

**The Florida Senate**  
**PROFESSIONAL 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: Governmental Operations Committee

BILL: CS/CS/SB 1980

INTRODUCER: Governmental Operations Committee and the Environmental Preservation and Conservation Committee and Environmental Preservation and Conservation Committee

SUBJECT: Wildlife Management and Saltwater Fisheries

DATE: April 13, 2007

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bascom	Kiger	EP	<b>Fav/CS</b>
2.	Wilson	Wilson	GO	<b>Fav/CS</b>
3.			FT	
4.			GA	
5.				
6.				

**I. Summary:**

The committee substitute authorizes use of up to 10 percent of the annual use fee deposited into the Save the Manatee Trust Fund, the Florida Panther Research and Management Trust Fund, and State Game Trust Fund to promote or market Manatee, Florida Panther, and Largemouth Bass specialty license plates. It increases the annual use fee collected from the sale of the Sea Turtle specialty license plate from \$17.50 to \$23. It also authorizes the use of annual use fees deposited into the Save the Manatee Trust Fund from the sale of the manatee license plates, for fiscal year 2007-2008, by the Florida Fish and Wildlife Conservation Commission (FWC or commission) to buy back any manatee license plates not issued by the Department of Highway Safety and Motor Vehicles thru June 30, 2006.

The committee substitute provides for deposit and use of certain fees, fines and penalties collected under the Marine Resources Conservation Trust Fund, for the funding of the stone crab trap reduction program under s. 370.13, F.S., the blue crab effort management program under s. 370.135, F.S., the spiny lobster trap certificate program under s. 370.142, F.S., and the trap retrieval program under s. 370.143, F.S.

The committee substitute requires Legislative approval for certain commission rules that establish equitable rent.

The committee substitute establishes fees for endorsements required by the FWC for the taking of blue crabs, under s. 370.135, F.S. It establishes a 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 stone

crab, blue crab, and spiny lobster fisheries in areas where massive trap losses occur due to natural disaster and if the area is declared, by the Governor, to be a disaster emergency area.

The committee substitute provides that all endorsement and trap tag fees, as well as fines for administrative and criminal penalties, shall be deposited in the Marine Resources Conservation Trust Fund, and specifies the purposes for which the fees may be used. It establishes administrative penalty limits, license suspension and revocation requirements, and third-degree felony penalties. The FWC is authorized to automatically suspend or permanently revoke blue crab endorsements and deactivate blue crab trap tag accounts under certain circumstances. It requires the commission to adopt, by rule, a schedule for administrative penalties for the blue crab effort management program.

The committee substitute appropriates \$132,000 from the Marine Resources Conservation Trust Fund to the FWC, on a recurring basis, for the purpose of implementing the blue crab effort management program and for administrative costs of the Blue Crab Advisory Board created by rule of the commission.

The committee substitute deletes the administrative penalty provision of endorsement revocation for first violations of commission rule of the stone crab management program. It also amends the cost of replacement stone crab trap tags to include the cost of shipping.

The committee substitute 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 the recovery of blue crab traps and black sea bass traps. It also corrects a reference to saltwater crawfish conforming to the commission's current spiny lobster program.

Finally, the committee substitute directs the commission to adopt by rule adequate due process procedures, to be accorded to any party as defined in s. 120.52, F.S.

The committee substitute amends ss. 20.331, 320.08058, 370.025, 370.0603, 370.1105, 370.12, 370.13, 370.135, 370.14, 370.1405, 370.142, 370.143, 372.09, 372.672, 372.83, and 861.021 Florida Statutes.

## **II. Present Situation:**

### **Manatee, Florida Panther, Sea Turtle and Largemouth Bass License Plates**

Under the current provisions of s. 320.08056, F.S. and s. 320.08058, F.S.:

- The first \$500,000 of the annual use fees collected from the sale of the "Sea Turtle" specialty license plate is deposited into the Marine Resources Conservation Trust Fund to be used by the Florida Marine Turtle Protection Program. The next \$215,000 shall be distributed to the Caribbean Conservation Corporation to fund sea turtle research and education programs. Additional revenues are divided amongst the two programs as specified in s. 320.08058 (19), F.S. In 2005, \$1,362,515 was generated from the sale of the plate. In that year, the FWC received a total of \$925,037 which was utilized for administration, research and management of the program.

- One hundred percent of the annual use fees collected from the “Save the Manatee” specialty license plate are deposited in the Save the Manatee Trust Fund and used only for the purposes specified in s. 370.12 (4), F.S.
- Eighty-five percent of the annual use fees collected from the “Protect the Panther” specialty license plate are deposited in the Florida Panther Research and Management Trust Fund to be used for education and programs to protect the endangered Florida panther. Fifteen percent, but no less than \$300,000, is deposited in the Florida Communities Trust Fund to be used pursuant to the Florida Communities Trust Act.
- One hundred percent of the annual use fees collected from the “Largemouth Bass” specialty license plate are deposited in the State Game Trust Fund to be used to fund programs that maintain the current levels of protection and management of the state’s fish and wildlife resources.
- The commission is working with the Save the Manatee Club to redesign the current plate. The organization that requested the specialty license plate may not redesign the specialty license plate unless the inventory of those plates has been depleted. However, the organization may purchase the remaining inventory of the specialty license plates from the Department of Highway Safety and Motor Vehicles at cost.

### **Equitable Rent**

Under the stone crab and spiny lobster trap certificate programs in ss. 370.13 and 370.142, F.S., the commission may establish by rule an amount of equitable rent that shall be recovered as partial compensation to the state for the access to its natural resources. Final approval of such a rule shall be by the Governor and Cabinet acting as the Board of Trustees of the Internal Improvement Trust Fund. To date, the commission has not adopted a rule that establishes equitable rent.

### **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, Laws of Florida, 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. In 2002, the moratorium was extended by commission rule until June 2005. In October 2004, the commission extended the moratorium until July 1, 2006. On June 8, 2006, the commission further extended the moratorium until July 1, 2007 pursuant to Rule 68B-45.004 (9)(b), F.A.C.

### **Blue Crab Advisory Board**

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 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 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.

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

- Requires that beginning in the 2007-2008 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, 2007, no new blue crab endorsements, except incidental take endorsements, shall be issued.
- Beginning in 2008/2009, each blue crab endorsement holder must renew the endorsement number by September 30. A failure to do so in any year will result in forfeiture of the endorsement number.
- 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, and 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 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 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 fisherman 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.
- Endorsement may not be sold or transferred.
- 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 certificates 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 persons convicted of a third-degree felony may be imprisoned for not more than 5 years. Section 775.083, F.S., provides that persons 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 that habitual felony offenders may be imprisoned for not more than 10 years.

**Sentencing guideline provisions of s. 921.0022, F.S.**

Section 921.0022, F.S., is the offence severity ranking chart used with the Criminal Punishment Code worksheet to compute a sentence score for each felony offender whose offense was committed after October 1, 1998. The offense severity chart has 10 levels, ranking from least severe (level 1 offenses) to most severe (level 10 offenses). Violations of s. 370.135, F.S., are level 1 offenses for the purposes of sentencing. The Criminal Punishment Code establishes sentence points to levels of offense and is used for sentencing purposes.

**Adequate due process**

Article IV, Section 9, Florida State Constitution, requires that the commission shall establish procedures to ensure adequate due process in the exercise of its regulatory and executive functions. On July 7, 1999, the FWC adopted *Due Process Procedures of the Florida Fish and Wildlife Conservation Commission* and determined them as “adequate” under the explicit meaning of the constitution.

In 2006, the Florida Senate’s opinion was that the commission had not established “adequate” due process procedures as required in Art. IV, section 9, State Constitution, by its reference to provisions in Rule 28-101, F.A.C. and ch. 120, F.S., and proposed legislation that the commission shall adopt a rule establishing adequate due process.

**Commission authority over marine life**

Section 370.025(4), F.S., states that the commission has full constitutional rulemaking authority over marine life and listed species except for:

- Endangered or threatened marine species for which rulemaking shall be done pursuant to ch. 120, F.S.
- Authority to regulate fishing gear in residential, manmade saltwater canals which is retained by the Legislature.
- Marine aquaculture products produced by individuals certified by the Department of Agriculture and Consumer Services pursuant to s. 597.004, F.S.

However it was the opinion of the Florida Supreme Court that the FWC power over marine life did not include the power which had been given to DEP on March 1, 1998.<sup>1</sup>

**III. Effect of Proposed Changes:**

**Section 1.** Amends subsection (s) of subsection (4) of s. 320.08056, F.S., to increase the annual use fee of the Sea Turtle specialty license plate from \$17.50 to \$23.

**Section 2.** Amends subsection (5) of subsection (18) of s. 320.08058, F.S., and reenacts subsection (1) of s. 320.08058, F.S., to authorize up to ten percent of the annual use fees collected from the Florida Panther, and Largemouth Bass specialty license plates to be used to promote and market the “Protect the Panther”, and “Largemouth Bass” specialty license plates.

**Section 3.** Amends subsection 370.0603, F.S., to provide funding from the Marine Resources Conservation Trust Fund for the stone crab trap reduction program, the blue crab effort

<sup>1</sup> Caribbean Conservation Corp., et al v Florida Fish and Wildlife Conservation Commission, et al, 838 So.2d 491 (Fla 2003).

management program, the spiny lobster trap certificate program, and the trap retrieval program. Any fees, fines, or penalties collected under s. 370.13, 370.135, and 370.142, F.S., shall be deposited into the Marine Resources Conservation Trust Fund.

**Section 4.** Amends subsection (1) of s. 370.1105, F.S., correcting a reference to saltwater crawfish to conform to the commission's current spiny lobster program.

**Section 5.** Amends s. 370.12, F.S. to authorize up to 10 percent of the annual use fee deposited into the Save the Manatee Trust Fund, from the sale of the "Save the Manatee" specialty license plate, to be used to promote and market the "Save the Manatee" specialty license plate. For the 2007-2008 fiscal year, authorizes the commission to use annual use fees collected from the sale of the "Save the Manatee" specialty license plate to buy back any manatee license plates not issued thru June 30, 2006.

**Section 6.** Amends s. 370.13, F.S., authorizing the commission to defer or waive stone crab trap replacement tags, in the event of a major natural disaster, and requiring Legislative approval of a rule, by the commission, that establishes equitable rent for enhanced access to the stone crab fishery. It also deletes the administrative penalty provision of endorsement revocation for first violations of commission rule of the stone crab management program. Finally, it amends the cost of replacement stone crab trap tags to include the cost of shipping.

**Section 7.** Amends subsection (1) of s. 370.135, F.S., to delete existing third-degree felony penalties for blue crab trap violations.

Amends subsection (2) of s. 370.135, F.S., to delete obsolete language and authorize the transfer of existing blue crab endorsements, by commercial harvesters, under certain circumstances.

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

- Establish 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 non-transferable endorsement to take hard-shell blue crabs.
  - \$25 of each of the above endorsements must be used solely for the trap retrieval program authorized under s. 370.143, F.S.
  - \$25 for an incidental take blue crab endorsement to take blue crab as a bycatch in shrimp trawls and stone crab traps.
- Establish trap tag fees of 50 cents per tag for each trap issued by FWC.
- Establish 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 major natural disaster.
- Authorize the commission to establish, by rule, equitable rent as compensation to the state for the enhanced access to blue crab resources. A rule that establishes equitable rent will only become effective upon approval by the Legislature.

- 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 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 FWC to waive all blue crab endorsement fees for the 2007-2008 license year for persons who qualify by September 30, 2007.

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

- By July 1, 2008, the commission shall implement, by rule, the administrative penalties authorized under this subsection. 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 direct harvest of blue crabs, may be penalized as follows:
  - For a first violation, an administrative penalty of up to \$1,000 may be assessed.
  - 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, F.S., 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 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 endorsement 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. 775.082, 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 authorized by the commission in rule.
  - Making or possessing altered, forged, counterfeit, or reproduced blue crab trap tags.
  - Possessing original trap tag and replacement 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 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.

Creates subsection (7) in s. 370.135, F.S., to provide that subsections (3), (4), (5), and (6) shall expire on July 1, 2009 unless reenacted by the Legislature during the 2009 regular session.

**Section 8.** For the fiscal year 2007-2008, the sum of \$132,000 is appropriated from the Marine Resources Conservation Trust Fund to the FWC to implement the blue crab effort management

program, and to cover administrative costs of the Blue Crab Advisory Board created by commission rule.

**Section 9.** Amends subsections (2) and (3) of s. 370.14, F.S., to delete obsolete language referencing the DEP with the spiny lobster program and to correct the reference to the spiny lobster endorsement.

**Section 10.** Amends s. 370.1405, F.S., correcting a reference to saltwater crawfish to conform to the commission's current spiny lobster program.

**Section 11.** Amends subsection (2) of s. 370.142, F.S., to:

- Authorize 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 major natural disaster.
- Require that any rule adopted by the commission for the establishment of equitable rent for compensation to the state for enhanced access to spiny lobster resources, be approved by the Legislature.
- Provide that in addition to third-degree felony penalties imposed for commercial harvesting, trapping, or possession of a spiny lobster without a spiny lobster endorsement, or during any period when a spiny lobster endorsement 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 spiny lobster 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 12.** Amends subsection (1) of s. 861.021, F.S., correcting a reference to saltwater crawfish to conform to the commission's current spiny lobster program.

**Section 13.** Amends s. 370.143, F.S., to expand the authorization for the FWC to implement a \$10 trap retrieval fee to include blue crab traps and black sea bass traps. The trap retrieval fee shall be waived by the commission in the event of a major natural disaster which causes massive trap losses within an area declared, by the Governor, to be an emergency area.

**Section 14.** Amends s. 372.09, F.S., expanding the use of funds in the State Game Trust Fund, to provide that the \$25 annual use fees collected from the sale of "Largemouth Bass" specialty license plates, are to fund conservation programs that provide protection and management of the states fish and wildlife resources pursuant to s. 320.08058(18), F.S.

**Section 15.** Amends s. 372.672, F.S., authorizing the use of funds in the Florida Panther Research and Management Trust Fund to promote and market the "Protect the Panther" specialty license plate.

**Section 16.** Amends subsections (2) and (4) of s. 372.83, F.S., to correct a cross-reference and prohibit criminal activities relating to the taking and harvesting of blue crabs.

**Section 17.** Reenacts subsection (1) of s. 380.511, F.S, for the purpose of incorporating amendments to s. 320.08058 (5), F.S, authorizing fifteen percent of the fees collected from the sale of the Florida Panther specialty license plate, but no less than \$300,000, to be deposited in the Florida Communities Trust Fund.

**Section 18.** Amends subsection (a) of subsection (8) of s. 20.331, F.S., requiring the commission to adopt a rule establishing adequate due process procedures.

**Section 19.** Provides an effective date of July 1, 2007

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

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

The committee substitute does not require cities and counties to expand 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 committee substitute establishes fees for blue crab endorsements necessary to implement a commercial blue crab effort management program, established by commission rule in 68B-45.007, Florida Administrative Code, 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., et al v. Florida Fish and Wildlife Conservation Commission, et al*, 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 of the Marine Fisheries Commission in effect on March 1, 1998. However, whether this gave to the FWCC regulatory and executive powers over all marine life depends on whether the regulatory and executive powers over some marine life remained with

other agencies after the voters approved 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.”

## **V. Economic Impact and Fiscal Note:**

### **A. Tax/Fee Issues:**

The committee substitute provides for an increase of the annual use fee of the “Sea Turtle” specialty license plate from \$17.50 to \$23 per tag, excluding other state and local registration fees. This impact is to only those persons voluntarily electing to purchase the tag.

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

The committee substitute 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 committee substitute establishes administrative fines as follows:

- i. Up to \$1,000 for blue crab trap tag violations.
- ii. Up to \$5,000 for the theft of blue crab trap gear and contents.
- iii. Up to \$5,000 for the willful molestation of blue crab and spiny lobster traps, lines or buoys; illegal trade, sale, or 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 committee substitute 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.

### **B. Private Sector Impact:**

The blue crab commercial fishery will experience financial impacts from the assessed fees, administrative fines, commercial 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 2005-2006 license year, the FWC shows 1,838 blue crab trap endorsement holders. Of those numbers:

- 1,080 qualify for entry into the program. 698 qualified for a hard or soft shell blue crab endorsement and 382 qualified for the non-transferable endorsement for displaced netters.
- 758 reported landings at a level too low for entry into the program or no landings at all.

**C. Government Sector Impact:**

FWC estimated fiscal impact:

Estimated Recurring Revenue	(FY 07-08)	(FY 08-09)	(FY 09-10)
Marine Resources Conservation Trust Fund			
Blue Crab Endorsements:	\$0	\$662,200	\$662,200
Marine Resources Conservation Trust Fund:	\$132,000 <sup>2</sup>	\$0	\$0
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Net Revenue:	\$132,000	\$662,200	\$662,200
Recurring Expenditures:			
Trap Retrieval Program			
And public education:		\$34,525	\$34,525
Management, Research			
And Enforcement efforts:	\$132,000	\$627,675	\$627,675
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Net Expenditures:	\$132,000	\$662,200	\$662,200
Net Impact:	\$0	\$0	\$0

There will be an unknown positive fiscal impact through the sale of the “Sea Turtle” license plate. According to the Florida Division of Highway Safety and Motor Vehicles, as of 2005, a total of 131,741 cumulative sea turtle license tags have been sold generating \$7,284,521 cumulative revenues. Future revenues are dependent upon the amount of registration renewals and new tags sold.

**VI. Technical Deficiencies:**

None.

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<sup>2</sup> Monies requested by the FWC from the Marine Resources Conservation Trust Fund to cover the cost of waiving the blue crab endorsements and trap tag fees in 2007-2008.

**VII. Related Issues:**

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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