

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes - The bill increases the fees and penalties relating to the taking of blue crabs and spiny lobsters.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Blue Crabs

Background

The blue crab supports an important commercial trap fishery in the State of Florida. During the 1998 Session, concerns about the rapidly increasing number of traps in the blue crab fishery resulted in a legislative moratorium on the issuance of new blue crab endorsements.¹ Last year, the Fish and Wildlife Conservation Commission (FWCC) extended that moratorium until July 1, 2006, to allow for the completion and adoption of the blue crab limited entry endorsement program.²

Problems in the blue crab fishery include the seasonal crowding of traps in confined waterways, lost traps and bycatch, endorsements that are unused, and conflict between hard shell blue crab producers and soft shell blue crab producers.

During 2003, the FWCC Division of Marine Fisheries Management (MFM) assembled an industry advisory board, the *ad hoc* Blue Crab Advisory Board (BCAB), to develop an effort management program. The primary recommendation of the BCAB was to develop an effort management program for the blue crab fishery before the moratorium on issuing endorsements is lifted in July 2006. The BCAB recommended separating the hard shell blue crab fishery from the soft shell blue crab fishery and creating separate endorsements for each. Hard shell blue crabs are sold on the live market or to packing houses and have a minimum size limit of five inches carapace length. Soft shell crabs are peeler crabs that are allowed to molt in shedding tanks, are sold in the soft shell condition (usually frozen), and do not have a minimum size limit.

The plan endorsed by the BCAB creates a limited access fishery that would limit the total number of participants in the fishery, with an equal number of traps available to each endorsement. Each qualified hard shell crab endorsement can receive up to 600 trap tags, which can be used anywhere, and an additional 400 for offshore waters of the Gulf of Mexico. Each qualified soft shell crab endorsement can receive up to 400 trap tags with an additional 250 tags for a subsequent qualified endorsement.

Once the program has been established, individuals wishing to enter the fishery would be required to purchase an existing blue crab endorsement and its associated traps from someone wishing to exit the fishery. Each trap will be required to have a tag, with the endorsement holder's number firmly attached. Trap tags would be supplied by the FWCC. The Commissioners approved this plan in April 2005, to become effective July 1, 2006.³

Based upon public testimony at the April 2005 meeting, the Commissioners directed staff to investigate mechanisms to accommodate fishers affected by the 1995 Net Limitation Constitutional Amendment

¹ Subsection 370.135(2)(a), F.S.

² Rule 68B-45.004(9)(b)

³ Rule 68B-45.007, F.A.C.

(Article X, Section 16, Florida Constitution) who have a blue crab endorsement but no qualifying landings, and in other fisheries in which blue crab bycatch is permitted. This affected several thousand commercial fishers who used this type of gear to harvest inshore species such as mullet. In 2000, a limited entry program for the stone crab fishery was implemented that issued trap tag certificates based upon reported commercial stone crab landings. Bona fide displaced netters, who would not have qualified to be in the program, were awarded a certain amount of trap certificates as compensation for the loss of their net gear. Many of these displaced net fishers also possess a blue crab endorsement, but do not have any reported blue crab landings during the qualifying years. These endorsements are free and have been renewed over the years as an additional fishery option should their principal fishery fail. Staff developed language by which qualified displaced netters could be issued a non-transferable blue crab endorsement that would make them eligible for up to 100 trap tags.

A blue crab bycatch in shrimp trawls (200 pounds per day) has been allowed since 1993, and a nominal amount of blue crabs have historically been landed as bycatch from stone crab traps. Under the new blue crab limited entry program, a harvester must possess a blue crab endorsement to harvest, possess, and sell commercial quantities of blue crab. Staff developed language establishing an incidental take endorsement to allow the incidental harvest, possession, and sale of 200 pounds of blue crabs from shrimp trawls and stone crab traps. This incidental take endorsement has precedence in the stone crab fishery.⁴

The BCAB recommended setting a fee for the hard shell blue crab endorsement at \$125; a fee for the soft shell blue crab endorsement of \$250, a fee for the displaced-netters blue crab endorsement of \$125, and a fee for the incidental take endorsement of \$25. The BCAB recommended that \$25 of each endorsement fee, except for the incidental take endorsement, would be used for the trap retrieval program administered by FWCC in cooperation with the commercial fishing industry. Additionally, the BCAB recommended a trap tag fee \$0.50 per tag.

The Commissioners approved all of the BCAB's fee recommendations and requested that they be presented to the 2006 Legislature.

Current Law

Section 370.135, F.S., currently addresses the regulatory requirements relating to the commercial taking of blue crabs using traps. Pursuant to the provisions of subsection 370.135(1), F.S., blue crabs may not be taken using a trap unless the person, firm or corporation setting the trap holds a valid saltwater products license issued by the FWCC pursuant to s. 370.06, F.S., and the trap has a current state number permanently attached to the buoy used to mark the trap.

Under subsection 370.135(1), F.S., it is a third degree felony for anyone to willfully molest any trap, line or buoy that belongs to another without the express written permission of the trap owner. Any person receiving a judicial disposition for such a violation, in addition to the penalties specified in s. 370.021, F.S., (general penalties for violations of FWCC rules), shall lose all saltwater fishing privileges for a period of 24 calendar months.

It is also unlawful under this subsection to remove the contents of another harvester's trap or to take possession of such a trap. Such removal or possession constitutes a theft. Any person receiving a judicial disposition for such a violation, in addition to the penalties specified in s. 370.021, F.S., shall lose all saltwater fishing privileges for a period of 24 calendar months.

In addition, any person receiving a judicial disposition for any violation of subsection 370.135(1), F.S., or s. 370.1107, F.S., (unlawful possession of licensed saltwater fisheries traps) shall be assessed an administrative penalty of up to \$5,000.

⁴ Subsubparagraph 370.13(1)(b)6(c), F.S.
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Spiny Lobster

Background

The spiny lobster trap certificate program was established by statute (s. 370.142, F.S.) in 1990 to “stabilize the fishery by reducing the total number of traps, which should increase the yield per trap and maintain or increase overall catch levels”. The program was implemented in response to rapid growth of the fishery and associated problems of “increased congestion and conflict on the water, excessive mortality of undersized lobsters, a declining yield per trap, and public concern over petroleum and debris pollution. . . .” The number of traps in the fishery was capped at 750,327 and fishers were allocated their share of allowable traps on the basis of their historical landings.⁵ Each year fishers receive one trap tag for each trap certificate on record in their file. Only lobster traps bearing a trap tag issued by the FWCC may be fished. A fisher may buy or sell trap certificates on the open market.

Current Law

Section 370.14, F.S., addresses the regulatory requirements for taking spiny lobsters (crawfish). Under this section, any person taking or attempting to take a crawfish with a trap in commercial quantities must obtain and exhibit a crawfish trap number as required by the FWCC. Under subsection 370.142(2), F.S., the FWCC has established a “trap certificate program” for the spiny lobster fishery. Each person who holds a saltwater products license who uses traps for taking spiny lobsters is required to have a certificate on record for each trap that is used. In addition, each trap must have affixed to it an annual tag issued by the FWCC.

Paragraph 370.142(2)(c), F.S., provides for prohibitions and penalties regarding violations relating to the spiny lobster trap certificate program. Specifically, it is unlawful for a person to:

- possess or use a spiny lobster trap without the required certificate and tag;
- molest a trap or remove its contents;
- forge a trap certificate or tag;
- barter, trade, sell, supply a trap certificate or tag.

This paragraph provides for civil penalties ranging from \$1,000 to \$5,000 and suspensions and revocations of the holders trap number. It also provides for a third degree felony for any person who violates the forging or bartering provisions during the period of time that a trap number is under suspension.⁶

Trap Retrieval Program

Background

Spiny lobster season ends on March 31 each year; stone crab season ends on May 15. Fishers are required to remove their traps from the water during the closed season. Traps may be left in the water at the close of season for several reasons: (1) they were moved by currents or dragged by boats and lost to the owner; (2) the owner is either unable to bring them in, e.g. because of illness, a mechanical problem with his boat, etc., or chooses to not retrieve them; or (3) the owner may intend to continue fishing. Traps left in the water pose two basic problems: they continue to catch product, much of which dies, and they have the potential to be illegally fished. Also, traps that are left in the water can end up as “derelict traps” or “trap debris”, swept shoreward by currents into mangrove forests, shallow water flats, grass beds and marsh areas.

⁵ Rule 68E-18, F.A.C.

⁶ Subsubparagraph 370.142(2)(c)6a, F.S.

While spiny lobster and stone crab have long had specific closed seasons, blue crab has been a year-round fishery until recently. In 2003, the Commission closed the blue crab fishery in an area north and west of the Suwannee River seaward of a line three nautical miles from shore for the 14 days prior to stone crab season. In 2004, the 14-day closure zone was extended to the entire Gulf Coast, seaward of the three-nautical-mile line. The principal reason for excluding blue crab traps from waters beyond the three mile line is to preclude the possibility that such traps could be used to collect stone crab immediately prior to the beginning of the stone crab fishing season.

In 2003, the Commission adopted guidelines for trap retrieval and trap debris removal.⁷ Definitions apply to spiny lobster, stone crab, and blue crab traps, and a closed season now exists for all three fisheries.

Current Law

Section 370.143, F.S., authorizes the FWCC to implement a trap retrieval program for retrieval of spiny lobster and stone crab traps remaining in the water during the closed season for each species. Trap owners are charged a retrieval fee of \$10 per trap. Traps recovered under this program become the property of the FWCC or its contract agent and must be destroyed or resold to the original owner. The revenue from retrieval fees is deposited into the Marine Resources Conservation Trust Fund and is used solely for operation of the trap retrieval program.

Payment of all assessed retrieval fees must be received by the FWCC prior to renewal of the trap owner's saltwater products license and stone crab and or crawfish endorsements. Retrieval fees assessed under this program stand in lieu of other penalties imposed for such trap violations.

EFFECT OF PROPOSED CHANGES

Blue Crabs

The bill amends s. 370.135, F.S., to create new "endorsement fees" for blue crabs. The taking of blue crabs is currently regulated by the FWCC under Rule Chapter 68B-45, F.A.C. The new fees are:

- \$125 for taking hard-shell blue crabs;
- \$250 for taking soft-shell blue crabs;
- \$125 for a nontransferable blue crab endorsement;
- \$25 for an incidental take blue crab endorsement.

The bill requires that \$25 of the new endorsement fees for the hard-shell, soft-shell and nontransferable blue crab endorsement be used for the trap retrieval program.

The bill also requires an annual fee of 50 cents for each blue crab trap tag. The fee for replacement tags that have been lost or damaged is also 50 cents plus the cost of shipping. The Commission may also waive this fee if the Governor declares a state of emergency.

All of these fees listed above are waived for the 2006-2007 license year for those qualifying by September 30, 2006.

The bill allows the FWCC to establish by rule an amount of "equitable rent" that the FWCC may recover from blue crab trap owners for their enhanced access to the state's natural resources. In making a decision whether to impose the equitable rent and in determining the amount charged, the FWCC is permitted to consider the amount of revenues generated each year by endorsement fees, trap tags, replacement tags, trap retrieval fees, and the continued economic viability of the commercial blue crab industry.

⁷ Rule 68B-55, F.A.C.

All the funds from fees, penalties and equitable rent relating to the blue crab program are to be deposited in the Marine Resources Conservation Trust Fund. No more than 50 percent of the revenues may be used for the operation and administration of the blue crab program.

The bill provides penalties for untagged blue crab traps. The first violation of the requirements for trap tags will subject the violator to an administrative penalty of up to \$1,000 and the blue crab fishing privileges may be suspended for the remainder of the current license year. Subsequent violations will subject the violator to increasing administrative penalties up to \$5,000 and increasing terms of suspension of blue crab fishing privileges.

The bill sets administrative penalties and provides for a third degree felony for conviction of violating commission rules regarding blue crab trap theft and molestation, and for bartering trading, selling or leasing and forging trap tags. Any person convicted of fraudulently reporting the actual value of transferred blue crab endorsements may have his/her blue crab endorsements automatically suspended or revoked by the FWCC. If an endorsement is permanently revoked, the FWCC must also permanently deactivate the endorsement holder's blue crab trap tag accounts. All traps subject to a suspended or revoked endorsement must be removed from the water within 15 days from notice by the FWCC. Failure to do so will result in a 6 month extension of the suspension or revocation.

The bill appropriates \$132,000 from the Marine Resources Conservation Trust Fund in order to pay for the program, tags and administrative costs associated with the blue crab management effort and its advisory board.

Spiny Lobster

The bill provides that any person who receives a judicial disposition other than an acquittal or dismissal for a violation of the prohibitions against forging or bartering spiny lobster trap tags or certificates (Subparagraph 370.142(2)(c)5, F.S.) during any period of time while a trap number is under suspension or revocation shall be assessed an administrative penalty of up to \$5,000, and the person's crawfish endorsement may be suspended for up to 24 months.

The bill provides the FWCC may waive trap tag replacement fees if the Governor declares a state of emergency.

Trap Retrieval Program

The bill amends s. 370.143, F.S., relating to the trap retrieval program, to add traps for blue crabs and black sea bass to the types of traps that fall under the current program for spiny lobsters and stone crabs.

Marine Resources Conservation Trust Fund

Purposes of this trust fund are expanded to include funding for the stone crab, blue crab, and spiny lobster commercial trap programs, including the trap retrieval program. The trust fund is also designated as the depository of any fees or fines collected from these programs.

C. SECTION DIRECTORY:

- Section 1.** Amends s. 370.0603, F.S., to specify additional purposes and uses the Marine Resources Conservation Trust Fund.
- Section 2.** Amends s. 370.13, F.S., to address fees relating to stone crab fishery programs.
- Section 3.** Amends s. 370.135, F.S., to address fees, penalties, and equitable rent relating to blue crab traps.

- Section 4.** Amends s. 370.142, F.S., to address fees and penalties relating to the spiny lobster trap certificate program.
- Section 5.** Amends s. 370.143, F.S., to add blue crabs and black sea bass to the trap retrieval program.
- Section 6.** Provides appropriations for the blue crab trap tag program and the Blue Crab Advisory Board.
- Section 7.** Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	<u>FY 06-07</u> <u>Amount / FTE</u>	<u>FY 07-08</u> <u>Amount / FTE</u>	<u>FY 08-09</u> <u>Amount / FTE</u>
Marine Resources Consv TF			
Blue Crab Endorsements	\$ 138,500	\$ 138,500	\$ 138,500
Trap Tags	<u>-0-</u>	<u>430,275</u>	<u>430,275</u>
Total	\$ 138,500	\$ 568,775	\$ 568,775

2. Expenditures:

a. Licensing & Permitting-Expenses (Trap Tag costs and Program costs)	\$ 120,000	\$ 120,000	\$ 120,000
b. Marine Fisheries Mgt-Expenses (Operations & Advisory Board)	12,000	12,000	12,000
c. Trap retrieval, research, public education, enforcement activities	<u>-0-</u>	<u>436,775</u>	<u>436,775</u>
Total	\$ 132,000	\$ 568,775	\$ 568,775

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Commercial blue crab fishers will be assessed an annual fee for the blue crab endorsement (\$125 for hard shell crab endorsement; \$250 for a soft shell crab endorsement; \$125 for a non-transferable blue crab endorsement; or \$25 for the blue crab incidental take endorsement) and \$0.50 for each trap tag received.

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference (CJIC) has not considered the prison bed impact, if any, of the third degree felony in the bill. The bill modifies an existing third degree felony relating to blue crab trap molestation by moving the offense to a different subsection, providing additional direction of its scope, and by making the penalty for violation of commission rule. Typically, the CJIC estimates a third degree felony with a Level 1 ranking on the offense severity ranking chart will have an insignificant prison bed impact, absent any significant prior criminal history. Probation, a likely non-prison sanction, has an indeterminate but probably minimal fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable, because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

Pursuant to Article IV, Section 9 of the Florida Constitution, the FWCC has the authority to exercise the regulatory and executive powers of the state with respect to fresh water aquatic life, marine life, and wild animal life. However, this Constitutional provision requires that "all license fees for taking wild animal life, fresh water aquatic life and marine life and penalties for violating regulations of the commission shall be prescribed by general law." The fees and penalties provided by the bill appear to be consistent with this constitutional requirement.

B. RULE-MAKING AUTHORITY:

The bill allows the FWCC to establish by rule an amount of "equitable rent" that the FWCC may recover from blue crab trap owners for their enhanced access to the state's natural resources.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 11, 2006, the Agriculture and Environment Appropriations Committee adopted six amendments, outlined as follows:

- Allows FWCC to waive replacement trap tag fees for commercial blue crab, stone crab, and spiny lobster fisheries, in the event of a declared emergency by the Governor. (3 separate amendments)
- Waives blue crab fishery fees for the 2006-2007 license year.
- Clarifies existing language regarding the appropriation of funds.
- Specifies use of the Marine Resources Conservation Trust Fund for the stone crab, blue crab, and spiny lobster programs, including trap retrieval, and provides this trust fund as the depository of any fees or fines collected from these programs.

This analysis is drawn to the bill as amended.