

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Criminal Justice Committee

BILL: CS/SB 2490

INTRODUCER: Environmental Preservation Committee and Senator Argenziano

SUBJECT: Saltwater Fisheries

DATE: March 31, 2006

REVISED: 04/04/06

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Molloy</u>	<u>Kiger</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/1 amendment</u>
3.	<u></u>	<u></u>	<u>GO</u>	<u></u>
4.	<u></u>	<u></u>	<u>GA</u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

## Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

### I. Summary:

The bill establishes fees for endorsements required by the Fish and Wildlife Conservation Commission (FWC or commission) for the taking of blue crabs, including an incidental take endorsement, under the blue crab effort management program created by commission rule. The bill establishes the fee for each blue crab trap tag issued, and the fee to replace lost or damaged tags. The FWC is authorized to waive the trap tag fees for the stone crab, blue crab, and spiny lobster fisheries in areas where massive trap losses occur due to hurricanes or other major storm events.

The bill provides that all endorsement and trap tag fees, as well as fines for civil and criminal penalties, shall be deposited in the Marine Resources Conservation Trust Fund, and specifies the purposes for which the fees may be used. The bill establishes administrative penalties, license suspension and revocation requirements, and third-degree felony penalties. The FWC is authorized to automatically suspend or permanently revoke blue crab endorsements and permanently deactivate blue crab trap tag accounts under certain circumstances.

The bill appropriates \$132,000 from the Marine Resources Conservation Trust Fund to the Fish and Wildlife Conservation Commission for the purpose of implementing the blue crab management effort program, and for administrative costs of the Blue Crab Advisory Board created by rule of the commission.

Finally, the bill provides for the assessment of administrative penalties and the suspension of endorsements in the spiny lobster program, and authorizes the application of trap retrieval fees for recovery of blue crab traps and black sea bass traps.

The bill amends sections 370.0603, 370.13, 370.135, 370.142, 370.143, and 921.0022 of the Florida Statutes.

## II. Present Situation:

### **Blue Crab Restricted Species Endorsements**

Under the current provisions of s. 370.135, F.S., no person may harvest blue crabs with more than 5 traps, harvest blue crabs in commercial quantities, or sell blue crabs without holding a saltwater products license with a restricted species endorsement and a blue crab endorsement (trap number).

In 1998, the Legislature enacted ch. 98-203, L.O.F., to provide that effective June 1, 1998, and until July 1, 2002, no blue crab endorsement (trap number) on a saltwater products license could be renewed except for those that were active during the 1997-1998 fiscal year. For 1998, persons holding an endorsement that was active during the 1997-1998 fiscal year had to request approval of that endorsement from the Department of Environmental Protection prior to December 31, 1998.<sup>1</sup> In 2002, the moratorium was extended by commission rule until June 2005. In October 2004, the commission extended the moratorium until July 1, 2006.

### **Blue Crab Advisory Board<sup>2</sup>**

In 2003, the Division of Marine Fisheries at the FWC implemented an industry advisory board to assist in the development of a management program for the blue crab fishery. The FWC sent applications for board participation to 653 saltwater products license holders who each reported landing more than 500 pounds of blue crabs. The FWC received 43 applications back and selected 15 harvesters and wholesale dealers, and 1 member representing the FWC, to serve as the *ad hoc* Blue Crab Advisory Board (BCAB). The BCAB held four public meetings from 2003 through June 2004, to develop recommendations for a management program. The plan endorsed by the Board asked for a limited access fishery to limit the number of participants in the fishery and assign an equal number of traps to each qualifier.

In April 2005, the FWC held a final public hearing for a limited entry program and in June 2005, the FWC approved the creation of the blue crab limited entry program.

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<sup>1</sup> The authority to regulate all commercial fishery licenses and limited entry programs, although not gear, seasons, or bag limits, rested with the department and not the Marine Fisheries Commission pursuant to s. 370.06, F.S., (1998). This authority was statutorily transferred to the Fish and Wildlife Conservation Commission when the Legislature enacted ch. 99-245, Laws of Florida.

<sup>2</sup> See "Executive Summary Blue Crab Advisory Board Recommendations" prepared by Division of Marine Fisheries at the FWC, June 2004.

**Blue Crab Limited Entry Endorsement Program (Rule 68B-45.007, F.A.C.)**

- Requires that beginning in the 2006-2007 license year, a blue crab limited entry endorsement number is required (along with a valid saltwater products license and a restricted species endorsement), in order to commercially harvest or sell blue crabs.
- Establishes trap tag requirements.
- Prohibits leasing or renting of blue crab limited entry endorsements, tags, or traps.
- Creates a transfer process for the sale of blue crab limited entry endorsements.
- After September 30, 2006, no new blue crab endorsements, except incidental take endorsements, shall be used.
- Creates a Blue Crab Appeals Board to consider disputes and problems arising from denial of entry into the program.
- Creates a Blue Crab Advisory Board to consider and advise the FWC on the operation of the limited entry program and problems in the fishery.
- Establishes requalifying criteria to stay in the fishery.

*Qualifying Criteria: Hard Crab Fishery (V-H number)*

- Minimum of 500 pounds of landings reported on any one entity's saltwater products license during any qualifying year (2000-2001, 2001-2002, 2002-2003). Each additional saltwater products license for that entity requires a minimum of 7,500 pounds of landings.
- Endorsement fee of \$125, including a \$25 trap retrieval fee.
- Each endorsement entitles the owner to fish up to 600 blue crab traps near shore and an additional 400 traps offshore in the Gulf of Mexico.
- Daily bycatch includes 150 soft shell crabs.

*Qualifying Criteria: Soft Crab Fishery (V-S number)*

- Minimum of 750 pounds of soft shell or peeler crabs reported on any one entity's saltwater products license during either 2000-2001, 2001-2002, or 2002-2003. One additional saltwater products license for that entity requires a minimum of 2,500 soft shell or peeler blue crabs.
- Endorsement fee of \$250, including a \$25 trap retrieval fee.
- Each endorsement allows up to 400 peeler traps to be fished, with 250 additional traps for the one additional saltwater products license.

*Qualifying Criteria: Non-transferable Blue Crab Limited Entry Endorsement (V-N number)*

- Must be a displaced net fishermen or a person who sold nets to the state under the net buy back program, and have a current saltwater products license with a restricted species endorsement and a blue crab endorsement.
- Must not have been convicted for net gear violations since July 1, 1995.
- May not sell or transfer endorsement.
- May purchase up to 100 hard shell blue crab trap tags to deploy a like number of traps.
- May only receive 1 V-N endorsement.

**Penalty provisions of s. 370.135, F.S.**

Section 370.135, F.S., relating to the regulation of blue crabs, provides that it is a third-degree felony for persons to willfully molest any traps, lines, or buoys belonging to another without the

express written consent of the trap owner. In addition to penalties assessed under ss. 775.082, 775.083, and 775.084, F.S., any person who is not acquitted or who has not had charges dismissed may also have all saltwater license privileges suspended for up to 24 months.

Persons who unlawfully possess or remove another's gear or trap contents commit theft, and in addition to penalties provided in s. 370.021, F.S., shall permanently lose all saltwater fishing privileges, including a saltwater products license and a blue crab endorsement. In such cases, a blue crab endorsement, landing history, and trap certificate may not be transferred. Any person who is not acquitted or who has not had charges dismissed may also be assessed an administrative penalty of up to \$5,000. A violator is prohibited from transferring any blue crab endorsements, landings history, or trap certificates upon immediate receipt of a citation, until adjudicated for a violation, or upon receipt of a judicial disposition other than acquittal or dismissal.

**Penalty provisions of s. 370.021, F.S.**

Subsection (1) of s. 370.021, F.S., provides that any person violating the provisions of ch. 370, F.S., may upon a first conviction, be imprisoned for not more than 60 days and/or may be fined not less than \$100 or more than \$500. For a second or subsequent conviction, a person may be imprisoned for not more than 6 months, and/or fined not less than \$250 or more than \$1,000. Subsection (2) of s. 370.021, F.S., does not contain penalty provisions that specifically address trap theft, but does contain major violation penalties for persons who are in possession of more than 100 illegal blue crabs (\$10 per crab), and penalty provisions for subsequent violations. Subsection (6) of s. 370.021, F.S., provides misdemeanor and felony penalties for persons who illegally harvest or attempt to harvest saltwater products with intent to sell.

**Penalty provisions of ss. 775.082, 775.083, and 775.084, F.S.**

Section 775.082, F.S., provides that a person convicted of a third-degree felony may be imprisoned for not more than 5 years. Section 775.083, F.S., provides that a person convicted of a third-degree felony may also be sentenced to pay a fine of not more than \$5,000. Section 775.084, F.S., provides for enhanced penalties for habitual felony offenders.

**Criminal Punishment Code (ss. 921.002 - 921.0027, F.S.)**

Under the Criminal Punishment Code, Florida's sentencing code for felony offenses, except capital offenses, committed on or after October 1, 1998, there are 10 ranking levels. All felony offenses, excluding capital offenses, are either specifically ranked in a ranking level of a ranking chart<sup>3</sup> or, if not specifically ranked in the chart, are ranked by a "default" provision<sup>4</sup> based on the felony degree of the offense. Sentencing points accrue based on the level ranking of a felony offense. The higher the level ranking of the offense, the greater the number of sentencing points for the offense. These points, along with points accrued for other factors, are used in a mathematical formula that determines a lowest permissible sentence.<sup>5</sup> This formula not only determines if the lowest permissible sentence scored will be a prison sentence or may be a nonprison sanction, but also determines the length of a lowest permissible sentence of imprisonment.

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<sup>3</sup> s. 921.0022, F.S.

<sup>4</sup> s. 921.0023, F.S.

<sup>5</sup> s. 921.0024, F.S.

If the lowest permissible sentence scored is a prison sentence,<sup>6</sup> the sentencing court must impose at least the lowest permissible sentence, unless there are mitigating grounds (most of which are specified in statute)<sup>7</sup> for imposing a lesser sentence. However, the court is free to impose a greater sentence within a range consisting of the lowest permissible sentence scored up to and including the maximum penalty imposed for the felony degree of the offense before the court for sentencing. If the lowest permissible sentence scored is a non-prison sanction, the sentencing court is free to impose a non-prison sanction for the offense before the court for sentencing. However, the court may impose a prison sentence up to and including the maximum penalty for the offense before the court for sentencing.<sup>8</sup>

### III. Effect of Proposed Changes:

**Section 1.** Amends subsection (1) of s. 370.135, F.S., to delete existing third-degree felony penalties for blue crab trap violations, and establishes endorsement fees for the taking of blue crabs as follows:

- \$125 for an endorsement to take hard-shell blue crabs.
- \$250 for an endorsement to take soft-shell blue crabs.
- \$125 for a nontransferable endorsement to take hard-shell blue crabs.
- \$25 for an incidental take blue crab endorsement to take blue crab as a bycatch in shrimp trawls and stone crab taps.

Creates subsection (3) in s. 370.135, F.S., to:

- Establish trap tag fees of 50 cents per tag for each trap tag issued by the FWC.
- Establish a replacement fee of 50 cents per tag, plus shipping costs, for lost or damaged tags.
- Authorize the FWC to waive or defer trap tag fees for massive trap losses in any area designated by the Governor to be a disaster emergency area due to a hurricane or other major storm event.
- Provide that all endorsement fees, trap tag fees, fines for civil and criminal penalties, and replacement trap tag fees shall be deposited into the Marine Resources Conservation Trust Fund.
- Provide that not more than 50 percent of the revenue from fees and fines can be used to operate and manage the blue crab limited entry program.
- Provide that remaining revenues must be used for trap retrieval efforts, management of the blue crab fishery, public education activities, research, and law enforcement activities related to the blue crab limited entry program.
- Authorize the FWC to waive all blue crab endorsement fees for the 2006-2007 license year.

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<sup>6</sup> Any sentence to state prison must exceed one year. s. 921.0024(2), F.S.

<sup>7</sup> s. 921.0026, F.S.

<sup>8</sup> There is statutory authorization for a scored sentence to exceed the maximum penalty provided in s. s. 775.082, F.S. *See* s. 921.0024(2), F.S. This rarely occurs.

Creates subsection (4) in s. 370.135, F.S., to provide that:

- In addition to other penalties assessed in s. 370.021, F.S., any person, firm, or corporation that violates commission rules requiring the placement of blue crab trap tags on each trap used for the directed harvest of blue crabs, may be penalized as follows:
  - For a first violation, an administrative penalty of up to \$1,000 may be assessed, and the blue crab endorsement holder's blue crab fishing privileges may be suspended for the remainder of the current license year.
  - For a second violation occurring within 24 months of a previous violation, an administrative penalty of up to \$2,000 may be assessed, and the blue crab endorsement holder's blue crab fishing privileges may be suspended for 12 calendar months.
  - For a third violation occurring within 36 months after any two previous violations, an administrative penalty of up to \$5,000 may be assessed, and the blue crab endorsement holder's blue crab fishing privileges may be suspended for 24 calendar months.
  - For a fourth violation occurring within 48 months after any three previous violations, all saltwater fishing privileges may be permanently revoked, and the commission is authorized to proceed against the endorsement holder's saltwater products license.
- Administrative penalties must be paid within 30 days of assessment, or an administrative hearing under ss. 120.569 and 120.57 must be requested.
- Administrative penalties must be deposited into the Marine Resources Conservation Trust Fund.
- It is unlawful for any person to remove or take possession of the contents of another harvester's trap without the written consent of the trap owner.
- Unauthorized possession of another harvester's trap gear or removal of trap contents constitutes theft.
- Any person convicted of theft shall, in addition to penalties specified in s. 370.021, F.S., permanently lose all saltwater fishing privileges, including saltwater products licenses, blue crab endorsements, and all trap tags allotted by the commission.
- Trap tags of endorsement holders convicted of theft are nontransferable.
  - Any person, firm, or corporation convicted of theft shall be assessed an additional administrative penalty of up to \$5,000.
  - A violator is prohibited from transferring any blue crab endorsements upon immediate receipt of a citation for theft of or from a trap, and until adjudicated for that violation, or upon receipt of a judicial determination other than dismissal or acquittal.
- Any person, firm, or corporation convicted of violating commission rules prohibiting any of the following, commits a third-degree felony, punishable as provided in ss. 775.083, 775.083, or 775.084, F.S.:
  - Willful molestation of any blue crab trap, line or buoy that is the property of any other license holder.
  - Bartering, trading, leasing, or sale of, or conspiring or aiding in the bartering, trading, leasing, sale of, or supplying of any blue crab trap tags except as authorized by the commission in rule.
  - Making or possessing altered, forged, counterfeit, or reproduced blue crab trap tags.

- Possessing original trap tag and replacement trap tags, the sum of which exceeds by 1 percent the number of traps allowed by commission rule.
- Engaging in commercial harvest of blue crabs during a period of license suspension or revocation.
- In addition to felony penalties, administrative penalties of up to \$5,000 can be assessed by the FWC.
- All blue crab endorsements possessed by the person, firm, or corporation convicted of a violation may be suspended for up to 24 calendar months.
- The transfer of blue crab endorsements by any person, firm, or corporation is prohibited immediately upon receipt of a citation, until adjudication, or if convicted of a violation.
- Authorizes the FWC to automatically suspend or permanently revoke the seller's or purchaser's blue crab endorsements for fraudulently reporting the value of transferred blue crab endorsements.
- In the event of a permanent revocation, the FWC must permanently deactivate the endorsement holder's blue crab trap tag accounts.
- During a period of suspension or after revocation of a blue crab endorsement, the endorsement holder has 15 days after receiving notice from the commission to remove all traps from the water.
- Failure to remove traps shall extend the period of suspension or revocation for an additional six calendar months.

Creates subsection (5) in s. 370.135, F.S., to provide that for purposes of the section, a conviction is any disposition other than an acquittal or dismissal of charges.

Creates subsection (6) in s. 370.135, F.S., to provide that an endorsement may not be renewed until all fees and administrative penalties are paid.

**Section 2.** For fiscal year 2006-2007, appropriates \$132,000 from the Marine Resources Conservation Trust Fund to the FWC to implement the blue crab effort management program, and to cover the administrative costs of the Blue Crab Advisory Board created by commission rule.

**Section 3.** Amends s. 370.13, F.S., to authorize the FWC to waive or defer stone crab trap tag fees for massive trap losses in any area designated by the Governor to be a disaster emergency area due to a hurricane or other major storm event.

Repeals statutory authorization for the FWC to establish by rule equitable rent for enhanced access to the stone crab fishery.

**Section 4.** Amends subsection (2) of s. 370.142, F.S., to:

- Authorize the FWC to waive or defer spiny lobster trap tag fees for massive trap losses in any area designated by the Governor to be a disaster emergency area due to a hurricane or other major storm event.
- Provide that in addition to third-degree felony penalties imposed for commercial harvesting, trapping, or possession of a spiny lobster without a crawfish trap number, or

during any period when a crawfish trap number is suspended or revoked, any person receiving a judicial disposition other than acquittal or dismissal of charges shall be assessed an administrative penalty of up to \$5,000, and may have his or her crawfish endorsement suspended for up to 24 calendar months.

- Prohibit the transfer of spiny lobster trap certificates by any person immediately upon receipt of a citation, until adjudication of the violation, or until after receipt of a judicial disposition other than acquittal or dismissal.

**Section 5.** Amends s. 370.143, F.S., to expand the authorization for the FWC to implement a \$10 per trap retrieval fee to include blue crab traps and black sea bass traps.

**Section 6.** Amends s. 370.0603, F.S., to provide that funds in the Marine Resources Conservation Trust Fund can be used for the purposes of the stone crab trap reduction, the blue crab effort management, and the spiny lobster trap certificate programs. Authorizes the trust fund to receive the proceeds from fees, fines, and penalties collected under the stone crab, blue crab, and spiny lobster programs.

**Section 7.** Amends s. 921.0022, F.S., to correct a cross-reference.

**Section 8.** Provides an effective date of July 1, 2006.

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

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

The bill does not require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by s. 18, Art. VII, State Constitution.

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

None.

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

None.

##### **D. Other Constitutional Issues:**

The bill establishes fees for blue crab endorsements necessary to implement a commercial blue crab effort management program, established by commission rule in 68B-45.007, F.A.C., in which entry to the fishery will be limited, in part, on prior blue crab landings. This effort management program is not authorized in statute and may not fall under the constitutional authority of the commission as provided in Art. IV, s. 9 of the State Constitution.

*In Caribbean Conservation Corp., Inc. v. Florida Fish and Wildlife Conservation Commission*, 838 So.2d 491 (Fla.2003), in which the Florida Supreme Court issued an



opinion finding that the commission's authority over endangered and threatened marine species is statutory and not constitutional, the Court stated:

..."the [petitioners] and [respondents] agree that the commission's jurisdiction and authority over marine life was to be whatever the jurisdiction and authority of the Marine Fisheries Commission was over marine life as to March 1, 1998" and "When the two constitutional sections are read together, we conclude that the provisions gave to the FWCC regulatory and executive powers with respect to marine life, including the regulatory and executive powers of the Marine Fisheries Commission in effect on March 1, 1998. However, whether this gave to the FWCC the regulatory and executive powers over all marine life depends on whether regulatory and executive powers over some marine life remained with other agencies after the voters approved the revision 5 amendments," and "The power in respect to marine life which the Marine Commission had on that date did not include the power which had been given to DEP."<sup>9</sup>

## V. Economic Impact and Fiscal Note:

### A. Tax/Fee Issues:

The bill provides for a \$125 endorsement fee for the taking of hard shell blue crabs, a \$250 endorsement fee for the taking of soft crabs, a \$125 nontransferable endorsement fee for taking hard shell blue crabs, and a \$25 endorsement fee for the incidental take of crabs.

The bill provides a trap tag fee of 50 cents per tag, and a replacement trap tag fee of 50 cents per tag, plus shipping costs.

The bill establishes administrative fines as follows:

- Up to \$1,000 for blue trap tag violations.
- Up to \$5,000 for the theft of blue crab trap gear and contents.
- Up to \$5,000 for the willful molestation of blue crab and spiny lobster traps, lines or buoys; illegal trade sale of leasing of trap tags; forging or counterfeiting trap tags; possessing forged or counterfeit trap tags; possession of trap tags exceeding by 1 percent the amount of traps authorized by rule; commercially harvesting blue crabs or spiny lobster during a license suspension or revocation period.

The bill establishes a \$10 per trap retrieval fee for the retrieval of each black sea bass trap, and for each blue crab trap after the first 5 blue crab traps have been retrieved.

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<sup>9</sup> On March 1, 1998, the Department of Environmental Protection had regulatory and executive authority over limited entry commercial fishing programs. See s. 370.14, F.S. (1998) relating to the spiny lobster trap certificate program, a commercial trap reduction program implemented by the department in which limited entry to the program was based on crawfish landings.

**B. Private Sector Impact:**

The blue crab commercial fishery will experience financial impacts from the fees assessed under the bill, and the administrative fines, criminal penalties, and license suspension and revocation provisions of the bill. The spiny lobster commercial fishery may experience financial impacts from the administrative fines created in the bill. Persons fishing with black sea bass traps and blue crab traps may experience financial impact from the \$10 per trap retrieval fee.

For the 2004-2005 license year, the FWC shows 1,782 blue crab endorsement holders. Of those numbers:

- 692 qualify for entry into the program.
- 450 reported landings at a level to low for entry into the program.
- 640 endorsement holders reported no landings.

The spiny lobster and stone crab commercial fisheries may experience some financial relief if the FWC either waives or defers replacement trap tag fees for massive trap losses which occurred during the 2005 hurricane season.

**C. Government Sector Impact:**

FWC estimated fiscal impact:

	(FY 06-07)	(FY 07-08)	(FY 08-09)
Recurring Revenue:			
Marine Resources			
Conservation Trust Fund			
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	\$586,775
Recurring Expenditures:			
Licensing & Permitting	\$120,000	\$120,000	\$120,000
Operation & Admin.	12,000	12,000	12,000
Trap Retrieval, research, public education, enforcement	<u>-0-</u>	<u>436,775</u>	<u>436,775</u>
Total	\$132,000	\$568,775	\$568,775

The Criminal Justice Impact Conference (CJIC) has not yet met to consider the prison bed impact, if any, of the third degree felony in the bill. The bill modifies an existing third degree felony relating to the molestation of a blue crab trap to put this offense in a different subsection of s. 370.135, F.S., and to add additional acts that constitute a violation. The offense retains its Level 1 ranking in the offense severity ranking chart of the Criminal Punishment Code. Usually, the CJIC estimates that a third degree felony with a Level 1 ranking will have an insignificant prison bed impact because, absent a significant prior criminal history to increase sentencing points, the lowest permissible

sentence scored for a third degree felony in Level 1 is a non-prison sanction, such as probation.<sup>10</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>10</sup> The sentencing range for such offense, absent a mitigation of sentence, is the lowest permissible sentence up to 5 years in state prison, which is the maximum penalty for a third degree felony, as provided in s. 775.082, F.S.



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## VIII. Summary of Amendments:

### **Barcode 772124 by Criminal Justice:**

Corrects statutory and descriptive references in the Criminal Punishment Code offense severity ranking pertinent to criminal activities involving the taking of blue crabs.

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