

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2146

SPONSOR: Natural Resources Committee and Senator Bronson

SUBJECT: Stone Crabs

DATE: March 29, 1999 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gee	Voigt	NR	Favorable/CS
2.			FR	
3.				
4.				
5.				

## I. Summary:

This bill creates a stone crab trap certificate program similar to the current spiny lobster trap certificate program to stabilize the fishery. It creates fees, requires certificates and trap tags, provides penalties, and creates three technical advisory and appeals boards. The bill prohibits the buying and selling of saltwater products by unlicensed persons, provides a limited waiver of trap retrieval fees, and provides appropriations and positions.

This bill creates s. 370.1322, F.S., and amends ss. 370.021, 370.13, and 370.143, F.S.

## II. Present Situation:

The FWCC reports that during the past 10 years the stone crab fishery has experienced rapid growth. This has led to increased congestion, competition, and conflict on the water. Overfishing and poaching have resulted in a decrease in stock populations and a declining yield per trap. The proliferation of stone crab traps damage grass beds, coral formations, and live rock bottoms. There is increasing public concern over debris pollution from damaged, lost, or abandoned traps.

There were 4,442 commercial harvesters who obtained stone crab endorsements during the 1998-1999 fiscal year. They used approximately 1,300,000 lawfully permitted commercial stone crab traps in the fishery in both state and adjacent federal waters. This number of traps, however, is only an estimate; the actual number of stone crab traps used commercially is unknown. The number of recreational stone crab traps used in the fishery is not known and no estimate of the number used is available. Although a moratorium on new stone crab endorsements was implemented by the Legislature in 1995, control over the number of stone crab traps that are being used in the fishery has not been possible. Stabilization of the number of stone crab traps is necessary to improve overall catch levels.

The geographic range of the stone crab fishery stretches from Palm Beach County on the Atlantic coast through the Florida Keys and continues north along the Gulf of Mexico into the Big Bend

region. It extends seaward in the Gulf of Mexico to depths of about 100 feet. Approximately 50 percent of the fishing grounds for this species occur in federal waters. The most prolific components of the fishery, both commercial and recreational, are in Broward, Dade, Monroe, and Collier Counties and in both Atlantic and Gulf waters. This fishery landed approximately \$21.5 million of product during the 1995/96 fishing year.

The FWCC reports that its personnel and equipment resources presently available are insufficient to adequately enforce existing fisheries laws. This lack of available law enforcement resources to maintain a presence at sea is known to the individuals who are engaged in stone crab violations. The ratio of harvesters to enforcement personnel is so overwhelming that only a minute fraction of trips in adjacent federal waters result in a boarding. Poaching and theft are rampant. Theft of fishing gear and product includes, but is not limited to, organized trap robbing rings (day and night) in both state and federal waters.

The market for stone crabs is substantial and consequently lucrative for poachers. This creates an extensive, year-round, black market for sales of undersized or out of season product, and for product taken by trap molestation. The contraband catch is then sold to wholesale dealers, restaurants, and private individuals. Many of these transactions are suspected of being conducted without proper licenses.

Although the stone crab has been designated a restricted species, there is currently no license fee to harvest stone crabs. However, one must obtain a saltwater products license (SPL) and obtain the stone crab endorsement on it to harvest stone crabs commercially.

Pursuant to s. 370.143, F.S., traps left in the water during closed seasons may be retrieved by the DEP. There is a \$10 fee for each trap retrieved.

On July 1, 1999, recent constitutional changes to create a new Fish and Wildlife Conservation Commission (FWCC) will become effective. The FWCC will have jurisdiction over the state's marine resources.

### **III. Effect of Proposed Changes:**

Section 1. Subsection (6) of s. 370.021, F.S., is amended to provide that, in addition to being subject to other penalties provided in ch. 370, F.S., any violation of s. 370.06, F.S., or s. 370.07, F.S., or rules of the FWCC implementing those sections involving buying saltwater products from an unlicensed person, firm, or corporation by a commercial wholesale dealer, retail dealer, or restaurant facility for public consumption, or selling saltwater products by an unlicensed person, firm, or corporation to a commercial wholesale dealer, retail dealer, or restaurant facility for public consumption is a major violation, for which existing penalties apply.

Section 2. Section 370.13, F.S., 1998 Supplement, is amended to provide a \$125 fee for an endorsement to harvest stone crabs on a saltwater products license, \$100 of which shall be used by the FWCC for administration, management, enforcement, and research costs related to stone crabs and \$25 of which shall be used for trap retrieval pursuant to s. 370.143(2), F.S. No more than two endorsements may be displayed on one vessel and more than one vessel may display the same endorsement.

Section 3. Section 370.1322, F.S., is created to provide for a stone crab trap certificate program. Intent is provided that, due to rapid growth, the stone crab fishery is experiencing increased congestion and conflict on the water, a declining yield per trap, and public concern over debris pollution from existing traps. In an effort to solve these and related problems, the Legislature intends to develop a stone crab trap certificate program, the principal goal of which is to stabilize the fishery by reducing the total number of traps, which should increase the yield per trap and therefore maintain or increase overall catch levels. Under the passive-trap-reduction program a reduction in traps will occur at the time of sale or transfer of traps. The Legislature seeks to preserve as much flexibility in the program as possible for the fishery's various constituents.

The FWCC is to establish a trap certificate program for the stone crab fishery and will be responsible for its administration and enforcement. The program requires that each holder of a SPL who uses traps for taking or attempting to take stone crabs have a certificate on record for each trap possessed or used in the fishery, except as otherwise provided in s. 370.1322, F.S.

The FWCC will initially allot certificates to each licenseholder with a current stone crab trap number who uses traps. Anyone who holds a current stone crab endorsement on his or her SPL for the 1998-1999 license year is eligible for a certificate. In addition, in order to be eligible the applicant must show that, pursuant to trip ticket records generated under the provisions of s. 370.06(2)(a), F.S., he or she had at least 300 pounds of stone crab landings during one of the five 1-year license periods between July 1993 through June 1998. The number of certificates allotted to each endorsement holder will be equal to the maximum number of traps stated on the endorsement holder's SPL application or multiple applications as determined by the endorsement holder's social security number or federal employer identification number during the 1996-1997 or 1997-1998 fishing season or, the endorsement holder's highest annual stone crab claw landings during the 1996-1997 or 1997-1998 fishing seasons, divided by 2 pounds per trap, whichever is less. Certificates may only be issued to individuals; therefore, all licenseholders other than individual licenseholders must designate the individual or individuals to whom their certificates will be allotted, if more than one.

After initial issuance, trap certificates are transferable on a market basis and may be transferred from one licenseholder to another for a fair market value agreed upon between the transferor and transferee. Upon the sale or transfer of certificates outside the immediate family of the certificateholder, the commission will reduce the number of certificates received by the purchaser by the following percentages depending on the overall number of certificates available to individual harvesters throughout the state at the time of sale:

- If more than 1.5 million certificates are available, there will be a 25 percent reduction in the number of certificates received by the purchaser.
- If more than 1.25 million, but less than 1.5 million certificates are available, there will be a 22.5 percent reduction in the number of certificates received by the purchaser.
- If more than 1 million, but less than 1.25 million certificates are available, there will be an 18.5 percent reduction in the number of certificates received by the purchaser.

- If more than 750,000, but less than 1 million certificates are available, there will be a 15 percent reduction in the number of certificates received by the purchaser.
- If more than 600,000, but less than 750,000 certificates are available, there will be a 10 percent reduction in the number of certificates received by the purchaser.
- When 600,000 certificates or less are available, there will be no reduction in the number of certificates received by the purchaser.

Within 72 hours of a transfer, the transfer must be recorded on a notarized form provided by the FWCC and hand delivered or sent by certified mail, return receipt requested, to the FWCC for recordkeeping. In addition, in order to cover the added administrative costs of the program, a transfer fee of \$2 per certificate transferred will be assessed against the purchasing licenseholder and sent by money order or cashier's check with the certificate transfer form. In addition to the transfer fee, a surcharge of \$2 per certificate transferred or 25 percent of the actual market value, whichever is greater, given to the transferor will be assessed the first time a certificate is transferred outside the original transferor's immediate family. Transfer fees and surcharges only apply to the number of certificates received by the purchaser. No transfer of a certificate will be effective until the FWCC receives the notarized transfer form and the transfer fee, including any surcharge, is paid.

The FWCC is authorized to establish, by rule, an amount of equitable rent per trap certificate that will be recovered as partial compensation to the state for the enhanced access to its natural resources. In determining whether to establish such a rent and, if so, the amount of the rent, the FWCC must consider the amount of revenues annually generated by certificate fees, transfer fees, surcharges, trap license fees, and sales taxes; the demonstrated fair market value of transferred certificates; and the continued economic viability of the commercial stone crab industry. If developed, the Board of Trustees of the Internal Improvement Trust Fund (Trustees) will approve the rule. The proceeds of equitable rent recovered will be deposited in the Marine Resources Conservation Trust Fund and used for research, management, enforcement, and protection of the stone crab fishery and habitat. No transfer fee will be assessed or required when the transfer is within a family as a result of the death or disability of the certificate owner.

This section also provides that:

- No person, firm, corporation, or other business entity may control, directly or indirectly, more than 1.0 percent of the total available certificates in any license year.
- The FWCC is to maintain records of all certificates and their transfers and will annually provide each licenseholder with a statement of certificates held.
- The number of trap tags issued annually to each licenseholder may not exceed the number of certificates held by the licenseholder at the time of issuance, and such tags and a statement of certificates held will be issued simultaneously.
- It is unlawful for any person to lease stone crab trap tags or certificates.

- Any person who holds a crawfish or blue crab endorsement on his or her saltwater products license is eligible to purchase a stone crab incidental take endorsement pursuant to rules of the FWCC. This endorsement is limited to a daily trip limit of 5 gallons of stone crab claws per day, which may be sold pursuant to law. The fee for the endorsement will be \$25.
- Effective October 1, 2000, each commercial trap used to take or attempt to take stone crabs in state waters or adjacent federal waters must, in addition to the stone crab trap number, also have firmly affixed to it an annual trap tag issued by the FWCC. Each tag will be made of durable plastic or a similar material and will, beginning with those tags issued for the 2000-2001 season based on the number of certificates held, have stamped on it the owner's license number. To facilitate enforcement and recordkeeping, the tags will be issued each year in a color different from that of each of the previous 3 years. There is no fee for the tag, although replacement tags will cost 50 cents. In order to recover administrative costs of the tags and the certificate program, the annual certificate fee shall be 50 cents per certificate.

After initial issuance, endorsements are transferable on a market basis and may be transferred for fair market value agreed upon between the transferor and transferee.

The bill contains the following prohibitions and penalties:

1. A commercial harvester may not possess or use a stone crab trap in or on state waters or adjacent federal waters without having firmly affixed thereto the required trap tag. It is unlawful for a person to possess or use any other gear or device designed to attract and enclose or otherwise aid in the taking of stone crabs with a trap that does not meet the requirements of ch.13.002, F.A.C. However, these provisions do not apply to persons who possess a valid stone crab incidental take endorsement and who use traps for the directed harvest of crawfish or blue crabs in accordance with rules of the commission, in which stone crabs are harvested as an incidental take of these fisheries, provided that the number of stone crabs so harvested and in possession of such person does not exceed 5 gallons of stone crab claws per day.
2. A person may not possess or use stone crab trap tags without having the necessary number of certificates on record.
3. A person may not remove the contents of another harvester's trap without express, available, written consent. Any person convicted of theft from a trap will, in addition to the penalties specified in ss. 370.021, and 370.13, F.S., and the provisions of s. 373.1322, F.S., permanently lose his or her SPL, stone crab endorsement and all trap certificates allotted to him or her through this program. In such cases, trap certificates and endorsements are nontransferable.
4. In addition to any other penalties provided in s. 370.021, F.S., a commercial stone crab harvester who violates the provisions of s. 373.1322, F.S., or the provisions relating to stone crab traps will be punished as follows:
  - If the first violation is for violation of 1., 2., or 3. above, the FWCC must assess an additional civil penalty of up to \$1,000, and the stone crab trap number issued may be suspended for the

remainder of the current license year. For all other first violations, an additional civil penalty of up to \$500 must be assessed.

- For a second violation of 1., 2., or 3. above, occurring within 24 months of any previous such violation, an additional civil penalty of up to \$2,000 must be assessed, and the stone crab trap number may be suspended for the remainder of the current license year.
- For a third or subsequent violation of 1., 2., or 3. above, occurring within 36 months of any previous two such violations, an additional civil penalty of up to \$5,000 must be assessed and the FWCC may suspend the stone crab trap number for a period of up to 24 months or may revoke the stone crab trap number and, if revoking the stone crab trap number, may also proceed against the licenseholder's SPL in accordance with the provisions of s. 370.021, F.S.
- For a fourth violation of 1., 2., or 3. above, occurring within 48 months of any three such violations, the FWCC must permanently revoke the violator's saltwater fishing privileges, and shall also proceed against the licenseholder's SPL in accordance with s. 370.021, F.S.

For the purposes of 4. above, "violation" refers to the prohibitions proscribed by 1., 2., or 3. above, regardless of whether the violation was adjudicated under state or federal law.

Any person assessed an additional civil penalty must, within 30 calendar days after notification:

- Pay the civil penalty to the FWCC; or
- Request an administrative hearing pursuant to the provisions of s. 120.60, F.S.

The commission must suspend the stone crab trap number for any person failing to pay the penalty or request a hearing.

5. It is unlawful for any person to make, alter, forge, counterfeit, or reproduce a stone crab trap tag or certificate or knowingly have in his or her possession a forged, counterfeit, or imitation stone crab trap tag or certificate.
6. It is unlawful for any person to barter, trade, sell, supply, agree to supply, aid in supplying, or give away a stone crab trap tag or certificate or to conspire to barter, trade, sell, supply, aid in supplying, or give away a stone crab trap tag or certificate unless such action is authorized by the FWCC as provided in ch. 370, F. S., or in the rules of the FWCC.

The bill provides a third degree felony penalty for any person who violates the provisions of 5. above, or any person who engages in the commercial harvest, trapping, or possession of stone crabs without a stone crab trap number or during any period while such stone crab trap number is under suspension or revocation. In addition, the FWCC must levy a fine of up to twice the amount of the appropriate surcharge to be paid on the fair market value of any transferred certificates on any person who violates the provisions of 6. above.

Any certificates for which the annual certificate fee is not paid for a period of 3 consecutive years will be considered abandoned and revert to the FWCC. During any period of trap reduction, any

certificates reverting to the FWCC will become permanently unavailable. Otherwise, any certificates that revert to the FWCC are to be reallocated in a manner provided by the FWCC.

The bill provides for the proceeds of all civil penalties and fines collected to be deposited into the Marine Resources Conservation Trust Fund and used only for the purposes of s. 370.1322, F.S.

Also, all traps must be removed from the water during any period of suspension or revocation.

The bill provides that the trap certificate program does not create vested rights in licenseholders, and may be altered or terminated as necessary to protect the stone crab resource, the participants in the fishery, or the public interest.

Because the objective of the overall trap certificate program is to reduce the number of traps used in the stone crab fishery to the lowest number that will maintain or increase overall catch levels, promote economic efficiency in the fishery, and conserve natural resources; the FWCC is directed to set an overall trap reduction goal based on maintaining or maximizing a sustained harvest from the stone crab fishery.

The bill creates regional stone crab trap certificate technical advisory and appeals boards. The boards will consider and advise the FWCC on disputes and other problems arising from the implementation of the program. The boards may also provide information to the FWCC on the operation of the program. Regional board number one will consist of the area of Pasco County north to the Alabama State line. Regional board number two will consist of the area of Pinellas County south through Lee County. Regional board number three will consist of Collier and Monroe Counties and north up the east coast of the state. Each board shall consist of the Executive Director of the FWCC or his or her designee and 9 members appointed by the executive director according to the following criteria:

- All appointed members must be certificateholders, but at least one must be a holder of fewer than 100 certificates, two must be holders of at least 100 but no more than 750 certificates, two must be holders of more than 750 certificates but not more than 2,000 certificates, and two must be holders of more than 2,000 certificates.
- Members shall be appointed to represent all geographic areas in the district..

The executive director of the FWCC may fill any position on the initial board with a member who does not fulfill the requirements if there are not enough qualified individuals available to meet those requirements. However, as soon as enough qualified individual are available to meet those requirements, the executive director must replace all nonqualified appointees with qualified appointees.

Appointed members will serve 4 year terms, and any vacancy must be filled for the balance of the unexpired term with a person having the qualifications required. However, of the initial appointees on each board, three will serve for terms of 4 years, three will serve for terms of 3 years, and three will serve for terms of 2 years. There will be no limitation on successive appointments to the board.

The executive director of the FWCC or his or her designee will call the organizational meeting of the boards, which will annually elect a chair and a vice chair. There is no limitation on successive terms that may be served by a chair or vice chair. A board shall meet at the request of the commission, or with the commission's concurrence at the call of its chair or at the request of a majority of its membership, but in no case less than once yearly. A majority of the board will constitute a quorum, and official action of the board will require a majority vote of the total membership of the board present at the meeting.

The procedural rules adopted by the board must conform to the requirements of chapter 120, F.S. Members of the board will be reimbursed for per diem and travel expenses as provided in s. 112.061, F.S.

Upon reaching a decision on any dispute or problem brought before it, including any decision involving the allotment of certificates, the board must submit its decision to the FWCC for final approval. The FWCC may alter or disapprove any decision of the board, with written notice to the board and to each party in the dispute, explaining the reasons for the disapproval. The action of the FWCC constitutes final agency action.

In addition to those certificates allotted initially, up to 150,000 certificates may be allotted by the board to settle disputes or other problems arising from implementation of the trap certificate program. Each board may recommend the issuance of additional certificates:

- To solve disputes arising from the initial allocation of certificates.
- For persons who were adversely affected by chapter 73-432, L.O.F.
- For displaced netters who were adversely affected by s. 16, Article X, of the State Constitution.
- For inefficient harvesting of stone crabs (less than 2-pound landings per trap) to a person who can demonstrate a need for more traps to maintain operation.
- For persons with claw landings, but with no traps listed on their SPL application during license years 1996-1997 or 1997-1998.
- For persons with no claw landings during license years 1996-1997 or 1997-1998 who can demonstrate an investment in the stone crab fishing by the 1998-1999 season.
- For nonreporting by dealers.

With respect to persons displaced by s. 16, Article X, of the State Constitution who do not otherwise qualify for the stone crab trap certificate program, and who can demonstrate through claw landings that their fishing occurred in the area from Wakulla through Monroe counties, the board may recommend the issuance of certificates to any person who:

- Can demonstrate that he or she received net buy-back money or unemployment compensation.



- Can demonstrate that he or she invested in the stone crab industry by the 1998-1999 season.
- Has no record of net violations since July 1, 1995.

Persons qualifying under this paragraph receive a minimum of 100 certificates.

The bill provides for all funds collected pursuant to s. 370.1322, F.S., including fines and civil penalties, to be deposited in the Marine Resources Conservation Trust Fund and used for administration of the trap certificate program, research and monitoring of the stone crab fishery, and enforcement and public education activities in support of the purposes of s. 370.1322, F.S., as well as for evaluating the impact of trap reduction on the stone crab fishery. No such revenues may be made available for other purposes.

The FWCC is authorized to adopt rules, including rules pursuant to ss. 120.536(1), F.S., and 120.54, F.S., as appropriate, to implement the provisions of s. 370.1322, F.S.

Section 4. Two appropriations are provided:

- From the commercial saltwater license fee revenues in the Marine Resources Conservation Trust Fund to the Division of Marine Fisheries in the FWCC, the sum of \$97,049 for fiscal year 1999-2000 for four career service positions to implement the stone crab trap certificate program,
- From the commercial saltwater license fee revenues in the Marine Resources Conservation Trust Fund to the Division of Marine Fisheries in the FWCC, the sum of \$254,408 for program operation, plus \$130,000 to cover the cost of tags for fiscal year 1999-2000, in order to implement the stone crab trap certificate program in fiscal year 2000-2001.

Section 5. Subsection (2) of section 370.143, F.S., is amended to waive the \$10 per trap retrieval fee for the first five traps received for persons holding a stone crab endorsement.

Section 6. Except for sections 2 and 6, which take effect upon becoming law, the act takes effect July 1, 1999.

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

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

## V. Economic Impact and Fiscal Note:

### A. Tax/Fee Issues:

This bill creates several new fees, a license, and a surcharge. A license to harvest stone crabs will cost \$125 annually. Persons eligible for trap certificates must pay a fee of \$2.00 per certificate to the FWCC upon the transfer of certificates to another. In addition, a surcharge of \$2.00 per certificate transferred or 25 percent of the actual market value, whichever is greater, given to the transferor is to be assessed the first time a certificate is transferred outside the transferors' immediate family. The bill also authorizes the FWCC to establish, by rule, an amount of equitable rent per trap certificate at some future time as partial compensation to the state for the enhanced access to natural resources. Factors to be considered in determining the amount of rent are provided. Such rent must be approved by the Board of Trustees.

The bill permits commercial harvesters of blue crab or crawfish to obtain a stone crab incidental take endorsement for a fee of \$25, which will allow them to harvest 5 gallons of stone crab claws per day.

The fee for a trap certificate is 50 cents, as is the cost of replacement trap tags.

### B. Private Sector Impact:

The following fees will be paid by stone crab harvesters:

- License fee - \$125.
- Certificate transfer fee - \$2 per certificate.
- Transfer surcharge - \$2 or 25 percent of market price, whichever is greater.
- Certificate fee - 50 cents per certificate.
- Trap tag - 50 cents per replacement tag.

The bill creates a number of violations, for which substantial civil penalties and fines can be assessed.

Because a number of harvesters fish thousands of traps, this bill will significantly impact many persons in the fishery. Because all fishers may not qualify for certificates, it is possible that some will be forced out of the fishery, although certificates for such persons may be available through appeals boards. On the other hand, reducing the number of traps in the water should benefit the resource, and harvesters, over time.

### C. Government Sector Impact:

The FWCC reports that it will require \$253,013 in non-recurring costs, and \$922,598 in recurring costs for program administration and monitoring. The FWCC also reports a need for 10 law enforcement officers at a first year cost of \$1,416,760, for a total of first year cost of \$2,592,371. This cost includes vessels and cars, as well as other equipment and would be reduced in the second year and subsequent years. The FWCC is concerned that a provision permitting more than one endorsement to be displayed on a vessel, would make enforcement substantially more difficult. If this provision is enacted in a manner allowing more than two endorsements on the same vessel, the FWCC reports a further need for 11 new law enforcement officers and three duty officers at a first year cost of \$1,682,945.

The Marine Fisheries Commission estimates that 1.3 million trap certificates will initially be issued, which, combined with the 150,000 that can be allotted by the appeals boards, will produce first year revenues of \$725,000. Assuming 900 licenses are issued, first year revenues from those sources is estimated to be \$815,000. This amount would decline as certificates are reduced. If industry estimates that 8 - 10 percent of the certificates will be transferred annually are correct, at least \$160,000 in revenues would be collected in transfer fees annually. Further revenues would be realized by surcharges, but this amount is speculative. Thus, total first year revenues can be roughly estimated at \$975,000.

The FWCC has expressed great concern regarding the need for increased law enforcement for this new program. The program does not provide sufficient funds for the level of enforcement the commission believes necessary. The first year annual cost of a marine patrol officer is \$139,486 and the second year cost is \$63,700 (the difference in cost is due to start up expenses for a vehicle, vessel, and other equipment).

It may be possible for the FWCC to redirect some of its expected administrative costs, particularly monitoring expenditures, to law enforcement.

### VI. Technical Deficiencies:

None.

### VII. Related Issues:

None.

### VIII. Amendments:

None.