

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1227 Crustaceans
SPONSOR(S): Raschein
TIED BILLS: **IDEN./SIM. BILLS:** SB 1470

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Gregory	Harrington
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The Florida Fish and Wildlife Conservation Commission (FWC) regulates the commercial harvest of stone crabs and spiny lobster. Individuals who wish to commercially sell, purchase, or harvest stone crabs and spiny lobsters must obtain a saltwater products license and a restricted species endorsement for that particular species from FWC. In addition to the licensing requirements, individuals must obtain a certificate and tag for each stone crab and spiny lobster trap. It is unlawful to violate any of FWC's rules regulating stone crab and spiny lobster trap certificates and trap tags. Further, it is unlawful to harvest and possess undersized spiny lobster unless authorized by FWC. Violators of these regulations are subject to administrative fines, penalties, jail time, and license suspension or revocation.

The bill increases the penalties for commercial harvesters who violate FWC's rules for stone crab and spiny lobster trap certifications and trap tags. Specifically the bill:

- Authorizes prosecutors to charge a separate misdemeanor count for each untagged and unlawful trap for violations involving fewer than 100 stone crabs or spiny lobster traps. The bill restricts the total misdemeanor penalty to not exceed 4 years imprisonment and \$4000 in civil fines;
- Adds criminal penalties for violations of the trap tag and certificate regulations. These penalties will increase for subsequent violations; and
- Adds that violations involving 100 or more untagged stone crab or spiny lobster traps are punishable as a third degree felony. The bill also requires FWC to impose an administrative penalty of \$2,000 and authorizes FWC to suspend all of the violator's license privileges up to 12 months.

The bill also provides that possession of undersized lobsters is a major violation, unless authorized by FWC rule, and provides criminal penalties for such violation. The bill authorizes prosecutors to charge a separate misdemeanor count for each undersized spiny lobster. The bill restricts the total misdemeanor penalty to not exceed 4 years imprisonment and \$4000 in civil fines. For violations involving 100 or more undersized spiny lobster, the bill provides that such violation is punishable as a third degree felony. The bill also requires FWC to impose an administrative penalty of \$2,000 and authorizes FWC to suspend all of the violator's license privileges up to 12 months.

The bill may have an indeterminate fiscal impact on the state.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Fish and Wildlife Conservation Commission (FWC) regulates the commercial harvest of stone crabs and spiny lobsters. Harvesters set cage like traps under water and bait the traps to attract the crustaceans. FWC restricts the size, construction and design of the traps.¹ Buoys must be attached and traps must be placed so as not to impede navigation.² Individuals may only harvest stone crabs whose forearm are at least 2 ¾ inches in length.³ Individuals may only harvest spiny lobsters whose carapace is at least 3 inches long, if the tail is separated from the body, or whose tails are at least 5 ½ inches long.⁴ Harvesters pull up stone crab traps to collect their catch while harvesters snorkel or scuba dive to collect spiny lobster from their traps.⁵

Individuals who wish to commercially sell, purchase, or harvest saltwater products must obtain a saltwater products license from FWC.⁶ “Saltwater products” include any species of saltwater fish, marine plant, or echinoderm, except shells, and salted, cured, canned, or smoked seafood.⁷ In addition to the saltwater products license, individuals who wish sell a “restricted species” must possess a restricted species endorsement for that particular species.⁸ FWC lists both stone crabs and spiny lobsters as restricted species.⁹ In addition to the licensing requirements, individuals must obtain a certificate and tag for each stone crab and spiny lobster trap.¹⁰

It is unlawful to violate any of FWC’s rules regulating stone crab trap certificates and trap tags.¹¹ Additionally, it is unlawful to possess a spiny lobster trap without the appropriate number of certificates and trap tags.¹² Any violator of these regulations commits a Level 2 violation.¹³

¹ Rules 68B-13.008 and 68B-24.006, F.A.C.

² Id.

³ Rule 68B-13.007(1), F.A.C.

⁴ Rule 68B-24.003(1), F.A.C.

⁵ See FWC, Stone Crab, <http://myfwc.com/fishing/saltwater/commercial/stone-crab/> (last visited January 27, 2016) and FWC, Commercial Regulation of Spiny Lobster, <http://myfwc.com/fishing/saltwater/commercial/spiny-lobster/> (last visited January 27, 2016).

⁶ Section 379.361, F.S.

⁷ Section 379.101(36), F.S.

⁸ Section 379.361(2)(b), F.S.

⁹ Rules 68B-13.005 and 68B-24.001(4), F.A.C.

¹⁰ Sections 379.365(2)(a) and 379.3671(2)(c), F.S.

¹¹ Section 379.365(2)(a), F.S.

¹² Section 379.3671(2)(c)1. and 2., F.S.

¹³ Sections 379.365(2)(a)2. and 379.401(2)(a)13., 16., and 18., F.S.

Section 379.401, F.S., provides the following penalties for Level 2 violations:

Level 2 Violation	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
1st offense ¹⁴	2nd Degree Misdemeanor	Max. \$500 or Max. 60 days	None
2nd offense within 3 years of previous Level 2 violation (or higher) ¹⁵	1st Degree Misdemeanor	Min. \$250; Max. \$1,000 or Max. 1 year	None
3rd offense within 5 years of two previous Level 2 violations (or higher) ¹⁶	1st Degree Misdemeanor	Min. \$500; Max. \$1,000 or Max. 1 year	Max. suspension of license for 1 year
4th offense within 10 years of three previous Level 2 violations (or higher) ¹⁷	1st Degree Misdemeanor	Min. \$750; Max. \$1,000 or Max. 1 year	Max. suspension of license for 3 years

Violators of these regulations are also subject to the penalties in s. 379.407, F.S. The base penalties for violations of these requirements are:

Section 379.407, F.S., Base Penalties ¹⁸	Fine or Jail Time
1st Conviction	Min. \$100; Max \$500 or Max 60 days in jail
2nd and Subsequent Convictions within 12 months	Min. \$250; Max \$1,000 or Max 6 months in jail

In addition to the base penalties, courts may assess additional penalties on commercial harvesters convicted of a major violation.¹⁹ For a violation involving more than 100 illegal stone crabs or spiny lobster, an additional penalty of \$10 for each stone crab or spiny lobster may be assessed.²⁰ For major violations involving stone crabs and spiny lobsters, license holder must show just cause why his or her license should not be suspended or revoked.²¹ For the purposes of suspension or revocation, a “major violation” is a major violation as prescribed for illegal stone crabs; any single violation involving possession of more than 25 stone crabs during the closed season or possession of 25 or more whole-bodied or egg-bearing stone crabs; any violation for trap molestation, trap robbing, or pulling traps at night; or any combination of violations in any 3-consecutive-year period wherein more than 75 illegal stone crabs in the aggregate are involved.²² For the purposes of suspension or revocation, a “major violation” is a major violation as prescribed for illegal spiny lobster; any single violation involving possession of more than 25 spiny lobster during the closed season or possession of more than 25 wrung spiny lobster tails or more than 25 egg-bearing or stripped spiny lobster; any violation for trap molestation, trap robbing, or pulling traps at night; or any combination of violations in any 3-consecutive-year period wherein more than 75 illegal spiny lobster in the aggregate are involved.²³

¹⁴ Section 379.401(2)(b)1., F.S.

¹⁵ Section 379.401(2)(b)2., F.S.

¹⁶ Section 379.401(2)(b)3., F.S.

¹⁷ Section 379.401(2)(b)4., F.S.

¹⁸ Section 379.407(1), F.S.

¹⁹ Section 379.407(2), F.S.

²⁰ Section 379.407(2)(a), F.S.

²¹ Section 379.407(2)(i) and (j), F.S.

²² Section 379.407(2)(i), F.S.

²³ Section 379.407(2)(j), F.S.

FWC may suspend or revoke a commercial harvester's saltwater products license as follows:

Commercial License Suspension or Revocation²⁴	
Offense	Length
1st conviction	Max. 30 days
2nd conviction within 12 months of prior violation	Max. 90 days
3rd conviction within 24 months of prior violation	Max. 180 days
4th conviction within 36 months of prior violation	Min. 6 months; Max. 3 years

In addition to the penalties imposed by ss. 379.401 and 379.407, F.S., commercial harvesters who violate the FWC rules regulating stone crab trap certificates and trap tags are subject to the following administrative penalties:

Stone Crab Certificate and Trap Tag Penalties²⁵	Administrative Penalty	License Restrictions
1st violation	Max. \$1,000	None
2nd violation within 24 months of previous violation	Max. \$2,000	Max. suspension of stone crab endorsement 12 months
3rd violation within 36 months of two previous violations	Max. \$5,000	Max. suspension of stone crab endorsement 24 months
4th violation within 48 months of three previous violations	None specified	Permanent revocation of saltwater fishing privileges including saltwater products license

In addition to the penalties imposed by ss. 379.401 and 379.407, F.S., commercial harvesters who violate the FWC rules regulating spiny lobster traps are subject to the following administrative penalties:

Spiny Lobster Trap Penalties²⁶	Administrative Penalty	License Restrictions
1st violation	Max. \$1,000 for violations involving certificates and tags Max. \$500 for all other violations	None
2nd violation within 24 months of previous violation of certificate and tag requirements	Max. \$2,000	Suspension of spiny lobster endorsement for remainder of current license year
3rd violation within 36 months of two previous violations of certificate and tag requirements and prohibition of taking or emptying another person's trap	Max. \$5,000	Max. suspension of spiny lobster endorsement 24 months and FWC may suspend or revoke saltwater products license

Further, an individual commits a major violation when they possess spiny lobster during the closed season or, while on the water, possesses spiny lobster tails that have been wrung or separated from the body, unless such possession is allowed by FWC rule.²⁷ Such violations are punishable as follows:

²⁴ Section 379.407(2)(h), F.S.

²⁵ Section 379.365(2)(a)1., F.S.

²⁶ Section 379.3671(2)(c)4., F.S.

²⁷ Section 379.407(5), F.S.

Penalties for Possession of Spiny Lobster ²⁸	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
1st violation	2nd Degree Misdemeanor	Max. \$500 or Max. 60 days	None
1st violation involving 25 or more lobsters	1st Degree Misdemeanor	Max. \$1,000 or Max. 1 year	None
2nd violation	1st Degree Misdemeanor	Max. \$1,000 or Max. 1 year	Max. suspension of license for 90 days
3rd violation	1st Degree Misdemeanor	Max. \$2,500 or Min. 6 months Max. 1 year	Max. suspension of license for 6 months
3rd violation within 1 year of 2 nd violation	3rd Degree Felony	\$5,000 or Min. 1 year; Max. 5 years	All FWC Licenses Permanently Revoked
4th offense	3rd Degree Felony	\$5,000 or Min. 1 year; Max. 5 year	All FWC Licenses Permanently Revoked

The illegal harvest of undersized and out of season spiny lobsters and stone crabs places negative pressure on the crustacean populations.²⁹

Effect of Proposed Changes

The bill increases the penalties for commercial harvesters who violate FWC's rules for stone crab and spiny lobster trap certifications and trap tags.

For violations of stone crab certificate and trap tag requirements, the bill:

- Authorizes prosecutors to charge a separate misdemeanor count for each untagged trap for violations involving fewer than 100 stone crab traps by amending paragraph 379.365(2)(a), F.S. The bill restricts the total misdemeanor penalty to not exceed 4 years imprisonment and \$4,000 in civil fines;
- Revises the current penalties that apply to commercial harvesters as follows:
 - Adds to the current penalties that a violator commits a second degree misdemeanor for the first violation by amending sub-subparagraph 379.365(2)(a)1.a., F.S. Such violations may be punished with a maximum civil penalty of \$500 or up to 60 days in jail;³⁰
 - Adds to the current penalties that a violator commits a first degree misdemeanor for the second violation by amending sub-subparagraph 379.365(2)(a)1.b., F.S. Such violations may be punished with a maximum civil penalty of \$1,000 or up to 1 year in jail.³¹ The bill removes the requirement that the second violation must occur within 24 months of the previous violation. The bill requires FWC to suspend all of the violator's licenses issued by FWC up to 12 months;
 - Adds to the current penalties that a violator commits a first degree misdemeanor for the third violation by amending sub-subparagraph 379.365(2)(a)1.c., F.S. Such violations may be punished with a maximum civil penalty of \$1,000 or up to 1 year in jail.³² The bill

²⁸ Id.

²⁹ See examples of recent arrests: *3 locals had illegal lobster, crab claws*, keynews.com (August 28, 2010) <http://keynews.com/node/25889>; Keysinfonet, *Two Keys men busted for illegal lobster haul a week before mini-season*, Keysinfonet (July 23, 2014) <http://www.keysnet.com/2014/07/23/497892/two-keys-men-busted-for-illegal.html>; Keysinfonet, *Three busted in two separate lobster cases*, Keysinfonet (August 6, 2014) http://www.keysnet.com/2014/08/06/498100_three-busted-in-two-separate-lobster.html?rh=1; Kevin Wadlow, *Law enforcement cracking down harder on lobster mobsters*, Keysinfonet (July 22, 2015) http://www.keysnet.com/2015/07/22/503743_law-enforcement-cracking-down.html?rh=1, *Convicted lobster poacher gets jail time, \$28K in fines*, keynews.com (April 7, 2015) <http://keynews.com/node/65465>.

³⁰ Sections 775.082(4)(b) and 775.083(1)(e), F.S.

³¹ Sections 775.082(4)(a) and 775.083(1)(d), F.S.

³² Id.

removes the requirement that the third violation must occur within 36 months of the previous violations. The bill also requires FWC to suspend all of the violator's licenses issued by FWC up to 24 months;

- Removes a redundant penalty provision that authorized FWC to proceed against the commercial harvester's saltwater products license for a fourth violation by amending sub-subparagraph 379.365(2)(a)1.d., F.S.;
- Adds to the current penalties that commercial harvesters commits a third degree felony for violations involving 100 or more untagged stone crab traps by adding sub-subparagraph 379.365(2)(a)1.e., F.S. Such violations may be punished with a maximum civil penalty of \$5,000 or up to 5 years in jail.³³ The bill makes this violation a level 5 offense on the offense severity ranking chart for the purposes of sentencing by amending paragraph 921.0022(3)(e), F.S. The bill also requires FWC to impose an administrative penalty of \$2,000 and authorizes FWC to suspend all of the violator's license privileges up to 12 months; and
- Increases the violation for "possession or removal of the contents of another harvester's stone crab trap" and "violation of rules relating to molestation of stone crab traps, lines, or buoys; or rules relating to stone crab trap tags" from unranked third degree felonies to level 5 offenses on the offense severity ranking chart for the purposes of sentencing by amending paragraph 921.0022(3)(e), F.S.

For violations of spiny lobster certificate and trap tag requirements, the bill:

- Authorizes prosecutors to charge a separate misdemeanor count for each untagged and unlawful trap for violations involving fewer than 100 spiny lobster traps by amending subparagraphs 379.3671(2)(c)1. and 2., F.S. The bill restricts the total misdemeanor penalty to not exceed 4 years imprisonment and \$4000 in civil fines;
- Revises the current penalties that apply to commercial harvesters as follows:
 - Adds to the current penalties that a violator commits a second degree misdemeanor for the first violation by amending sub-subparagraph 379.3671(2)(c)4.a., F.S. Such violations may be punished with a maximum fine of \$500 or up to 60 days in jail;³⁴
 - Adds to the current penalties that a violator commits a first degree misdemeanor for the second violation by amending sub-subparagraph 379.3671(2)(c)4.b., F.S. Such violations may be punished with a maximum fine of \$1000 or up to 1 year in jail.³⁵ The bill removes the requirement that the second violation must occur within 24 months of the previous violation. The bill also requires FWC to suspend the violator's license privileges for up to 12 months. The statute previous only required suspension for the remainder for the license year;
 - Adds to the current penalties that a violator commits a first degree misdemeanor for the third violation by amending sub-subparagraph 379.3671(2)(c)4.c., F.S. Such violations may be punished with a maximum fine of \$1,000 or up to 1 year in jail. The bill removes the requirement that the third violation must occur within 36 months of the previous violations. The bill also requires FWC to suspend all of the violators licenses issued by FWC up to 24 months or revoke the violator's spiny lobster endorsement; and
 - Adds to the current penalties that a violator commits a third degree felony for violations involving 100 or more untagged spiny lobster traps or unlawful trap tags by adding sub-subparagraph 379.3671(2)(c)4.d., F.S. Such violations may be punished with a mandatory civil penalty of \$500 and maximum fine of \$5,000 or up to 5 years in jail.³⁶ The bill makes this violation a level 5 offense on the offense severity ranking chart for the purposes of sentencing by amending paragraph 921.0022(3)(e), F.S. The bill also requires FWC to impose an administrative penalty of up to \$2,000 and authorizes FWC to suspend all of the violator's license privileges up to 12 months.

³³ Section 775.082(3)(e) and 775.083(1)(c), F.S.

³⁴ Sections 775.082(4)(b) and 775.083(1)(e), F.S.

³⁵ Sections 775.082(4)(a) and 775.083(1)(d), F.S.

³⁶ Section 775.082(3)(e) and 775.083(1)(c), F.S.

The bill makes possession of undersized spiny lobster a major violation for recreational and commercial harvesters, unless authorized by FWC rule by adding paragraph 379.407(5)(b), F.S.³⁷ Specifically the bill:

- Authorizes prosecutors to charge a separate misdemeanor count for each undersized spiny lobster for violations involving fewer than 100 spiny lobster traps. The bill restricts the total misdemeanor penalty to not exceed 4 years imprisonment and \$4000 in civil fines; and
- Provides the following criminal penalties for recreational and commercial harvesters:
 - For the first violation, a second degree misdemeanor. Such violations may be punished with a maximum fine of \$500 or up to 60 days in jail;³⁸
 - For the second violation, a first degree misdemeanor. Such violations may be punished with a maximum fine of \$1000 or up to 1 year in jail;³⁹ and
 - For violations involving 100 or more undersized spiny lobsters, a third degree felony. Such violations may be punished with a mandatory civil penalty of \$500 and maximum fine of \$5,000 or up to 5 years in prison.⁴⁰ The bill makes this violation a level 5 offense on the offense severity ranking chart for the purposes of sentencing by amending paragraph 921.0022(3)(e), F.S. The bill also requires FWC to impose an administrative penalty of up to \$2,000 and authorizes FWC to suspend all of the violator's license privileges up to 12 months.

B. SECTION DIRECTORY:

Section 1. Amends s. 379.365, F.S., relating to stone crab regulation.

Section 2. Amends s. 379.3671, F.S., relating to the spiny lobster trap certification program.

Section 3. Amends s. 379.407, F.S., relating to penalties for possession of spiny lobster.

Section 4. Amends s. 921.0022, F.S., relating to the offense severity ranking chart for criminal sentencing.

Section 5. Providing an effective date of October 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate positive fiscal impact on FWC by adding and raising civil penalties and administrative fines for violations of stone crab and spiny lobster harvest regulations.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on the state because the bill creates a third degree felony for the possession of 100 or more undersized spiny lobsters and for violations involving 100 or more untagged stone crab traps, which may have a fiscal impact on the state. The bill makes these violations a level 5 offense on the offense severity ranking chart for the purposes of sentencing. The bill also increases the violation for "possession or removal of the contents of another harvester's stone crab trap" and "violation of rules relating to molestation of stone crab traps, lines, or buoys; or rules relating to stone crab trap tags" from unranked third degree felonies to level 5 offenses on the offense severity ranking chart for the purposes of sentencing. As a result,

³⁷ Rule 68B-24.003(3), F.A.C., authorizes commercial harvesters to possess 50 undersized lobsters per boat and one lobster per trap if used exclusively for luring, decoying, or otherwise attracting noncaptive spiny lobster into traps.

³⁸ Sections 775.082(4)(b) and 775.083(1)(e), F.S.

³⁹ Sections 775.082(4)(a) and 775.083(1)(d), F.S.

⁴⁰ Section 775.082(3)(e) and 775.083(1)(c), F.S.

the criminal justice estimating conference estimates that the bill will have a positive indeterminate fiscal impact on prison beds.⁴¹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may have an indeterminate negative fiscal impact on commercial harvesters who violate FWC's rules for stone crab and spiny lobster trap certifications and trap tags. Further, bill may have an indeterminate negative fiscal impact on recreational and commercial harvesters who harvest undersized spiny lobsters.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

⁴¹ Criminal Justice Estimating Conference, January 29, 2016 Conference Report.