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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Appellant,

v.

CASE NO. 75,128

DAVID DAVIS,

Appellee.  
-----/

BRIEF OF AMICUS CURIAE

Greenpeace - U.S.A.

and

The Environmental Defense Fund

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TABLE OF CONTENTS

TABLE OF CITATIONS . . . . .	ii
I. STATEMENT OF CASE AND FACTS . . . . .	1
11. SUMMARY OF THE ARGUMENT . . . . .	1
III. ARGUMENT . . . . .	3
A. PROTECTION OF ENDANGERED AND THREATENED SEA TURTLES IS MANDATED BY STATE POLICY . . . . .	3
1. <u>Sea Turtles Are Protected Under the            Florida Endangered and Threatened            Species Act</u> . . . . .	4
2. <u>Sea Turtle Protection is Implemented            Via Regulation as Saltwater Fisheries.</u> . . . . .	3
3. <u>The Legislature Mandates Protection of All            Marine Resources.</u> . . . . .	6
4. <u>The Marine Fisheries Commission Exists            Within DNR.</u> . . . . .	3
3. <u>The Trial Court Violated Fundamental Tenets            of Statutory Construction.</u> . . . . .	5
B. THE COMMISSION HAD A DUTY TO PASS EMERGENCY RULE MODIFYING SHRIMP TRAWLING GEAR LETHAL TO SEA TURTLES . . . . .	14
IV. CONCLUSION . . . . .	16

TAB E OF CITATIONS

<u>CASES</u>	<u>PAGE</u>
<u>City of Boca Raton v. Gidman,</u> 440 So.2d 1277 (Fla. 1983)	. . . . . 12
<u>Curry v. Lehman,</u> 55 Fla. 847, 47 So. 18, 20	. . . . . 13
<u>Foley v. State,</u> 50 So.2d 179 (Fla. 1951)	. . . . . 3, 13
<u>Garner v. Ward,</u> 251 So.2d 252 (Fla. 1971)	. . . . . 13
<u>Howarth v. City of Deland,</u> 158 So. 294 (Fla. 1934)	. . . . . 13
<u>McCullough County v. Davis,</u> 395 So.2d 540 (Fla. 1981)	. . . . . 13
<u>National Fishermen Producers Co-operative Society, Ltd. v. State,</u> 503 So.2d 430 (Fla. 3rd DCA 1987)	. . . . . 5
<u>Realty Bond and Share Company v. Englar,</u> 143 So. 152 (Fla. 1932)	. . . . . 13
<u>State v. Casal,</u> 410 So.2d 152 (Fla. 1982)	. . . . . 5
<u>State v. Sullivan,</u> 116 So. 255 (Fla. 1928)	. . . . . 12, 13
<u>STATUTES</u>	
Chapter 120, Florida Statutes (1987; 1988 Supp.)	. . . . . 9
Chapter 370, Florida Statutes (19 7; 1988 Supp.)	
Section 370.021	. . . . . 6, 8, 11
Section 370.025	. . . . . 7, 8, 14, 16
Section 370.026	. . . . . 9
Section 370.027	. . . . . 9, 10
Section 370.12.	. . . . . 2, 5, 8, 14, 14, 15, 16
Chapter 372, Florida Statutes (19 7; 1988 Supp.)	
Section 372.072.	. . . . . 1, 4, 8, 9

## I. STATEMENT OF CASE AND FACTS

Greenpeace-U.S.A. (Greenpeace) and the Environmental Defense Fund (EDF) adopt the Statement of Case and Facts as ably set forth in the State's brief, to the extent it properly states the facts and disposition of the instant appeal. As to the participation of Greenpeace and EDF, the organizations filed a motion for leave to file a joint brief as Amicus Curiae on December 15, 1989, based upon the experience and intense involvement of both organizations as to the issue of endangered and threatened sea turtle mortality resulting from shrimp trawling practices.

Greenpeace-U.S.A. and the Environmental Defense Fund respectively submit this joint brief in support of the State of Florida in its efforts to demonstrate the propriety of Marine Fisheries Commission Emergency Rule 49ER89-3. Greenpeace and EDF appreciate the opportunity to participate in the appeal of an issue so critically important to Greenpeace and EDF members and the endangered and threatened sea turtles of Florida.

### 11. SUMMARY OF THE ARGUMENT

*Strong* legislative policy mandates protection and enhancement of Florida marine life and marine resources, and especially those species which require heightened protection because of their endangered or threatened designation. The Florida Endangered and Threatened Species Act, section 372.072, Florida Statutes, provides for the conservation and protection of endangered and threatened species as natural resources. The marine sea turtles of Florida comprise such resources.

Strict legislative directives mandate protection of endangered and threatened sea turtles. Chapter 370, Florida Statutes, entitled Saltwater Fisheries, contains provisions that declare possession of even a part of marine sea turtle to be a violation punishable by fines, imprisonment, and additional

monetary penalties. Section 370.021(2)(c)5, Florida Statutes. Section 370.12 (1) (b) commands that "(n)o person, firm, or corporation may take, kill, disturb, mutilate, molest, harass, or destroy any marine turtle, unless by accident in course of normal fishing activities." However, it became evident to the Marine Fisheries Commission, and its parent agency the Department of Natural Resources, that "normal" fishing practices were devastatiig turtle populatioiis, especially the critically endangered Kemp's ridley turtle, thereby exacerbating the endangerea and threatened status of the animals.

While the Department of Natural Resources has authority to implement legislative policy as to the protection of endangered and threatened species, including marine sea turtles, the Marine Fisheries Commission has exclusive rule making authority over inter alia, gear specifications and prohibited gear. Section 370.027, Florida Statutes. Exercising its authority to regulate fishing gear, the Marine Fisheries Commission promulgated the emergency rule at issue, 49ER89-3, requiring the installation of a turtle exclude; device (TEDs) to be used in shrimp trawls. Florida Administrative Weekly, Vol. 15, No. 33 at page 3608. Prior to promulgating the emergency rule, tire Commission had concluded that TEDs were 97% effective in excluding turtle's alive from shrimp trawls and that the required use of TEDs was the only means by which shrimping could continue without devastating effects on Florida sea turtle populations. Id. at 3609.

While it is clear that the Marine Fisheries Commission could not promulgate the rule that would allow the taking or harvest of sea turtles, it is equally clear that the Marine Fisheries Commission could address by rule shrimping gear proven to be lethal to endangered and threatened sea turtles to facilitate the legislative mandate to protect the fragile animals. Sections 370.021, 370.026, 370.027, 370.12(1) read pari materia.

The trial court however, reached a different conclusion. Conceding that the Marine Fisheries Commission must promulgate

rules pursuant to the legislative standards set out in section 370.025, Florida Statutes, which define the "paramount concern" of conservation and management measures to be the continuing "health and abundance" of marine fisheries resources in the state, the trial court concluded that marine sea turtles were, indeed, not a marine fisheries resource. Because the marine sea turtles of Florida were designated endangered or threatened species and subject to special statutory protection, the trial court concluded that the Marine Fisheries Commission could not pass a rule that would assure the "health and abundance" of an "endangered or threatened" species.

Such a strained interpretation violates fundamental principals of statutory construction. See, e.g. Foley v. State, 50 So.2d 179 (Fla. 1951). The trial court has concluded that because the legislature sees fit to provide for the heightened protection of marine sea turtles as endangered and threatened species, that the Marine Fisheries Commission could not pass a regulation as to shrimping gear proven to be devastating to turtle populations. No reasonable interpretation of Chapter 370, Florida Statutes, regulating Saltwater Florida Fisheries, would result in such a conclusion. The trial court erred in failing to interpret statutory provisions as to the authority of the Marine Fisheries Commission in such a manner as to fulfill the spirit of intent of Chapter 370, Florida Statutes, as to the protection of marine sea turtles.

## 111. ARGUMENT

### A. PROTECTION OF ENDANGERED AND THREATENED SEA TURTLES AND THEIR ENVIRONMENT IS MANDATED BY STATE POLICY

Strong legislative policy mandates the protection and enhancement of Florida marine life and marine resources, as well as the many species whose losing battle for survival has resulted in their dreaded distinction as threatened or endangered species.

The Florida Department of Natural Resources (hereinafter DNR or the "Department") is responsible for implementation of the explicit legislative mandate to assure that marine species, whether endangered or not, thrive and prosper in the Florida marine environment.

1. Sea Turtles Are Protected Under the Florida Endangered and Threatened Species Act.

The DNR shares jurisdiction over the protection and management of endangered species with the Florida Game and Fresh Water Fish Commission pursuant to its authority under the Florida Endangered and Threatened Species Act of 1977. Section 372.072, Florida Statutes. It is the declared policy of the legislature to conserve and wisely manage fish and wildlife resources, "with particular attention to those species defined by the Game and Fresh Water Fish Commission, the Department of Natural Resources, or the U.S. Department of Interior, or other such agencies, as being endangered or threatened."

Acknowledging that Florida has a greater number of endangered species than any other Continental State, the legislature declares its intent "to provide for research and management to conserve and protect the species as a natural resource." (Emphasis supplied). The Department of Natural Resources is responsible for research and management of marine species whereas fresh water and upland species are the responsibility of the Florida Game and Fresh Water Fish Commission. Section 372.072(4), Florida Statutes. Under the Florida Act, an endangered species is defined as:

(A)ny species of fish and wildlife naturally occurring in Florida, whose prospect for survival are in jeopardy due to modification or loss of habitat; over utilization for commercial, sporting, scientific, or educational purpose; disease; predation; **inadequacy of regulatory mechanism; or other natural or manmade factors affecting its continued existence.** Section 372.072(3)(b), Florida Statutes. (Emphasis supplied).

Accordingly, it is the responsibility of the Florida Department

of Natural Resources to protect and conserve endangered marine species as a natural resource, which include the endangered and threatened Sea Turtle populations of Florida. The American green turtle (Chelonia mydas mydas), Atlantic hawksbill turtle (Eretmochelys imbricata imbricata), Atlantic ridley turtle (Lepidochelys kempi), and the Leatherback turtle (Dermochelys coriacea) are designated as endangered species pursuant to Rule 39-27.003, F.A.C. whereas the Loggerhead turtle (Caretta caretta) is designated as a threatened species pursuant to Rule 39-27.004, F.A.C.

2. Sea Turtle Protection is Implemented Via Regulation as Saltwater Fisheries.

The legislature provides for the preservation of endangered and threatened sea turtles via the codification of its protective policies in Chapter 370 of the Florida Statutes entitled Saltwater Fisheries, which includes provisions regulating, inter alia, fish, marine animals, shrimping and fishing practices, and aspects of the marine environment. As stated by this Honorable Court in State v. Casal, 410 So. 2d 152 (Fla. 1982) and reiterated by the Florida Third District Court of Appeal in National Fishermen Producers Co-operative Society, Ltd. v. State, 303 So. 2d 43U (Fla. 3d DCA 1987):

The purpose of Chapter 370, Florida Statutes (1985), which regulates the taking and possession of saltwater fish, is to **conserve Florida's marine life**, which is valuable to its economy, and to **protect certain species from extinction**. (Emphasis supplied).

The endangered and threatened sea turtles of Florida are clearly one type of marine life Chapter 370 seeks to protect from extinction.

Section 370.12, F.S., sets out in no uncertain terms the clear legislative directive of sea turtle protection, to wit:

(a) No person may take, possess, disturb, mutilate, destroy, cause to be destroyed, sell, offer for sale, transfer, molest, or harass any marine turtle nest or eggs at any time.



(b) No person, firm, or corporation may take, kill, disturb, mutilate, molest, harass, or destroy any marine turtle, unless by accident in the course of normal fishing activities. Any turtle accidentally caught will be returned alive to the water immediately.

(c) No person, firm, or corporation may possess any marine turtle or parts thereof unless it is in possession of an invoice evidencing the fact that the marine turtle or parts thereof has been imported from a foreign country or outside the territorial waters of the state, or are possessed under special permit from the Division of Marine Resources for scientific, educational, or exhibitionai purposes.

Due to the endangered or threatened status of the sea turtles, the legislature has established stiffer penalties for their taking, harvesting, or possession.

Section 3'70.021, Florida Statutes, specifically authorizes the Department of Legal Affairs, the several state attorneys or, if necessary special counsel, to seek fines and imprisonment for violating a provision of Chapter 370, a rule of the Department of Natural Resources adopted pursuant to Chapter 370, or any rule of the Marine Fisheries Commission. Pursuant to Section 370.021 (2) those penalties are:

(a) Upon a first conviction, by imprisonment for a period of not more than 60 days or by a fine of not less than \$100 nor more than \$500, or by both such fine and imprisonment.

(b) On a second or subsequent conviction within 12 inontis, by imprisonment for not more than 6 months or by a fine of not less than \$230 nor more than \$1,000, or by both such fine and imprisonment.

(c) In addition to the penalties provided in paragraphs (a) and (b), the court shall assess additional penalties against any person, firm, or corporation convicted of major violations as follows:

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3. For a violation involving the taking, harvesting, or possession of any of the following species, which are endangered, threatened, or of special concern:

- a. Shortnose sturgeon (*Acipenser brevirostruin*);
- b. Atlantic sturgeon (*Acipenser oxyrhynchus*);
- c. Common snook (*Centropomus undecimalis*);

- d. Atlantic loggerhead turtle (*Caretta caretta caretta*);
- e. Atlantic green turtle (*Chelonia inydas mydas*);
- f. Leatherback turtle (*Dermochelys coriacea*);
- g. Atlantic hawksbill turtle (*Eretmochelys imbricata imbricata*);
- h. Atlantic ridley turtle (*Lepidochelys kemp*); or
- i. West Indian manatee (*Trichechus manatus latirostris*).

an additional penalty of \$100 for each unit of marine life or part thereof (Emphasis supplied).

The legislative intent is unquestionable. Endangered and threatened sea turtles, like sturgeon and snook, are saltwater fisheries to be managed so strictly that possessing a "part" of an animal shall subject the violator to fines, potential imprisonment and additional monetary penalties.

### 3. The Legislature Mandates Conservation and Protection of All Marine Resources

Legislative policy as to marine life and marine resources, in addition to those species that are endangered or threatened, is equally clear and unequivocal. Section 370.025, Florida Statutes, states in pertinent part;

1. The legislature hereby declares the policy of the State to be management and preservation of its renewable marine fisheries resources, based upon the best available information, emphasizing protection and enhancement of the marine and estuarine environment in such a manner to provide for optimum sustained benefits and use to all the people of this state for present and future generations.

2. All rules related to saltwater fisheries adopted by the department (Department of Natural Resources) pursuant to this chapter or adopted by The Marine Fisheries Commission and approved by the Government Cabinet as head of the Department shall be consistent with the following standards;

(a) The paramount concern of conservation and management measures shall be the continuing health and abundance of marine fisheries resources of this state.

(b) Conservation and management measures shall be based upon the best information available, including biological, sociological, economic and other

information deemed relevant by the commission. Conservation management measures shall permit reasonable means and quantities of annual harvest, consistent with maximum practicable sustainable stock abundance on a continuing basis.

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(g) Conservation and management decisions shall be fair and equitable to all the people of this state and carried out in such a manner that no individual, corporation, or entity requires an excessive share of such privileges.

(h) Federal fisheries management plans and fishery management plans of other states or interstate commissions should be considered when developing state marine fisheries plans. Inconsistencies should be avoided unless it is determined that it is in the best interest of the fisheries or residents of this state to be inconsistent. (Emphasis supplied).

The clear intent of the legislature is irrefutable. It is State mandate that marine life, the inarine environment, and especially those marine species considered endangered or threatened, are protected, conserved, and managed as natural resources in such manner to assure their continued existence for, and enjoyment by, the people of the State of Florida. By including statutory protective ineasures in Chapter 370, which regulates saltwater fisheries, it is clear that the legislature deems sea turtles to be one such resource.

It is important to re-emphasize that one agency, the Florida Department of Natural Resources, is the implementing agency of both the pertinent portions of the Florida Endangered and Threatened Species Act, Section 372.072, Florida Statutes, as well as Chapter 370, Florida Statutes, entitled Saltwater Fisheries, which includes specific provisions designed to protect sea turtles. Section 370.021 and Section 370.12, Florida Statutes. The obvious fact that Florida sea turtle populations comprise a "fishery" consisting of endangered and threatened species renders the salient portions of Chapter 372 and Chapter 370 inextricably intertwined as a legislative framework for the

protection of those animals. It is inescapable to conclude that any power granted the Florida Department of Natural Resources pursuant to Chapter 370 or Section 372.072, Florida Statutes, may be applied in concert to fulfill the legislative mandate to protect endangered and threatened sea turtles in Florida.

4. The Marine Fisheries Commission Exists Within DNR.

One tool given to the Department of Natural Resources to fulfill the legislature mandate is The Florida Marine Fisheries Commission. The enabling legislation creating the Marine Fisheries Commission, Section 370.026, Florida Statutes, states in no uncertain terms that "(t)here is created **within The Department of Natural Resources** a Marine Fisheries Commission ... " (Emphasis supplied). This commission has broad rule making authority which is exercised pursuant to the Administrative Procedures Act (Chapter 120, Florida Statutes) within the parent agency, The Florida Department of Natural Resources. This "specialty agency" within a "parent agency" concept is clearly expressed in Section 370.027 (1), Florida Statutes, which states in pertinent part:

Pursuant to the policy and standards in s. 370.025, The Marine Fisheries Commission is delegated full rule making authority over marine life, with the exception of endangered species, subject to final approval by the Governor and Cabinet sitting as the head of The Department of Natural Resources, in the areas of concern herein specified.

Designed as an administrative think tank to study and promulgate regulations as to specific aspects of marine life and marine resource preservation and management, the rule making authority of the commission is defined in Section 370.027(2), which states:

Exclusive rule making authority in the following subject matter areas relating to marine life, with the exception of endangered species, is vested in the commission; any conflicting authority of any division or bureau of the Department or any other agency of State Government is withdrawn as of the effective date of the rule **proposed by the commission and approved by the Governor and Cabinet**, and the inconsistent rule or

the inconsistent part thereof is superceded to the extent of the inconsistencies; ... (Emphasis supplied).

The specific subject areas for which exclusive rule making authority has been granted to the commission include, inter alia, gear specifications, prohibited gear, and protected species. Sections 370.027(2)(a),(b), and (f), F.S.

The remainder of Section 370.027, Florida Statutes, sets out the procedural framework whereby The Marine Fisheries Commission acts through The Florida Department of Natural Resources. As with virtually all administrative agencies, rules are promulgated pursuant to the Florida Administrative Procedures Act, Chapter 120, Florida Statutes. However, once ready for final adoption, a rule proposed by the Marine Fisheries Commission must be submitted to the executive director of the Department of Natural Resources. The director of DNR is responsible for placing the commission rules on the same agenda as all other proposed DNR rules and regulations, for final approval by the Governor and Cabinet acting as head of the Department of Natural Resources. s.370.027(3)(a),F.S. In addition, the executive director is responsible for appointing a management level staff member to coordinate with the director of the Marine Fisheries Commission for submission of commission rules for final approval by the Government and Cabinet, acting as head of the Department. s.370.027(3)(b),F.S. While much discretion is given to the commission as to the substance of a proposed rule, it is indeed the Governor and Cabinet as head of the department that approves or disapproves the commission rule.

This inextricable nexus between the Department of Natural Resources and the Florida Marine Fisheries Commission resulted in the Emergency Rule requiring Turtle Excluder Devices in shrimp trawls in an effort to prevent the destruction of Florida marine turtle populations. Clearly, The Department of Natural Resources had the authority to seek a regulatory mechanism by which to carry out the statutory mandate of protecting endangered species, i.e., the marine sea turtles. The Department did so by asking

the Marine Fisheries Commission, a commission "within" DNR, to address the problem of lethal shrimping gear. While the commission could not promulgate a rule that would allow sea turtles, or another endangered or threatened species, to be harvested, the MFC would clearly have authority to promulgate a rule within its enumerated areas of jurisdiction (e.g. gear specifications) in aid of the parent agency in carrying out the intent of its statutory mandate as protector of marine resources.

5. The Trial Court Violated Fundamental Tenets of Statutory Construction

The trial court concedes in its written opinion that:

Section 370.021, Florida Statutes, makes the violation of any rule of the MFC a criminal act. Section 46ER89-3(2), F.A.C. is a rule of the MFC. Hence, the possession aboard a vessel 25 feet or greater in length upon State waters of any trawl rigged for fishing without a TED installed is a crime subject to prosecution by the State if the rule is within the scope of the MFC's rulemaking authority. (Emphasis supplied).

To be within the authority of the commission, the trial court concludes that the rule must pertain to a "renewable marine fishery resource". And while the court notes that the first statutory standard for the promulgation of commission rules states that:

The paramount concern of conservation and management measures shall be the **continuing health and abundance of the marine fisheries resources of this state,**

the trial court concludes that endangered sea turtles certainly could not be such a resource, because the legislature does not allow them to be taken or harvested at all. (Emphasis supplied). See s.370.025(2)(a), Florida Statutes, and s.370.12, Florida Statutes, respectively.

The trial court's logic deserves careful contemplation. The judge concludes that because the legislature has deemed the sea turtle fisheries so fragile and in need of protection that no harvest is allowed, and mere possession of a part of a sea turtle may result in fines and imprisonment, the sea turtle is not a

"marine fisheries resource" the "health and abundance" of which the commission may facilitate by rule. Indeed, the court reasons, since harvest of the turtles is prohibited, the turtles do not even constitute a fishery, much less a renewable resource.

And, while the trial court concedes that the commission has exclusive rule making authority as to gear specifications and prohibited gear, it concludes that the commission has no authority to pass an emergency rule as to the lethal effects of shrimp trawling upon sea turtles **because they are endangered and subject to special legislative protection.**

The trial court's strained conclusion overlooks the fact that as recently as the 1970's there was in fact an active commercial fishery for sea turtles in Florida. Measures like the challenged emergency rule have the potential to restore Florida's sea turtle population to a point at which an active fishery would resume. Yet, under the trial court's cramped interpretation, the Marine Fisheries Commission is without the power to impose measures to restore a now depleted fishery.

Even apart from the historic fishery for turtles in Florida, it is clear that sea turtles today represent a natural resource highly valued in Florida because of the opportunity they provide both tourists and native Floridians to observe them on their nesting beaches and in coastal waters. Thus, the protection of sea turtles through the emergency rule ensures that these important benefits to the State and its citizens are continued.

In that very reasonable sense also, sea turtles and the benefits they provide can logically be considered a "renewable fishery resource". The trial court, however, purports to rely on what it wrongly considers to be a "literal" reading that is neither compelled by the language of the statute nor consistent with its clear purpose.

No literal interpretation of a statute should be given that leads to an unreasonable or ridiculous conclusion or as to a purpose not designated by the law makers. City of Boca Raton v. Gidman, 440 So.2d 1277 (Fla. 1983), citing State v. Sullivan,

116 So. 255 (Fla. 1928). The law favors rational, sensible construction of statutes. Ld. Laws should be construed together with any other law relating to the same purpose such as they are in harmony. Ld. at 1282; McCullough County v. Davis, 395 So.2d 5-10 (Fla. 1981); Garner v. Ward, 251 So.2d 232 (Fla. 1971). Courts should avoid a construction which places in conflict statutes which cover the same general field. Ld. at 1282; Howarth v. City of Deland, 158 So. 294 (Fla. 1934). It is the duty of the courts to avoid interpretation of a statute which would produce unreasonable consequences. McCullough County v. Davis, 395 So.2d 340 (Fla. 1981). Realty Bond and Share Company v. Englar, 143 So. 152 (Fla. 1932j).

While it is certainly clear that the Marine Fisheries Commission could not pass a rule, regarding sea turtles, that would allow them to be harvested or in some manner exacerbate their endangered and threatened status, a statutory construction that would prohibit the commission from passing a rule to aid their protection, especially a rule regarding lethal fishing gear, results in absurdity. It is irrefutable that the intent of Chapter 370 is the protection and management of marine resources, all marine resources, but especially those living resources considered threatened or endangered. If the trial court had any doubt as to whether endangered and threatened sea turtles were contemplated as marine fisheries resources falling within the spirit and intent of Chapter 370, the learned judge need only read the title of the Chapter. As noted by this court in Poley v. State, 50 So.2d 179 (Fla. 1951):

If the language employed by the legislature in the law itself is clear and unambiguous the legislative intent is to be found therein. It is not the function of the court by judicial fiat to declare a different intent. Of course, if the phraseology of the act is ambiguous or is susceptible to more than one interpretation, it is the court's duty to glean the legislative intent for a consideration of the act as a whole, "the evil to be corrected, the language of the act, including its title, the history of its enactment, and the state of the law already in existence bearing on the subject", Curry v. Lehman, 55 Fla. 847, 47 So. 18, 20, and give that construction to the act which comports with the



evident intention of the legislature.

It is clear that the intent of Chapter 370 is, among other things, to protect marine resources and especially threatened and endangered sea turtles. It was the duty of the court to construe this statute accordingly.

**B. THE COMMISSION HAD A DUTY TO PASS THE EMERGENCY RULE MODIFYING SHRIMP TRAWLING GEAR LETHAL TO SEA TURTLES.**

Regardless of their endangered or threatened designation, it is the policy of the Florida legislature to prevent harm to any marine turtle, nest, or egg. s.370.12, Florida Statutes. In an unequivocal statement of law Section 370.12 (1) (b) commands that:

No person, firm, or corporation may take, kill, disturb, mutilate, molest, harass, or destroy any marine turtle . . . .

Recognizing the inevitable probability that turtle and man would nonetheless cross maritime paths, the legislature provided:

(U)nless by accident in the course of normal fishing activities. Any turtle accidentally caught will be returned to the water alive.

However, it became clear to the Marine Fisheries Commission that "normal" shrimping practices were devastating sea turtle populations, especially the critically endangered Kemp's Ridley turtle.

In its stated reasons as to why it deemed trawling related sea turtle mortality to be an immediate danger to the public health safety and welfare, published in Florida Administrative Weekly, Vol. 15, No. 33, August 18, 1989, pages 3608 and 3609, the Commission established, inter alia, that:

1. The State of Florida, the Marine Fisheries Commission and the Department of Natural Resources have consistently followed a policy of vigorous protection of the state's endangered and threatened sea turtle resources.

2. The National Marine Fisheries Service estimates

that 11,000 of these endangered or threatened sea turtles are killed in shrimp trawls in southeastern U.S. waters each year.

3. Because sea turtles are present in all Florida offshore waters at most times of the year, a significant percentage of the estimated mortality of sea turtles from this source occurs in these waters.

4. The Commission, after reviewing the extensive body of scientific evidence concerning this issue, is convinced that requiring turtle excluder devices (TEDs) is the **only** method currently available and enforceable to allow continued shrimp trawling and still protect these valuable resources. (Emphasis supplied).

5. Reduced tow times are relatively unenforceable and cannot effect reductions in sea turtle mortality comparable to the TED, which is 97% effective in excluding turtles alive from shrimp trawls.

*ii.* Therefore, the Florida Marine Fisheries Commission finds that there is an immediate danger to the public welfare if immediate action is not taken to alleviate the incidental capture and drowning of endangered and threatened sea turtles **by** trawls operated in offshore Florida waters.

In short, "normal" shrimp trawling practices were exacerbating the endangered and threatened status of the protected sea turtles. A provision that would excuse liability for the unavoidable and truly accidental killing of individual turtles, became a loophole for an industry practice that made a mockery of the legislative directive that Florida's sea turtles shall not be harmed.

Delegated exclusive rule making authority over gear specifications and prohibited gear, the Marine Fisheries Commission, and only the Commission, was compelled to act. Having established that TEDs were ninety-seven percent (97%) effective in excluding turtles alive from shrimp trawls, the Commission had a duty to the people of Florida to exercise its authority over shrimp trawling gear to further the purpose of Section 370.12, Florida Statutes, as to the protection of sea turtles.

Once the Commission learned that it could, by rule, employ a gear specification to render "normal fishing activities" within

the shrimping industry virtually non-lethal to endangered and threatened sea turtles, failure to promulgate a TED rule or prohibit shrimping, would be a dereliction of its duties as an implementing body for legislative policy. Such an omission would be in derogation of the legislative mandate of Section 370.12, prohibiting harm to sea turtles, and in direct violation of the standards of marine resource protection to which the Commission is held by virtue of Section 370.025, Florida Statutes.

And, once the means of correcting the lethal effects of shrimp trawling upon sea turtles became known to the shrimping industry, the killing of helpless sea turtles as a result of trawling operations, was no longer accidental.

#### IV. CONCLUSION

Emergency Rule 49ER-89-3, as promulgated by the Marine Fisheries Commission, is a legitimate exercise of the commission's exclusive rule making authority as to fishing gear specifications and prohibited gear which is consistent with the legislative mandate of Chapter 370, Florida Statutes, to protect and conserve Florida marine life and marine resources, and especially the endangered and threatened sea turtles.

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