

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Criminal Justice Committee

**BILL:** CS/SB 804

**INTRODUCER:** Environmental Preservation and Conservation Committee; Environmental Preservation and Conservation Committee; and Senator Evers

**SUBJECT:** Fish and Wildlife Conservation

**DATE:** December 8, 2011      **REVISED:** 01/19/12 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiggins</u>	<u>Yeatman</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
3.	_____	_____	<u>BC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

The bill does the following:

- Removes outdated references to documentary stamp tax appropriations for marine mammal care and provides for permissive use for vessel registration fees. Marine mammal care is now funded by vessel registration fees and documentary stamp taxes no longer fund marine mammal care appropriations.
- Removes the provision requiring that undistributed funds be carried over to the next fiscal year.
- Repeals the law requiring a printed version of the *Florida Wildlife* magazine, as well as dissolves the Florida Wildlife Magazine Advisory Council (Council), a seven-member group whose role is to provide advice to the Fish and Wildlife Conservation Commission (FWC) on the publication *Florida Wildlife*.
- Modifies the mentor option of the hunter safety education course, deletes the one-year deferral, and allows individuals to hunt under supervision, indefinitely, without taking the course.

- Reduces the fee for a commercial blue crab soft shell endorsement by one-half, from \$250 to \$125 for each endorsement. This will make the endorsements the same for all trap fisheries: spiny lobster, stone crab, soft shell blue crab, and hard shell blue crab.
- Ranks two third degree felony offenses in Level 5 of the offense severity ranking chart of the Criminal Punishment Code: willful molestation of a commercial harvester's spiny lobster trap, line, or buoy; and willful molestation or unauthorized possession or removal of a commercial harvester's spiny lobster trap contents or trap gear (currently these offenses are not ranked in the chart and default to a Level 1 ranking pursuant to s. 921.0023, F.S., based on the ranking assigned under that statute to a third degree felony that is not ranked in the chart). This change would allow judges to impose a sentence within the full range of sentencing for a third degree felony (up to 5 years in state prison).

This bill amends sections 379.208, 379.3581, 379.366, and 921.0022, Florida Statutes, and repeals section 379.2342(2), Florida Statutes.

## II. Present Situation:

### Marine Resources Conservation Trust Fund

According to the FWC, during the 2000 Session, the Legislature passed SB 186, which provides a fixed amount of \$2 million from documentary stamp taxes to support marine mammal care. The revenue was appropriated on a recurring basis providing \$1.15 million for manatee rehabilitation, \$810,000 for University of Florida marine mammal veterinary training and \$40,000 for program administration. The sections of law that were modified in SB 186 (2000) were s. 201.15, F.S., pertaining to distributions of documentary stamp revenues, and s. 370.0603, F.S., pertaining to the Marine Resources Conservation Trust Fund.

In 2008, with the passage of SB 1882, the Legislature changed the fixed amount of documentary stamp revenues to a percentage of documentary stamp revenues with a \$2 million cap. The recurring appropriation remained the same (\$2 million) with the intent that when documentary stamp tax revenues dipped below \$2 million, the difference would be supported from vessel registration fees. The sections of law that were modified in SB 1882 (2008) were s. 201.15(1)(c)5, F.S., pertaining to distributions of documentary stamp revenues, and s. 370.0603, F.S., pertaining to the Marine Resources Conservation Trust Fund.

In 2009, the Legislature passed SB 1750, which eliminated the provision of documentary stamp taxes for marine mammal care. The recurring appropriation was left to be supported entirely from vessel registration fees. SB 1750 (2009) repealed s. 201.15(1)(c)5, F.S., pertaining to distributions of documentary stamp revenues; however, the residual language in s. 379.208, F.S., pertaining to the Marine Resources Trust Fund (the successor statute to s. 370.0603, F.S.), which references how those documentary stamp taxes were to be used in the Marine Resources Conservation Trust Fund, was not updated.<sup>1</sup>

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<sup>1</sup> Analysis of SB 804, Florida Fish and Wildlife Conservation Commission, dated December 2, 2011 (on file with the Committee on Environmental Preservation and Conservation). Further cited as "FWC Analysis."

## **Florida Wildlife Magazine Repeal**

The Game and Fresh Water Fish Commission, the predecessor to the FWC, first published *Florida Wildlife* magazine in 1947. It began as a monthly magazine, switching to a bi-monthly schedule in the 1970s. As the official magazine of the FWC, the goal of *Florida Wildlife* is to promote the heritage of hunting, fishing and nature-based recreation in Florida and to encourage wise stewardship of the State's fish and wildlife resources.

During the 2003 Session, the Florida Legislature concurred with the FWC's potential reductions submission to eliminate the magazine's budget and positions. There were approximately 15,000 paid subscribers at the time, and the magazine ceased accepting new and renewal subscriptions. After *Florida Wildlife* published its final issue in November-December 2003, the FWC processed approximately \$84,000 in refunds for the approximately 6,000 remaining subscribers.

During the 2004 Session, the Legislature reinstated the funding of the magazine and included statutory provisions that allowed the sale of advertising and established a seven-member Florida Wildlife Magazine Advisory Council. The Council's role was to provide advice and guidance regarding the editorial and advertising content of the magazine, as well as strategies to increase circulation and reduce costs. The first issue of the re-established *Florida Wildlife* was published in April 2005. The Council has been inactive since 2006.

During the 2011 Session, the Legislature concurred with the FWC's potential reductions submissions to eliminate the printed publication of the *Florida Wildlife* magazine. Beginning July 1, 2011, the budget for the *Florida Wildlife* magazine was permanently cut by \$240,000. Section 41 of the Implementing bill (SB 2002) states: "notwithstanding the provisions of s. 379.2342(2), F.S., for the 2011-2012 fiscal year only, the FWC shall suspend the publication of a printed version of the *Florida Wildlife* magazine and the operations of the Florida Wildlife Magazine Advisory Council." The implementing bill is tied to the annual General Appropriations Act and is therefore limited to adjusting statutory requirements for one year only. The 2011-12 General Appropriations Act, however, reduced the funding permanently. A statutory change is needed for the FWC to carry out the legislative intent of the permanent cut to the funding of the printed version, and to repeal the authorization of the Council.

The number of paid subscriptions to *Florida Wildlife* was approximately 4,900, as of May 2011. Those 4,900 subscribers are eligible for refunds totaling approximately \$68,000.

## **Hunter Safety**

Section 379.3581, F.S., covers the hunter safety course, requirements, and penalties. The statute covering hunter safety became law in 1991. This statute requires everyone born after June 1, 1975, to successfully complete a hunter safety course before purchasing a hunting license. Since a hunting license is required once you turn 16 years of age, it is necessary for students to take the course before turning 16-years-old.

According to the FWC, for those who fail to take the course before turning 16 years of age, it is important for them to take the course before hunting season begins in the fall when all the volunteer instructors are hunting and not teaching hunter safety courses. Over the years, there

became an ever increasing number of individuals who were over 16 years of age who wanted to hunt, but waited until after hunting season started to try to purchase a license. When they discovered the hunter safety requirement, the lack of course offerings during hunting season hindered their ability to participate.<sup>2</sup>

In 2006, the hunter safety statute was amended to allow the FWC to defer the hunter safety course requirement for one year and issue a hunting license to a person allowing for only supervised hunting under certain circumstances. Anyone 16 years or older and born after May 31, 1975, can hunt under the supervision of a licensed hunter, 21 or older, without having to complete the state's hunter safety certification. The newly established "Hunter Safety Mentoring Exemption" enables those persons to purchase a Florida hunting license and hunt during a one-year trial basis. The new mentoring exemption was passed by the Legislature to help persuade more people to experience hunting. It is designed to encourage experienced hunters to teach novice hunters about safety, ethics, wildlife, hunting skills and respect for Florida's outdoors. Those who use this exemption are only eligible for this deferral for one year. After that, individuals taking advantage of this would have to take and pass a hunter safety class to be eligible to purchase a hunting license and hunt the following year.<sup>3</sup>

### **Commercial Blue Crab Soft Shell Endorsement Fee**

A Saltwater Products License (SPL) is the fishing license for commercial fishermen harvesting in Florida's state waters. The SPL authorizes the licensee to fish for commercial quantities of fish, rather than recreational bag limits. Anyone may purchase an SPL. The price of the SPL is \$50 for Florida residents, \$100 for nonresidents, and \$150 for aliens.<sup>4</sup>

An endorsement is required for some fisheries in addition to the SPL. As used by the FWC, an "endorsement" gives permission to the commercial fisherman to legally harvest and/or use specific methods of commercial harvest in a particular fishery, and may be based on qualifying criteria.

During the 1998 Legislative Session, concerns about the rapidly increasing number of traps in the blue crab fishery and the resulting stress on marine natural resources resulted in a moratorium on the issuance of new blue crab endorsements. The moratorium was established to allow for the completion and adoption of a blue crab effort management program. The moratorium was extended two times and lasted until July 1, 2007.

In 2003, the FWC assembled an ad hoc 15 member industry advisory board made up of blue crab harvesters and wholesale dealers to develop an effort management program. Included in the management program would be management of the blue crab fishery, trap retrieval, research, enforcement, public education activities, and issuance of licenses, endorsements, and trap tags. The ad hoc Blue Crab Advisory Board endorsed the adoption of an effort management program that would limit the total number of participants in the fishery, and allow for an equal number of

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<sup>2</sup> FWC Analysis.

<sup>3</sup> Florida Fish and Wildlife Conservation Commission, Hunting, Hunter Safety Mentoring Exemption, <http://myfwc.com/hunting/safety-education/mentoring/> (last visited Dec. 5, 2011).

<sup>4</sup> An "alien" is defined as a person who does not have documentation from the Immigration and Naturalization Service showing permanent residency status in the United States.

trap tags available for each endorsement issued. They further recommended separating the hard shell blue crab fishery from the soft shell blue crab fishery and the creation of a distinct endorsement for each fishery.

In order to qualify for a hard shell crab endorsement, an applicant had to demonstrate reported hard shell blue crab landings of 500 pounds on their SPL during any one of the qualifying years (license years 2000-2001, 2001-2002, or 2002-2003). In order to qualify for additional hard shell crab endorsements, applicants had to demonstrate reported landings of at least 7,500 pounds on any of their SPLs during any one of the qualifying years. Each qualified hard shell crab endorsement is allotted 600 trap tags, which can be used anywhere, and an additional 400 trap tags to be used only in offshore waters of the Gulf of Mexico.

In order to qualify for a soft shell crab endorsement, applicants had to demonstrate reported soft shell (or peeler) blue crab landings of 750 crabs on their SPL during any one of the same qualifying years (license years 2000-2001, 2001-2002, or 2002-2003). In order to qualify for an additional soft shell crab endorsement on one additional SPL, an applicant had to demonstrate reported landings of 2,500 soft shell crabs. Each qualified soft shell crab endorsement is allotted 400 trap tags with an additional 250 trap tags for a subsequent qualified endorsement. After the initial allotment, endorsements could be traded or sold between participants.

In addition to the ad hoc Blue Crab Advisory Board recommendation, the FWC elected to allow qualified commercial fishermen affected by the Net Limitation Amendment to be issued a non-transferable blue crab endorsement that is allotted 100 trap tags.

The hard and soft shell endorsements must be requalified every three years. To requalify endorsements, the holder must document crab landings in one of the three previous years. The requalifying amounts are the same as the amounts that qualified the applicant to obtain an endorsement originally. If the endorsement holder does not requalify, the endorsement is not renewed the next year and is required to be forfeited.

The FWC also addressed commercial fisheries (such as shrimp and stone crab) in which blue crab harvest is permitted as a bycatch. In the years prior to the moratorium, blue crab endorsements were provided to these commercial fisheries at no additional cost and were renewed over the years as additional fishery options. The FWC has permitted a blue crab bycatch in shrimp trawls (200 pounds per day) since 1993, and nominal amounts of blue crabs have historically been landed as bycatch from stone crab traps. Therefore, the FWC established 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.

The endorsement fees were set by the Legislature, at the recommendation of the FWC and the ad hoc Blue Crab Advisory Board, at \$125 for the hard shell crab and net limitation endorsements, \$250 for the soft shell crab endorsement, and \$25 for the incidental take endorsement. The original fee for the soft shell crab endorsement was set higher because the market value of soft shell crabs is higher and therefore the value of the endorsement to the crabber was greater. To illustrate, in 2010, the price per pound of hardshell crabs averaged \$1.16 while the price per pound of soft shell crabs was \$8.34.

In 2007, at the beginning of the current limited endorsement program, there were 152 qualified crabbers that purchased and were issued a soft shell crab endorsement, as opposed to 1,016 hard shell crab endorsements. The effort management program stipulates that only endorsements that were issued in the 2007-2008 license year can be eligible for renewal, thereby capping the number of available endorsements. Additionally, if an endorsement is not renewed by September 30 each year, the endorsement is forfeited and is removed from the fishery. Because of the cap on the fishery and the forfeiture of non-renewed licenses, the number of soft shell crab endorsements has dropped from 152 the first year of the program to 83 available to be issued for the 2012 license year. If endorsement holders wish to leave the fishery, they are able to sell or transfer their endorsement(s) to another commercial harvester; however, many have not renewed or sold their endorsements, therefore permanently reducing the number of available soft shell crab endorsements.

Once the management plan was adopted by the FWC and the Legislature passed the endorsement fees and penalties for violations, a Blue Crab Advisory Board was formally established to make recommendations on the fishery. Due to the significantly reduced number of soft shell crab endorsements, the Blue Crab Advisory Board voted unanimously in 2009 to recommend that the FWC reduce the fee for the soft shell crab endorsement from \$250 to \$125 annually.

Industry representatives from the Organized Fisherman of Florida and the Southeastern Fisheries Association, Inc., are also in favor of reducing the price of the soft shell crab endorsement.

Currently, the fees for all other commercial fishing license endorsements that allow the use of traps, spiny lobster and stone crab are set at \$125.

Section 379.366(3)(d), F.S., directs moneys generated from the sale of all blue crab endorsements (soft shell, hard shell, net limitation, and incidental take), trap tags, replacement tags, and from the assessment of administrative penalties into the Marine Resources Conservation Trust Fund (Trust Fund). Revenues are to be used for management of the fishery, trap retrieval, research, law enforcement, and public education. In Fiscal Year 2010-11, \$244,179.50 was deposited into the Trust Fund from the purchase of blue crab endorsements and blue crab trap tags.

### **Modification of the Lobster Trap Theft Penalty**

A lobster trap theft violation, including the theft of the contents or the trap itself, is a third degree felony.<sup>5</sup> The penalty for a third degree felony is up to 5 years in prison and/or up to a \$5,000 fine.<sup>6</sup> However, “[i]f a defendant is sentenced for an offense committed on or after July 1, 2009, which is a third degree felony but not a forcible felony as defined in s. 776.08, and excluding any third degree felony violation under chapter 810, and if the total sentence points pursuant to s. 921.0024 are 22 points or fewer, the court must sentence the offender to a nonstate prison sanction.”<sup>7</sup> A prison sentence can only be imposed if the court makes written findings that a nonstate prison sanction could present a danger to the public.<sup>8</sup>

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<sup>5</sup> See ss. 379.367 and 379.3671, F.S.

<sup>6</sup> Sections 775.082 and 775.083, F.S.

<sup>7</sup> Section 775.082(10), F.S.

<sup>8</sup> *Id.*

A lobster trap violation would not be considered a forcible felony.

The Criminal Punishment Code is Florida's general framework or mechanism for establishing the lowest permissible sentence.<sup>9</sup> Each noncapital felony offense is assigned an offense severity ranking level either by placement in a particular level (Levels 1-10) in the offense severity ranking chart<sup>10</sup> or based on felony degree if not ranked in the chart.<sup>11</sup> A specific number of sentence points accrue for the primary offense and any additional offense or prior offense based on ranking level. Points may also accrue for other factors. These sentence points are relevant to establishing the lowest permissible sentence.

The lobster trap violations relevant to the bill are not specifically ranked in the chart. A third degree felony not ranked in the chart is a Level 1 offense,<sup>12</sup> so the relevant lobster trap violations are Level 1 offenses. A Level 1 offense only accrues 4 sentence points.<sup>13</sup> Therefore, a prison sentence is not available absent the exception previously noted or a significant number of additional and/or prior offenses that would allow for the judge to impose a prison sentence.

Commercial fishermen have estimated that in the 2009-2010 season the loss revenues due to trap theft or molestations were approximately \$2.7 million dollars. The Florida Keys Commercial Fishermen's Association has estimated that trap theft annual losses to fisherman represents about 8-10 percent of the total annual harvest. According to the FWC, it is difficult to apprehend/charge trap robbing offenders and sophisticated trap robbing efforts are not deterred by the current penalties.<sup>14</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 379.208, F.S., and removes outdated references to documentary stamp tax appropriations for marine mammal care and provides for permissive use for vessel registration fees. Vessel registration fees now fund marine mammal care and documentary stamp taxes no longer fund marine mammal care appropriations.

**Section 2** repeals s. 379.2342(2), F.S., requiring a printed version of the *Florida Wildlife* magazine, and dissolves the Florida Wildlife Magazine Advisory Council. It is the FWC's intent to provide the majority of the magazine's content on their website at no cost.

**Section 3** amends s. 379.3581, F.S., of the hunter safety course one-year deferral, and allows individuals to hunt under supervision, indefinitely, without taking the course.

**Section 4** amends s. 379.366, F.S., to reduce the fee for a soft shell crab endorsement by one-half, from \$250 to \$125 for each endorsement, making the fee for endorsements for all trap

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<sup>9</sup> Section 921.0024, F.S.

<sup>10</sup> Section 921.0022, F.S.

<sup>11</sup> Section 921.0023, F.S.

<sup>12</sup> *Id.*

<sup>13</sup> Section 921.0024, F.S.

<sup>14</sup> FWC Analysis.

fisheries the same. This change would take effect at the beginning of the 2012 blue crab license year, and mostly affect soft shell crab trap fishermen who operate as small businesses.

**Section 5** amends s. 921.0022, F.S., to rank two third degree felony offenses in Level 5 of the offense severity ranking chart of the Criminal Punishment Code: willful molestation of a commercial harvester's spiny lobster trap, line, or buoy; and willful molestation or unauthorized possession or removal of a commercial harvester's spiny lobster trap contents or trap gear (currently these offenses are not ranked in the chart and default to a Level 1 ranking pursuant to s. 921.0023, F.S., based on the ranking assigned under that statute to a third degree felony that is not ranked in the chart). This change would allow judges to impose a sentence within the full range of sentencing for a third degree felony (up to 5 years in state prison).

**Section 6** provides that, except as otherwise provided in the act, the act takes effect July 1, 2012. The amendments to s. 379.366(3)(a), F.S., by Section 4 of the bill are effective upon commencement of the 2012-2013 blue crab license year.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The members of the public who currently have subscriptions to Florida Wildlife will not receive all printed volumes to which they subscribed and will receive refunds. This change will provide the public with free access to magazine content in an electronic format where previously they had to pay a subscription fee for the printed magazine.

The bill would have a positive fiscal impact for commercial soft shell blue crabbers in Florida. Each commercial soft shell blue crabber would see a reduction in licensing fees of \$125 per endorsement, of which they can hold two.



The ranking of two third degree felonies involving lobster trap theft penalty will allow judges to impose a prison sanction. This change may decrease trap theft, which could reduce lost revenue related to trap theft for commercial fisherman.

**C. Government Sector Impact:**

The bill would eliminate annual Florida Wildlife magazine subscription fees to the FWC of \$38,000. The changes the bill makes would result in a slight reduction of revenues to the Trust Fund. There are 83 current soft shell crab endorsements in the fishery. If all 83 of these endorsements are renewed for Fiscal Year 2011-2012, at a cost of \$125 rather than \$250, the reduction of revenue to the Trust Fund would be \$10,375 (4.25% of the monies generated from blue crab regulation). All of the blue crab revenues in the Trust Fund are appropriated to the FWC's Division of Marine Fisheries Management, Fish and Wildlife Research Institute, Division of Law Enforcement, and the Office of Licensing and Permitting. The small reduction of revenue to the Trust Fund resulting from the bill would be absorbed by these entities.

The cost of administrating the soft shell crab endorsement is the same as the hard shell crab and net limitation endorsements. Therefore, reducing the fee of the soft shell crab endorsement to the same price as the other two endorsements should still adequately fund the soft shell portion of the blue crab management program.

The bill ranks two lobster trap theft offenses in Level 5 of the offense severity ranking chart of the Criminal Punishment Code. The sentence points accrued for a Level 5 primary offense would allow, but not require, a prison sentence. The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation has reviewed CS/SB 804 and estimates that the bill will have an insignificant prison bed impact.

According to staff of the State Attorney's Office in Munroe County, the county which likely have the highest volume of prosecutions of the lobster trap theft offenses, prior to the enactment of s. 775.082(10), F.S., which limited the courts' ability to impose a prison sentence on those who commit these offenses, there was one defendant sentenced to a 3-year prison term for a theft violation.<sup>15</sup> State Attorney staff believe this was the only individual in the last 5 years who has served a prison term. (There were two other defendants the court sentenced to a prison term in that case but the court suspended that sentence and they will only be required to serve that term if they violate their conditions of probation.) State Attorney staff estimate that, on average, they have 5 to 10 trap molesting cases a year and that does not necessarily mean these offenders necessarily warrant a prison sentence.

**VI. Technical Deficiencies:**

None.

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<sup>15</sup> Information in this paragraph is from an e-mail, dated January 12, 2012, from staff of the Munroe County State Attorney's Office to staff of the House Agriculture & Natural Resources Appropriations Subcommittee (on file with the Committee on Criminal Justice).

**VII. Related Issues:**

None.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Environmental Preservation and Conservation on December 6, 2011:**

The CS provides a technical fix to the Marine Resources Conservation Trust Fund. It also modifies the hunter safety education course mentor option to allow individuals to hunt under supervision, indefinitely, without taking the course. Finally, it ranks two lobster trap theft offenses, which are third degree felonies, in Level 5 of the offense severity ranking chart of the Criminal Punishment Code, which would allow judges to impose a sentence within the full range of sentencing for a third degree felony (up to 5 years in state prison).

- B. **Amendments:**

None.