

STORAGE NAME: h0797.wrm
DATE: February 8, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Water and Resource Management
ANALYSIS**

BILL #: HB 797
RELATING TO: Marine Resources
SPONSOR(S): Representatives Sorenson, Sembler, and Sanderson
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) Water and Resource Management
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

HB 797 provides penalties for buying saltwater products from unlicensed persons and for selling saltwater products by unlicensed persons. The bill also provides a fee for a stone crab endorsement on a saltwater products license and establishes a stone crab trap certificate program with appropriations, fees, rulemaking authority, and penalties. The bill also addresses trap retrieval fees, penalties for removal of stone crab and crawfish trap contents and authorizes additional means of crawfish trap reduction.

The stone crab trap certificate program is anticipated to generate approximately \$ 850,000 in its first year. The Fish and Wildlife Conservation Commission (FWCC) has estimated first year operating expenses at approximately \$ 450,000. The bill appropriates \$ 481,457 from commercial saltwater license fee revenues in the Marine Resources Conservation Trust Fund to the FWCC for fiscal year 2000-2001.

Because the FWCC has constitutional authority to exercise the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life, it is unclear as to the necessity and binding nature of the majority of the subject matter HB 797, except for those sections authorizing fees and penalties and appropriating funding to support the program for fiscal year 2000-2001. In addition, the FWCC recently adopted rules relating to a stone crab trap certificate program that already addresses the mechanics of the program and in certain instances conflicts with the provisions of the bill.

Except as otherwise provided in the act, this act will take effect upon becoming a law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

HB 797 creates the authority to make rules as the Fish and Wildlife Conservation Commission (FWCC) is authorized to adopt rules to implement the provisions of the stone crab trap certificate program. Also, the Stone Crab Trap Certificate Technical Advisory and Appeals Boards created in the bill are required to adopt procedural rules that conform to the requirements of chapter 120, Florida Statutes.

HB 797 creates new responsibilities. The FWCC is given the additional duty of implementing the stone crab trap certificate program. Also, the individual holders of the stone crab trap certificates are required to purchase annual trap tags which must be affixed to each trap. Certificate holders also are required to submit paperwork to the FWCC each time certificate transfers take place outside of the immediate family of the original certificate owner.

In addition, new responsibilities are incurred by the Stone Crab Trap Certificate Technical Advisory and Appeals Boards who are required to consider and advise the FWCC on disputes and other problems arising from the implementation of the stone crab trap certificate program.

Finally, HB 797 creates entitlements as the Stone Crab Trap Certificate Technical Advisory and Appeals Boards are authorized to recommend the issuance of additional certificates to certain persons such as persons adversely impacted by the implementation of the net ban, or persons adversely impacted by the limitation on the placement of stone crab traps in Citrus, Dixie, Levy, or Taylor counties, which was enacted by the Legislature in 1973. Also, although the bill states it does not, the creation of a trap certificate program can be viewed by itself as an entitlement.

2. Lower Taxes Yes No N/A

The bill authorizes:

- o A \$125 stone crab endorsement fee;
- o A \$25 stone crab incidental take endorsement fee;
- o A \$2 transfer fee for each stone crab certificate transferred;
- o A \$2 or 25 percent (whichever is greater) surcharge for each stone crab certificate transferred;
- o An equitable rent fee per trap certificate to be decided by the FWCC and approved by the Governor and Cabinet for both stone crabs and spiny lobster;
- o A \$.50 per stone crab tag trap fee;
- o A \$.50 for in-season stone crab tag trap replacement fee;
- o Various financial penalties for violations of the provisions of the bill.

3. Individual Freedom Yes No N/A

The bill decreases the allowable options of individuals to conduct their own affairs by requiring that commercial harvesters participating in the initial allocation of certificates meet certain poundage requirements. Eligibility for the initial certificate distribution requires an endorsement holder to have landed 300 pounds of stone crab claws during one of the six license periods between July 1993 and June 1999. The number of certificates allocated is based on the number of traps possessed during the 1995-96 through the 1997-98 license year or the highest landings during the same period divided by two pounds per trap. This bill provides that commercial harvesters who can't meet these requirements are ineligible for trap certificates (unless an appeal to one of the Advisory Boards is successful). Their only method for harvest would be under the incidental take provisions of the bill which requires a \$25 incidental take endorsement and limits take to five gallons of stone crab claws per day.

Thus, the bill creates new governmental interference in the stone crab fishery by creating a trap certificate program implemented with trap reductions.

4. Personal Responsibility Yes No N/A

The bill creates possible entitlements as discussed above. However, the persons benefitting from this legislation do pay the fees proposed by the bill.

5. Family Empowerment Yes No N/A

For any principle that received a "no" above, please explain:
Please see above.

B. PRESENT SITUATION:

Unlicensed Sellers

Currently, s. 370.021(5), F.S. prohibits the sale of saltwater products without the appropriate license(s). Purchase of saltwater products from an unlicensed seller is also prohibited. Upon arrest and conviction for either of these violations, a court can assess criminal penalties. The FWCC may now assess civil penalty against the buyer but not the seller. The agency may also suspend the buyer's licenses but not the seller's.

Stone Crabs

The commercial harvesting of stone crabs is regulated through rules of the Fish and Wildlife Conservation Commission (FWCC), and by statutory law created in chapter 370, Florida Statutes. Section 370.13, F.S., sets the season for the taking of stone crabs between May 15 and October 15 of each year, provides penalties for the molestation of traps and illegal use of gear in harvesting, and provides for the recreational harvesting of stone crabs. Persons taking stone crabs for non-commercial purposes are limited to 5 traps. Only persons holding a valid saltwater products license with a restricted species endorsement and a stone crab endorsement are authorized to harvest stone crabs in commercial quantities. A moratorium on the issuance of new stone crab trap numbers has been in effect since July 1, 1995.

Prior to the creation of the FWCC on July 1, 1999, the Marine Fisheries Commission's rules (ch. 46-13.002, F.A.C.) imposed restrictions on size, possession, and transport of stone

crabs and stone crab claws, authorized the materials to be used in the construction of traps, provided for the size and makeup of the traps, and provided for commercial trap marking requirements. The rule also provided that a person commercially harvesting stone crabs be required to hold not only a valid saltwater products license, and a restricted species endorsement, issued to a valid boat registration or in the name of an individual, but that each trap used have a trap number permanently attached.

At its February 2000 meeting, the FWCC adopted rules relating to stone crabs. The rules amend ch. 68B-13.0015, F.A.C. (formerly the MFC's rule ch. 46-13.0015, F.A.C.) providing additional definitions, repeal ch. 68B-13.002, F.A.C. (formerly the MFC's rules ch. 46-13.02, F.A.C. and ch. 46-13.002, F.A.C.), and create rules ch. 68B-13.005, F.A.C. through ch. 68B-13.011, F.A.C. establishing a stone crab trap limitation program. The effective date of these rules is July 1, 2000.

Data received from the Florida Marine Research Institute indicates that for the 1998-99 season, 4,442 commercial harvesters obtained a restricted species endorsement and a stone crab endorsement. There is no way of knowing how many of those harvesters are actually working in the fishery. Although the fee for the saltwater products license for residents is \$50, there is no charge for either a restricted species endorsement or a stone crab endorsement. Many commercial fishermen obtain the endorsements because they can, and not because they will use them to fish.

The 1997-98 commercial landings of stone crab claws totaled more than 3.5 million pounds. Although the actual number of commercial stone crab traps remains unknown, information from the saltwater products licenses issued, and from a physical count obtained through a grant program, indicates that around 1.3 million lawfully permitted traps are in the fishery.

The commercial stone crab fishery runs from the Big Bend region of the state and south along the Gulf of Mexico, through the Keys, and runs north along the Atlantic Ocean to Palm Beach County. For the 1995-96 harvest, the stone crab fishery landed approximately \$21.5 million worth of product. The strongest regions for the fishery, both commercial and recreational, are in Broward, Dade, Monroe and Collier Counties, in both the Atlantic and the Gulf of Mexico. Information from the Florida Marine Research Institute shows a drastic drop in landings in the fishery for the 1998-99 year partially due to extreme weather conditions. Records for February of the 1997-1998 season showed 384,754 pounds of claws were landed. For the same period in 1999, 106,144 pounds of claws were landed.

Although data from the Florida Marine Research Institute indicates that the stone crab fishery is stable, it is thought that the number of traps in the water is damaging the bottom, is raising marine debris concerns due to recent storms, and is interfering with recreational purposes.

Spiny Lobster

The spiny lobster trap certificate program is authorized by s. 370.142, F.S. The program was initiated in response to concerns similar to those raised for stone crabs in that there were large numbers of traps (more than 750,000) and to the fact that the fishery was and is limited primarily to the waters off south Florida, both of which could contribute to a decline in spiny lobster populations if additional regulation was not imposed.

The spiny lobster trap certificate program consists of transferable trap certificates, trap tags, reductions in the number of traps, and a technical advisory and appeal board.

Provisions exist for the transfer of traps between individuals on a market basis with a \$2 transfer fee per certificate due for administrative costs and a 25 percent surcharge of the fair market value or a \$5 fee, whichever is greater, due the first time a certificate is transferred outside the original holder's immediate family. No person, firm, corporation, or other business entity is allowed to control more than 1.5 percent of the total available certificates in any given year.

In addition to a crawfish trap number, each trap used to take spiny lobster in Florida waters or adjacent federal waters has a trap tag issued by the Fish and Wildlife Conservation Commission (FWCC) attached to the trap. Trap tags and certificates are issued simultaneously. Fees were increased for the trap tags over a five year period to the current \$1 annual fee per certificate. Certificates for which the annual fee is not paid for a period of three years are considered abandoned and revert back to the FWCC. In addition to these fees, the commercial trap number fee is \$100.

A Trap Certificate Technical Advisory and Appeals Board was created to "consider and advise on disputes and other problems arising from the implementation of the spiny lobster trap certificate program" (Section 370.142(4), F.S.).

The overall objective of the trap certificate program is to reduce the number of traps used in the spiny lobster fishery to the lowest number that will maintain or increase overall catch levels, promote economic efficiency in the fishery, and conserve natural resources. To meet this objective, a trap reduction goal was established by the Marine Fisheries Commission (which has since been abolished and its functions incorporated into the FWCC). The reduction goals were: 10-percent reduction in the number of traps from 1993-1995; an additional 10-percent reduction in the number of traps during the 1998-1999 season; and another 10-percent reduction during the 2000-2001 season.

C. EFFECT OF PROPOSED CHANGES:

- o Clarifies the prohibition of buying saltwater products from an unlicensed entity and prohibits the selling of saltwater products by an unlicensed entity in s. 370.021(5), F.S.
- o Provides a \$125 fee for a stone crab endorsement for the taking of stone crabs (\$25 of which is to be used for trap retrieval and the remainder is to be used for FWCC administration, enforcement, management and research costs related to stone crabs).
- o Establishes the Legislature's intent to develop a stone crab trap certificate program.
- o Establishes a trap certificate program whose principal goal is to stabilize the fishery by reducing the total number of traps at the time of sale or transfer of ownership outside the immediate family thereby increasing the yield per trap. Reductions would occur until the desired number of traps was achieved. Trap numbers would also decrease due to initial requirements for participation in the program.
- o Establishes a stone crab incidental take endorsement permitting a daily trip limit of five gallons of stone crab claws.
- o Provides that any trap being used to take stone crabs in state or adjacent federal waters shall have an annual trap tag to be issued by the FWCC and an associated trap certificate.

- o Provides that the stone crab endorsement certificates are transferrable on a market basis and may be transferred for fair market value as agreed upon by the buyer and seller.
- o Provides penalties for violations of the stone crab and spiny lobster trap certificate programs.
- o Provides for the creation of a Stone Crab Trap Certificate Technical Advisory and Appeals Board whose purpose is to consider and advise the FWCC on disputes and other problems arising from the implementation of the stone crab trap certificate program.
- o States that the stone crab trap certificate program does not create vested rights in licenseholders.
- o Waives the retrieval fee for retrieving the first five traps of stone crab endorsement holders.
- o Provides that the fees raised and fines assessed from the stone crab trap certificate program shall be deposited into the Marine Resources Conservation Trust Fund to be used for administration of the certificate program, research and monitoring of the stone crab fishery, and for enforcement and public education purposes.
- o Provides the FWCC with the authority to adopt rules to implement the provisions of the stone crab and the spiny lobster trap certificate programs.
- o Clarifies certificate transfer provisions for the spiny lobster trap certificate program and authorizes the FWCC to vary from the annual lobster trap reduction schedule set forth in statute.
- o Provides for the recreational taking of spiny lobsters.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Under the provisions of the bill, the trap certificate program will generate an estimated \$ 850,000 in revenue the first year through applications for saltwater products licenses and the stone crab endorsements, tags and certificates. Initial endorsement numbers are based on FWCC and industry estimates of 1.2 million traps and 1,650 stone crab endorsements that would meet the required landing thresholds. Currently, there are approximately 4,400 stone crab endorsement holders. However, it is thought that many possess the stone crab endorsement on a saltwater products license simply because it is free. Industry estimates 2,000 current endorsement holders would purchase incidental take endorsements.

After the first year, revenues will be raised through the \$2 transfer fee for the sale of certificates on the open market, the one-time \$2 (or 25 percent of market value) surcharge for the transfer of certificates outside of an immediate family, and the purchases of stone crab endorsements and trap tags. Industry estimates that there would be a 10% annual turnover of trap certificates subject to these fees.

1,650 x \$125/Stone Crab Endorsement	\$ 206,250
1,500 x \$25/Incidental Take Endorsement	\$ 50,000
1.2 million traps at \$.50/certificate	<u>\$ 600,000</u>

Total (using conservative estimates): \$ 856,250

The total revenue from the sale and transfer of certificates is indeterminate at this time. Since the trap reduction percentages are based on the amount of certificates in the market at any given time, fair market value for the sale of certificates will vary also.

It is estimated that revenues from stone crab endorsements and trap tags will decrease by a little less than half over time. This is because industry estimates that the number of individuals holding stone crab endorsements will decrease to approximately 1,000 within five years. In addition, trap numbers will eventually decrease to the 600,000 target level.

2. Expenditures:

The FWCC estimates their first year administrative costs to be approximately \$455,000, with recurring costs estimated at \$350,000.

The following is a breakdown of these expenditures:

Office expenses for administering the tag program	\$170,000
Salaries (4 FTE's)	\$145,000
Database development and clean up (*non recurring)	\$105,000
Appeals Board Expenses	<u>\$ 37,000</u>
	\$455,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

All fees and costs will be paid by private sector participants who earn a living in the stone crab fishery. Persons who earn a living in the stone crab fishery are expected to see an increase in trap yield due to the reduction in the number of traps in the water. Under this bill, some commercial harvesters would not be able to meet the landing requirements and as such would be ineligible for trap certificates (unless an appeal to one of the Advisory

Boards is successful). Their only method for harvest would be under the incidental take provisions of the bill.

D. FISCAL COMMENTS:

The bill appropriates the following amounts from the commercial saltwater license fee revenues in the Marine Resources Conservation Trust Fund for fiscal year 2000-2001:

- o \$97,049 for four career service positions to implement the stone crab trap certificate program
- o \$254,408 for program operation costs
- o \$130,000 to cover the cost of tags

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Constitutionally, the FWCC is authorized to exercise the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life. Exceptions to this authority include license fees, penalties for violations, planning, budgeting, personnel management, and purchasing which shall be prescribed by general law. As such, it is unclear as to the necessity and binding nature of the majority of the subject matter HB 797, except for those sections authorizing fees and penalties and appropriating funding to support the program for fiscal year 2000-2001. In addition, the stone crab trap certificate program rule recently adopted by the FWCC already addresses the mechanics of the program and in certain instances conflicts with the provisions of the bill. For example, the bill proposes multiple appeals boards while the rule authorizes only one.

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B. RULE-MAKING AUTHORITY:

Please see constitutional issues.

C. OTHER COMMENTS:

Although data from the Florida Marine Research Institute indicates that stone crab fishery is stable, it is thought that the number of traps in the water is damaging the bottom, is raising marine debris concerns due to recent storms, and is interfering with other commercial and recreational purposes. The FWCC and the commercial stone crab industry have participated in the development of this legislation. The industry has asked for self regulation, and is a willing participant in the payment of fees and the reduction of traps in the water. However, information received by the House Water & Resource Management Committee indicates that this legislation is not supported by all commercial stone crab harvesters. The small commercial harvesters who would not be able to meet the landing requirements, and as such would be ineligible for trap certificates, may be adversely impacted by this legislation as their only method for harvest would be under the incidental take provisions of the bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The bill's sponsor has indicated that a strike amendment will be offered removing the provisions of the bill that are duplicative with the FWCC's recently adopted rules.

VII. SIGNATURES:

COMMITTEE ON Water and Resource Management:

Prepared by:

Staff Director:

Kellie R. Ralston

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