

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 489 Shellfish Harvesting

**SPONSOR(S):** State Affairs Committee, Agriculture and Natural Resources Subcommittee, Drake, and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1318

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N, As CS	Gregory	Harrington
2) Agriculture & Natural Resources Appropriations Subcommittee	11 Y, 0 N	Lolley	Massengale
3) State Affairs Committee	17 Y, 0 N, As CS	Gregory	Camechis

### SUMMARY ANALYSIS

An individual who wishes to conduct aquaculture activities on sovereign submerged lands, such as shellfish harvesting, must obtain a lease from the Board of Trustees of the Internal Improvement Trust (Board of Trustees). Current law prohibits the removal of oysters from natural or artificial reefs by dredge or other mechanical device unless specifically authorized by the Board of Trustees in a lease issued before July 1, 1989.

This bill makes changes to the shellfish harvesting provisions by:

- Expanding the definition of shellfish to include scallops, mussels, and clams;
- Defining “dredge or mechanical harvesting device;”
- Removing the prohibition on mechanical dredging of shellfish from Apalachicola Bay unless specifically authorized by the Board of Trustees in a lease issued before July 1, 1989;
- Authorizing the Board of Trustees to permit the harvest of shellfish using a dredge or mechanical harvesting device in a submerged lands lease with certain conditions;
- Prohibiting the use of dredge or mechanical harvesting devices on public shellfish beds;
- Authorizing individuals to use only one dredge or mechanical harvesting devices per lease at any one time;
- Providing that violations of shellfish harvesting statutes, rules, or lease conditions will result in the revocation of the violator’s lease and denial of any future application to use sovereign submerged lands;
- Repealing a provision relating to shellfish harvesting seasons;
- Removing the requirement that the harvester notify the Florida Fish and Wildlife Conservation Commission (FWC) 48 hours in advance of any dredging or mechanical harvesting activity and that each vessel display its lease number in 12-inch high numbering;
- Removing a provision that authorized 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;
- Authorizing, rather than requiring, the Department of Agriculture and Consumer Services (DACS) to designate areas for the taking of oysters and clams that are planted on leases, grants, and public areas;
- Requiring the FWC to establish the amount of oysters, clams, and mussels that may be obtained for relaying or transplanting; and
- Removing the prohibition on dredging of dead shell deposits.

The bill appears to have no fiscal impact on state and local governments, and an indeterminate fiscal impact on the private sector.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

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>

Over the past century, aquacultural cultivation of shellfish has replaced direct harvest of natural stocks.<sup>2</sup> Shellfish aquaculture often involves “planting” empty shells on the beds of submerged lands and “seeding” the shells with larva.<sup>3</sup> The shellfish grow to maturity and are then harvested. The shellfish provide environmentally-beneficial ecosystem services such as water filtration, nitrogen removal, and carbon storage.<sup>4</sup>

Contemporary on-bottom shellfish cultivation uses rake-like dredges 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 behind the boat a steel frame with bladed teeth and a collection bag or using a suction dredge. Clams may be collected by a hydraulic dredge that 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 that rides above the surface of the submerged lands, kicking up sea scallops and collecting them into an attached bag.<sup>5</sup>

In Florida, an individual who wishes to conduct aquaculture activities on sovereign submerged lands must obtain a lease from the Board of Trustees of the Internal Improvement Trust (Board of Trustees).<sup>6</sup> The Board of Trustees delegated the power to issue these leases to the Department of Agriculture and Consumer Services (DACS).<sup>7</sup> Individuals may not remove oysters from natural or artificial reefs by dredge or other mechanical device unless specifically authorized by Board of Trustees in a lease issued before July 1, 1989.<sup>8</sup>

Certified aquaculture activities that apply appropriate best management practices (BMPs) adopted by DACS are exempt from obtaining an environmental resource permit (ERP) from the Department of Environmental Protection (DEP) or water management districts (WMDs).<sup>9</sup> The following are examples of the BMP requirements:

- Land-based facilities must be designed and operated in a manner which minimizes adverse impacts to the receiving waters, adjacent wetlands, and uplands;
- Pumping, intake and discharge systems must be designed in a manner which does not create currents which increase sedimentation, scouring, turbidity, or in any way damage the surrounding habitat;
- Sediment removal and disposal must be conducted in a manner that eliminates or minimizes adverse impacts to the receiving waters;

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<sup>1</sup> National Oceanic and Atmospheric Administration (NOAA), Review of the Ecological Effects of Dredging in the Cultivation and Harvest of Molluscan Shellfish, available at: <http://www.nefsc.noaa.gov/publications/tm/tm220/> (last visited January 7, 2016).

<sup>2</sup> Id.

<sup>3</sup> University of Florida Institute of Food and Agricultural Sciences, *About the Industry*, available at: <http://shellfish.ifas.ufl.edu/industry/> (last visited January 8, 2016).

<sup>4</sup> University of Florida Institute of Food and Agricultural Sciences, *Environmental Benefits*, available at: <http://shellfish.ifas.ufl.edu/environmental-benefits/>, (last visited January 8, 2016).

<sup>5</sup> NOAA, *supra* note 1.

<sup>6</sup> Sections 253.67 through 253.75 and 597.010, F.S.; Rule 18-21.021, F.A.C.

<sup>7</sup> Section 253.002(1), F.S.

<sup>8</sup> Sections 379.2525(2) and 597.010(18), F.S.

<sup>9</sup> Section 373.406(8), F.S.

- Shell stock must not be used to fill wetlands or be placed on submerged lands. Shell stock may be disposed of in appropriate upland areas, landfills, or designated shell recycling areas;
- Hatchery operators must maintain records of all brood stock purchases and seed sales for a period at least two years. These records must be available for inspection by DACS upon request;
- A Florida based clam hatchery selling seed must be certified as a clam hatchery facility. Clam seed sold or transferred from these certified facilities must be accompanied with an aquaculture certification number attached to all product containers and associated sales documentation;
- The activity must follow all the terms of the submerged lands lease;
- The lease area must be marked to sufficiently warn mariners passing in the vicinity of the lease and the potential hazards to navigation;
- Culture materials placed on the grow-out area must be a suitable substrate for attachment of oyster larvae;
- Bags, cover nets, or trays used in the culture operation must be removed from the water during all mechanical cleaning, maintenance and repair operations. During harvest, culture bags and cover nets must be rinsed and cleaned over the grow-out area to allow sediments to remain in the lease area.<sup>10</sup>

While exempted from ERP requirements, individuals engaged in aquaculture may need to obtain a dredge and fill permit from the U.S. Army Corps of Engineers and a National Pollution Discharge Elimination System (NPDES) permit from the U.S. Environmental Protection Agency if certain thresholds are met.<sup>11</sup>

An individual who engages in aquaculture must be certified by DACS.<sup>12</sup> Further, individuals who commercially harvest, possess, or sell shellfish must obtain a saltwater products license<sup>13</sup> and a shellfish endorsement<sup>14</sup> or Apalachicola Bay oyster harvesting license from the Fish and Wildlife Conservation Commission (FWC), unless they are harvesting from an aquaculture lease under the authority of an aquaculture certificate of registration issued by DACS.<sup>15</sup> Individuals may not commercially harvest bay scallops or freshwater mussels.<sup>16</sup>

### Effect of the Proposed Changes

This bill makes changes to the shellfish harvesting provisions by:

- Repealing an outdated provision relating to DACS' and FWC's duty relating to shellfish development and replacing it with language regarding interagency coordination to protect shellfish beds, grounds, and reefs;
- Removing the requirement for DACS to control the pollution of waters over or surrounding shellfish beds, grounds, and reefs. This function is performed by DEP and the WMDs;
- Defining "dredge or mechanical harvesting device" to mean any dredge, scrape, rake, drag, or other device, being towed by a vessel or self-propelled, that is used for the purpose of harvesting shellfish. The bill specifically excludes handheld or hand drawn hydraulically or mechanically operated devices for harvesting cultured clams from the requirements of the bill;
- Expanding the definition of shellfish that may be harvested to include scallops, mussels, and clams;

<sup>10</sup> DACS, *Aquaculture Best Management Practices Manual*, p. 45 – 51, available at: [http://www.freshfromflorida.com/content/download/64046/1520658/BMP\\_RULE\\_AND\\_MANUAL\\_FINAL.pdf](http://www.freshfromflorida.com/content/download/64046/1520658/BMP_RULE_AND_MANUAL_FINAL.pdf) (last visited January 15, 2016).

<sup>11</sup> DACS, *Aquaculture Best Management Practices Manual*, September 2015, p. 8-9, available at: [http://www.freshfromflorida.com/content/download/64046/1520658/BMP\\_RULE\\_AND\\_MANUAL\\_FINAL.pdf](http://www.freshfromflorida.com/content/download/64046/1520658/BMP_RULE_AND_MANUAL_FINAL.pdf) (last visited January 7, 2016).

<sup>12</sup> Section 597.004, F.S.

<sup>13</sup> Section 379.361, F.S.

<sup>14</sup> Rules 68B-17.009 and 68B-27.018(1), F.A.C.

<sup>15</sup> Rule 68B-27.018(1)(a), F.A.C.; FWC, *Shellfish*, available at: <http://myfwc.com/fishing/saltwater/commercial/shellfish/> (last visited January 8, 2016).

<sup>16</sup> Rules 68B-18.004 and 68A-23.015, F.A.C.

- Removing the prohibition on mechanical dredging of shellfish from Apalachicola Bay unless specifically authorized by the Board of Trustees in a lease issued before July 1, 1989;
- Authorizing the Board of Trustees to permit the harvest of shellfish using a dredge or other mechanical devices in a submerged land lease when:
  - The activity does not adversely affect public health, safety, and welfare of adjacent natural resources; and
  - Aquaculture best management practices have been adopted that describe the approved size and specifications of the dredge or mechanical harvesting device to be used; provide conditions for deploying and using the approved dredge or mechanical harvesting device; and specifying the requirements of the lease holder to monitor for potential impacts at and adjacent to the sovereign submerged lands lease site;
- Grandfathering in the use of dredges or other mechanical devices if it was previously authorized as an existing condition of a perpetual shellfish lease issued by FWC under the former chapter 370, F.S.;
- Authorizing individuals to use only one dredge or mechanical harvesting devices per lease at any one time;
- Prohibiting the use of dredge or mechanical harvesting devices on public shellfish beds;
- Prohibiting the possession of any dredges or other mechanical devices on the waters of the state from 5pm until sunrise;
- Providing that violations of shellfish harvesting statutes, rules, or lease conditions will result in the revocation of the violator's lease and denial of any future application to use sovereign submerged lands;
- Specifying harvesting shellfish from natural reefs is not authorized by the section of law regulating harvest from sovereign submerged lands;
- Repealing a provision requiring FWC to establish shellfish harvesting seasons in Apalachicola Bay. While FWC adopted oyster harvesting seasons in rule 68B-27.019, F.A.C., it does not require legislative authority to adopt harvesting seasons because such authority exists in article IV, section 9 of the Florida Constitution;
- Removing the requirement that the harvester must notify FWC 48 hours in advance of any dredging or mechanical harvesting activity and that each vessel display its lease number in 12-inch high numbering. According to DACS, these are requirements of the now defunct Marine Fisheries Commission that were placed in statutes approximately 35-40 years ago;<sup>17</sup>
- Removing a provision that authorized 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;
- Authorizing, rather than requiring, DACS to designate areas for the taking of oysters and clams that are planted on leases, grants, and public areas;
- Requiring the FWC to establish the amount of oysters, clams, and mussels that may be obtained for relaying or transplanting; and
- Removing the prohibition on dredging of dead shell deposits.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 597.010, F.S., relating to shellfish regulations and leases.

Section 2. Provides an effective date of July 1, 2016.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

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<sup>17</sup> DACS, Agency Analysis of 2016 House Bill 497, p. 2 (November 16, 2015).  
**STORAGE NAME:** h0489e.SAC  
**DATE:** 2/22/2016

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on individuals or companies who engage in aquaculture by authorizing them to harvest shellfish with dredges or other mechanical devices. As a result, the bill may have a negative fiscal impact on individuals who are employed to harvest shellfish by hand.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DACS, FWC, and the Board of Trustees appear to have sufficient rulemaking authority to conform their rules to the changes made in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Shellfish Definition

The bill may need to be amended to clarify that bay scallops and freshwater mussels may not be commercially harvested to conform to FWC Rules 68B-18.004 and 68A-23.015, F.A.C., which provide that bay scallops and freshwater mussels may not be commercially harvested. The Legislature may not enact laws that are inconsistent with FWC regulations that are established pursuant to FWC's constitutional authority in article IV, section 9 of the Florida Constitution.<sup>18</sup>

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 20, 2016, the Agriculture and Natural Resources Subcommittee adopted a strike-all amendment and reported the bill favorably with committee substitute. The amendment:

- Removed an outdated provision regarding shellfish development and replaced it with language regarding interagency coordination to protect shellfish beds, grounds, and reefs;
- Defined "dredge or mechanical harvesting device;"

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<sup>18</sup> Section 9, Art. IV, Fla. Const.  
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- Removed the prohibition on dredging or mechanically harvesting shellfish beds in Apalachicola Bay without a lease issued before 1989;
- Specified what protections must be in place in the best management practices for dredging or mechanically harvesting shellfish;
- Prohibited the use of dredge or mechanical harvesting devices on public shellfish beds;
- Authorized the use of only one dredge or mechanical harvesting devices per lease area at any one time;
- Removed the requirement that the harvester notify FWC 48 hours in advance of any dredging or mechanical harvesting activity and that each vessel display its lease number in 12 inch high numbering;
- Provided that violations of shellfish harvesting statutes, rules, or lease conditions will result in the revocation of the violator's lease and denial of any future application to use sovereign submerged lands;
- Authorized, rather than required, DACS to designate areas for the taking of oysters and clams that are planted on leases, grants, and public areas; and
- Removed the prohibition on dredging of dead shell deposits.

On February 18, 2016, the State Affairs Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Removed the requirement for DACS to control the pollution of waters over or surrounding shellfish beds, grounds, and reefs. This function is performed by DEP and the WMDs;
- Removed the term "aquaculture" from the definition of shellfish;
- Removed the requirement that shellfish leases may only be granted to individuals who have a perpetual shellfish lease from FWC;
- Grandfathered in the use of dredges or other mechanical devices if it was previously authorized as an existing condition of a perpetual shellfish lease issued by FWC; and
- Required FWC to establish the amount of oysters, clams, and mussels that may be obtained for relaying or transplanting.

This analysis is drawn to the committee substitute reported favorably by the State Affairs Committee.