL.docx) (last visited Feb. 12, 2016).

<sup>8</sup> Rule 18-21.003(61), F.A.C.; s. 253.03(1), F.S.

<sup>9</sup> Sections 253.68 and 597.010, F.S.

<sup>10</sup> Rule 18-21.021(1)(q), F.A.C.

<sup>11</sup> Except in Apalachicola Bay on private grounds leased or granted by the state prior to July 1, 1989. Section 597.010(18)(a), F.S.

<sup>12</sup> Section 373.406(8), F.S.

- Shellfish farmers are permitted to sell only to a certified shellfish processor or must become a certified shellfish processor to sell shellfish for human consumption to a retailer or the consumer.<sup>13</sup>

An individual engaging in aquaculture must obtain an aquaculture certificate of registration from the DACS.<sup>14</sup> This certification exempts such an individual from the requirement to purchase or possess a Florida Fish and Wildlife Conservation Commission (FWC) commercial freshwater fishing/dealers license or saltwater products license or shellfish endorsement in order to possess, transport, or sell marine aquaculture products.<sup>15</sup> Further, a commercial harvester who is harvesting pursuant to a valid saltwater products license and a valid Apalachicola Bay oyster harvesting license is exempt from the requirement to possess a shellfish endorsement from the FWC. Otherwise, a commercial harvester may not harvest or possess oysters for commercial purposes in or on state waters or sell oysters unless the commercial harvester is harvesting pursuant to a valid saltwater products license with a shellfish endorsement.<sup>16</sup>

Currently, all submerged land aquaculture leases issued pursuant to ch. 253, F.S., prohibit the use of dredges or mechanical harvesting devices. However, some shellfish leases issued pursuant to ch. 379, F.S., allow the use of dredges or mechanical harvesting devices but only if the lease document specifically allows such harvesting devices.<sup>17</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 597.010, F.S., related to shellfish harvesting and regulation.

The bill defines:

- “Shellfish” as oysters, clams, mussels, and scallops; and
- “Dredge or mechanical harvesting device” as 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 term does not include handheld or hand drawn hydraulically or mechanically operated devices used to harvest cultured clams from leased sovereign submerged lands.

The bill authorizes harvesting of shellfish from a sovereign submerged land lease pursuant to ch. 253, F.S.

The bill allows the BOT to authorize 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; and
- Aquaculture BMPs are adopted pursuant to ch. 120, F.S., which:

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<sup>13</sup> *Supra* note 7 at 45-51

<sup>14</sup> Section 597.004(1), F.S.

<sup>15</sup> Florida Fish and Wildlife Conservation Commission, Aquaculture Certificate, *available at* <http://myfwc.com/license/aquaculture-certificate/> (last visited Feb. 12, 2016). *See also* Rule 68B-27.018, F.A.C.

<sup>16</sup> Rule 68B-27.018, F.A.C.

<sup>17</sup> The Department of Agriculture and Consumer Services, *Agency Analysis of SB 1318*, (Jan. 19, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).

- Describe the approved size and specifications of the dredge or mechanical harvesting device to be used;
- Provide conditions for deploying and using an approved dredge or mechanical harvesting device; and
- Specify requirements for monitoring potential impacts at, and adjacent to, the sovereign submerged land lease site by the leaseholder.

The bill also authorizes the use of the dredge or mechanical harvesting device for harvesting shellfish from a sovereign submerged land lease if it was previously authorized as an existing condition of a perpetual shellfish lease issued pursuant to former ch. 370, F.S.

Only one dredge or mechanical harvesting device per lease may be possessed or operated at any time at a lease site. The bill prohibits:

- A dredge or mechanical harvesting device from being used for the taking of shellfish from public shellfish beds in state waters;
- A dredge or mechanical harvesting device from being possessed on state waters from 5 p.m. to sunrise; and
- The harvesting of shellfish from natural reefs.

The bill specifies that a violation of any of the above described provisions is a violation of the sovereign submerged land lease agreement and will result in the revocation of all leases held by the violator and denial of any future use of sovereign submerged land.

The bill moves and revises provisions related to the responsibilities of the DACS and the FWC with respect to shellfish development. The bill removes general responsibilities related to control of pollution around grounds, reefs, or beds; to improve or enlarge reefs and beds; to protect products produced on leased or granted reefs and beds; and to provide recommendations to the Legislature as needed. The DACS and the FWC are charged with the overall protection of grounds, reefs, or beds, which would include the general responsibilities that are removed.

The bill provides that the DACS *may* designate areas for taking of oysters and clams to be plated on public areas. The bill moves the responsibility of establishing the amount of oysters, clams, and mussels to be obtained for relaying or transplanting from the DACS to the FWC.

The bill repeals duplicative provisions that are contained in s. 379.2525, F.S., and the requirement for the FWC to set the noncultured shellfish harvesting seasons in Apalachicola Bay by rule and the related reporting requirements.

**Section 2** provides the bill is effective 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 bill may have a positive impact on individuals or companies who engage in aquaculture by allowing the harvest of shellfish with a dredge or other mechanical device.

**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/CS by Environmental Preservation and Conservation on February 9, 2016:**

The committee substitute:

- Amends the definition of shellfish by removing the word “aquaculture;”
- Removes a condition required for the BOT to authorize the use of a dredge or a mechanical harvesting device; and
- Provides that the use of a dredge or mechanical harvesting device for the harvesting of shellfish from a sovereign submerged land lease is authorized if such use was previously authorized as an existing condition of a perpetual shellfish lease issued pursuant to ch. 370, F.S.

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

The committee substitute:

- Repeals an outdated provision regarding shellfish development and replaces 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 p.m. until sunrise.
- Prohibits harvesting shellfish from natural reefs.
- Removes the requirement that a harvester must notify the FWC 48 hours in advance of any dredging or mechanical harvesting activity and that each vessel display its lease number in 12-inch high numbers.
- 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.