

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1227 Crustaceans

**SPONSOR(S):** Agriculture and Natural Resources Subcommittee and Raschein

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1470

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	13 Y, 0 N, As CS	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 updates the penalties for commercial harvesters who violate FWC's rules for stone crab and spiny lobster trap certifications and trap tags by:

- Specifying that the stone crab specific administrative penalties are in addition to other commercial penalties;
- Specifying that violations of FWC rules relating to stone crab harvesting are a level 5 offense on the offense severity ranking chart for the purposes of sentencing; and
- Revising the current penalties that apply to commercial harvesters of spiny lobster by authorizing FWC to suspend or revoke the violator's license in certain situations.

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 by:

- Authorizing 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;
- Providing that violations involving 100 or more undersized spiny lobster are punishable as a third degree felony; and
- Requiring FWC to impose an administrative penalty of \$2,000 and authorizing 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.<sup>1</sup> Buoys must be attached and traps must be placed so as not to impede navigation.<sup>2</sup> Individuals may only harvest stone crabs whose forearm are at least 2 ¾ inches in length.<sup>3</sup> 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.<sup>4</sup> Harvesters pull up stone crab traps to collect their catch while harvesters snorkel or scuba dive to collect spiny lobster from their traps.<sup>5</sup>

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

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

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<sup>1</sup> Rules 68B-13.008 and 68B-24.006, F.A.C.

<sup>2</sup> Id.

<sup>3</sup> Rule 68B-13.007(1), F.A.C.

<sup>4</sup> Rule 68B-24.003(1), F.A.C.

<sup>5</sup> 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).

<sup>6</sup> Section 379.361, F.S.

<sup>7</sup> Section 379.101(36), F.S.

<sup>8</sup> Section 379.361(2)(b), F.S.

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

<sup>10</sup> Sections 379.365(2)(a) and 379.3671(2)(c), F.S.

<sup>11</sup> Section 379.365(2)(a), F.S.

<sup>12</sup> Section 379.3671(2)(c)1. and 2., F.S.

<sup>13</sup> 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 <sup>14</sup>	2nd Degree Misdemeanor	Max. \$500 or Max. 60 days	None
2nd offense within 3 years of previous Level 2 violation (or higher) <sup>15</sup>	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) <sup>16</sup>	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) <sup>17</sup>	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 <sup>18</sup>	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.<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup>

<sup>14</sup> Section 379.401(2)(b)1., F.S.

<sup>15</sup> Section 379.401(2)(b)2., F.S.

<sup>16</sup> Section 379.401(2)(b)3., F.S.

<sup>17</sup> Section 379.401(2)(b)4., F.S.

<sup>18</sup> Section 379.407(1), F.S.

<sup>19</sup> Section 379.407(2), F.S.

<sup>20</sup> Section 379.407(2)(a), F.S.

<sup>21</sup> Section 379.407(2)(i) and (j), F.S.

<sup>22</sup> Section 379.407(2)(i), F.S.

<sup>23</sup> Section 379.407(2)(j), F.S.

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

<b>Commercial License Suspension or Revocation<sup>24</sup></b>	
<b>Offense</b>	<b>Length</b>
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:

<b>Stone Crab Certificate and Trap Tag Penalties<sup>25</sup></b>	<b>Administrative Penalty</b>	<b>License Restrictions</b>
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:

<b>Spiny Lobster Trap Penalties<sup>26</sup></b>	<b>Administrative Penalty</b>	<b>License Restrictions</b>
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.<sup>27</sup> Such violations are punishable as follows:

<sup>24</sup> Section 379.407(2)(h), F.S.

<sup>25</sup> Section 379.365(2)(a)1., F.S.

<sup>26</sup> Section 379.3671(2)(c)4., F.S.

<sup>27</sup> Section 379.407(5), F.S.

Penalties for Possession of Spiny Lobster <sup>28</sup>	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 <sup>nd</sup> 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.<sup>29</sup>

### Effect of Proposed Changes

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

The bill specifies that the stone crab specific administrative penalties in subsections 379.365(2), F.S., are in addition to the commercial penalties in s. 379.407, F.S. The bill makes violations of FWC rules relating to molestation of stone crab traps, lines, or buoys; illegal trade, sale, or supplying of stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and commercial harvest of stone crabs while license is suspended or revoked a level 5 offense 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 revises the current penalties that apply to commercial harvesters as follows:

- Authorizes FWC to suspend the violator's license privileges for up to 12 months for the second violation by amending subparagraph 379.3671(2)(c)4.b., F.S. The statute previous only required suspension for the remainder for the license year;
- Authorizes FWC to suspend the violator's spiny lobster endorsement for 24 months for the third violation by amending subparagraph 379.3671(2)(c)4.c., F.S. The bill removes FWC's authorization to proceed against the violator's saltwater products license for the third violation; and
- Requires FWC to permanently revoke the violator's saltwater fishing privileges, including authorizing FWC to proceed against the violator's saltwater products license, for the fourth violation that occurs within 48 months of any previous three violations by adding subparagraph 379.3671(2)(c)4.d., F.S.

<sup>28</sup> Id.

<sup>29</sup> 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.keysnets.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.keysnets.com/2014/08/06/498100\\_three-busted-in-two-separate-lobster.html?rh=1](http://www.keysnets.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.keysnets.com/2015/07/22/503743\\_law-enforcement-cracking-down.html?rh=1](http://www.keysnets.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>.

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.<sup>30</sup> 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;<sup>31</sup>
  - 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;<sup>32</sup> 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.<sup>33</sup> 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 creating a civil penalty for possession of undersized spiny lobster.

<sup>30</sup> 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.

<sup>31</sup> Sections 775.082(4)(b) and 775.083(1)(e), F.S.

<sup>32</sup> Sections 775.082(4)(a) and 775.083(1)(d), F.S.

<sup>33</sup> Section 775.082(3)(e) and 775.083(1)(c), F.S.

2. Expenditures:

The Criminal Justice Impact Conference met on January 29, 2016, and determined that this bill will have a positive indeterminate prison bed impact. The impact conference provided:

While current sentencing and incarceration practices are low for the existing [third] degree felonies, it is unknown how many crustaceans were involved among the violations affected by these changes to statute. Furthermore, it is not known how courts will treat misdemeanor violations that surpass a one year jail sentence, as the current language seems to allow, which could have a positive impact on prison beds in addition to the felonies.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The 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

On February 2, 2016, the Agriculture and Natural Resources Subcommittee adopted a strike-all amendment and reported the bill favorably with committee substitute. Specifically the amendment:

- Removes the additional criminal penalties for violations of the stone crab and lobster trap tag and certification requirements in the original bill;
- Removes the authorization for 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 originally in the bill;

- Specifies that the stone crab specific administrative penalties in subsections 379.365(2), F.S., are in addition to the commercial penalties in s. 379.407, F.S.;
- Specifies that violations of FWC rules relating to stone crab harvesting are a level 5 offense on the offense severity ranking chart for the purposes of sentencing; and
- Revises the current penalties that apply to commercial harvesters of spiny lobster by authorizing FWC to suspend or revoke of the violator's license in certain situations.

This analysis is drafted to the committee substitute as approved by the subcommittee.