

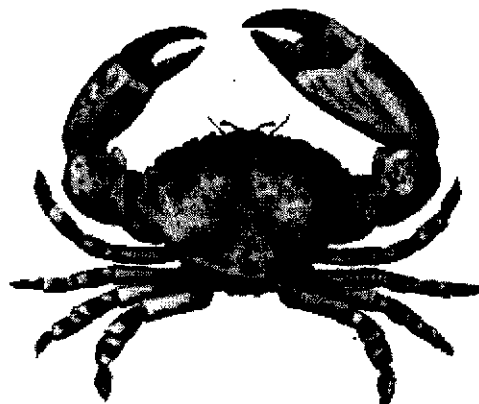


# Evaluation of Limited-Entry Commercial Fishing Programs

## Interim Project

Final Report Prepared By:  
Committee on Water and Resource Management  
Florida House of Representatives

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## Summary

Florida currently has only one limited-entry fishery, that for spiny lobster which was fully implemented in 1993. The spiny lobster limited-entry program (s. 370.142, F.S.) consists of transferable trap certificates, trap tags, reductions in the number of traps, and a technical advisory and appeal board. Under-reporting of certificate transfers/sales has been a major problem with this program, resulting in substantial revenue loss. No distinct trends relating to the effectiveness of the limited-entry program are evident in the data. Trap numbers have decreased due to the trap reduction goals, but while the total number of pounds landed appears to fluctuate within the realm of natural population fluctuations, catch rates have been decreasing in the Atlantic and fluctuating in the Gulf.

A statutorily mandated moratorium on new entrants into the stone crab fishery has been in place since 1995 and expires July 1, 2000. During the 1999 Legislative session, legislation was offered (HB 1685/SB 2146) to establish a limited-entry program for stone crabs similar to that for spiny lobsters. However, a limited-entry program does not appear to be necessary from a resource standpoint, as the fishery has remained fairly constant over the last 15 years. This legislation died in messages, but is expected to be filed again for the 2000 Legislative session.

There are multiple components of general limited-entry programs. Among them are:

- o Establishing goals and objectives which are then used to define the program terms.
- o How allocations of permits will initially be implemented.
- o Duration of the program.
- o Permit transfers.
- o How new entrants may enter the fishery.
- o Gains to the recipient of the initial allocation.
- o Program costs and fees.
- o Monitoring and enforcement.
- o Data necessary to establish the program.

Most limited-entry programs in other states and countries were implemented in response to declines in fisheries populations. Common components are: limited numbers of participants, initial allocations to existing fishermen, permit transfer and leasing procedures and renewal criteria. Difficulties with programs include enforcement issues, particularly relating to quotas and transfer fees, and general public sentiment regarding limited-entry programs.

In summary, there are multiple factors that must be critically examined when establishing a limited-entry program, with the most important being the necessity of the program in the first place. While most states and countries examined in this study implemented their programs as a result of a decline in the fishery or in returns, prevention of these situations may be the preferred alternative. However, these decisions should be tempered with caution, particularly when considering that the outcome of limited-entry programs is to “introduce exclusive privileges to harvest a portion of a public resource.”<sup>1</sup>

## **History of Limited-Entry in Florida**

### *Spiny Lobster*

Florida currently has only one limited-entry fishery. The limited-entry program for spiny lobster (also called crawfish) was created by SB 1768 in 1991 (pursuant to s. 370.142, F.S.) with implementation completed in 1993. The program was initiated in response to concerns 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 limited-entry program consists of transferable trap certificates, trap tags, reductions in the number of traps, and a technical advisory and appeal board. Trap certificates are required for each lobster trap used by persons holding saltwater products licenses. The Department of Environmental Protection (DEP) originally allotted trap certificates only to license holders with crawfish trap numbers current as of 1991 according to a formula based on each license holder's landings over a three year period. The number of certificates actually issued was then based on the individual's highest reported single license-year landings. In 1995, there were 606,190 trap certificates issued.

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 DEP or, since July 1, 1999, 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.). It is comprised of nine certificate holders from various counties and nationalities and the secretary of the DEP/executive director of the FWCC or their designee.

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.

A 1997 audit of the program by DEP's Office of the Inspector General cites the following as the reasons for implementing the limited-entry program: "increasing numbers of traps utilized in the fishery that resulted in increased congestion and conflict among fishermen, excessive mortality of undersized lobsters, declining yield per trap and public concern over petroleum and debris pollution." The audit cited under-reporting of certificate sales as a major problem resulting in \$750,000 in lost revenues from 1994-1996 alone. The audit recommended that DEP establish a formal method of verifying the accuracy of reported trap certificate transfer sales to "ensure proper reporting by participants and maximize program revenues." Currently, the program requires separate transfer applications from the seller and the buyer which are then compared. Discrepancies can then be evaluated. The audit also cited concerns regarding leasing of trap certificates, particularly since this provision is not authorized directly by statute, but is authorized by rule (Chapter 46-24, F.A.C.). Legislation has since been passed that eliminates leasing effective with the year 2003 (Section 370.142(2), F.S).

How effective has the program been in achieving the stated goals of maintaining or increasing overall catch levels, promoting economic efficiency in the fishery, and conserving natural resources? In 1997, there were 866 Crawfish Endorsements on the Atlantic coast and 1,477 on the Gulf coast, compared to 4173 total endorsements in 1991-1992. Thus, the number of endorsements issued has decreased dramatically. However, catch levels have "varied without trend" since 1970, ranging between 4.3 million pounds and 7.9 million pounds per year. Figure 1 illustrates these levels for years 1982-1995. The years 1996 and 1997 were similar to 1995 in pounds landed with 7.7 and 7.6 million pounds landed for each year, respectively.

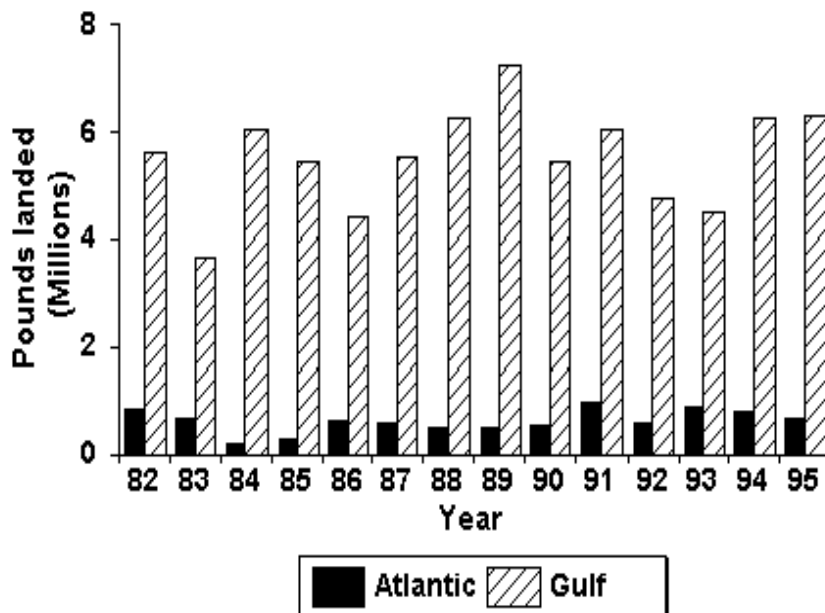
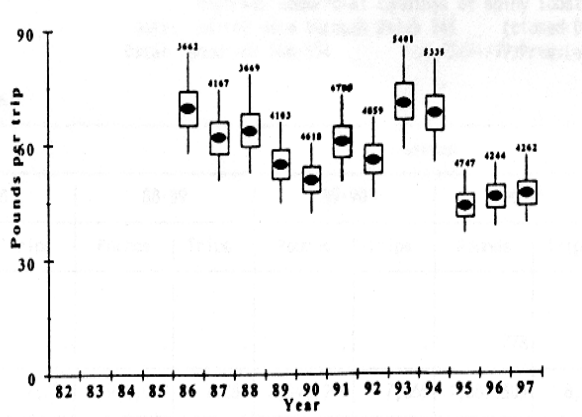


Figure 1. Total annual landings of Caribbean spiny lobster on the Atlantic and Gulf coasts of Florida, 1982-1995.

When standardized to account for variables such as the county where landings were made, the

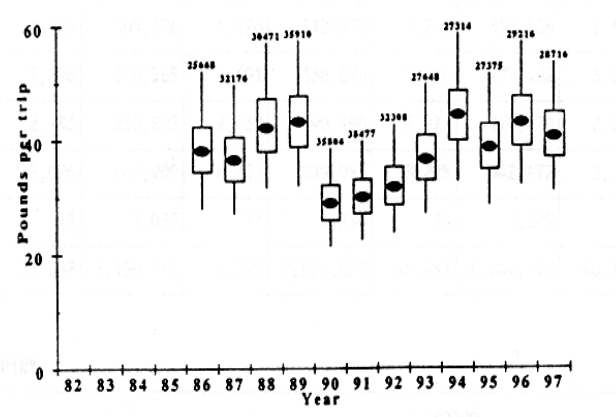
month landings were made, the year, and the duration of the fishing trip, commercial catch rates have varied substantially over the last 10 years. Data for the Atlantic fishery indicate a decline in catch rate over the last three years, while data for the Gulf fishery indicate a decrease in 1989-1990 followed by an increase to pre-1990 levels.<sup>2</sup>

Figure 2. Annual commercial standardized commercial catch rates (Pounds/trip) for Caribbean spiny lobster on the Atlantic coast of 1986-1997. Numbers above the bars indicate the number



of fishing trips.

Figure 3. Annual commercial standardized commercial catch rates (Pounds/trip) for Caribbean spiny lobster on the Gulf coast of Florida, 1986-1997. Numbers above the bars indicate the number



of fishing trips.

Thus, no distinct trends relating to the effectiveness of the limited-entry program in enhancing the resource are evident in the data (i.e. pounds landed per trip have not increased dramatically). Trap numbers have decreased due to the trap-reduction goals, but while the total number of pounds landed appears to fluctuate within the realm of natural population fluctuations, catch rates have been decreasing in the Atlantic and fluctuating in the Gulf. However, it is thought that the program has eliminated the cyclical seven year decreases seen in the past.

*Stone Crabs*

A statutorily-mandated moratorium on new entrants into the stone crab fishery has been in place since 1995 and expires on July 1, 2000. During the 1999 Legislative session, legislation was offered (HB 1685/SB 2146) to establish a limited-entry program similar to that for spiny lobsters. This legislation died in House messages, but is expected to be filed again for the 2000 Legislative session.

Legislation creating a limited-entry program for stone crabs does not appear to be necessary from a resource standpoint, as the fishery has remained fairly constant over the last 15 years. Figure 4 illustrates the stone crab pounds landed from 1982-1995. Decreases have been noted over the last three years in commercial catch rates along the Gulf coast, but not the Atlantic (Figures 5 and 6).<sup>3</sup> It is estimated that currently there are approximately 1 million stone crab traps in the water, creating a debris problem. Implementation of a limited-entry program could alleviate this situation, but, under the current passive trap reduction proposal discussed below, would occur at an extended rate.

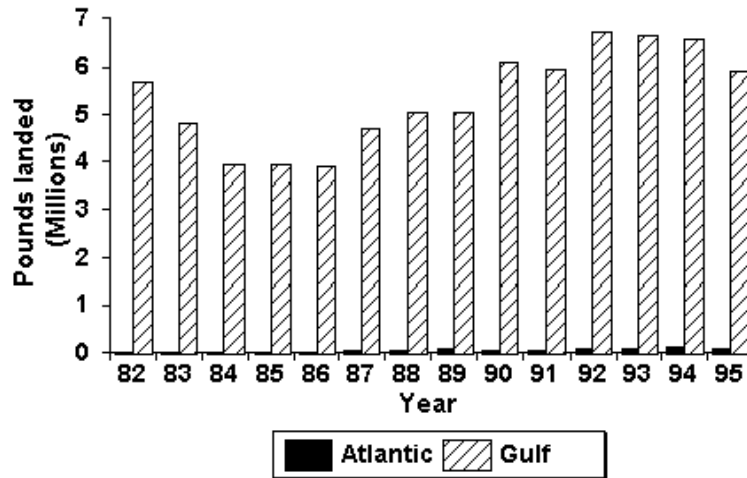


Figure 4. Total annual commercial landings of stone crabs on the Atlantic and Gulf coasts of Florida 1982-1995.

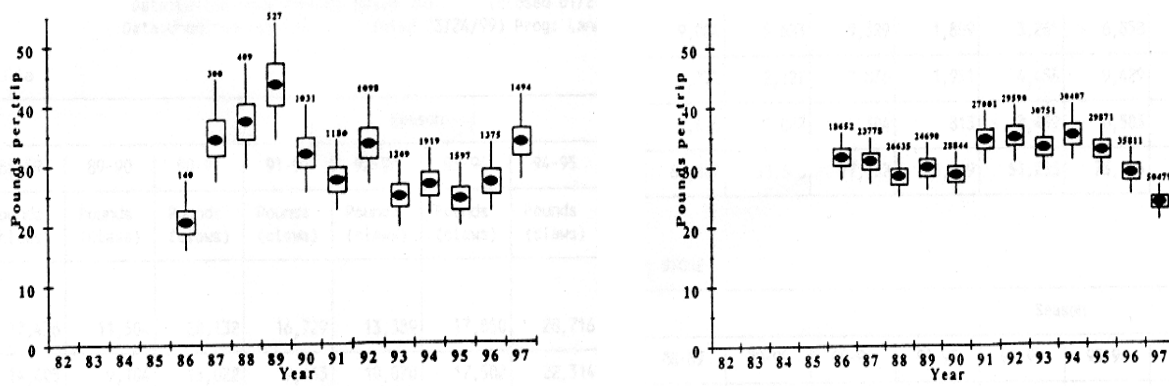


Figure 5. Annual standardized commercial catch rates (pounds/trip) for stone crabs on the Atlantic coast of Florida, 1982-1997. Numbers above the bars indicate the number of fishing trips.

HB 1685 provided legislative intent regarding the development of a stone crab trap certificate program with the principal goal of stabilizing the fishery by reducing the total number of traps in the water. Because of the eligibility requirements for the original permits, there would be a reduction in the number of traps at the beginning of the limited entry program because not everyone currently in the fishery would continue to participate. Subsequently, the "official" reduction of traps would occur under a passive trap reduction program with the actual reduction occurring at the time of sale or transfer of traps.

The bill, as amended by the House, provided that the newly created Fish and Wildlife Conservation Commission would establish a trap certificate program with administrative and enforcement responsibilities with the following components:

- o A certificate allocation formula requiring that the initial number of certificates issued would be equal to the maximum number of traps stated on a saltwater products license application for any stone crab fishing season from 1995-96 through 1997-98. By basing the allocation formula on a cumulative count of their landings, small volume crabbers would be afforded some equality with large volume crabbers in procuring permits.
- o A stone crab endorsement fee of \$125, \$25 of which would be used for trap retrieval, and trap tag certificate fees of \$0.50.
- o A \$2 service fee and a \$2 or 25 percent of market value, whichever is greater, surcharge each time a trap certificate is sold with a percentage reduction in certificates made at the time of sale.
- o An additional fee, established by rule, to be charged per trap for enhanced access to the resource.
- o Three regional Stone Crab Certificate Technical Advisory Appeals Boards.

#### *Moratoriums*

Moratoriums on issuing new permits were established in 1998 for the blue crab fishery (s. 370.135, F.S.) and the marine life (aquarium) fishery (s. 370.06, F.S.) and will remain in effect until 2002. A report relating to options for a marine life limited-entry fishery is due to the Legislature by 2000. Within this fishery, industry has become concerned with levels of take and resource depletion as well as increased numbers of participants. Initial efforts to allay these concerns revolved around dramatically increasing endorsement fees. When this was ineffective, industry representatives began discussions to implement a limited-entry program. However, a consensus could not be reached as to the specifics of the program and a moratorium was implemented to temporarily halt growth within the fishery. Limited-entry program discussions are ongoing between the FWCC and the industry.

The blue crab fishery moratorium also was imposed as a precursor to a limited-entry program, but, according to the FWCC, for different reasons. Enforcement issues due to gear intermixing with stone crab and lobster fisheries, both with either proposed or existing limited-entry programs, make a blue crab limited-entry program a preferred option.



## Components of Limited-Entry Programs

*Goals and Objectives:* Stating the ultimate purpose of the limited-entry program is necessary for designing the program. Is the purpose to restore the fishery or to protect the catch rates of fishermen? Answers to these questions will determine how the program is structured. For example, if the goal is economic efficiency and rapid fleet downsizing, then “quota shares should be freely transferable, be as divisible as possible, and have long-term tenure.”<sup>4</sup>

*Initial Allocation:* How to initially allocate quota shares is one of the most difficult and controversial components of a limited-entry program particularly regarding who should be eligible and what criteria will be used in determining the allocation. Tradeoffs will occur between how broad to make the eligibility and the amount of the allocation. While broader initial allocations will result in “more equitable distribution of benefits,” they are more likely to “leave initial recipients with smaller initial allocations.” Possible factors to be considered when establishing criteria are: catch history, permit history, status of individuals or communities (e.g. Are they vessel owners? To what degree does a community depend on fishing for its livelihood?), and returns to the public from initial allocations. (“How can the public be compensated when awarding exclusive privileges for use of public resources to private persons?”)<sup>5</sup>

*Duration:* A limited-entry program of a permanent duration is preferred from an economic standpoint as it encourages “long-term investments, possibility of using fishing interests as loan collateral, and engenders in quota holders a sense of long-term stake in the resource.” A permanent program may or may not be necessary from a biological standpoint, but would encourage continued consideration of the limited resource. “A limited duration program is likely to reduce the holder’s incentive to conserve the fish stocks because its value decreases over time and investments in stewardship of the resource will be reaped by someone else.”<sup>6</sup>

*Transfers:* The degree to which transfer of quota rights are allowable, if at all, depends on the goals of the limited-entry program and the restrictions that accompany the transfer. If the goals are to protect “an owner-operated mode of organizing production, to prevent absentee ownership or to protect fishery-dependent coastal communities, it may be necessary to restrict transferability-either geographically, between groups of fishermen, between bona fide fishermen and others, with respect to time, or all of these.” A general concern regarding transfers is the possible “concentration of quotas in the hands of a few individuals” as well as economic gains associated with the transfer and possible changes in the social structure with communities. To address these concerns, limits on the total number of quotas one individual can own may be necessary as well as taxes on any transfer sales or a lottery system for transfers should be considered. Temporary transfers or leasing are also of concern. While leasing may be important to allow flexibility within the fishery, problems such as absentee ownership can arise. Thus, restrictions on the frequency and proportion of total quota that can be leased and taxation of leased quota may be necessary to alleviate the quotas becoming the unofficial property of third party investors.<sup>7</sup>

*New Entrants:* The most common way for new entrants to gain access in a limited-entry system is through the transfer of quota shares. However, this can be difficult for some entrants who are “disadvantaged with respect to the financial capital market if they lack collateral or credit history” to purchase the quota shares or if inflation of the quota share price has occurred through

speculation or “irrational expectations.” A possible solution to these difficulties is to eliminate the transfer system altogether and have quotas revert to the state who can then redistribute them using lottery systems, zero-revenue auctions, or waiting lists. Quota share prices could be reduced by taxing the transfer seller a percentage of the sales price.<sup>8</sup>

*Gains:* Prior to the contemplation of a limited-entry program, a moratorium may be instated to limit speculation in the limited-entry fishery and possible windfall gains after its initiation. Most limited-entry programs do not charge the recipient of the initial allocation for use of a public resource. Thus, “not only do they have privileged access to the fishing quota, but they also may have competitive advantage in raising capital for future investments in the fishery, especially if the quota shares are treated as collateral by lenders.” If no fee is charged for the initial allocation, then those with initial quota allocations stand to make an unearned economic gain when they sell their shares. These windfall gains can be lessened through taxes on the first sale of quotas, assessing annual fees on quota shares, or having transfers revert to the state rather than sold on the open market.<sup>9</sup>

*Costs:* At the very least, costs associated with the operation and enforcement of the limited-entry program should be recovered through fees to participants or beneficiaries of the program. In addition, additional fees above operating and enforcement costs to cover other fishery related projects such as mitigating impacts of the limited-entry fishery on displaced fishermen may be considered.<sup>10</sup>

*Monitoring and Enforcement:* Noncompliance with the limited-entry guidelines can undermine the successfulness of the program. A monitoring and enforcement program is necessary to ensure that the stated goals are being met and that participants are following the stated guidelines. Penalties for violations should be established as well as a system for appeals of any decisions.<sup>11</sup>

*Data:* Reliable and relevant fisheries data is needed not only for the initial determination that a limited-entry program is necessary, but also to determine whether or not the program has been successful. Biological data is needed to set accurate total allowable catch rates, quotas, or gear restrictions while socioeconomic data is needed to assess the impacts of the limited-entry fishery both to fishermen operating within it and to other fisheries as a result of translocation. Record keeping to determine program compliance is also of great importance.<sup>12</sup>

## Limited-Entry Programs in Other States and Countries

Most limited-entry programs in other states and countries were implemented in response to declines in fisheries populations. Common components are: limited numbers of participants, initial allocations to existing fishermen, permit transfer and leasing procedures and renewal criteria. Difficulties with programs include enforcement issues, particularly relating to quotas and transfer fees, and general public sentiment regarding limited-entry programs.

Among other states in the U.S.:

*Alaska:* Alaska has more than 50 limited-entry fisheries including herring, salmon, crab, shrimp, and other shellfish. In addition to limiting the number of participants, limits on vessel size, fishing seasons and closures, and gear restriction are used to limit fishing capacity. Limited-entry was begun in the 1970's in response to "disasters" in the salmon fisheries with input from the fishermen themselves on the program design. While most of Alaska's limited-entry programs are based on a quota system, the salmon fishery has a reverse quota. That is, a sufficient number of fish are allowed to escape upriver for spawning, and the fleet is then allowed to catch all remaining fish. The original objective of the limited-entry program was to limit the growth of the numbers of participants in the various fisheries. As such, for initial permits, the Alaska Commercial Fisheries Entry Commission sets a maximum number of permits for a given fishery and ranks eligible (i.e. past participants in the fishery) individuals according to the "relative degree of hardship they would suffer if not awarded an entry permit."<sup>13</sup> Hardship is based on an individual's dependency on the fishery and their past participation in the fishery (number of years and consistency of involvement). Once ranked, permits, up to the maximum allotted, are given to the highest ranking individuals. The maximum number of permits to be issued may be exceeded to include those individuals who would suffer "significant economic hardship" (Section 16.43.270(a), A.S.). Permits must be renewed on an annual basis or they are forfeited. Annual fees are required for the permit and gear. Forfeited permits return to the state and are not reissued to other fishermen. Adjudication of disputes regarding permit awards is a problem due to the fact that "applicants for entry permits can remain in the fishery as long as they can keep their claim to a permit alive either in court or before the commission."<sup>14</sup> Permits may be transferred, but only to a "living individual who can demonstrate their ability to participate actively in the fishery."<sup>15</sup> Some permits are nontransferable (e.g. if their point classifications indicated they would suffer only minor economic hardship). In general, permits cannot be transferred to corporations or partnerships, they cannot be leased, used to secure loans (unless they are Alaska state-loan programs), or used to satisfy a judgement (except for the IRS and child support). Emergency transfers of permits for up to three years are permitted in certain circumstances (e.g. illness, death, disability, etc). A common complaint of individuals attempting to enter fisheries in Alaska is the high cost of these transfers. Prices are set by the market and top \$200,000 for some salmon fisheries. Recovery has been seen in many fisheries as a result of limited-entry programs. In addition, permit holders have a stake in the fishery, and thus an incentive to see that the program works. Some fishermen in the salmon fisheries have even established a self imposed a tax to develop non-profit hatcheries to rebuild salmon stocks.

*Georgia:* Blue crab and shrimp (castnet only) are regulated in Georgia under limited-entry programs. The blue crab program was implemented in response to industry initiative based on

declining landings, decreasing catch per unit effort, and fear of new entrants in the fishery due to translocated fishermen from the Florida net ban. A moratorium on new entrants was imposed in July 1995 with the limited-entry program implemented in July 1998. License fees vary with residency requirements and a \$2 per trap fee along with an identifying trap float is also required and up to 200 traps are allowed. There is a record keeping requirement for catch and sales. Eligibility is determined based on crab sales and holding a license for two of the three years prior to the implementation of the limited-entry program. Licenses that are not renewed are reissued by the state using a lottery system. Crab licenses cannot be sold. Permits may be transferred to immediate family members without fee or to others with the sale of the vessel used for crabbing if a license fee is paid to the state. While no official mechanism exists for license leasing, it is allowable if the department has been notified by the permittee that another individual has permission to use their traps. Enforceability of this program has been difficult particularly regarding these “leasing” arrangements. The castnet shrimp limited-entry program was established due to rapid growth of the inshore shrimp fishery, a lack of regulation, and due to allocation issues between castnetters and trawlers. The program was implemented in July 1998 with license numbers limited to 200 and fees varying substantially according to residency. Eligibility was determined by sales records and license holders from the previous year. There is a 60 quart catch limit, but enforceability is difficult. Licenses that are not renewed revert back to the state to be allocated by lottery.

*Maryland:* Maryland’s only limited-entry program for a specific fishery is for striped bass. It was implemented in April 1994 following sharp declines in abundance as a result of excessive fishing pressure. A cap on entrants to the fishery was based on license holders for the year prior to implementation of the limited-entry program. To maintain eligibility, licensees must participate in the fishery for two out of three years, maintain logs and reports, and meet harvest minimums. “Attrition occurs by failing to declare intent to harvest striped bass or failure to renew the commercial finfish license (\$100-\$200 fee).<sup>16</sup> Transfers of striped bass licenses are allowed only in conjunction with commercial fishing licenses which may be transferred to an immediate family member upon the death of the licensee or to others for a temporary period (30-90 days) or with the sale of a licensee’s business. No payment may be accepted by the original licensee for the transferred striped bass authorization. Any licenses that are not transferred, revert to the state to be distributed to those on waiting lists (first come first served). Individuals wishing to enter the fishery are placed on a waiting list and licenses are awarded as a result of attrition. After the declaration of intent is received, each participant is given a daily and seasonal allocation of catch. Licensees may not harvest more than their daily allocations plus 10 percent or harvest using another licensee’s permit until they have used up their own seasonal allocation. Each striped bass caught must be affixed with a tag issued by the state identifying the licensee. Allocations cannot be transferred but may be temporarily fished if a license is temporarily transferred. The most substantial problem associated with implementation of the program was its “lack of popularity” with fishermen, particularly since the initial quota was 892,500 pounds. “The (initial) modest quota would not sufficiently support the number of license holders.”<sup>17</sup> Currently the commercial quota is 1,000,000 pounds. Overall, the limited-entry program has been deemed a success by the state as it “effectively limited the harvest of striped bass while protecting those commercial fishermen who are economically dependent on the fishery.”<sup>18</sup>

*New Jersey:* New Jersey has 10 limited-entry programs, most of which were implemented in the 1990’s. The surf clam and oyster programs were implemented in 1976 and 1981 respectively.

With the exception of surf clam landing fees at 15¢ per bushel, the only fees collected are gear license fees. A limited-entry program for gill net permits was implemented to alleviate gear conflicts and restore the weakfish resource. For gill net permits, an applicant must demonstrate the sale of a certain amount of crab or fish during any one of the five years prior to the implementation of the limited-entry program. Permits may be transferred to a son or daughter only. No additional licenses are to be issued until the number of issued licenses drops below a set number. At that time, individuals on a waiting list of approved applicants would be issued any available permits. For an application to be approved, the individual must document a minimum of three years commercial experience. Crab pot and dredge limited-entry permits were issued to “mitigate user conflicts between crab potters and recreational boaters and to immediately stabilize the harvest of crabs with subsequent decrease in harvest pressure.”<sup>19</sup> For crab pot and dredge permits, an applicant must have held a license during at least one of the three years prior to the implementation of the limited-entry program or have applied for a lottery during the year prior to the implementation of the program. Licenses issued under the lottery numbered 20 percent of those licenses issued during the year prior to implementation of the limited entry program. Permits can be transferred to an immediate family member only. No additional licenses are to be issued until the number of issued licenses drops below a set number. At that time, a lottery will be held to issue any additional licenses. Commercial quotas were established for summer flounder to “reduce overall harvest”<sup>20</sup> and to protect fishermen's interests and investments in the fishery. These are federal quotas with individual state permits. Eligibility is determined according to the number of pounds landed and sold in New Jersey for at least two of the seven years prior to implementation of the program. Permits are issued in the name of the owner and of the vessel. As such, permits may transfer with the owner from vessel to vessel or with the vessel upon its sale. A tautog limited-entry program was begun in New Jersey to protect the individual harvest opportunities of existing tautog fishermen from new entrants. Eligibility would depend on the pounds of tautog landed and sold during at least two of the ten years prior to the implementation of the program. Transfers are allowed as for summer flounder. The limited-entry program for horseshoe crabs was established to “reduce disturbance to shorebirds”<sup>21</sup> and to reduce fishing pressure on the crabs. Permits were issued to those who landed horseshoe crabs and held a permit for at least two years during the four years prior to implementation of the program. They may be transferred to an immediate family member. During the late 1960's harvest of surf clams decreased by over 50 percent. In an attempt to reduce fishing pressure on this resource, a limited-entry program was begun that grandfathered in historical participants (i.e. those who owned a surf clam vessel, were residents of New Jersey, and held a license during the prior year) with no additional permits available. Licenses may be transferred to new entrants provided they own a surf clam vessel and are state residents. “Based on an annual stock assessment, a seasonal harvest quota is established for the industry with each license (currently 57) allocated 1/57th of the seasonal quota.” These allocations may be transferred to “another licensee provided that no more than three quotas are fished by a single vessel.”<sup>22</sup> Oyster dredge limited-entry permits were begun over concerns about increasing fishing activity, irregular recruitment and disease losses, and a general declining resource. Historic participants were grandfathered in, but licenses must be renewed annually. Licenses may be transferred as for summer flounder.

*North Carolina:* North Carolina imposed a moratorium on the sale of all commercial fishing licenses in 1994 primarily in response to rapid growth in the blue crab industry. The moratorium was replaced in July 1999 by a limited-entry program for all commercial fisheries (i.e. fish, crab, shrimp, and shellfish). This program limits licenses to those individuals holding licenses on June

30, 1999 plus 500 additional licenses to be distributed by lottery. Eligibility for the lottery depended on past involvement in the fisheries, degree of reliance on commercial fishing, and other factors. Depending on the number of licenses renewed annually, “the pool number for distribution by lottery can be higher or lower than 500” in subsequent years.<sup>23</sup> Licenses can be transferred to an immediate family member or with the sale of a vessel. Licenses may also be temporarily transferred, or assigned, for use by an individual other than the licensee but must be approved by the state. Difficulties associated with implementation of the program stem mainly from social response—those that were unable to enter the fisheries or those that are in but “philosophically oppose limited-entry.”<sup>24</sup>

*Oregon:* There are seven state limited-entry programs in Oregon: sea urchin, roe herring, Columbia River gillnet, ocean salmon troll, pink shrimp trawl, Dungeness crab and ocean scallop dredge, most of which were instated in the 1980's. “All have target levels of permits and provisions for a lottery if the number of permits falls below a threshold level.”<sup>25</sup> Initial eligibility was granted to those persons holding licenses during the year prior to the implementation of the program. Decreases in permit numbers are by attrition, with the exception of a federally-financed buyback program for the Columbia River gillnet fishery. Permits must be renewed annually, and some fisheries have landing requirements for renewals as well. Transfers have various restrictions depending on vessel length increases (i.e. How much larger is the new vessel?) and the length of time the permit has been held by the original permittee. Limits also exist on the number of permits an individual can hold to prevent monopolies. The effectiveness of limited-entry programs in the state has been hampered by allowing too many boats or not regulating size and efficiency of boats entering the programs. “In the cases where attrition has aided the effort, and appropriate action has been taken to lower caps and prevent efficiency increases, the programs have been somewhat successful in improving the economics of fishing for the remaining participants.”<sup>26</sup>

*Texas:* Texas has three limited-entry programs, two of which are currently in place, that were initiated in response to over fishing and decreased yields. The inshore shrimp program was begun in 1995, the crab program was begun in 1998, and the finfish program will be implemented in 2000. To be eligible for the shrimp and crab programs, fishermen must have held a valid license the year prior to implementation. A two year window is given for the finfish program. Annual renewals are required to maintain an active license. Shrimp license transfers are restricted until September 1999 unless the transfer is to: 1) “intra-industry members who were initially qualified”, 2) “qualified captains”, 3) or to immediate family members as an inheritance through death.<sup>27</sup> Crab licenses may not be transferred until September 2001, unless it is to heirs of the license holder's estate. Finfish licenses will be transferable, subject to a fee. Limits on shrimp vessel upgrades are required, but vessels over the maximums were grandfathered in. Gear limits are set for all programs with a marking requirement for the finfish program. To prevent monopolies of the fisheries, ownership of multiple licenses is restricted for each of the programs, unless grandfathered in. Licenses may be suspended or revoked for “flagrant violations” of the programs. Industry selected review boards exist for all three programs to hear appeals and advise the state. License buyback programs were also established based on increased license fees and any license transfer fees to fund the programs. Positive results have been seen in the shrimp fishery as a result of limited-entry, but it is too early to tell definitively.

Among other nations:

*Iceland:* Limited-entry in Iceland has a history going back to 1977 with most current limited-entry programs originating in 1990. Almost all fisheries have limited-entry programs. The objectives of these programs were to improve conservation and increase economic efficiency. Individual transferrable quotas (ITQs) are portions of the total allowable catch (TAC) quota expressed as a percentage of the TAC in metric tons. ITQs are issued to individuals on an annual basis and were initially allocated among “vessel owners on the basis of their fishing record during the three years preceding implementation of the program.”<sup>28</sup> While initial transfers were allowed only when accompanied by sale of a vessel, quota shares can now be leased or permanently transferred (i.e. sold). Leasing restrictions require that the quota holder “fish at least half of their quotas every second year.”<sup>29</sup> Iceland set up a new government agency to monitor and enforce its limited-entry fisheries. ITQs may be suspended or revoked in the case of gross violations of the laws. The Icelandic Supreme Court concluded in December 1998 that the fisheries laws that privilege “those who derive their fishing rights from ownership of vessels during a specific period (during which their ‘fishing history’ was established) is unconstitutional.”<sup>30</sup> According to the court, this privilege violates their constitutional rule against “discrimination and the rule about the right to work” because it prevents the “majority of the public from enjoying the right to work.”<sup>31</sup> How this will affect limited-entry programs in Iceland remains to be seen.

*New Zealand:* The first fishery moratoria were introduced in 1978 with the first limited-entry program for rock lobsters implemented in 1979. A government licensing authority managed entry and exit to the program as licenses were non-transferable. “This system of limited-entry failed to control the increase in effort and investment in these fisheries.”<sup>32</sup> Individual transferable quotas (ITQs) were implemented in 1986. These are transferable “individual privileges to harvest portions of an overall quota of marine fish or shellfish.”<sup>33</sup> The major goals of the program were to rebuild fisheries, fish to maintain sustainable levels, and ensure harvest efficiency. As of 1997, there were 30 ITQ programs in New Zealand. There was no fee for the initial allocation of ITQs and the allocation was based on catch history, “modified by the results of a buy-back scheme and administrative reductions used to match effort more closely to the available resource.”<sup>34</sup> ITQs were allocated for life and “authorized the holders to take specified quantities of each species annually in each quota area” (versus a percentage of an annually adjusted total allowable catch figure).<sup>35</sup> Also considered were onshore capital, the investment in catching, and onshore throughput. Limits on the percent of the total ITQ a person or company can hold ranges from 20-35 percent depending on the number of species. ITQs can only be held by residents (individuals or companies) of New Zealand and are freely transferable on an open market system. Conflicts are resolved through mediation or by the Minister of the fisheries department. Enforcement concerns are quota violations and “high grading” (discarding the small fish in favor of the larger, more salable fish when under a quota system). “Some of the major administrative issues encountered during the first 10 years of the ITQ program include reducing bycatch problems in multi-species fisheries, settlement of native Maori fisheries claims, the change to proportional ITQs from fixed tonnages, and implementation of strategies for adjusting total allowable catches in situations with limited information.”<sup>36</sup> The ITQ program has been successful in improving the fisheries stocks.

## Conclusions

There are numerous options for limited-entry programs in Florida. Major consideration should be given to the overall objectives and goals of individual programs. Based on this direction, suitable components can be assembled.

Initial permit allocations may consider catch history, monetary investment and prior involvement in the fishery as well as any hardships that might result if a permit is not issued. General program questions include:

- o Who can hold a permit? Should only individuals be allowed, or can corporations hold permits as well? Should permits be held only by captain or vessel owners and not by crew? How many permits should one entity be allowed to hold to avoid monopolies?
- o What fees should be charged and how much should they be? Fees should cover administrative, enforcement and research costs.
- o What, if any, are the conditions for permit transfers? Possible conditions are transfers to immediate family only, with the sale of business or gear, with the new vessel of permittee, to another fisherman, or sold on an open market system. Another consideration might be a restriction on how much larger the transferee's vessel is than the transferor's or how many more traps they operate. Finally, transfers may not be allowed at all, with permits reverting back to the state for possible redistribution or held to reduce fishery participants.
- o Is leasing allowed? If so, for how long? What restrictions would apply (e.g. permit holders might be required to fish a portion of their permit allocation every so often)?
- o What are the quota limits-pounds of fish or gear limitations? Is there a sound scientific and/or economic basis for these limits?
- o How are permits acquired by the state, either as a result of non-renewal or when permit numbers fall below a certain threshold, redistributed? Use of a lottery or waiting list (first come first served) are possibilities.
- o Are buy-back programs or gear reductions necessary? If large numbers of initial permit allocations were necessary, buying back a portion of those permits or requiring proportional gear reductions may be necessary to assist the resource in recovery.
- o How will conflicts be resolved?
- o What will the record keeping requirements be? How will you keep track of program compliance? Log books or tagging requirements may be useful in this situation along with enforcement action if necessary.

In summary, there are multiple factors that must be critically examined when establishing a limited-entry program, with the most important being the necessity of the program in the first place. While most states examined in this study implemented their programs as a result of a



decline in the fishery or in returns, prevention of these situations may be the preferred alternative. However, these decisions should be tempered with caution, particularly when considering that the outcome of limited-entry programs is to “introduce exclusive privileges to harvest a portion of a public resource.”<sup>37</sup>

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# *Florida House of Representatives*

John Thrasher, Speaker

## **Committee on Water and Resource Management**

Resource and Land Management Council, Group IV

**J.D. Alexander**  
Chair

**Janegale Boyd**  
Vice Chair

June 16, 1999

FIELD(1)

Dear FIELD(2),

The Florida Legislature's House Committee on Water and Resource Management is researching the policy considerations of limited entry programs for commercial fisheries, and staff would like to know how other states and countries have dealt with this issue.

Enclosed is a survey asking you a number of questions about limited entry programs as they may pertain to your state. We are particularly interested in programs related to shellfish, but are interested in finfish limited entry programs as well. This survey is being mailed to environmental agencies with limited entry programs in other states and countries and we would greatly appreciate your participation. A self-addressed, metered envelope is enclosed for your convenience in returning the survey. Participants are asked to return the responses no later than **July 30, 1999**.

If you have any questions, please do not hesitate to call me at (850) 488-0711. Thank you for taking time to respond to the survey.

Sincerely,

Kellie Ralston  
Legislative Analyst

/krr  
enclosures

# LIMITED ENTRY SURVEY

AGENCY:

STATE/COUNTRY:

NAME & TITLE OF PERSON

COMPLETING SURVEY:

ADDRESS & PHONE # OF

PERSON COMPLETING SURVEY:

1. Does your state have a law, rule or policy requiring limited entry into commercial fisheries?

NO

YES

If **YES**, please provide a copy of the state law, rules and regulations related to the *limited entry program(s)*.

*If more than one limited entry program, please answer the following for each fishery individually.*

2. To what fishery does the limited entry program apply?

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3. What were the circumstances resulting in the development of the limited entry program?

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4. Please describe the specific components of the limited entry program, specifically:

- when the program was implemented
- types of equipment used in the affected fishery
- all program fees (e.g. permit fees, special stamp fees, trap fees, etc.)
- conditions of permit non-renewal
- qualifications for entry into the program

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**5.** Has limited entry improved the fishery from either a biological or commercial standpoint?

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**6.** What, if any, negative impacts has limited entry had, particularly on the commercial fishing industry?

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**7.** Please describe any problems or difficulties in implementing the limited entry program.

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WEST'S FLORIDA STATUTES ANNOTATED  
TITLE XXVIII. NATURAL RESOURCES; CONSERVATION, RECLAMATION, AND USE  
CHAPTER 370. SALTWATER FISHERIES

Current through End of 1998 2nd Reg. Sess.

370.142. Spiny lobster trap certificate program

(1) Intent.--Due to rapid growth, the spiny lobster fishery is experiencing increased congestion and conflict on the water, excessive mortality of undersized lobsters, a declining yield per trap, and public concern over petroleum and debris pollution from existing traps. In an effort to solve these and related problems, the Legislature intends to develop pursuant to the provisions of this section a spiny lobster trap certificate program, the principal goal of which 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 Legislature seeks to preserve as much flexibility in the program as possible for the fishery's various constituents and ensure that any reduction in total trap numbers will be proportioned equally on a percentage basis among all users of traps in the fishery.

(2) Transferable trap certificates; trap tags; fees; penalties.--The Department of Environmental Protection shall establish a trap certificate program for the spiny lobster fishery of this state and shall be responsible for its administration and enforcement as follows:

(a) Transferable trap certificates.--Each holder of a saltwater products license who uses traps for taking or attempting to take spiny lobsters shall be required to have a certificate on record for each trap possessed or used therefor, except as otherwise provided in this section.

1. The department shall initially allot such certificates to each licenseholder with a current crawfish trap number who uses traps. The number of such certificates allotted to each such licenseholder shall be based on the trap/catch coefficient established pursuant to trip ticket records generated under the provisions of s. 370.06(2)(a) over a 3-year base period ending June 30, 1991. The trap/catch coefficient shall be calculated by dividing the sum of the highest reported single license-year landings up to a maximum of 30,000 pounds for each such licenseholder during the base period by 700,000. Each such licenseholder shall then be allotted the number of certificates derived by dividing his or her highest reported single license-year landings up to a maximum of 30,000 pounds during the base period by the trap/catch coefficient. Nevertheless, no licenseholder with a current crawfish trap number shall be allotted fewer than 10 certificates. However, certificates may only be issued to individuals; therefore, all licenseholders other than individual licenseholders shall designate the individual or individuals to whom their certificates will be allotted and the number thereof to each, if more than one. After initial issuance, trap certificates are transferable on a market basis and may be transferred from one licenseholder to another for a fair market value agreed upon between the transferor and transferee. Each such transfer shall, within 72 hours thereof, be recorded on a notarized form provided for that purpose by the department and hand delivered or sent by certified mail, return receipt requested, to the department for recordkeeping purposes. In addition, in order to cover the added administrative costs of the program and to recover an equitable natural resource rent for the



people of the state, a transfer fee of \$2 per certificate transferred shall be assessed against the purchasing licenseholder and sent by money order or cashier's check with the certificate transfer form. Also, in addition to the transfer fee, a surcharge of \$5 per certificate transferred or 25 percent of the actual market value, whichever is greater, given to the transferor shall be assessed the first time a certificate is transferred outside the original transferor's immediate family. No transfer of a certificate shall be effective until the department receives the notarized transfer form and the transfer fee, including any surcharge, is paid. The department may establish by rule an amount of equitable rent per trap certificate that shall be recovered as partial compensation to the state for the enhanced access to its natural resources. In determining whether to establish such a rent and, if so, the amount thereof, the department shall consider the amount of revenues annually generated by certificate fees, transfer fees, surcharges, trap license fees, and sales taxes, the demonstrated fair market value of transferred certificates, and the continued economic viability of the commercial lobster industry. The proceeds of equitable rent recovered shall be deposited in the Marine Resources Conservation Trust Fund and used by the department for research, management, and protection of the spiny lobster fishery and habitat.

2. No person, firm, corporation, or other business entity may control, directly or indirectly, more than 1.5 percent of the total available certificates in any license year.

3. The department shall maintain records of all certificates and their transfers and shall annually provide each licenseholder with a statement of certificates held.

4. The number of trap tags issued annually to each licenseholder shall not exceed the number of certificates held by the licenseholder at the time of issuance, and such tags and a statement of certificates held shall be issued simultaneously.

5. Beginning July 1, 2003, and applicable to the 2003-2004 lobster season and thereafter, it is unlawful for any person to lease lobster trap tags or certificates.

(b) Trap tags.--Each trap used to take or attempt to take spiny lobsters in state waters or adjacent federal waters shall, in addition to the crawfish trap number required by s. 370.14(2), have affixed thereto an annual trap tag issued by the department. Each such tag shall be made of durable plastic or similar material and shall, beginning with those tags issued for the 1993-1994 season based on the number of certificates held, have stamped thereon the owner's license number. To facilitate enforcement and recordkeeping, such tags shall be issued each year in a color different from that of each of the previous 3 years. A fee of 50 cents per tag issued other than on the basis of a certificate held shall be assessed through March 31, 1993. Until 1995, an annual fee of 50 cents per certificate shall be assessed, and thereafter, until 1998, an annual fee of 75 cents per certificate shall be assessed upon issuance in order to recover administrative costs of the tags and the certificate program. Beginning in 1998, the annual certificate fee shall be \$1 per certificate. Replacement tags for lost or damaged tags may be obtained as provided by rule of the department.

(c) Prohibitions; penalties.--

1. It is unlawful for a person to possess or use a spiny lobster trap in or on state waters or adjacent federal waters without having affixed thereto the trap tag required by this section. It is unlawful for a person to possess or use any other gear or device designed to attract and enclose or otherwise aid in the taking of spiny lobster by trapping that is not a trap as defined in rule 46-24.006(2),

Florida Administrative Code.

2. It is unlawful for a person to possess or use spiny lobster trap tags without having the necessary number of certificates on record as required by this section.

3. In addition to any other penalties provided in s. 370.021, a commercial harvester, as defined by rule 46-24.002(1), Florida Administrative Code, who violates the provisions of this section, or the provisions relating to traps of chapter 46-24, Florida Administrative Code, shall be punished as follows:

a. If the first violation is for violation of subparagraph 1. or subparagraph 2., the department shall assess an additional civil penalty of up to \$1,000 and the crawfish trap number issued pursuant to s. 370.14(2) or (7) may be suspended for the remainder of the current license year. For all other first violations, the department shall assess an additional civil penalty of up to \$500.

b. For a second violation of subparagraph 1. or subparagraph 2. which occurs within 24 months of any previous such violation, the department shall assess an additional civil penalty of up to \$2,000 and the crawfish trap number issued pursuant to s. 370.14(2) or (7) may be suspended for the remainder of the current license year.

c. For a third or subsequent violation of subparagraph 1. or subparagraph 2. which occurs within 36 months of any previous two such violations, the department shall assess an additional civil penalty of up to \$5,000 and may suspend the crawfish trap number issued pursuant to s. 370.14(2) or (7) for a period of up to 24 months or may revoke the crawfish trap number and, if revoking the crawfish trap number, may also proceed against the licenseholder's saltwater products license in accordance with the provisions of s. 370.021(2)(e).

d. Any person assessed an additional civil penalty pursuant to this section shall within 30 calendar days after notification:

(I) Pay the civil penalty to the department; or

(II) Request an administrative hearing pursuant to the provisions of s. 120.60.

e. The department shall suspend the crawfish trap number issued pursuant to s. 370.14(2) or (7) for any person failing to comply with the provisions of sub-subparagraph d.

4. a. It is unlawful for any person to make, alter, forge, counterfeit, or reproduce a spiny lobster trap tag or certificate.

b. It is unlawful for any person to knowingly have in his or her possession a forged, counterfeit, or imitation spiny lobster trap tag or certificate.

c. It is unlawful for any person to barter, trade, sell, supply, agree to supply, aid in supplying, or give away a spiny lobster trap tag or certificate or to conspire to barter, trade, sell, supply, aid in supplying, or give away a spiny lobster trap tag or certificate unless such action is duly authorized by the department as provided in this chapter or in the rules of the department.

5. a. Any person who violates the provisions of subparagraph 4., or any person who engages in the commercial harvest, trapping, or possession of spiny lobster without a crawfish trap number as required by s. 370.14(2) or (7) or during any period while such crawfish trap number is under suspension or revocation, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. In addition to any penalty imposed pursuant to sub-subparagraph a., the department shall levy a fine of up to twice the amount of the appropriate surcharge to be paid on the fair market value of the transferred certificates, as provided in subparagraph (a)1., on any person who violates the provisions of sub-subparagraph 4.c.

6. Any certificates for which the annual certificate fee is not paid for a period of 3 years shall be considered abandoned and shall revert to the department. During any period of trap reduction, any certificates reverting to the department shall become permanently unavailable and be considered in that amount to be reduced during the next license-year period. Otherwise, any certificates that revert to the department are to be reallocated in such manner as provided by the department.

7. The proceeds of all civil penalties collected pursuant to subparagraph 3. and all fines collected pursuant to sub-subparagraph 5.b. shall be deposited into the Marine Resources Conservation Trust Fund.

8. All traps shall be removed from the water during any period of suspension or revocation.

(d) No vested rights.--The trap certificate program shall not create vested rights in licenseholders whatsoever and may be altered or terminated as necessary to protect the spiny lobster resource, the participants in the fishery, or the public interest.

(3) Trap reduction.--The objective of the overall 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. Therefore, the Marine Fisheries Commission shall set an overall trap reduction goal based on maintaining or maximizing a sustained harvest from the spiny lobster fishery. To reach that goal, the commission shall, by July 1, 1992, set an annual trap reduction schedule, not to exceed 10 percent per year, applicable to all certificateholders until the overall trap reduction goal is reached. All certificateholders shall have their certificate holdings reduced by the same percentage of certificates each year according to the trap reduction schedule. The department shall then issue the number of trap tags authorized by the commission, as requested, and a revised statement of certificates held. Certificateholders may maintain or increase their total number of certificates held by purchasing available certificates from within the authorized total. The commission shall provide for an annual evaluation of the trap reduction process and shall suspend the annual percentage reductions for any period deemed necessary by the commission in order to assess the impact of the trap reduction schedule on the fishery. The commission may then, by rule, resume, terminate, or reverse the schedule as it deems necessary to protect the spiny lobster resource and the participants in the fishery.

(4) Trap certificate technical advisory and appeals board.--There is hereby established the Trap Certificate Technical Advisory and Appeals Board. Such board shall consider and advise the department on disputes and other problems arising from the implementation of the spiny lobster trap

certificate program. The board may also provide information to the department on the operation of the trap certificate program.

(a)1. The board shall consist of the secretary of the department or designee and nine other members appointed by the secretary, after determination of the initial certificate allotments by the department, according to the following criteria, except as otherwise provided in subparagraph 2.:

a. All appointed members shall be certificateholders, but two shall be holders of fewer than 100 certificates, two shall be holders of at least 100 but no more than 750 certificates, three shall be holders of more than 750 but not more than 2,000 certificates, and two shall be holders of more than 2,000 certificates.

b. At least one member each shall come from Broward, Dade, and Palm Beach Counties; and five members shall come from the various regions of the Florida Keys.

c. At least one appointed member shall be a person of Hispanic origin capable of speaking English and Spanish.

2. The secretary of the department may fill any position on the initial board with a member who does not fulfill the requirements of subparagraph 1. if there are not enough qualified individuals available to meet those requirements. However, as soon as enough qualified individuals are available to meet those requirements, the secretary must replace all nonqualified appointees with qualified appointees.

(b) The term of each appointed member shall be for 4 years, and any vacancy shall be filled for the balance of the unexpired term with a person of the qualifications necessary to maintain the requirements of subparagraph (a)1. However, of the initial appointees, three shall serve for terms of 4 years, two shall serve for terms of 3 years, two shall serve for terms of 2 years, and two shall serve for terms of 1 year. There shall be no limitation on successive appointments to the board.

(c) The secretary of the department or designee shall serve as a member and shall call the organizational meeting of the board. The board shall annually elect a chair and a vice chair. There shall be no limitation on successive terms that may be served by a chair or vice chair. The board shall meet at the call of its chair, at the request of a majority of its membership, at the request of the department, or at such times as may be prescribed by its rules. A majority of the board shall constitute a quorum, and official action of the board shall require a majority vote of the total membership of the board present at the meeting.

(d) The procedural rules adopted by the board shall conform to the requirements of chapter 120.

(e) Members of the board shall be reimbursed for per diem and travel expenses as provided in s. 112.061.

(f) Upon reaching a decision on any dispute or problem brought before it, including any decision involving the allotment of certificates under paragraph (g), the board shall submit such decision to the secretary of the department for final approval. The secretary of the department may alter or disapprove any decision of the board, with notice thereof given in writing to the board and to

each party in the dispute explaining the reasons for the disapproval. The action of the secretary of the department constitutes final agency action.

(g) In addition to those certificates allotted pursuant to the provisions of subparagraph (2)(a)1., up to 125,000 certificates may be allotted by the board to settle disputes or other problems arising from implementation of the trap certificate program during the 1992-1993 and 1993-1994 license years. Any certificates not allotted by March 31, 1994, shall become permanently unavailable and shall be considered as part of the 1994-1995 reduction schedule. All appeals for additional certificates or other disputes must be filed with the board before October 1, 1993.

(h) Any trap certificates issued by the department as a result of the appeals process must be added to the existing number of trap certificates for the purposes of determining the total number of certificates from which the subsequent season's trap reduction is calculated.

(i) On and after July 1, 1994, the board shall no longer consider and advise the department on disputes and other problems arising from implementation of the trap certificate program nor allot any certificates with respect thereto.

(5) Disposition of fees and surcharges.--Transfer fees and surcharges, annual trap certificate fees, and recreational tag fees collected pursuant to paragraphs (2)(a) and (b) shall be deposited in the Marine Resources Conservation Trust Fund and used for administration of the trap certificate program, research and monitoring of the spiny lobster fishery, and enforcement and public education activities in support of the purposes of this section and shall also be for the use of the Marine Fisheries Commission in evaluating the impact of the trap reduction schedule on the spiny lobster fishery; however, at least 15 percent of the fees and surcharges collected shall be provided to the commission for such evaluation.

(6) Rulemaking authority.--The Department of Environmental Protection may adopt rules to implement the provisions of this section.