

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7025 PCB ANRS 12-03 Fish and Wildlife Conservation Commission
SPONSOR(S): State Affairs Committee, Agriculture & Natural Resources Subcommittee, Crisafulli
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 804

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Agriculture & Natural Resources Subcommittee	12 Y, 0 N	Deslatte	Blalock
1) Agriculture & Natural Resources Appropriations Subcommittee	13 Y, 0 N	Massengale	Massengale
2) State Affairs Committee	17 Y, 0 N, As CS	Deslatte	Hamby

SUMMARY ANALYSIS

Current law specifies that 85 percent of the proceeds collected from the Florida Panther license plate be deposited into the Florida Panther Research and Management Trust Fund, which is managed by the Fish and Wildlife Conservation Commission (FWCC), and 15 percent, but not less than \$300,000, be deposited into the Florida Communities Trust Fund to fund the administration of the Florida Communities Trust program, which prior to 2011 was within the Department of Community Affairs (DCA). Chapter 2011-142, L.O.F., created the Department of Economic Opportunity, in part, to replace the DCA, and transferred the Florida Communities Trust Program from the DCA to the Department of Environmental Protection (DEP), which does not require the funds from the Florida Panther License Plate to administer the program. The bill deletes the requirement for the deposit into the Florida Communities Trust Fund, and specifies that all proceeds be deposited into the Florida Panther Research and Management Trust Fund.

Current law specifies that a portion of vessel registration fees be distributed to the Marine Resources Conservation Trust Fund to be used for marine mammal care. The bill repeals an outdated statutory reference to documentary stamp tax revenue distributed to the Marine Resources Conservation Trust Fund to reflect the fact that such revenues are no longer deposited into the fund.

The bill repeals the statutory requirement that the FWCC publish a printed version of the *Florida Wildlife* magazine, and abolishes the *Florida Wildlife Magazine Advisory Council*.

The bill specifies that if the operator of a vessel that carries scuba divers for a fee, either directly or indirectly, maintains the appropriate vessel license based upon the number of persons the vessel is licensed to carry and any applicable permits, then individual scuba divers engaged in taking or attempting to take saltwater products are not required to obtain individual fishing licenses and permits. However, the scuba divers will have to obtain the permits if the vessel operator does not have the appropriate license.

The bill deletes the 1-year limitation on the special authorization allowing persons to hunt without taking a hunter safety course, under the supervision of a licensed hunter 21 years old or older.

The bill amends current statute to reduce the fee for a commercial blue crab soft shell endorsement from \$250 to \$125 for each endorsement, which will make the fee for all endorsements for trap fisheries (spiny lobster, stone crab, soft shell blue crab, and hardshell blue crab) the same.

The bill designates spiny lobster trap theft violations as a Level 5 offense, which equals 28 sentencing points, and thus, affords judges the discretion to sentence persons that steal or molest spiny lobster traps to the maximum allowed for a third degree felony (5 years in prison) on a case-by-case basis.

The bill appears to have an insignificant negative fiscal impact on state government, but a potential insignificant positive fiscal impact on local government (see Fiscal Analysis and Economic Impact section below).

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h7025c.SAC

DATE: 1/26/2012

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Panther License Plate

Current Situation

Beginning in 1990, the DEP was charged with developing a Florida Panther license plate. Fifty percent of the proceeds from the license plate were distributed to the Florida Panther Research and Management Trust Fund in the Game and Fresh Water Fish Commission (now the FWCC), and 25 percent were distributed into the Florida Communities Trust Fund within the DCA to fund the administration of the Florida Communities Trust program.

In 1993 the distribution was changed to 45 percent for the Florida Panther Research and Management Trust Fund and 15 percent, but not less than \$300,000, for the Florida Communities Trust Fund. In 1996, the distribution was changed again to 85 percent for the Florida Panther Research and Management Trust Fund. However, the distribution remained the same for the Florida Communities Trust Fund.

Chapter 2011-142, L.O.F., created the Department of Economic Opportunity, in part, to replace the DCA, and transferred the Florida Communities Trust program from the DCA to the DEP. Now that the Florida Communities Trust program has been transferred from the DCA to the DEP, there is no longer a reason for the DEP to transfer funds collected from the Florida Panther License Plate fee to the DCA for administrative purposes. The DEP indicates it does not need these funds to administer the Florida Communities Trust program.

Effect of Proposed Changes

The bill deletes the provision in s. 320.08058, F.S., requiring 15 percent, but not less than \$300,000, be deposited in the Florida Communities Trust Fund. The bill provides that all proceeds from the Florida Panther license plate fees be deposited into the Florida Panther Research and Management Trust Fund. The bill also deletes a reference in s. 380.511, F.S., providing that the proceeds of the sale of environmental license plates be deposited in the Florida Communities Trust Fund.

Marine Resources Conservation Trust Fund

Current Situation

Section 379.208, F.S., establishes the Marine Resources Conservation Trust Fund within the FWCC. During the 2008 legislative session, a subsection of s. 201.15, F.S., that distributed documentary stamp tax revenue to the Marine Resources Conservation Trust Fund for marine mammal care was repealed. A cross-reference to s. 201.15, F.S., in s. 379.208, F.S., was not amended or repealed.

Section 328.76, F.S., requires all funds collected from the registration of vessels through the Department of Highway Safety and Motor Vehicles and the tax collectors of the state to be deposited in the Marine Resources Conservation Trust Fund to be used for: recreational channel marking; public launching facilities; law enforcement and quality control programs; aquatic weed control; manatee protection, recovery, rescue, rehabilitation, and release; and marine mammal protection and recovery.

Effect of Proposed Changes

The bill amends s. 379.208, F.S., pertaining to the Marine Resources Conservation Trust Fund, to repeal the outdated reference to s. 201.15, F.S., requiring documentary stamp tax revenue to be distributed to the Marine Resources Conservation Trust Fund, and replaces it with a cross-reference to

s. 328.76, F.S., since the funds collected pursuant to s. 328.76, F.S., are already allocated for marine mammal care as described above.

Florida Wildlife Magazine

Current Situation

The *Florida Wildlife* magazine was first published in 1947 by the Game and Fresh Water Fish Commission, the predecessor to the Fish and Wildlife Conservation Commission (FWCC). The goal of the magazine was to promote hunting, fishing, and nature-based recreation in Florida, and to encourage good stewardship of the state's wildlife resources.¹

In 2004, a seven-member Florida Wildlife Magazine Advisory Council (Council) was created² to provide advice and guidance relating to the editorial and advertising content of the magazine. The council has been inactive since 2006.

During the 2011 session, the Legislature permanently eliminated the budget for the *Florida Wildlife* magazine, and in the appropriations implementing bill directed the FWCC to suspend the printed publication of the magazine and the operations of the council during Fiscal Year 2011-2012. However, a statutory change is needed to permanently repeal the required publication of a printed version of the magazine and to repeal the authorization of the council.

Effect of Proposed Changes

The bill repeals s. 379.2342, F.S., which ends the statutorily required printing of the magazine and dissolves the Florida Wildlife Magazine Advisory Council. However, the FWCC still intends to offer the *Florida Wildlife* magazine online.

Scuba Diver Fishing Licenses

Current Situation

Pursuant to section 379.353(2), F.S., any person saltwater fishing from a vessel licensed pursuant to section 379.354(7), F.S., is not required to have a saltwater fishing license to take or attempt to take saltwater fish.

Section 379.354(7), F.S., provides that no person may operate any vessel where a fee is paid, for the purpose of taking, attempting to take, or possessing any saltwater fish for noncommercial purposes unless the person has obtained a license for each vessel for that purpose, and has paid the license fee. License fees vary as follows:

- For vessels carrying more than 10 customers, the fee is \$800 per year.
- For vessels carrying no more than 10 customers, or any person licensed to carry 6 or fewer customers, the fee is \$400 per year.
- For vessels carrying 6 or fewer customers, but who operates a vessel carrying 4 or fewer customers, the fee is \$200 per year.

If a patron is on a charter boat that does not have a license, then that patron must obtain an individual fishing license if they plan on fishing off of the vessel. If the vessel is licensed, then the patron does not need to obtain an individual fishing license.

Charter diving vessels primarily provide marine life viewing charters, and not fishing charters. Sometimes, however, the charter dive vessels take patrons out for the purpose of taking (or attempting

¹ FWCC 2011 analysis, on file with staff.

² See s. 279.2343(2), F.S.

to take) saltwater species. This occurs primarily during the mini-spiny lobster season (the last consecutive Wednesday and Thursday in July).

When applied as written, section 379.354(7), F.S., would require charter diving vessels taking patrons out to catch spiny lobster to have the appropriate vessel permit.

In *State of Florida v. Capt. Simmons* (1990), in the County Court of Palm Beach County, Captain Simmons operated a charter boat that transported scuba divers. She was charged with failure to have a vessel operator's fishing license under the statute (then section 370.0605(a)1), after marine patrol officers found that her passengers possessed spiny lobster. The court found that the "primary purpose" of Captain Simmons' passengers on their trips was to take scuba excursions, and that a "minority of her passengers seek lobster in season as a secondary purpose of their diving." The court therefore held that the "primary purpose of scuba dive boat trips is not fishing and section 370.0605 (now section 379.354), F.S., does not apply to the operators of scuba dive boats." Though the case holds no precedential value, since it is a trial court opinion, it still creates enforcement problems since this is the only time the statute has actually been interpreted.

Currently, the officers of the Fish and Wildlife Conservation Commission (Commission) enforce the law as interpreted by the judge in *State of Florida v. Capt. Simmons*. Specifically, officers first check to determine if individuals who are taking or attempting to take fish have a license, and if they do not, then the officers check to see if the scuba diving vessel operator has a vessel license. If neither the individual patron nor the vessel have a license, the officers cite the patron for failure to have the appropriate fishing license or permit. Commission officers are not currently citing scuba diving vessel operators under section 379.354(7), F.S., in these circumstances.

Effect of Proposed Changes

The bill specifies that if the operator of a vessel that carries scuba divers for a fee, either directly or indirectly, maintains the appropriate vessel license based upon the number of persons the vessel is licensed to carry and any applicable permits, then individual scuba divers engaged in taking or attempting to take saltwater products are not required to obtain individual fishing licenses and permits. However, the scuba divers will have to obtain the permits if the vessel operator does not have the appropriate license. This provision clarifies current law and gives scuba diving charter boats who want to take their customers fishing two options: 1. Obtain a vessel license and their patrons will not have to obtain an individual fishing license, or 2. If the scuba diving charter boat chooses not to obtain a vessel license, their patrons must obtain an individual saltwater fishing license or risk being issued a citation.

Hunter Safety Course

Current Situation

Section 379.3581(2), F.S., specifies that a person born on or after June 1, 1975, who has not successfully completed a hunter safety course, can apply to the Fish and Wildlife Conservation Commission (FWCC) for a special authorization to hunt under supervision. The special authorization for supervised hunting must be designated on any license or permit required under chapter 379, F.S., for a person to take game or fur-bearing animals and must be valid for not more than one year. A special authorization for supervised hunting also cannot be issued more than once to the person applying for such authorization. Any person issued a license with the special authorization to hunt under supervision must hunt under the supervision of, and in the presence of, a person 21 years of age or older, who is licensed to hunt pursuant to s. 379.354, F.S., or who is exempt from licensing requirements or eligible for a free license pursuant to s. 379.353, F.S.

Effect of Proposed Changes

The bill amends s. 379.3581(2), F.S., deleting the one-year limitation on the special authorization for supervised hunting. A hunting license will still be required every year, but it will have the special authorization on it, so that law enforcement will know that the individual must comply with this section.

Blue Crab Soft Shell Endorsement Fee Reduction

Current Situation

Pursuant to s. 379.361, F.S., a Saltwater Products License (SPL) is required for commercial fishermen harvesting in Florida's state waters. The SPL authorizes the license holder to fish for commercial quantities of fish instead of recreational bag limits. The fee for an SPL is \$50 for Florida residents, \$100 for non-residents, and \$150 for aliens. Along with SPLs, an endorsement may be required for some fisheries. These may be free or there may be a charge for the endorsement.

Beginning in 1998, a moratorium was established on the issuance of new blue crab endorsements because of concerns about the increasing number of traps for blue crabs and the resulting stress on the marine resources environment. The moratorium was extended twice and lasted until July 1, 2007.

In 2003, the FWCC established an ad hoc Blue Crab Advisory Board to develop a management program for the harvesting of blue crab. The board endorsed adopting a program that would limit the total number of participants in the fishery, and allow for an equal number of trap tags available for each endorsement issued.³ The board also recommended separating the hard shell blue crab fishery from the soft shell blue crab fishery and having separate endorsements for each.

To qualify for a soft shell crab endorsement, applicants had to demonstrate reported soft shell blue crab landings of 750 crabs on their SPL during any one of the same qualifying years. To qualify for an additional endorsement on one additional SPL, applicants had to demonstrate reported landings of 2,500 soft shell crabs. Each initial endorsement is allotted 400 trap tags with an additional 250 trap tags for a subsequent qualified endorsement. The endorsements must be re-qualified every 3 years. If the endorsement holder does not re-qualify, the endorsement is not renewed the next year and is required to be forfeited.

The Legislature, with the recommendation of the board and the FWCC, set endorsement fees at the following rates: \$125 for hard shell crab and net limitation endorsements; \$250 for soft shell crab endorsements; and \$25 for the incidental take endorsement.⁴

As a result of the cap on the fishery and the forfeiture of non-renewed licenses, the endorsements for soft shell crab have dropped from 152 the first year of the program to 83 available to be issued for the 2012 year. In 2009, the board voted to reduce the fee for soft shell crab from \$250 to \$125, which is the same for the hard shell crab.

All monies generated from the sale of blue crab endorsements, trap tags, replacement tags, and from the assessment of administrative penalties are distributed into the Marine Resources Conservation Trust Fund. The revenues are to be used for the management of the fishery, trap retrieval, research, law enforcement, and public education.

Effect of Proposed Changes

The bill reduces the fee for a soft shell crab endorsement from \$250 to \$125 for each endorsement, making the fee for endorsements for all trap fisheries the same.

Spiny Lobster Trap Theft

Current Situation

When measured annually in dollars, the spiny lobster fishery is the largest commercial fishery in Florida. For the last 10 years, \$20 million has been generated annually. Because of demand, supply,

³ FWCC 2011 analysis, on file with staff.

⁴ Section 379.366, F.S.

and higher prices, the 2010-2011 and 2011-2012 seasons have had a sharp increase in lobster trap theft. According to the Florida Keys Commercial Fishermen's Association, as a result of the theft, \$4.2 million is lost per commercial fishing season.

Section 379.367, F.S., specifies that each commercial harvester taking spiny lobster with a trap in commercial quantities or for commercial purposes must obtain and exhibit a spiny lobster endorsement number. Section 379.367, F.S., also specifies that it is unlawful for any person to willfully molest any commercial spiny lobster traps, lines, or buoys belonging to another without permission of the licenseholder. Furthermore, anyone who violates this section commits a felony of the third degree, punishable as specified in s. 775.082 or s. 775.083, F.S. Section 775.082, F.S., specifies that a felony of the third degree may not exceed 5 years imprisonment and/or up to a \$5,000 fine. In 2009, changes were made to the sentencing statutes that prevented judges from administering any state prison time (sentences of 1 year or greater) for a non-forcible felony of the third degree, unless the total sentence points, pursuant to the offense severity ranking chart, equaled 23 points or more. When scoring is applied to theft/molestation of spiny lobster traps, the score is 4. As a result, for anyone who violates s. 379.367, F.S., the maximum sentence that a judge can give is 364 days or less in county jail.

Section 379.3671, F.S., provides legislative intent to develop the spiny lobster trap certificate program. The principal goal of the program is to stabilize the fishery by reducing the total number of traps, which should increase the yield per trap, and therefore, maintain or increase overall catch levels. The FWCC is responsible for establishing the program and is responsible for its administration and enforcement. Each trap used to take or attempt to take spiny lobsters in state waters must have an annual trap tag, issued by the FWCC, affixed to the trap. Section 379.3671, F.S., also specifies that it is unlawful for any person to willfully molest, take possession of, or remove the contents of another harvester's spiny lobster trap without the express written consent of the trap owner available for immediate inspection. Unauthorized possession of another's trap gear or removal of trap contents constitutes theft.

Section 921.0022, F.S., specifies an offense severity ranking chart for particular offenses that must be used with the Criminal Punishment Code worksheet⁵ to compute a sentence score for each felony offender whose offense was committed on or after October 1, 1998.

Effect of Proposed Changes

The bill amends s. 921.0022, F.S., to specify that any person who willfully molests or takes a spiny lobster trap or its contents in violation of ss. 379.367 or 379.3671, F.S., commits a Level 5 offense, which equals 28 sentencing points, and thus affords judges the discretion to sentence persons convicted of stealing or molesting spiny lobster traps to the maximum allowed for a third degree felony (5 years in prison) on a case-by-case basis.

B. SECTION DIRECTORY:

Section 1. Amending s. 320.08058, F.S., deleting the distribution to the Florida Communities Trust Fund and directing all proceeds from the Florida Panther license plate to the Florida Panther Research and Management Trust Fund in the FWCC.

Section 2. Amending s. 379.208, F.S., providing for funds from vessel registration fees to be distributed into the Marine Resources Conservation Trust Fund for marine mammal care; removing funds from documentary stamp tax revenue as a funding source for marine mammal care.

Section 3. Repealing s. 379.2342, F.S., ending the required printing of the *Florida Wildlife Magazine* and dissolving the Florida Wildlife Magazine Advisory Council.

Section 4. Amending s. 379.354, F.S., specifies that an individual diver is not required to hold a fishing license while on a vessel for hire if the vessel operator maintains the appropriate license and permits.

⁵ Section 922.0024, F.S.

Section 5. Amending s. 379.3581, F.S., deleting the 1-year limitation on the current special authorization that allows persons to hunt without taking a hunter safety course under the supervision of a licensed hunter 21 years or older.

Section 6. Amending s. 379.366, F.S., reducing the fee for the blue crab soft shell endorsement from \$250 to \$125.

Section 7. Amending s. 380.511, F.S., deleting a reference to proceeds of the sale of environmental license plates as a funding source for the Florida Communities Trust Fund.

Section 8. Amending s. 921.0022, F.S., reclassifying spiny lobster trap theft violations as a Level 5 offense.

Section 9. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	FY 2012-13 Recurring	FY 2013-14
Fish And Wildlife Conservation Commission		
Florida Panther Research & Management Trust Fund		
Florida Panther License Plate Fees	\$300,000	\$0
Marine Resources Conservation Trust Fund		
Blue Crab Soft Shell Endorsement Fee (83 X \$125)	(\$10,375)	\$0
State Game Trust Fund		
Florida Wildlife Magazine Annual Subscription Collections	(\$38,000)	\$0
Department of Environmental Protection		
Florida Communities Trust Fund		
Florida Panther License Plate Fees	(\$300,000)	\$0
General Revenue		
Service Charge on Marine Resources Conservation TF	(\$830)	\$0

2. Expenditures:

The \$10,375 revenue loss to the Marine Resources Conservation Trust Fund would be absorbed by the Division of Marine Fisheries Management, Fish and Wildlife Research Institute, Division of Law Enforcement, and the Office of Licensing and Permitting.

The Criminal Justice Impact met January 17, 2012 and determined this bill will have an insignificant impact on the state prison beds because of the low volume of offenses addressed in this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

To the extent that there is anyone subject to a state prison sentence rather than a county jail sentence, this may have a positive fiscal impact on local government.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Subscribers to the printed version of the *Florida Wildlife* magazine were refunded after July 1, 2011. The magazine will be available for free through an electronic format.

The reduction in fees for the Soft Shell Blue Crab endorsement will have a positive impact on the commercial crabbers in Florida.

Persons violating spiny lobster commercial trap theft laws could be subject to increased fines.

Patrons of scuba diving vessels will be required to purchase a fishing license to take fish, unless the vessel they will be travelling on has a vessel license. The cost of the license, and any necessary permits, will vary depending on whether or not the patron is a resident of the state, and the length of time the license is valid. Scuba diving vessel operators will not be required to possess a vessel license, even if they will be transporting patrons who intend to fish, but may choose to as a marketing tool-their patrons would not have to obtain an individual saltwater fishing license. They may experience a positive fiscal impact, and the amount is dependent on the number of passengers transported.

D. FISCAL COMMENTS:

As a result of the provisions in the bill pertaining to scuba diving charter vessels, the FWCC may see an increase in the number of scuba diving charter boats that seek to obtain vessel licenses so that their patrons will not have to obtain individual fishing licenses if they are planning to take saltwater species. However, this may also result in less individual saltwater fishing licenses being obtained by scuba divers that take saltwater species.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 6, 2011, the Agriculture & Natural Resources Subcommittee amended and passed PCB ANRS 12-03 with one amendment. The amendment is technical and corrects two statutory references that were incorrectly written.

On January 25, 2012, the State Affairs Committee amended HB 7025. The amendment states that if the operator of a vessel that carries scuba divers for a fee, either directly or indirectly, maintains the appropriate vessel license based upon the number of persons the vessel is licensed to carry and any applicable permits, then individual scuba divers engaged in taking or attempting to take saltwater products are not required to obtain individual fishing licenses and permits. However, the scuba divers will have to obtain the permits if the vessel operator does not have the appropriate license.