

STORAGE NAME: h1685.wrm

DATE: March 18, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
WATER & RESOURCE MANAGEMENT
ANALYSIS**

BILL #: HB 1685

RELATING TO: Regulation of Stone Crabs

SPONSOR(S): Representative Sorenson

COMPANION BILL(S): SB 2146 (S) by Senator Bronson

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) WATER & RESOURCE MANAGEMENT
 - (2) GENERAL GOVERNMENT APPROPRIATIONS
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

HB 1685 provides for limited entry into the stone crab fishery by creating a stone crab trap certificate program designed to stabilize the fishery by reducing the total number of traps. Current holders of saltwater products licenses with a restricted species endorsement and a stone crab endorsement who use or possess traps to take stone crabs will be required to have a trap certificate for each trap possessed or used. In addition, commercial stone crab harvesters are required to have a trap tag affixed for each trap with a certificate. The bill imposes certain fees for issuing the tags.

After the initial issuance, the trap certificates are transferable on a market basis. Certain transfer and surcharge fees are imposed by the state at the time of transfer. Upon the sale or transfer of the certificates, the Department of Environmental Protection will reduce the number of certificates issued by 10 percent for each sale or transfer outside of the immediate family of the original certificate owner, thereby creating a passive reduction in the number of stone crab traps.

The bill is effective upon becoming a law.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The commercial harvesting of stone crabs is regulated through rules of the Marine Fisheries Commission, and by statutory law created in chapter 370, Florida Statutes. Section 370.13, F.S., sets the season for the taking of stone crabs between May 15 and October 15 of each year, provides penalties for the molestation of traps and illegal use of gear in harvesting, and provides for the recreational harvesting of stone crabs. Persons taking stone crabs for non-commercial purposes are limited to 5 traps. Only persons holding a valid saltwater products license with a restricted species endorsement and a stone crab endorsement are authorized to harvest stone crabs in commercial quantities.

Rule 46-13.002, F.A.C. establishes the Marine Fisheries Commission's rules imposing restrictions on size, possession, and transport of stone crabs and stone crab claws. The rule authorizes the materials to be used in the construction of traps, provides for the size and makeup of the traps, and provides for commercial trap marking requirements. The rule also provides that a person commercially harvesting stone crabs must not only hold a valid saltwater products license, and, beginning in October, 1995, a restricted species endorsement, issued to a valid boat registration or in the name of an individual, but that each trap used must have a trap number permanently attached.

Data received from the Florida Marine Research Institute indicates that in the 1997-1998 season, 3,759 commercial harvesters with a saltwater products license also obtained a restricted species endorsement with a stone crab endorsement. For the 1998-99 season, the Office of Fisheries Management and Assistance Services indicates 4,442 commercial harvesters obtained a restricted species endorsement and a stone crab endorsement. There is no way of knowing how many of those harvesters are actually working in the fishery. Although the fee for the saltwater products license for residents is \$50, there is no charge for either a restricted species endorsement or a stone crab endorsement. Many commercial fishermen obtain the endorsements because they can, and not because they will use them to fish.

The 1997-98 commercial landings of stone crab claws totaled more than 6.4 million pounds. Although the actual number of commercial stone crab traps remains unknown, information from the saltwater products licenses issued, and from a physical count obtained through a grant program, indicates that around 1.3 million lawfully permitted traps are in the fishery.

The commercial stone crab fishery runs from the Big Bend region of the state and south along the Gulf of Mexico, through the Keys, and runs north along the Atlantic Ocean to Palm Beach County. DEP has stated that for the 1995-96 harvest, the stone crab fishery landed approximately \$21.5 million worth of product. The strongest regions for the fishery, both commercial and recreational, are in Broward, Dade, Monroe and Collier Counties, in both the Atlantic and the Gulf of Mexico. Information from the Florida Marine Research Institute shows a drastic drop in landings in the fishery for the 1998-99 year partially due to extreme weather conditions. Landing records for February of the 1997-1998 season showed 742,910 pounds of claws were landed. For the same period this year, 210,147 pounds of claws were landed.

B. EFFECT OF PROPOSED CHANGES:

HB 1685 would:

- o Provide a \$100 fee for a stone crab endorsement for the taking of stone crabs
- o Establish the Legislature's intent to develop a stone crab trap certificate program.
- o Establish a trap certificate program whose principal goal is to stabilize the fishery by reducing the total number of traps at the time of sale or transfer of ownership.
- o Provide that any trap being used to take stone crabs in state water or adjacent federal waters shall have an annual trap tag to be issued by the Department of Environmental Protection as well as a stone crab trap number.

- o Provide that the stone crab endorsement certificates are transferrable on a market basis and may be transferred for fair market value as agreed upon by the buyer and seller.
- o Provide penalties for violations of the stone crab trap certificate program.
- o Provide for the creation of three Stone Crab Trap Certificate Technical Advisory and Appeals Boards whose purpose is to consider and advise the department on disputes and other problems arising from the implementation of the stone crab trap certificate program.
- o Provide that the fees raised from the stone crab trap certificate program shall be deposited into the Marine Resources Conservation Trust Fund to be used for administration of the certificate program, research and monitoring of the stone crab fishery, and for enforcement and public education purposes.
- o Provide the Department of Environmental Protection with the authority to adopt rules to implement the provisions of the stone crab trap certificate program.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

- (1) any authority to make rules or adjudicate disputes?

Yes. The Department of Environmental Protection is given the authority to adopt rules to implement the provisions of the stone crab trap certificate program. Also, the Stone Crab Trap Certificate Technical Advisory and Appeals Boards created in the bill are required to adopt procedural rules that conform to the requirements of chapter 120, Florida Statutes.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. The Department of Environmental Protection is given the additional duty of implementing the stone crab trap certificate program, including additional enforcement responsibilities. Also, the individual holders of the stone crab trap certificates are required to purchase annual trap tags which must be affixed to each trap. Certificate holders also are required to submit paperwork to the Department of Environmental Protection each time certificate transfers take place outside of the immediate family of the original certificate owner.

New responsibilities are incurred by the Stone Crab Trap Certificate Technical Advisory and Appeals Boards who are required to consider and advise the Department of Environmental Protection on disputes and other problems arising from the implementation of the stone crab trap certificate program.

- (3) any entitlement to a government service or benefit?

Yes. The Stone Crab Trap Certificate Technical Advisory and Appeals Boards are authorized to recommend the issuance of additional certificates to certain persons such as persons adversely impacted by the implementation of the net ban, or persons adversely impacted by the limitation on the placement of stone crab traps in Citrus, Dixie, Levy, or Taylor counties, which was enacted by the Legislature in 1973.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

None.

- (2) what is the cost of such responsibility at the new level/agency?

None.

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

Yes. The bill authorizes:

- o A \$100 stone crab endorsement fee,
- o A \$2 transfer fee for each certificate transferred,
- o A \$2 or 25 percent (whichever is greater) surcharge for each certificate transferred,
- o An equitable rent fee per trap certificate to be decided by the Department of Environmental Protection,
- o A \$25 stone crab by-catch product endorsement fee,
- o A \$.50 per tag trap tag fee,
- o a \$.50 per certificate fee, and
- o Various financial penalties for violations of the provisions of the bill.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No. As discussed above, the bill implements several new fees and penalties.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No. The bill creates possible entitlements as discussed above.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes. The persons benefitting from this legislation pay the fees proposed by the bill.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No. The bill requires that commercial harvesters participating in the initial allocation of certificates must meet certain poundage requirements. The certificate allocation is based on the number of traps possessed during the 1996-97 or 1997-98 license year providing that landings reflect a catch of 2 pounds per trap. This bill provides that commercial harvesters who can't meet these requirements are initially forced out of the fishery (unless an appeal to one of the Advisory Boards is successful) and must buy their way back in through the sale of certificates.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. The bill creates new governmental interference in the stone crab fishery by creating a limited entry program implemented with trap reductions.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

The bill amends section 370.13, F.S, and creates section 370.1322, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 370.13, F.S., to provide that the fee for a stone crab endorsement on a saltwater products license for the taking of stone crabs will be \$100 to be used by the Department of Environmental Protection for administration, management, and research costs related to stone crabs. Provides that in accordance with the stone crab trap certificate program created in s. 370.1322, F.S., more than one endorsement for the taking of stone crabs may be displayed on one vessel, and more than one vessel may display the same endorsement.

Section 2: Creates s. 370.1322, F.S., the stone crab trap certificate program. Establishes as legislative intent the development of a stone crab trap certificate program with the principal goal of stabilizing the fishery by reducing the total number of traps in the water. Provides that under a passive trap reduction program, a reduction in traps will occur at the time of sale or transfer of traps.

Provides that the Department of Environmental Protection shall establish a trap certificate program with administrative and enforcement responsibilities as follows:

- o Each holder of a saltwater products license who uses or attempts to take stone crabs with traps shall be required to have a certificate on record for each trap possessed or used, except in certain circumstances.
- o The department will initially allot certificates to each saltwater products license holder with a current stone crab trap number who uses traps. Persons holding a stone crab endorsement on a saltwater products license for the 1998-1999 license year are eligible for a certificate.
- o Requires that eligible applicants must meet certain trip ticket requirements for stone crab landings during one of the five 1-year license periods between 1993 and 1998.
- o The number of certificates and trap tags issued shall be the greater of the number of traps listed on a saltwater products license application for either the license year of 1997-1998, or 1996-1997, provided that landings indicate a 2 pounds per trap catch.
- o Trap certificates may only be issued to individuals. All license holders other than individuals must designate the individual or individuals to whom certificates will be allotted, and the number thereof to each, if certificates will be allotted to more than one person.
- o Trap certificates will be transferable on a market basis only after the initial issuance by the department. The certificates may be transferred from one saltwater products license holder to another for an agreed upon fair market value price.
- o Upon the sale or transfer of certificates outside of the immediately family of the certificate holder, the department will reduce the number of certificates by 10 percent.
- o DEP is authorized to establish by rule an amount of equitable rent per trap as partial compensation to the state for enhanced access to a natural resource.
- o Within 72 hours of a transfer, each transfer must be recorded on a notarized form provided by the department. The form must be hand delivered to , or sent by certified mail, return receipt requested, to DEP.
- o A transfer fee of \$2 per certificate is imposed against a purchaser to cover the added administrative costs of the program.

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- o No person, firm, corporation, or other business entity may hold more than 1 percent of the total available certificates in any license year.
- o No person may lease stone crab trap tags or certificates.
- o Beginning with the 2000-2001, each trap used to take stone crabs in state waters or adjacent federal waters shall, in addition to the stone crab trap number, have affixed an annual trap tag to be issued by DEP for a fee of 50 cents per tag. An additional fee of 50 cents will be assessed against each certificate to cover the administrative costs of implementing the tag program.
- o Prohibitions and penalties are provided for persons who possess or use more than 5 stone crab traps without having an attached tag; for persons who possess or use any other gear or device to take stone crabs except for traps; for persons who possess or use stone crab trap tags without having the necessary number of certificates as required; and for persons who rob the contents of another harvester's trap.
- o Prohibitions and penalties are provided for persons who knowingly have a forged, counterfeit, or imitation trap tag or certificate in their possession; and for persons bartering, trading, selling, supplying, or giving away trap tags or certificates without authorization from DEP.
- o Certificates for which the annual certificate fee is not paid for a period of three consecutive years will be considered abandoned and shall revert to DEP.
- o Traps are to be removed from the water during periods of suspension or revocation.
- o The Marine Fisheries Commission is authorized to set an overall trap reduction goal based on maintaining or maximizing a sustained harvest from the fishery.
- o Creates three Stone Crab Trap Certificate Technical Advisory and Appeals Boards to advise DEP on disputes and other problems arising from the implementation of the program. The boards are created regionally, and shall consist of the DEP Secretary or a designee, and 12 additional appointees who shall all be certificate holders of varying degrees. Terms are four years, with staggered appointments for the initial appointees, and the DEP Secretary must call the organizational meeting of each board. Procedural rules of each board must conform to chapter 120, F.S. Members of each board are entitled to per diem and travel expenses. Board decisions on disputes and problems, receive final approval from DEP.
- o All fees authorized under the program are to be deposited into the Marine Resources Conservation Trust Fund to be used for administration of the program, for research and monitoring of the fishery, and for enforcement and public education purposes.
- o DEP is authorized to adopt rules under chapter 120, F.S. to implement the provisions of the program.

Section 3: Provides that the bill will take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

The trap certificate program will continue to generate revenue each year through applications for tags and certificates, and through the sale of tags and certificates on the open market.

3. Long Run Effects Other Than Normal Growth:

Indeterminate at this time.

4. Total Revenues and Expenditures:

Indeterminate at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

DEP's fiscal analysis indicates a non-recurring effect of \$2.25 million to develop a computerized data base, including hardware and software, and to purchase two additional offshore patrol vessels for enforcement purposes.

2. Recurring Effects:

DEP estimates that more than \$8 million annually will be necessary to cover the costs of administering and enforcing the trap reduction program. For enforcement purposes, the department estimates approximately 50 new enforcement FTE's are necessary.

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

All fees and costs will be paid by private sector participants who earn a living in the stone crab fishery.

2. Direct Private Sector Benefits:

Persons who earn a living in the stone crab fishery are expected to see an increase in trap yield due to the reduction in the number of traps in the water.

3. Effects on Competition, Private Enterprise and Employment Markets:

Some commercial harvesters will be forced out of the fishery under this program and will, like persons affected by the implementation of the net ban, lose their livelihood.

D. FISCAL COMMENTS:

4,442 x \$50/SPL	\$ 222,100
4,442 x \$100/Stone Crab Endorsement	\$ 444,200
1.3 million traps at \$.50/trap	\$ 650,000
1.3 million traps at \$.50/certificate	<u>\$ 650,000</u>

Revenues raised: \$ 1,966,300

Revenues raised through the saltwater products license are currently collected by DEP and can not be used in determining if the trap reduction program will pay for itself.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

E. APPLICABILITY OF THE MANDATES PROVISION:

The mandates provision is not applicable to HB 1685 because it does not require cities or counties to expend funds, or to take actions requiring the expenditure of funds.

F. REDUCTION OF REVENUE RAISING AUTHORITY:

HB 1685 does not reduce the revenue-raising authority of counties or municipalities.

G. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

HB 1685 does not reduce the state tax revenues shared with counties or municipalities.

IV. COMMENTS:

The Department of Environmental Protection, the Marine Fisheries Commission, and the commercial stone crab industry have participated in the development of this legislation. The industry has asked for self regulation, and is a willing participant in the payment of fees and the reduction of traps in the water.

On March 29, 1999, the Senate Natural Resources Committee adopted a strike-everything amendment for SB 2146 to create a committee substitute which incorporated changes to the original legislation suggested by industry, the Marine Fisheries Commission, and the Department of Environmental Protection. It is expected that the House sponsor will conform the House bill to CS/SB 2146.

Information received by the House Water & Resource Management Committee indicates that this legislation is not supported by all commercial stone crab harvesters. The small commercial harvesters may be adversely impacted by this legislation and forced out of the fishery.

Due to the passage of Revision #5 to the State Constitution on November 3, 1998, the regulation of stone crabs will fall under the jurisdiction of the Fish and Wildlife Conservation Commission as of July 1, 1999. HB 1685 should be amended to reflect the change in jurisdiction.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VI. SIGNATURES:

COMMITTEE ON WATER & RESOURCE MANAGEMENT:

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