

STORAGE NAME: h0797s1a.grr
DATE: March 30, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL RULES & REGULATIONS
ANALYSIS**

BILL #: CS/HB 797

RELATING TO: Illegal Marine Products/Stone Crabs

SPONSOR(S): Committee on Water & Resource Management, Representatives Sorenson, Sembler, and others

TIED BILL(S):

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

- (1) WATER & RESOURCE MANAGEMENT YEAS 11 NAYS 0
- (2) GOVERNMENTAL RULES & REGULATIONS YEAS 8 NAYS 0
- (3) FINANCE & TAXATION
- (4) GENERAL GOVERNMENT APPROPRIATIONS
- (5)

I. SUMMARY:

CS/HB 797 provides fees and penalties necessary to implement the stone crab trap-limitation program established by Fish and Wildlife Conservation Commission (FWCC) rules. The bill also provides for the establishment of an equitable rent by the FWCC. New penalties are provided for violations of the stone crab trap limitation program, including the revocation of licenses and endorsements in certain situations. The bill provides an exemption from the \$10 trap retrieval fee for the first five stone crab traps retrieved.

The bill clarifies that purchases from and sales by an unlicensed entity of saltwater products to a commercial wholesale dealer, retail dealer, or restaurant facility for public consumption are major violations. Penalties are specified for additional and major violations and other violations involving specified saltwater products, and the bill makes the ability to trawl for shrimp on a noncommercial basis in the St. Johns River conditional upon authorization by the FWCC.

CS/HB 797 provides that the establishment of an equitable rent for the spiny lobster program must be approved by the Governor and Cabinet. The bill also exempts transfer fees when crawfish trap transfers occur within the family as a result of death or disability and prohibits surcharges for transfers within the immediate family. Finally, CS/HB 797 provides that removal of the contents of another harvester's trap(s) constitutes theft with the penalty being revocation of a persons saltwater products license and crawfish endorsement.

The stone crab trap certificate program is anticipated to generate approximately \$850,000 in its first year. The Fish and Wildlife Conservation Commission (FWCC) has estimated first-year operating expenses at approximately \$450,000. The bill appropriates \$481,457 from commercial saltwater license fee revenues in the Marine Resources Conservation Trust Fund to the FWCC for FY 2000-2001.

One provision of the bill that may create constitutionality questions is the establishment of equitable rent for the enhanced access to both stone crabs and crawfish. If rent is a fee, the Legislature must set it. While there is no case law regarding rent and fees relating to the FWCC, in the sales tax laws the concepts of license fee and rent together have been combined {See: s. 212.02(10)(g), (l), and (j), F.S.; s. 212.02(15), F.S.; and s. 212.031(1), F.S.}.

This act will take effect upon becoming a law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:
Please see above.

Less Government

By providing penalties and fees for the stone crab trap limitation program, CS/HB 797 allows for implementation of the program by the Fish and Wildlife Conservation Commission (FWCC). Also, additional penalties are provided for violations other than those associated with the stone crab program.

Lower Taxes

The bill authorizes:

- o A \$125 stone crab endorsement fee;
- o A \$25 stone crab incidental take endorsement fee;
- o A \$2 transfer fee (\$1 if to a crew member) for each stone crab certificate transferred;
- o A \$2 or 25 percent (whichever is greater) one-time surcharge for each stone crab certificate transferred outside the immediate family;
- o An equitable rent fee per trap certificate to be decided by the FWCC and approved by the Governor and Cabinet for both stone crabs and spiny lobster;
- o A \$.50 per stone crab trap certificate fee;
- o A \$.50 for in-season stone crab tag trap replacement fee; and
- o Various financial penalties for violations of the stone crab trap limitation program and other major violations involving saltwater products.

Individual Freedom

The bill decreases the allowable options of individuals to conduct their own affairs by providing for implementation of the stone crab trap-limitation program. This program requires that, in order to participate in the initial allocation of certificates, commercial harvesters must meet certain poundage requirements. Eligibility for the initial certificate distribution requires an endorsement holder to have landed 300 pounds of stone crab claws during one of the six license periods between July 1993 and June 1999. The number of certificates allocated is based on the number of traps possessed during the 1995-96 through the 1997-98 license year or the highest landings during the same period divided by two pounds per trap. The program provides that commercial

harvesters who can't meet these requirements are ineligible for trap certificates (unless an appeal to one of the Advisory Boards is successful). Their only method for harvest would be under the incidental take provisions of the bill which requires a \$25 incidental take endorsement and limits take to five gallons of stone crab claws per day.

Thus, the bill creates new governmental interference in the stone crab fishery by providing for the implementation of the stone crab trap-limitation program established by FWCC rule. In addition, other freedoms are decreased by the authorization of additional fines and penalties related to saltwater products.

Personal Responsibility

While the FWCC rules state that no vested rights for stone crab endorsement/certificate holders are being created, in essence they do just that by limiting entry into the stone crab fishery. Thus, by providing for implementation of the rule, the bill creates entitlements. However, the persons benefitting from this legislation do pay the fees proposed by the bill.

B. PRESENT SITUATION:

Stone Crabs

The commercial harvesting of stone crabs is regulated through rules of the Fish and Wildlife Conservation Commission (FWCC), and by statutory law created in chapter 370, F.S. 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 five 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. A moratorium on the issuance of new stone crab trap numbers (i.e. endorsements) has been in effect since July 1, 1995.

Prior to the creation of the FWCC on July 1, 1999, the Marine Fisheries Commission's rules (ch. 46-13.002, F.A.C.) imposed restrictions on size, possession, and transport of stone crabs and stone crab claws, authorized the materials to be used in the construction of traps, provided for the size and makeup of the traps, and provided for commercial trap marking requirements. The rule also provided that a person commercially harvesting stone crabs be required to hold not only a valid saltwater products license, and a restricted species endorsement, issued to a valid boat registration or in the name of an individual, but that each trap used have a trap number permanently attached.

At its February 2000 meeting, the FWCC adopted rules relating to stone crabs. The rules amend ch. 68B-13.0015, F.A.C. (formerly the MFC's rule ch. 46-13.0015, F.A.C.) providing additional definitions, repeal ch. 68B-13.002, F.A.C. (formerly the MFC's rules ch. 46-13.02, F.A.C. and ch. 46-13.002, F.A.C.), and create rules ch. 68B-13.005, F.A.C. through ch. 68B-13.011, F.A.C. establishing a stone crab trap limitation program. The effective date of these rules is July 1, 2000.

The FWCC rules establish the stone crab trap limitation program pursuant to the FWCC's constitutional authority over marine life. However, fees and penalties cannot be set by the FWCC as this is the responsibility of the Legislature. The rules:

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- designate stone crabs as a restricted species pursuant to s. 370.01(21), F.S., and set the harvest season from October 15th-May 15th.
- require a saltwater products license (SPL), a restricted species endorsement (RSE), and a stone crab endorsement (SCE) for the commercial harvest of stone crabs.
- place a moratorium on renewal or replacement of stone crab endorsements until July 1, 2001, except for those endorsements active during the 1999-2000 fiscal year.
- require that the size of harvested stone crab claws must be at least 2 3/4 inches in length and prohibit the transport of whole stone crabs and possession of or claw removal from egg-bearing females.
- address gear, trap construction, commercial trap marking requirements, trap working regulations, and trap transfers.
- provide for recreational stone crab harvest allowing five traps per person and one gallon of stone crab claws to be harvested per day.
- establish the stone crab trap-limitation program that:
 - requires a certificate on record with the FWCC for each stone crab trap;
 - requires that a tag be attached to each stone crab trap;
 - provides that persons are only eligible for certificates if they had a SPL with a RSE and a SCE during the 1999-2000 season and had 300 pounds of stone crab claw landings during any one fishing season from 1993-1994 through 1998-1999;
 - provides that the number of certificates allocated is determined by the number of traps listed on the SPL or the number of pounds landed divided by two from one fishing season between 1995-1996 and 1997-1998;
 - prohibits the control of more than one percent of the total number of available certificates by any entity;
 - requires trap tags by October 1, 2001, with one tag issued per certificate;
 - allows for certificates to be transferred on a market basis, however, a transfer fee and a surcharge, if applicable, are required to be paid to the FWCC;
 - once certificates are transferred outside the immediate family, reduces the number of certificates transferred proportionally until 600,000 or fewer certificates are available in the program;
 - provides that no transfer fees or reductions will be required if transfers are to immediate family members as a result of death or disability;
 - provides that up to five percent of the total amount of reduced certificates may be allotted by the FWCC to provide for new entrants into the program;
 - prohibits leasing;

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- provides for an incidental take endorsement permitting crawfish or blue crab endorsement holders to land five gallons of stone crab claws per day;
- creates an appeals board composed primarily of industry members to hear and resolve complaints or problems with the program;
- states that the program does not create any vested rights for endorsement or certificate holders;
- prohibits the use of any gear other than that specified in the rule;
- prohibits the use of trap tags without an associated certificate on file;
- prohibits the removal of contents from another harvester's traps;
- prohibits the willful molestation of stone crab traps, lines, or buoys;
- prohibits the use of non-FWCC issued trap tags or expired tags;
- prohibits the altering, making, forging, counterfeiting, or reproduction of a stone crab trap tag or the possession of such a tag;
- prohibits the bartering, trading, selling, supplying, agreeing to supply, aiding in supplying, or giving away of trap tags or certificates unless the action is authorized by FWCC rules; and
- prohibits out-of-season harvest, fraudulent reporting of the cost of transferred certificates, and the use of traps without trap tags.

Data received from the Florida Marine Research Institute indicates that for the 1998-99 season, 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 harvest stone crabs.

The 1997-98 commercial landings of stone crab claws totaled more than 3.5 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. 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. Records for February of the 1997-1998 season showed 384,754 pounds of claws were landed. For the same period in 1999, 106,144 pounds of claws were landed.

Although data from the Florida Marine Research Institute indicates that the stone crab fishery is stable, it is believed that the number of traps in the water is damaging the bottom, is raising marine debris concerns due to recent storms, and is interfering with recreational purposes.

Unlicensed Sellers

Currently, s. 370.021(5), F.S., prohibits the sale of saltwater products without the appropriate license(s). Purchase of saltwater products from an unlicensed seller also is prohibited. Upon arrest and conviction for either of these violations, a court can assess criminal penalties. The FWCC may now assess a civil penalty against the buyer but not the seller. The agency may also suspend the buyer's licenses but not the seller's.

Trap Retrieval

Currently, s. 370.143, F.S., provides that a retrieval fee of \$10 per trap retrieved during closed season for lobster and stone crab will be assessed to trap owners, but that the fee will be waived in the event of a major natural disaster resulting in massive trap losses. The assessed retrieval fee must be paid prior to renewal of the trap owner's trap number.

Noncommercial Shrimp Trawling in Northeast Florida

Pursuant to s. 370.153, F.S., persons may harvest shrimp in the St. Johns River for their own personal use if they obtain a noncommercial trawling permit from the FWCC at a cost of \$50. Trawling is restricted to the St. Johns River north of the Acosta Bridge and 100 yards from the nearest shore. Shrimp caught under this permit may not be sold. Currently, noncommercial shrimp trawling is not allowed under FWCC rule.

Major Violations

Blanket penalties for violations of FWCC rules are provided in s. 370.21(1), F.S. In addition to these penalties, major violations and their penalties are provided for in s. 370.021(2), F.S. Permits or licenses issued by the FWCC to take saltwater products may be suspended up to 60 days for a second conviction of a major violation. Major violation suspensions for third and fourth convictions are up to 180 days and three years, respectively. Major violations for saltwater fisheries include:

- violations involving more than 100 pounds of stone crabs, crawfish, or blue crabs (penalty is \$10 per unit);
- violations involving the taking of shrimp from a nursery or a prohibited area (penalty is \$10 per pound);
- violations involving the taking of oysters from nonapproved areas or the taking/possession of unculled oysters (penalty is \$10 per bushel);
- violations involving the taking of clams from nonapproved areas (penalty is \$100 per 500 count bag);
- violations involving the taking/possession of specified endangered, threatened, or special concern species (penalty is \$100 per unit);
- subsequent convictions within 24 months involving the taking of more than 100 pounds of any finfish are subject to an additional penalty of \$5 per pound;
- violations involving the taking of more than 1,000 pounds of any illegal finfish (penalty equals the market value of the fish);

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- violations involving stone crabs, including possession of more than 25 stone crabs during the closed season, more than 25 whole bodied or egg-bearing stone crabs, trap molestation or robbing, pulling traps at night, or any combination of violations in three consecutive years where more than 75 illegal stone crabs are involved;
- violations involving crawfish, including possession of more than 25 crawfish during the closed season, more than 25 wrung crawfish tails, more than 25 egg-bearing or stripped crawfish, trap molestation or robbing, pulling traps at night, or any combination of violations in three consecutive years where more than 75 illegal crawfish are involved;
- violations involving blue crabs, including any single violation involving more than 50 blue crabs, trap molestation or robbing, pulling traps at night, or any combination of violations in three consecutive years where more than 100 illegal blue crabs are involved; and
- violations involving illegal finfish, including any single violation involving the possession of more than 100 pounds of illegal finfish or any combination of violations in three consecutive years where more than 200 pounds of illegal finfish are involved;

Marine Life Harvesting

Marine life is defined in FWCC rule (ch. 68B-42.001, F.A.C.) as specific species of fish (e.g. moray eels, butterflyfish, angelfish, wrasses, tangs, and damselfish), invertebrates (e.g. sponges, jellyfish, anemones, corals, shrimp, crabs, and starfish), and plants (e.g. halimeda and coralline red algae). The harvesting of marine life requires a \$75 marine life endorsement and a saltwater products license. The FWCC is currently in the process of developing a limited-entry program for this fishery with a report due to the Legislature by July, 2000, regarding options for such a program. Due to large numbers of entrants into the fishery, the impending limited-entry program, and an overall concern regarding over-collecting of specimens, a moratorium on the issuance of any new marine life endorsements is in effect until July 2002.

Blue Crab

The commercial harvest (i.e. more than five traps) of blue crab requires a saltwater products license, a restricted species endorsement, and a trap number, one issued per boat, attached to the trap buoy. No trap numbers may be renewed or replaced, except those active during the 1997-1998 season, until July 1, 2002. Trap number transfers are allowed only in very limited circumstances. Persons willfully molesting traps, lines, or buoys commit a felony of the third degree.

Spiny Lobster

The spiny lobster trap certificate program is authorized by s. 370.142, F.S. The program was initiated in response to concerns similar to those raised for stone crabs, in that there were large numbers of traps (more than 750,000) and to the fact that the fishery was and is limited primarily to the waters off south Florida, both of which could contribute to a decline in spiny lobster populations if additional regulation was not imposed.

The spiny lobster trap certificate program consists of transferable trap certificates, trap tags, reductions in the number of traps, and a technical advisory and appeal board.

Provisions exist for the transfer of traps between individuals on a market basis with a \$2 transfer fee per certificate due for administrative costs and a 25 percent surcharge of the

fair market value or a \$5 fee, whichever is greater, due the first time a certificate is transferred outside the original holder's immediate family. No person, firm, corporation, or other business entity is allowed to control more than 1.5 percent of the total available certificates in any given year.

In addition to a crawfish trap number, each trap used to take spiny lobster in Florida waters or adjacent federal waters has a trap tag issued by the Fish and Wildlife Conservation Commission (FWCC) attached to the trap. Trap tags and certificates are issued simultaneously. Fees were increased for the trap tags over a five year period to the current \$1 annual fee per certificate. Certificates for which the annual fee is not paid for a period of three years are considered abandoned and revert back to the FWCC. In addition to these fees, the commercial trap number fee is \$100.

A Trap Certificate Technical Advisory and Appeals Board was created to "consider and advise on disputes and other problems arising from the implementation of the spiny lobster trap certificate program" (s. 370.142(4), F.S.).

The overall objective of the trap certificate program is to reduce the number of traps used in the spiny lobster fishery to the lowest number that will maintain or increase overall catch levels, promote economic efficiency in the fishery, and conserve natural resources. To meet this objective, a trap reduction goal was established by the Marine Fisheries Commission (which has since been abolished and its functions incorporated into the FWCC). The reduction goals were: 10-percent reduction in the number of traps from 1993-1995; an additional 10-percent reduction in the number of traps during the 1998-1999 season; and another 10-percent reduction during the 2000-2001 season.

C. EFFECT OF PROPOSED CHANGES:

Stone Crabs

CS/HB 797 provides fees and penalties necessary to implement the stone crab trap-limitation program established by FWCC rules. Stone crabs can be commercially harvested under either an SCE or an incidental take endorsement. The bill also provides for the establishment of an equitable rent by the FWCC to be paid by harvesters for enhanced access to a natural resource. New penalties are provided for violations of the stone crab trap limitation program, including the revocation of licenses and endorsements in certain situations.

Unlicensed Sellers

The bill clarifies that purchases of saltwater products from an unlicensed entity by a commercial wholesale dealer, retail dealer, or restaurant facility for public consumption are major violations. In addition, the sale of saltwater products to a commercial wholesale dealer, retail dealer, or restaurant facility for public consumption by an unlicensed entity is also deemed a major violation.

Trap Retrieval

The bill provides an exemption from the \$10 trap retrieval fee for the first five stone crab traps retrieved. The reasoning for this exemption is that by requiring a portion of the SCE fee (\$25) to go towards retrieval, it is not necessary to collect the retrieval fee for a certain number of traps.

Noncommercial Shrimp Trawling in Northeast Florida

The ability to trawl for shrimp on a noncommercial basis in the St. Johns River is made conditional upon authorization by the FWCC. This authorization is within the constitutional authority of the FWCC and is clarifying in nature as the use of trawls for noncommercial shrimp harvest is not currently authorized by FWCC rule.

Major Violations

CS/HB 797 specifies penalties for the first conviction of a major violation involving saltwater products and increases the maximum license suspension penalty for a second such violation within one year of the first to 90 days.

The bill also specifies that two violations within a one-year period involving shrimping gear, shrimp count, or season constitutes a major violation subject to an additional penalty of \$10 per pound of illegal shrimp.

Marine Life Harvesting

The taking or harvesting of marine life species are classified as major violations according to CS/HB 797, subject to suspension or revocation of the marine life endorsement. Major violations are the harvesting of prohibited species, harvesting out of season or by illegal means, possession of 25 or more individual specimens, or any combination of violations in a three year period involving more than 70 specimens.

Blue Crab

CS/HB 797 provides that removal of the contents of another harvester's trap(s) constitutes theft. The penalty for such a violation, in addition to those already provided in s. 370.021, F.S., is revocation of a person's saltwater products license and blue crab endorsement.

Spiny Lobster

The establishment of an equitable rent for the spiny lobster program must be approved by the Governor and Cabinet according to CS/HB 797. The bill also exempts transfer fees when trap transfers occur within the family as a result of death or disability and prohibits surcharges for transfers within the immediate family. Finally, the bill provides that removal of the contents of another harvester's trap(s) constitutes theft. The penalty for such a violation, in addition to those already provided in s. 370.021, F.S., is revocation of a person's saltwater products license and crawfish endorsement.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Substantially amends s. 370.13, F.S., to provide fees and penalties for the newly adopted FWCC rules regarding the stone crab trap limitation program. Fees and penalties are as follows:

- Endorsement fee - \$125, \$25 of which goes to trap retrieval.
- Certificate fees - \$0.50 annual fee per certificate; replacement trap tags \$0.50 (except unless due to major storm); \$2 transfer fee per certificate (\$1 if to a crew member); \$2 or 25% of the actual value, whichever is greater, surcharge for first time certificate transferred outside of immediate family; no transfer fee when transferred within family due to death or disability; no surcharge when transferred within family.
- Incidental take endorsement - \$25 fee.

- Equitable rent - Commission may establish an amount of equitable rent per certificate for partial compensation to the state for enhanced access to its natural resources and this must be approved by the Governor and Cabinet.
- Fees, surcharges, civil penalties, and fines will be deposited into the Marine Resources Conservation Trust Fund. No more than 50% can be used for operation and administration of the program. Remaining revenues are to be used for trap retrieval, management of the fishery, public education, evaluation of the reductions on the fishery, and enforcement. The program is intended to be self-supporting from revenues generated.
- Violations of trap certificate and specified tag requirements are subject to administrative penalties ranging from \$1,000 penalty and endorsement suspension for the remainder of the current license year for a first violation to revocation of saltwater fishing privileges and saltwater products license for a fourth violation within 48 months. Persons assessed administrative penalties have 30 days to pay the penalty or request an administrative hearing.
- Removal of the contents of another harvester's trap without the trap owner's written consent constitutes theft. In addition to penalties under the bill and s. 370.021, F.S., persons convicted will lose their saltwater products license, stone crab endorsement, and all trap certificates. A \$5,000 penalty will also be assessed.
- Criminal violations (i.e. felony in the third degree) are specified for violations of specified tag requirements, willful molestation of another's traps, and harvesting while endorsement is suspended.
- Endorsements may be automatically revoked or suspended and a fine levied for fraudulent reporting of the actual value of transferred stone crab certificates. If revoked, the associated certificates shall be deactivated.
- All traps must be removed from the water when endorsement is suspended or revoked or the time period of the suspension or revocation will be extended by 6 months.
- All fees and administrative penalties must be paid prior to endorsement renewal.

Section 2. Amends s. 370.143 (2), (3), and (4), F.S., to waive the existing \$10 retrieval fee for stone crab endorsement holders for the first five traps. Requires that payment of all retrieval fees are required prior to renewal of saltwater products license, and stone crab and or crawfish endorsements. Provides that retrieval fees will be waived in the event of a major natural disaster as declared by the Governor to be a disaster emergency area.

Section 3. Amends s. 370.153 (5), F.S., to provide that persons may trawl for shrimp in the St. Johns River if noncommercial trawling is authorized there by the FWCC.

Section 4. Amends s. 370.021 (2)(i), F.S., to provide a penalty of a 30-day license suspension for a first conviction of a major violation involving saltwater fisheries and increases the license suspension to 90 days for a second conviction. Amends s. 370.021(5), F.S., to clarify that the purchase of saltwater products by a commercial wholesale dealer, retail dealer, or restaurant facility for public consumption from an unlicensed entity is a major violation, subject to specified penalties. In addition, this section provides that the sale of saltwater products by a commercial wholesale dealer, retail dealer,

or restaurant facility for public consumption by an unlicensed entity is a major violation, subject to specified penalties. Amends s. 370.021 (2)(b), F.S., to provide that the court shall assess an additional penalty of \$10 per pound of illegal shrimp for two violations within a 12-month period involving shrimping gear, shrimp minimum size (count), or shrimp season. Adds a new paragraph (o) to s. 370.021 (2), F.S., to provide for the suspension or revocation of marine life endorsements for violations involving the taking or harvesting of marine life species.

Section 5. Adds a new subsection (9) to s. 370.06, F.S., to authorize the commission to deny the renewal or issuance of any saltwater products license, wholesale dealer license or retail dealer license to those who owe fines or fees to the commission.

Section 6. Amends s. 370.135(1), F.S., to add provision that it is unlawful to remove the contents of another blue crab harvester's trap without the trap owner's written consent and that such removal constitutes theft. In addition to penalties under the bill and s. 370.021, F.S., persons convicted will lose their saltwater products license and blue crab endorsement.

Section 7. Amends s. 370.142(2), F.S., to provide that final approval of any rent assessed for the spiny lobster program will be approved by the Governor and Cabinet. In addition, no transfer fee will be required when certificates are transferred within the immediate family due to death or disability, nor will any surcharge be required when certificates are transferred within the immediate family. The bill adds provision that it is unlawful to remove the contents of another spiny lobster harvester's trap without the trap owner's written consent and constitutes theft. In addition to penalties under the bill and s. 370.021, F.S., persons convicted will lose their saltwater products license, crawfish endorsement, and all trap certificates.

Section 8. This section appropriates \$97,049 for FY 2000-2001 for 4 career service positions to implement the stone crab trap limitation program. These funds would be appropriated from the commercial saltwater license fee revenues in the Marine Resources Conservation Trust Fund to the FWCC. The bill also appropriates \$254,408 for program operation and \$130,000 to cover the cost of stone crab trap tags for FY 2000-2001 in order to implement the program in FY 2001-2002. These funds would be appropriated from the commercial saltwater license fee revenues in the Marine Resources Conservation Trust Fund to the FWCC.

Section 9. Provides that the effective date of this act is July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Under the provisions of the bill, House staff estimates that the stone crab trap-limitation program will generate an estimated \$ 850,000 in revenue the first year through applications for saltwater products licenses and the stone crab endorsements, tags and certificates based on industry estimates of 1.2 million traps and 1,650 stone crab endorsements that would meet the required landing thresholds. Currently, there are approximately 4,400 stone crab endorsement holders. However, it is thought that many possess the stone crab endorsement on a saltwater products license simply because it

is free. Industry estimates 2,000 current endorsement holders would purchase incidental take endorsements.

After the first year, revenues will be raised through the \$2 transfer fee for the sale of certificates on the open market, the one-time \$2 (or 25 percent of market value) surcharge for the transfer of certificates outside of an immediate family, and the purchases of stone crab endorsements and trap tags. The industry estimates that there would be a 10 percent annual turnover of trap certificates subject to these fees.

1,650 x \$125/Stone Crab Endorsement	\$ 206,250
1,500 x \$25/Incidental Take Endorsement	\$ 50,000
1.2 million traps at \$.50/certificate	<u>\$ 600,000</u>
Total (using conservative estimates):	<u>\$ 856,250</u>

The total revenue from the sale and transfer of certificates is indeterminate at this time. Since the trap reduction percentages are based on the amount of certificates in the market at any given time, fair market value for the sale of certificates will also vary.

It is estimated that revenues from stone crab endorsements and trap tags will decrease by a little less than half over time. This is because industry estimates that the number of individuals holding stone crab endorsements will decrease to approximately 1,000 within five years. In addition, trap numbers will eventually decrease to the 600,000 target level.

The FWCC estimates total first-year revenues at \$ 450,000 with subsequent annual revenues of \$900,000 based on 1.5 million traps.

2. Expenditures:

The FWCC estimates its first-year program costs to be approximately \$480,933, with annual recurring costs estimated at approximately \$ 425,000. The following is a breakdown of these expenditures:

Office expenses for administering the tag program	\$ 90,208
Salaries (4 FTEs)	\$ 80,008
Trap Tags (1.5 million)	\$184,800
Database development and one OPS (*non recurring)	\$110,917
Appeals Board Expenses	<u>\$ 15,000</u>
TOTAL	<u>\$480,933</u>

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

All fees and costs will be paid by private sector participants who earn a living in the stone crab fishery. Persons who earn a living in the stone crab fishery expect to see an increase in trap yield due to the reduction in the number of traps in the water. Under the FWCC rule implemented by this bill, some commercial harvesters would not be able to meet the landing requirements and as such would be ineligible for trap certificates (unless an appeal to one of the Advisory Boards is successful). Their only method for harvest would be under the incidental take provisions of the rule.

D. FISCAL COMMENTS:

The bill appropriates the following amounts, totaling \$ 481,457, from the commercial saltwater license fee revenues in the Marine Resources Conservation Trust Fund for fiscal year 2000-2001:

- \$97,049 for 4 career service positions to implement the stone crab trap certificate program.
- \$254,408 for program operation costs.
- \$130,000 to cover the cost of tags.

The FWCC also has indicated that additional law enforcement will be necessary to implement this program, but has not included those costs in the appropriations request accompanying the bill. Rather, the funds would come from its budget request for law enforcement overtime.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

CS/HB 797 does not require counties or municipalities to expend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

CS/HB 797 does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

CS/HB 797 does not reduce the percentage of state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The FWCC is authorized by the Florida Constitution to exercise the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life. Exceptions to this authority include license fees, penalties for violations, planning, budgeting, personnel management, and purchasing which "shall be prescribed by general law." The stone crab trap certificate program rules recently adopted by the FWCC already address the mechanics of the program. However, legislative authorization is necessary for the fees and penalties to implement the rules. One provision of the bill that is unclear as to its constitutionality is the establishment of "equitable rent" for the enhanced access to both stone crabs and crawfish. If rent is a fee, the Legislature must set it. While there is no case law regarding rent and fees relating to the FWCC, in the sales tax laws the concepts of license fee and rent together have been combined {See: s. 212.02(10)(g), (l), and (j); s. 212.02(15); and s. 212.031(1)}.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Although data from the Florida Marine Research Institute indicates that stone crab fishery is stable, it is thought that the number of traps in the water is damaging the bottom, is raising marine debris concerns due to recent storms, and is interfering with other commercial and recreational purposes. The FWCC and the commercial stone crab industry have participated in the development of this legislation. Industry representatives state that 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. However, 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 who would not be able to meet the landing requirements, and as such would be ineligible for trap certificates, may be adversely impacted by this legislation as their only method for harvest would be under the incidental take provisions of the bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 22, 2000, the House Committee on Water and Resource Management adopted a strike-everything amendment to HB 797. The amendment removed the provisions of HB 797 that were duplicative with the FWCC's recently adopted rules relating to stone crabs, and added additional provisions regarding noncommercial shrimp trawling and major violations and other penalties relating to various saltwater products.

The House Committee on Water and Resource Management adopted without objection the above amendment as a committee substitute.

STORAGE NAME: h0797s1a.grr

DATE: March 30, 2000

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VII. SIGNATURES:

COMMITTEE ON WATER & RESOURCE MANAGEMENT:

Prepared by:

Staff Director:

Kellie R. Ralston

Joyce Pugh

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES & REGULATIONS:

Prepared by:

Staff Director:

Shari Z. Whittier

David M. Greenbaum