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DATE: June 26, 2000

****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2000-364, Laws of Florida

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
AGRICULTURE
FINAL ANALYSIS**

BILL #: CS/CS/CS/SB 806

RELATING TO: Aquaculture

SPONSOR(S): Committee on Fiscal Resource; Committee on Natural Resources; Committee on Agriculture and Consumer Services and Senator Laurent

TIED BILL(S): None

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

- (1) AGRICULTURE AND CONSUMER SERVICES YEAS 5 NAYS 0
- (2) NATURAL RESOURCES YEAS 8 NAYS 0
- (3) FISCAL RESOURCE YEAS 7 NAYS 0
- (4)
- (5)

I. SUMMARY:

In 1999, the Florida Legislature created the Division of Aquaculture within the Department of Agriculture and Consumer Services (DACS). CS/CS/CS/SB 806 addresses oversights that occurred in the transferring of duties to the Division.

Many of the changes in CS/CS/CS/SB 806 are of a "housekeeping" nature. Language dealing with the regulation and licensing of aquaculture from various chapters throughout the statutes are transferred to new sections in Chapter 597 (ss. 597.010 and 597.020, F.S.) to centralize the functions and duties of the newly created Division of Aquaculture. Many of the references throughout the statutes are updated as well to reflect the transfer to the new sections in Chapter 597.

In addition, effective July 1, 2000, DACS will perform the duties and functions relating to aquaculture lease applications for board of trustees-owned submerged lands. The bill requires DACS to provide notice to DEP when an aquaculture license is issued. The bill also stipulates that revenues collected from fees for aquaculture leases be deposited into the General Inspection Trust Fund of DACS. CS/CS/CS/SB 806 increases the per acre surcharge from \$5 to \$10 per annum and requires forty percent of the registration fees from commercial vessels to be transferred on a monthly basis by the Department of Highway Safety to the General Inspection Trust Fund of DACS to be used for shellfish and aquaculture law enforcement and quality control programs.

CS/CS/CS/SB 806 gives the Fish and Wildlife Conservation Commission (Commission) rule-making authority for setting harvesting seasons in Apalachicola Bay and requires the Commission and DACS to work together in monitoring the impacts of the new harvest schedule on the bay and on local shellfish harvesters. The bill also requires the Aquaculture Review Council to review specific funding projects and provide recommendations to the Commissioner of Agriculture.

CS/CS/CS/SB 806 requires the Commission to transfer funds from the alligator management program to DACS for the purpose of providing marketing and education services for alligator products produced in the state, irrespective of whether a fee is assessed on eggs or hides.

The bill provides fees and penalties necessary to implement the stone crab trap limitation programs established by the Commission rules, as well as allowing the Commission to establish an equitable rent. New penalties are provided for violations of the stone crab trap limitation program, including the revocation of licenses and endorsements in certain situations.

The bill clarifies that purchases from and sales by an unlicensed entity of saltwater products to a commercial wholesale dealer, retail dealer, or restaurant facility for public consumption are major violations. The bill also makes the ability to trawl for shrimp on a noncommercial basis in the St. Johns River conditional upon authorization of the Commission.

The bill amends s. 190.003, F.S., extending the meaning of "landowner" to include the owner of a ground lease from a government entity. The bill also amends s. 190.005, F.S., providing that the establishment of a community development district must include the consent of all landowners whose lands are included in the district and amends s. 190.021, F. S., providing that certain governmental properties subject to a ground lease shall not be subject to lien or encumbrance for described taxes.

For further details on this legislation, please see Section D (Section-by-Section Analysis).

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

Less Government

By providing penalties and fees for the stone crab trap limitation program, the bill allows for implementation of the program by the Fish and Wildlife Conservation Commission (Commission). Also, additional penalties are provided for violations other than those associated with the stone crab program.

Lower Taxes

The bill authorizes:

- a \$125 stone crab endorsement fee;
- a \$25 stone crab incidental take endorsement fee;
- a \$2 transfer fee (\$1 if to a crew member) for each stone crab certificate transferred;
- a \$2 or 25 percent (whichever is greater) one-time surcharge for each stone crab certificate transferred outside the immediate family;
- an equitable rent fee per trap certificate to be decided by the Commission and approved by the Governor and Cabinet for both stone crabs and spiny lobster;
- a \$0.50 per stone crab trap certificate fee;
- a \$0.50 for in-season stone crab tag trap replacement fee; and
- various financial penalties for violations of the stone crab trap limitation program and other major violations involving saltwater products.

Individual Freedom

The bill decreases the allowable options of individuals to conduct their own affairs by providing for implementation of the stone crab trap-limitation program. This program requires that in order to participate in the initial allocation of certificates, commercial harvesters must 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. The program provides that commercial harvesters who can not 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 providing for the implementation of the stone crab trap-limitation program established by Commission rule. In addition, other freedoms are decreased by the authorization of additional fines and penalties related to saltwater products.

Personal Responsibility

While Commission rules state that no vested rights for stone crab endorsement/certificate holders are being created, in essence they do just that by limiting entry into the stone crab fishery. Thus, by providing for implementation of the rule, the bill creates entitlement. However, the persons benefitting from this legislation do pay the fees proposed by the bill.

B. PRESENT SITUATION:

Presently, most of the activities relating to aquaculture in the state are handled by the Department of Agriculture and Consumer Services' (DACS) Division of Aquaculture. However, some functions are still handled by other agencies. For example, the Department of Environmental Protection (DEP) and the water management districts perform all staff duties and functions related to acquisition, administration, and disposition of state lands as they relate to aquaculture leases.

The statutes currently require rental fees for aquaculture leases to be deposited into the Marine Resources Conservation Trust Fund (MRCTF) of DEP. The registration fees from commercial vessels collected by the Department of Highway Safety and Motor Vehicles are also transferred into the MRCTF to be used for law enforcement and quality control programs. Under existing statutes, no more than 25 percent of the funds collected and deposited into the MRCTF can go towards the Florida Saltwater Products Promotion Trust Fund within DACS. Because these funds are generated by aquaculture activity, it is believed they should be deposited into DACS's General Inspection Trust Fund to sustain the aquaculture industry in the state.

Stone Crabs

The commercial harvesting of stone crabs is regulated through rules of the Commission, and by statutory law created in Chapter 370, F.S. 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 five 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 (i.e. endorsements) has been in effect since July 1, 1995.

Prior to the creation of the Commission 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 Commission 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.

The Commission rules establish the stone crab trap limitation program pursuant to the Commission's constitutional authority over marine life. However, fees and penalties cannot be set by the Commission as this is the responsibility of the Legislature. The rules:

- designate stone crabs as a restricted species pursuant to s. 370.01(21), F.S., and set the harvest season from October 15th through May 15th;
- require a saltwater products license (SPL), a restricted species endorsement (RSE), and a stone crab endorsement (SCE) for the commercial harvest of stone crabs;
- place a moratorium on renewal or replacement of stone crab endorsements until July 1, 2001, except for those endorsements active during the 1999-2000 fiscal year;
- require the size of harvested stone crab claws to be at least 2 3/4 inches in length and prohibit the transport of whole stone crabs and possession of or claw removal from egg-bearing females;
- address gear, trap construction, commercial trap marking requirements, trap working regulations, and trap transfers; and
- provide for recreational stone crab harvest allowing five traps per person and one gallon of stone crab claws to be harvested per day.

The rules also establish the stone crab trap-limitation program:

- requiring a certificate on record with the Commission for each stone crab trap;
- requiring a tag be attached to each stone crab trap;
- providing persons are only eligible for certificates if they had an SPL with an RSE and an SCE during the 1999-2000 season and had 300 pounds of stone crab claw landings during any one fishing season from 1993-1994 through 1998-1999;
- providing the number of certificates allocated is determined by the number of traps listed on the SPL or the number of pounds landed divided by two from one fishing season between 1995-1996 and 1997-1998;
- prohibiting the control of more than one percent of the total number of available certificates by any entity;
- requiring trap tags by October 1, 2001, with one tag issued per certificate;
- allowing for certificates to be transferred on a market basis; however, a transfer fee and a surcharge, if applicable, are required to be paid to the Commission;
- reducing the number of certificates transferred proportionally until 600,000 or fewer certificates are available in the program once certificates are transferred outside the immediate family;
- providing no transfer fees or reductions will be required if transfers are to immediate family members as a result of death or disability;
- providing up to five percent of the total amount of reduced certificates may be allotted by the Commission to provide for new entrants into the program;
- prohibiting leasing;
- providing for an incidental take endorsement permitting crawfish or blue crab endorsement holders to land five gallons of stone crab claws per day;
- creating an appeals board composed primarily of industry members to hear and resolve complaints or problems with the program;
- stating the program does not create any vested rights for endorsement or certificate holders;
- prohibiting use of any gear other than specified in the rule;
- prohibiting use of trap tags without an associated certificate on file;
- prohibiting removal of contents from another harvester's traps;

STORAGE NAME: s0806s3z.ag

DATE: June 26, 2000

PAGE 5

- prohibiting willful molestation of stone crab traps, lines, or buoys;
- prohibiting use of non-Commission issued trap tags or expired tags;
- prohibiting altering, making, forging, counterfeiting, or reproduction of a stone crab trap tag or the possession of such a tag;
- prohibiting bartering, trading, selling, supplying, agreeing to supply, aiding in supplying, or giving away of trap tags or certificates unless the action is authorized by Commission rules; and
- prohibiting out-of-season harvest, fraudulent reporting of the cost of transferred certificates, and use of traps without trap tags.

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 endorsements because they can and not because they will use them to harvest stone crabs.

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 south along the Gulf of Mexico, through the Keys, and 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 the stone crab fishery is stable, it is believed that the number of traps in the water is damaging the bottom, raising marine debris concerns due to recent storms, and interfering with recreational purposes.

Unlicensed Sellers

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

Trap Retrieval

Currently, s. 370.143, F.S., provides a retrieval fee of \$10 per trap retrieved during closed season for lobster and stone crab will be assessed to trap owners. However, the fee will be waived in the event of a major natural disaster resulting in massive trap losses. The assessed retrieval fee must be paid prior to renewal of the trap owner's trap number.

Noncommercial Shrimp Trawling in Northeast Florida