

By Representative Sembler

1 A bill to be entitled
2 An act relating to saltwater fisheries;
3 amending s. 370.142, F.S.; revising language
4 with respect to the surcharge for the transfer
5 of trap certificates for the taking of spiny
6 lobsters; prohibiting the leasing of lobster
7 trap certificates; revising language with
8 respect to penalties relating to traps;
9 providing an effective date.

10

11 Be It Enacted by the Legislature of the State of Florida:

12

13 Section 1. Paragraphs (a) and (c) of subsection (2) of
14 section 370.142, Florida Statutes, are amended to read:

15 370.142 Spiny lobster trap certificate program.--

16 (2) TRANSFERABLE TRAP CERTIFICATES; TRAP TAGS; FEES;
17 PENALTIES.--The Department of Environmental Protection shall
18 establish a trap certificate program for the spiny lobster
19 fishery of this state and shall be responsible for its
20 administration and enforcement as follows:

21 (a) Transferable trap certificates.--Each holder of a
22 saltwater products license who uses traps for taking or
23 attempting to take spiny lobsters shall be required to have a
24 certificate on record for each trap possessed or used
25 therefor, except as otherwise provided in this section.

26 1. The department shall initially allot such
27 certificates to each licenseholder with a current crawfish
28 trap number who uses traps. The number of such certificates
29 allotted to each such licenseholder shall be based on the
30 trap/catch coefficient established pursuant to trip ticket
31 records generated under the provisions of s. 370.06(2)(a) over

1 a 3-year base period ending June 30, 1991. The trap/catch
2 coefficient shall be calculated by dividing the sum of the
3 highest reported single license-year landings up to a maximum
4 of 30,000 pounds for each such licenseholder during the base
5 period by 700,000. Each such licenseholder shall then be
6 allotted the number of certificates derived by dividing his or
7 her highest reported single license-year landings up to a
8 maximum of 30,000 pounds during the base period by the
9 trap/catch coefficient. Nevertheless, no licenseholder with a
10 current crawfish trap number shall be allotted fewer than 10
11 certificates. However, certificates may only be issued to
12 individuals; therefore, all licenseholders other than
13 individual licenseholders shall designate the individual or
14 individuals to whom their certificates will be allotted and
15 the number thereof to each, if more than one. After initial
16 issuance, trap certificates are transferable on a market basis
17 and may be transferred from one licenseholder to another for a
18 fair market value agreed upon between the transferor and
19 transferee. Each such transfer shall, within 72 hours thereof,
20 be recorded on a notarized form provided for that purpose by
21 the department and hand delivered or sent by certified mail,
22 return receipt requested, to the department for recordkeeping
23 purposes. In addition, in order to cover the added
24 administrative costs of the program and to recover an
25 equitable natural resource rent for the people of the state, a
26 transfer fee of \$2 per certificate transferred shall be
27 assessed against the purchasing licenseholder and sent by
28 money order or cashier's check with the certificate transfer
29 form. Also, in addition to the transfer fee, a surcharge of \$5
30 per certificate transferred or 25 percent of the actual fair
31 market value, whichever is greater, given to the transferor

1 shall be assessed the first time a certificate is transferred
2 outside the original transferor's immediate family. No
3 transfer of a certificate shall be effective until the
4 department receives the notarized transfer form and the
5 transfer fee, including any surcharge, is paid. The
6 department may establish by rule an amount of equitable rent
7 per trap certificate that shall be recovered as partial
8 compensation to the state for the enhanced access to its
9 natural resources. In determining whether to establish such a
10 rent and, if so, the amount thereof, the department shall
11 consider the amount of revenues annually generated by
12 certificate fees, transfer fees, surcharges, trap license
13 fees, and sales taxes, the demonstrated fair market value of
14 transferred certificates, and the continued economic viability
15 of the commercial lobster industry. The proceeds of equitable
16 rent recovered shall be deposited in the Marine Resources
17 Conservation Trust Fund and used by the department for
18 research, management, and protection of the spiny lobster
19 fishery and habitat.

20 2. No person, firm, corporation, or other business
21 entity may control, directly or indirectly, more than 1.5
22 percent of the total available certificates in any license
23 year.

24 3. The department shall maintain records of all
25 certificates and their transfers and shall annually provide
26 each licenseholder with a statement of certificates held.

27 4. The number of trap tags issued annually to each
28 licenseholder shall not exceed the number of certificates held
29 by the licenseholder at the time of issuance, and such tags
30 and a statement of certificates held shall be issued
31 simultaneously.

1 5. Beginning July 1, 1998, and applicable to the
2 1998-1999 lobster season and thereafter, it shall be unlawful
3 for any person to lease lobster trap certificates.

4 (c) Prohibitions; penalties.--

5 1. It is unlawful for a person to possess or use a
6 spiny lobster trap in or on state waters or adjacent federal
7 waters without having affixed thereto the trap tag required by
8 this section. It is unlawful for a person to possess or use
9 any other gear or device designed to attract and enclose or
10 otherwise aid in the taking of spiny lobster by trapping that
11 is not a trap as defined in rule 46-24.006(2), Florida
12 Administrative Code.

13 2. It is unlawful for a person to possess or use spiny
14 lobster trap tags without having the necessary number of
15 certificates on record as required by this section.

16 3. Unless otherwise provided in this section and in
17 addition to any other penalties provided in s. 370.021, a
18 commercial harvester, as defined by rule 46-24.002(1), Florida
19 Administrative Code, who violates the provisions of this
20 section, or the provisions relating to traps of chapter 46-24,
21 Florida Administrative Code, shall be punished as follows:

22 a. If the first violation is for violation of
23 subparagraph 1. or subparagraph 2., the department shall
24 assess an additional ~~a~~ civil penalty of up to \$1,000 and the
25 crawfish trap number issued pursuant to s. 370.14(2) or (7)
26 may be suspended for the remainder of the current license
27 year. For all other first violations, the department shall
28 assess an additional ~~a~~ civil penalty of up to \$500.

29 b. For a second violation of subparagraph 1. or
30 subparagraph 2. which occurs within 24 months of any previous
31 such violation, the department shall assess an additional ~~a~~

1 civil penalty of up to \$2,000 and the crawfish trap number
2 issued pursuant to s. 370.14(2) or (7) may be suspended for
3 the remainder of the current license year.

4 c. For a third or subsequent violation of subparagraph
5 1. or subparagraph 2. which occurs within 36 months of any
6 previous two such violations, the department shall assess an
7 additional ~~a~~ civil penalty of up to \$5,000 and may suspend the
8 crawfish trap number issued pursuant to s. 370.14(2) or (7)
9 for a period of up to 24 months or may revoke the crawfish
10 trap number and, if revoking the crawfish trap number, may
11 also proceed against the licenseholder's saltwater products
12 license in accordance with the provisions of s. 370.021(2)(e).

13 d. Any person assessed an additional ~~a~~ civil penalty
14 pursuant to this section shall within 30 calendar days after
15 notification:

16 (I) Pay the civil penalty to the department; or
17 (II) Request an administrative hearing pursuant to the
18 provisions of s. 120.60.

19 e. The department shall suspend the crawfish trap
20 number issued pursuant to s. 370.14(2) or (7) for any person
21 failing to comply with the provisions of sub-subparagraph d.

22 4.a. It is unlawful for any person to make, alter,
23 forge, counterfeit, or reproduce a spiny lobster trap tag or
24 certificate.

25 b. It is unlawful for any person to knowingly have in
26 his or her possession a forged, counterfeit, or imitation
27 spiny lobster trap tag or certificate.

28 c. It is unlawful for any person to barter, trade,
29 sell, supply, agree to supply, aid in supplying, or give away
30 a spiny lobster trap tag or certificate or to conspire to
31 barter, trade, sell, supply, aid in supplying, or give away a

1 spiny lobster trap tag or certificate unless such action is
2 duly authorized by the department as provided in this chapter
3 or in the rules of the department.

4 5.a. Any person who violates the provisions of
5 subparagraph 4., or any person who engages in the commercial
6 harvest, trapping, or possession of spiny lobster without a
7 crawfish trap number as required by s. 370.14(2) or (7) or
8 during any period while such crawfish trap number is under
9 suspension or revocation, commits a felony of the third
10 degree, punishable as provided in s. 775.082, s. 775.083, or
11 s. 775.084.

12 b. In addition to any penalty imposed pursuant to
13 sub-subparagraph a., the department shall levy a fine of up to
14 twice the amount of the appropriate surcharge to be paid on
15 the fair market value of the transferred certificates, as
16 provided in subparagraph (a)1., on any person who violates the
17 provisions of sub-subparagraph 4.c.

18 6. Any certificates for which the annual certificate
19 fee is not paid for a period of 3 years shall be considered
20 abandoned and shall revert to the department. During any
21 period of trap reduction, any certificates reverting to the
22 department shall become permanently unavailable and be
23 considered in that amount to be reduced during the next
24 license-year period. Otherwise, any certificates that revert
25 to the department are to be reallocated in such manner as
26 provided by the department.

27 7. The proceeds of all civil penalties collected
28 pursuant to subparagraph 3. and all fines collected pursuant
29 to sub-subparagraph 5.b. shall be deposited into the Marine
30 Resources Conservation Trust Fund.

31

