

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB ANRS 16-02 Fish and Wildlife Conservation Commission

**SPONSOR(S):**

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Agriculture & Natural Resources Subcommittee	13 Y, 0 N, As CS	Gregory	Harrington

### SUMMARY ANALYSIS

The bill relocates and amends provisions for recreational fish and wildlife violations for the Florida Fish and Wildlife Conservation Commission (FWC) to achieve consistency between the penalties and statutes, make the penalties meaningful, encourage compliance, and deter offenses. Specifically, the bill:

- Increases the fine for illegally taking game while trespassing from \$250 to \$500 per violation and adds all fish and wildlife to the list of species affected.
- Offers violators of recreational fishing and hunting licensing provisions the new option of purchasing the respective license, rather than paying the cost of the license in addition to the penalty but not receiving the license.
- Increases the fine for repeat offenders for any non-criminal infraction within 3 years from \$100 to \$250.
- Reduces from a second degree misdemeanor violation to a non-criminal infraction the penalty for violations of rules or orders of the commission requiring reporting by people who hold alligator licenses or requiring the return of unused CITES tags issued under the Statewide Alligator Harvest Program or the Statewide Nuisance Alligator Program.
- Decreases the penalty for failure to file required alligator reports from a second degree misdemeanor offense to a non-criminal infraction.
- Makes penalties for wildlife management areas on U.S. forests consistent with those of all other wildlife management areas.
- Increases the penalty for the sale, barter, or trade of tarpon from a second degree misdemeanor to a first degree misdemeanor to make it consistent with the penalty for rules that prohibit the sale of saltwater species.
- Deletes language prohibiting the altering or changing of a license or permit from the statutory section that prohibits the transfer of a license or permit or possession of a transferred license or permit. Instead, such actions will be treated as forging or counterfeiting a license or permit, punishable as a third degree felony.
- Authorizes spearfishing when allowed by FWC rule.
- Makes violations of rules or orders of the commission related to the unlawful use of *any* traps (unless otherwise provided) second degree misdemeanors.

In addition, the bill defines the term "fish and wildlife" to mean any member of the animal kingdom, including, but not limited to, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate. It also authorizes, rather than requires, FWC to retain an administrative fee when collecting donations for Southeastern Guide Dogs, Inc.

The bill may have an insignificant positive fiscal impact on the FWC and an insignificant negative fiscal impact on the Clerks of Court.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

The Florida Constitution provides that the Florida Fish and Wildlife Conservation Commission (FWC) must exercise the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life.<sup>1</sup> However, the Florida Constitution specifically provides that all licensing fees for taking wild animal life, fresh water aquatic life, and marine life and penalties for violating regulations of the commission must be prescribed by general law.<sup>2</sup>

Section 379.401, F.S., provides a four tiered penalty structure for violations of FWC's recreational hunting, fishing, and trapping regulations.

#### Level 1 Violations

Individuals who violate the following commit a Level 1 violation:

- FWC rules or orders relating to the filing of reports or other documents required to be filed by persons who hold recreational licenses and permits issued by FWC.
- FWC rules or orders relating to quota hunt permits, daily use permits, hunting zone assignments, camping, alcoholic beverages, vehicles, and check stations within wildlife management areas or other areas managed by FWC.
- FWC rules or orders relating to daily use permits, alcoholic beverages, swimming, possession of firearms, operation of vehicles, and watercraft speed within fish management areas managed by FWC.
- FWC rules or orders relating to vessel size or specifying motor restrictions on specified water bodies.
- Section 379.354(1)-(15), F.S., relating to recreational license requirements to hunt, fish, and trap.
- Section 379.3581, F.S., relating to hunter safety course requirements.
- Section 379.3003, F.S., relating to deer hunting clothing requirements.<sup>3</sup>

Section 379.401, F.S., provides the following penalties for Level 1 violations:

Level 1 Violation	Type of Infraction	Civil Penalty
1 <sup>st</sup> offense for failure to possess the required license or permit under s. 379.354, F.S. <sup>4</sup>	Noncriminal	\$50 plus the cost of the license or permit
2 <sup>nd</sup> offense for failure to possess the required license or permit under s. 379.354, F.S., within 36 months of 1 <sup>st</sup> offense <sup>5</sup>	Noncriminal	\$100 plus the cost of the license or permit
1 <sup>st</sup> offense not involving s. 379.354, F.S., license or permit requirements <sup>6</sup>	Noncriminal	\$50
2 <sup>nd</sup> offense not involving s. 379.354, F.S., license or permit <sup>7</sup> requirements within 36 months of 1 <sup>st</sup> offense	Noncriminal	\$100

<sup>1</sup> Section 9, Art. IV, Fla. Const.

<sup>2</sup> Id.

<sup>3</sup> Section 379.401(1)(a), F.S.

<sup>4</sup> Section 379.401(1)(c)1., F.S.

<sup>5</sup> Section 379.401(1)(c)2., F.S.

<sup>6</sup> Section 379.401(1)(d)1., F.S.

<sup>7</sup> Section 379.401(1)(d)2., F.S.

## Level 2 Violations

Individuals who violate the following commit a Level 2 violation:

- FWC rules or orders relating to seasons or time periods for the taking of wildlife, freshwater fish, or saltwater fish.
- FWC rules or orders establishing bag, possession, or size limits or restricting methods of taking wildlife, freshwater fish, or saltwater fish.
- FWC rules or orders prohibiting access or otherwise relating to access to wildlife management areas or other areas managed by the commission.
- FWC rules or orders relating to the feeding of wildlife, freshwater fish, or saltwater fish.
- FWC rules or orders relating to landing requirements for freshwater fish or saltwater fish.
- FWC rules or orders relating to restricted hunting areas, critical wildlife areas, or bird sanctuaries.
- FWC rules or orders relating to tagging requirements for wildlife and fur-bearing animals.
- FWC rules or orders relating to the use of dogs for the taking of wildlife.
- FWC rules or orders prohibiting the unlawful use of finfish traps.
- Section 379.33, F.S., prohibiting the violation of or noncompliance with commission rules.
- Section 379.407(7), F.S., relating to the sale, purchase, harvest, or attempted harvest of any saltwater product with intent to sell.
- Section 379.2421, F.S., relating to the obstruction of waterways with net gear.
- Section 379.413, F.S., relating to the unlawful taking of bonefish.
- Section 379.365(2)(a) and (b), F.S., relating to the possession or use of stone crab traps without trap tags and theft of trap contents or gear.
- Section 379.366(4)(b), F.S., relating to the theft of blue crab trap contents or trap gear.
- Section 379.3671(2)(c), F.S., relating to the possession or use of spiny lobster traps without trap tags or certificates and theft of trap contents or trap gear.
- Section 379.357, F.S., relating to the possession of tarpon without purchasing a tarpon tag.
- Section 379.105, F.S., relating to the intentional harassment of hunters, fishers, or trappers.
- Chapter 379, F.S, violations which are not otherwise classified.
- FWC rules or orders which are not otherwise classified.<sup>8</sup>

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

<b>Level 2 Violation</b>	<b>Type of Infraction</b>	<b>Civil Penalty or Jail Time</b>	<b>License Restrictions</b>
1 <sup>st</sup> offense <sup>9</sup>	2 <sup>nd</sup> Degree Misdemeanor	Max. \$500 or Max. 60 days	None
2 <sup>nd</sup> offense within 3 years of previous Level 2 violation (or higher) <sup>10</sup>	1 <sup>st</sup> Degree Misdemeanor	Min. \$250; Max. \$1000 or Max. 1 year	None
3 <sup>rd</sup> offense within 5 years of two previous Level 2 violations (or higher) <sup>11</sup>	1 <sup>st</sup> Degree Misdemeanor	Min. \$500; Max. \$1000 or Max. 1 year	Max. suspension of license for 1 year
4 <sup>th</sup> offense within 10 years of three previous Level 2 violations (or higher) <sup>12</sup>	1 <sup>st</sup> Degree Misdemeanor	Min. \$750; Max. \$1000 or Max. 1 year	Max. suspension of license for 3 years

## Level 3 Violations

Individuals who violate the following commit a Level 3 violation:

- FWC rules or orders prohibiting the sale of saltwater fish.

<sup>8</sup> Section 379.401(2)(a), F.S.

<sup>9</sup> Section 379.401(2)(b)1., F.S.

<sup>10</sup> Section 379.401(2)(b)2., F.S.

<sup>11</sup> Section 379.401(2)(b)3., F.S.

<sup>12</sup> Section 379.401(2)(b)4., F.S.

- FWC rules or orders prohibiting the illegal importation or possession of exotic marine plants or animals.
- Section 379.407(4), F.S., relating to the possession of certain finfish in excess of recreational daily bag limits.
- Section 379.28, F.S., relating to the importation of freshwater fish.
- Section 379.354(17), F.S., relating to the taking of game, freshwater fish, or saltwater fish while a required license is suspended or revoked.
- Section 379.3014, F.S., relating to the illegal sale or possession of alligators.
- Section 379.404(1), (3), and (6), F.S., relating to the illegal taking and possession of deer and wild turkey.
- Section 379.406, F.S., relating to the possession and transportation of commercial quantities of freshwater game fish.<sup>13</sup>

Section 379.401, F.S., provides the following penalties for Level 3 violations:

Level 3 Violation	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
1 <sup>st</sup> offense <sup>14</sup>	1 <sup>st</sup> Degree Misdemeanor	Max. \$1000 or Max. 1 year	None
2 <sup>nd</sup> offense within 10 years of previous Level 3 violation (or higher) <sup>15</sup>	1 <sup>st</sup> Degree Misdemeanor	Min. \$750; Max. \$1000 or Max. 1 year	Maximum suspension of license for 3 years
Fishing, hunting, or trapping with a suspended license <sup>16</sup>	1 <sup>st</sup> Degree Misdemeanor	Mandatory \$1000 or Max. 1 year	May not acquire license for 5 years

#### Level 4 Violations

Individuals who violate the following commit a Level 4 violation:

- Section 379.365(2)(c), F.S., relating to criminal activities relating to the taking of stone crabs.
- Section 379.366(4)(c), F.S., relating to criminal activities relating to the taking and harvesting of blue crabs.
- Section 379.367(4), F.S., relating to the willful molestation of spiny lobster gear.
- Section 379.3671(2)(c)5., F.S., relating to the unlawful reproduction, possession, sale, trade, or barter of spiny lobster trap tags or certificates.
- Section 379.354(16), F.S., relating to the making, forging, counterfeiting, or reproduction of a recreational license or possession of same without authorization from the commission.
- Section 379.404(5), F.S., relating to the sale of illegally-taken deer or wild turkey.
- Section 379.405, F.S., relating to the molestation or theft of freshwater fishing gear.
- Section 379.409, F.S., relating to the unlawful killing, injuring, possessing, or capturing of alligators or other crocodilia or their eggs.<sup>17</sup>

Section 379.401, F.S., provides the following penalties for Level 4 violations:

Level 4 Violation	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
1 <sup>st</sup> offense <sup>18</sup>	3 <sup>rd</sup> Degree Felony	Max. \$5000 or Max. 5 years	None

<sup>13</sup> Section 379.401(3)(a), F.S.

<sup>14</sup> Section 379.401(3)(b)1., F.S.

<sup>15</sup> Section 379.401(3)(b)2., F.S.

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

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

<sup>18</sup> Section 379.401(4)(b), F.S.

## Miscellaneous Penalties

In addition to the current four tier penalty structure, there are a number of statutes in ch. 379, F.S., that have their own penalties that apply to recreational activities and that do not fit into the four tiered structure. For example:

- Section 379.2223, F.S., provides that any person violating any rule or regulation relating to the control and management of state game lands commits a second degree misdemeanor;
- Section 379.2257, F.S., provides that any person violating any rule or regulation relating to control of wildlife within U.S. Forest Service lands commits a second degree misdemeanor;
- Section 379.29, F.S., provides that any person, firm, or corporation violating any provisions relating to contaminating fresh waters in quantities sufficient to injure, stupefy, or kill fish commits a second degree misdemeanor for the first offense, and for the second and subsequent offense, commits a first degree misdemeanor;
- Section 379.3511, F.S., provides that any person who willfully violates any provisions related to the regulation of subagents for the sale of hunting, fishing, and trapping licenses and permits commits a second degree misdemeanor;
- Section 379.411, F.S., provides that any person who is found guilty of killing or wounding any species designated as endangered, threatened, or of special concern, commits a third degree felony; and
- Section 379.4115, F.S., provides that any person convicted of unlawfully killing a Florida or wild panther commits a third degree felony.

Subsection 379.401(5), F.S., provides a “catch all” provision making violations of ch. 379, F.S., except as provided elsewhere in the chapter, second degree misdemeanors for first offenses, and first degree misdemeanors for second or subsequent offenses. Thus, the first offense carries a maximum civil penalty of \$500<sup>19</sup> or maximum 60 days in jail.<sup>20</sup> The second or subsequent offense carries a maximum fine of \$1000<sup>21</sup> or maximum 1 year in jail.<sup>22</sup> The statute does not provide an expiration time after which a first offense is not considered for purposes of accruing a second or subsequent offense. Similarly, subparagraph 379.401(2)(a)11, F.S., provides that all prohibitions in ch. 379, F.S., which are not otherwise classified, are Level 2 violations.

### **“Fish and Wildlife” Definition**

#### Present Situation

Currently, ch. 379, F.S., does not contain a definition for the term “fish and wildlife.” The Florida Endangered and Threatened Species Act does define the phrase as it relates specifically to that section.<sup>23</sup> It defines “fish and wildlife” to mean any member of the animal kingdom, including, but not limited to, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate.<sup>24</sup>

#### Effect of the Proposed Change

The bill amends s. 379.101, F.S., to add a definition for the term “fish and wildlife” that is identical to the definition in the Florida Endangered and Threatened Species Act.

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<sup>19</sup> Section 775.083(1)(e), F.S.

<sup>20</sup> Section 775.082(4)(b), F.S.

<sup>21</sup> Section 775.083(1)(d), F.S.

<sup>22</sup> Section 775.082(4)(a), F.S.

<sup>23</sup> Section 379.2291(3)(a), F.S.

<sup>24</sup> Id.

## **Taking Game or Fur-Bearing Animals While Trespassing Penalties**

### Present Situation

In addition to other penalties in ch. 379, F.S., any person who violates the provisions of ch. 379, F.S., by illegally killing, taking, possessing, or selling game or fur-bearing animals in or out of season while trespassing or committing burglary must pay a \$250 fine plus court costs and restitution.<sup>25</sup>

### Effect of the Proposed Changes

The bill repeals s. 379.403, F.S., and creates a new subsection 379.401(5), F.S., to incorporate the additional trespassing and burglary penalty into the larger four tiered recreational penalty section. The bill increases the penalty from \$250 to \$500. Further, the bill expands the list of species affected to include fish and wildlife, rather than just fur-bearing animals.

## **Hunting or Fishing without a License**

### Present Situation

Individuals who wish to hunt or fish recreationally in Florida must obtain the appropriate license and permit, unless exempted by subsection 379.353(2), F.S.<sup>26</sup> Individuals who violate the hunting and fishing license and permit requirements in subsections 379.354(1) through (15), F.S., commit a Level 1 violation.<sup>27</sup> Persons convicted of this must pay a \$50 fine, plus the cost of the appropriate license and permit, for the first offense. Persons who commit a second offense within 36 months of the first offense must pay a \$100 fine, plus the cost of the appropriate license and permit.<sup>28</sup>

From 2012 to 2014, FWC officers issued 9,435 citations for hunting or fishing without a license.<sup>29</sup>

### Effect of the Proposed Changes

The bill amends subparagraphs 379.401(1)(c)1. and 2., F.S., to offer violators of recreational fishing and hunting license provisions, except for a person who violates s. 379.354(6), (7), (8)(f), or (8)(h), F.S.,<sup>30</sup> the option to purchase the appropriate license or permit in addition to the fine rather than just paying the cost of the license or permit. Thus, these individuals will possess the appropriate license and permit in the future. The bill also amends paragraph 379.401(1)(f), F.S., to provide a method to provide proof of compliance with the penalty.

The bill creates subsection 379.354(18), F.S., to provide a cross reference that, unless otherwise provided by law, violations of the hunting and fishing license and permit requirements are a Level 1 violation. This is consistent with subparagraph 379.401(1)(a)5., F.S.

## **Repeat Offense of a Level 1 Violation**

### Present Situation

Currently, individuals who commit a Level 1 violation within 36 months of a previous Level 1 violation must pay a \$100 fine.<sup>31</sup>

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<sup>25</sup> Section 379.403, F.S.

<sup>26</sup> Section 379.354, F.S.

<sup>27</sup> Section 379.401(1)5., F.S.

<sup>28</sup> Section 379.401(1)(c)1. and 2., F.S.

<sup>29</sup> FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 17 (October 23, 2015).

<sup>30</sup> Section 379.354(6), F.S., pertains to pier licenses, s. 379.354(7), F.S., pertains to vessel licenses, and s. 379.354(8)(f) and (h), F.S., pertains to special use permits for limited entry permits and permits for recreational hunting on lands leased from FWC by nongovernmental owners.

<sup>31</sup> Section 379.401(1)(c)2. and (d)2., F.S.

## Effect of the Proposed Changes

The bill amends subparagraphs 379.401(1)(c)2. and (d)2., F.S., to increase the penalty for a repeat Level 1 violation from \$100 to \$250.

## **Alligator License Hunting, Tagging, and Reporting Requirement Penalties**

### Present Situation

Individuals who wish to hunt alligators must obtain an alligator trapping license or alligator trapping agent's license.<sup>32</sup> FWC issues Convention on International Trade in Endangered Species (CITES) tags with each alligator trapper license.<sup>33</sup> Once an alligator is killed, the trapper must attach a CITES tag 6 inches from tip of the alligator's tail.<sup>34</sup> All unused CITES tags must be returned to FWC within 14 days (for recreational licensees) or 15 days (for alligator management programs) after the expiration of the alligator harvest permit.<sup>35</sup> Failure to return a CITES tag may be grounds to deny future alligator harvest permits.<sup>36</sup>

Further, within 24 hours of harvesting an alligator and prior to transfer of the carcass, the trapper must submit a harvest report form to FWC.<sup>37</sup> On the form, the trapper must indicate the CITES tag number, the harvest date, the location of the harvest, the size of the alligator, the disposition of the carcass, the sex, and the meat yield.<sup>38</sup> The alligator processor must fill out the same form upon receipt of the alligator carcass.<sup>39</sup> The processor must report its facility number, the disposition of the carcass, the sex of the alligator, and the meat yield.<sup>40</sup> The processor must maintain this information for one year.<sup>41</sup>

Other reporting requirements also apply to individuals who handle alligators. Hide dealers must keep records and make an annual report to FWC about the number of hides bought and who bought the hides.<sup>42</sup> Individuals permitted to operate captive wildlife exhibits with alligators must complete and sign the Captive Alligator and Egg Transportation/Transfer Document before the transport of live untagged alligators.<sup>43</sup> Individuals who operate alligator farms must keep inventory records of alligators and alligator eggs and document their transfer.<sup>44</sup> Individuals who collect alligator eggs and hatchlings must tag and report the collection.<sup>45</sup>

It appears unclear whether failing to possess an alligator trapper license or alligator trapping agent's license, failing to comply with the tagging requirements, and failing to file a report relating to alligator licensees or alligator reporting requirements are:

- Level 2 violations under the catch all provision of subparagraph 379.401(2)(a)9., F.A.C., for violations of a rule or order of the commission which are not otherwise categorized;
- Level 2 violations under the catch all provisions of subparagraph 379.401(2)(a)11., F.S., for violations of all prohibitions in ch. 379 which are not otherwise classified; or

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<sup>32</sup> Section 379.3751(1), F.S.

<sup>33</sup> Rule 68A-25.042(2)(d), F.A.C.; CITES is an international agreement between governments to regulate the trade of wild animal and plant species. Convention on International Trade in Endangered Species, *What is CITES?*, <https://www.cites.org/eng/disc/what.php> (last visited October 7, 2015).

<sup>34</sup> Section 379.3752(1), F.S.; rule 68A-25.042(3)(h), F.A.C.

<sup>35</sup> Rules 68A-25.032(5) and 68A-25.042(3)(k), F.A.C.

<sup>36</sup> Id.

<sup>37</sup> Rules 68A-25.032(2)(g) and 68A-25.042(3)(i), F.A.C.

<sup>38</sup> FWC, *Alligator Harvest Report Form* (FWC form 1001AT, effective April 30, 2000), available at [http://myfwc.com/media/310137/Alligator\\_1001at.pdf](http://myfwc.com/media/310137/Alligator_1001at.pdf) (last visited October 7, 2015).

<sup>39</sup> Rule 68A-25.042(5)(a)1., F.A.C.

<sup>40</sup> FWC, *Alligator Harvest Report Form* (FWC form 1001AT, effective April 30, 2000), available at [http://myfwc.com/media/310137/Alligator\\_1001at.pdf](http://myfwc.com/media/310137/Alligator_1001at.pdf) (last visited October 7, 2015).

<sup>41</sup> Rule 68A-25.042(5)(a)2., F.A.C.

<sup>42</sup> Rule 68A-24.004(2)(a), F.A.C.

<sup>43</sup> Rule 68A-25.002(1)(b), F.A.C.

<sup>44</sup> Rule 68A-25.004(3), F.A.C.

<sup>45</sup> Rule 68A-25.031(1)(b) and (2)(b), F.A.C.

- A second degree misdemeanor under the catch all provision of subsection 379.401(5), F.S., for violations of ch. 379, F.S.

From 2012 to 2014, FWC officers issued 22 citations for violations of alligator trapping license requirement.<sup>46</sup> From 2012 to 2014, FWC officers did not issue any citations for violations of alligator tagging requirements.<sup>47</sup>

### Effect of Proposed Changes

The bill adds subparagraph 379.401(1)(a)5., F.S., to decrease the penalty for violating FWC rules or orders requiring the return of unused CITES tags issued under the Statewide Alligator Harvest Program or Statewide Nuisance Alligator Program from a Level 2 violation to a Level 1 violation. Violating rules or orders of the commission requiring the return of unused CITES tags issued under an alligator program other than the Statewide Alligator Harvest Program or Statewide Nuisance Alligator Program will remain a Level 2 violation because the bill adds subparagraph 379.401(2)(a)12., F.S.

The bill amends subparagraph 379.401(1)(a)1., F.S., to decrease the penalty for violating rules or orders of the commission relating to the filing of reports or other documents required to be filed by persons who holds an any alligator trapping license or permit from a Level 2 violation to a Level 1 violation. Violating FWC rules or orders that require the maintenance of records relating to alligators will be a Level 2 violation because the bill adds subparagraph 379.401(2)(a)11., F.S.

Lastly, the bill creates subparagraphs 379.401(2)(a)29. and 30., F.S., and subsections 379.3751(5), and 379.3752(3), F.S., to provide cross references that violations of the requirements to possess an alligator trapping license (or alligator trapping agent's license) or to place a CITES tag on a harvested alligator are Level 2 violations.

## **Wildlife Management Areas on U.S. Forest Service Land**

### Present Situation

Section 379.2257, F.S., authorizes FWC to enter into cooperative agreements with the U.S. Forest Service (USFS) for the development of game, bird, fish, reptile, or fur-bearing animal management and demonstration projects in the National Forests in Florida.<sup>48</sup> With the cooperation of the USFS, FWC may make, adopt, promulgate, amend, and repeal rules and regulations, consistent with law, for the further or better control of hunting, fishing, and control of wildlife in the National Forests.<sup>49</sup> These regulations include requiring hunting and fishing licenses, restricting hunting during certain times of the year, regulating how game is taken, regulating camping, and regulating vehicle access.<sup>50</sup>

Individuals who violate these rules commit a second degree misdemeanor.<sup>51</sup> Violators face a maximum civil penalty of \$500 or a maximum 60 days in jail.<sup>52</sup> These penalties are inconsistent with violations in other wildlife management areas. For example, violations of FWC rules or orders relating to quota hunt permits, daily use permits, hunting zone assignments, camping, alcoholic beverages, vehicles, and check stations within wildlife management areas or other areas managed by the commission are Level 1 violations.<sup>53</sup> Whereas, violations of FWC rules or orders prohibiting access or otherwise relating to access to wildlife management areas or other areas managed by the commission are a Level 2 violation.<sup>54</sup>

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<sup>46</sup> FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 20 (October 23, 2015).

<sup>47</sup> *Id.*

<sup>48</sup> Section 379.2257(1), F.S.

<sup>49</sup> Section 379.2257(2), F.S.

<sup>50</sup> *See* chapters 68A-15 and 68A-17, F.A.C.

<sup>51</sup> Section 379.2257(3), F.S.

<sup>52</sup> Sections 775.082 and 775.083, F.S.

<sup>53</sup> Section 379.401(1)(a)2., F.S.

<sup>54</sup> Section 379.401(2)(a)3., F.S.



## Effect of Proposed Changes

The bill amends s. 379.2257, F.S., to indicate that penalties for violations of rules or regulations for wildlife management areas on USFS lands will be penalized under s. 379.401, F.S. Thus, the penalties for these areas will be consistent for all lands. This change will increase the penalty for repeat offenders of wildlife management area, wildlife and environmental area, and fish management area rules on USFS lands. According to FWC, USFS indicated it preferred to eliminate the inconsistency.<sup>55</sup>

## **Sale, Barter, or Trade of Tarpon Penalties**

### Present Situation

Tarpon are a popular sport fish found throughout Florida's coastal environment. In June 2013, FWC approved a series of changes to the tarpon tag rules.<sup>56</sup> Previously individuals could harvest two tarpon per day.<sup>57</sup> The rule amendments restricted tarpon to a catch-and-release only fishery.<sup>58</sup> FWC's rule does allow for the temporary possession of tarpon for the purpose of photography, measuring length and girth, and taking scientific samples.<sup>59</sup>

Section 379.357, F.S., provides that individuals may only harvest tarpon when in pursuit of an International Game Fish Association record.<sup>60</sup> Further, individuals may not possess or harvest a tarpon without first purchasing a tarpon tag and securely attaching the tag through the lower jaw of the tarpon.<sup>61</sup> A person may not use more than one tarpon tag during a single license year.<sup>62</sup>

Individual may not take, kill, or possess any tarpon unless the individual has purchased a tarpon tag and securely attached it through the lower jaw of the fish.<sup>63</sup> Individuals who violate this prohibition commit a Level 2 violation.<sup>64</sup> Further, individuals may not sell, offer for sale, barter, exchange for merchandise, transport for sale, either within or without the state, offer to purchase, or purchase any tarpon.<sup>65</sup> Violations of any FWC rules or orders prohibiting the sale of saltwater fish, including tarpon, are Level 3 violations.<sup>66</sup>

From 2012 to 2014, FWC officers issued two citations for violations of tarpon regulations.<sup>67</sup>

### Effect of Proposed Changes

The bill amends subsection 379.357(5), F.S., and adds subparagraph 379.401(3)(a)6., F.S., to increase the penalty for the sale, transfer, or purchase of tarpon from a Level 2 violation to a Level 3 violation. This will make the penalty consistent with the penalty for violations prohibiting the sale of all saltwater fish.

The bill amends subsection 379.357(4), F.S., and creates subparagraph 379.401(2)(a)23, F.S., so that the unauthorized take, kill, or possession of tarpon remains a Level 2 violation.

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<sup>55</sup> FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 9 (October 23, 2015).

<sup>56</sup> 39 Fla. Admin. R. 94 (May 14, 2013).

<sup>57</sup> Rule 68B-32.004, F.A.C. (2005).

<sup>58</sup> Rule 68B-32.001, F.A.C.

<sup>59</sup> Rule 68B-32.004(2), F.A.C.

<sup>60</sup> Rule 68B-32.009(1)(a), F.A.C.

<sup>61</sup> Rule 68B-32.009(1)(b), F.A.C.

<sup>62</sup> Rule 68B-32.009(1)(c), F.A.C.

<sup>63</sup> Section 379.357(3), F.S.

<sup>64</sup> Section 379.357(4), F.S.

<sup>65</sup> Section 379.357(5), F.S.

<sup>66</sup> Section 379.401(3)(a)1., F.S.

<sup>67</sup> FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 17 (October 23, 2015).

## **“Changing” or “Altering” a License Penalties**

### Present Situation

Individuals may not “alter” or “change” in any manner, or loan or transfer to another, unless otherwise provided, any license or permit issued by FWC.<sup>68</sup> It is unclear whether violators of this provision are:

- Level 2 violations under the catch all provisions of subparagraph 379.401(2)(a)11., F.S., for violations of all prohibitions in ch. 379 which are not otherwise classified; or
- Second degree misdemeanors under the catch all provision of subsection 379.401(5), F.S., for violations of ch. 379, F.S.

Whereas, individuals who make, forge, counterfeit, or reproduce a license or permit issued by FWC or knowingly possess such a license commit a Level 4 violation.<sup>69</sup> Level 4 violations are third degree felonies which are consistent with the penalty for counterfeiting and forgery in the criminal statutes.<sup>70</sup>

From 2012 to 2014, FWC officers did not issue any citations altering or changing a license or permit.<sup>71</sup>

### Effect of Proposed Changes

The bill amends s. 379.3502, F.S., to remove the reference to “altering” or “changing” a license because “altering” or “changing” a license may be charged as forging or counterfeiting a license.

The bill also clarifies that loaning, transferring, or using a borrowed or transferred license or permit without permission is a Level 2 violation by amending s. 379.3502, F.S., and adding subparagraph 379.401(2)(a)20, F.S.

## **Sale, Purchase, Harvest, or Attempted Harvest of any Saltwater Product Penalties & Stone Crab and Spiny Lobster Trap Tags Penalties**

### Present Situation

Individuals or corporations who wish to commercially sell, purchase, or harvest saltwater products must obtain the appropriate license.<sup>72</sup> Individuals must obtain a stone trap tag to use a stone crab trap.<sup>73</sup> Further, individuals must obtain a spiny lobster certificate and trap tag to use a spiny lobster trap.<sup>74</sup> Violators of these regulations commit a Level 2 violation.<sup>75</sup> However, such violations are commercial activities that are punishable under s. 379.407, F.S.

Further, individuals who steal stone crab and spiny lobster trap contents and gear commit Level 2 violations.<sup>76</sup>

### Effect of Proposed Changes

The bill removes subparagraphs 379.365(2)(a)2. and 379.401(2)(a)13., F.S., and amends subparagraphs 379.401(2)(a)16. and 18., F.S., to remove these commercial violations from the recreation penalty statute. Thus, violations of the requirements to obtain a saltwater products license, stone crab trap tags, and spiny lobster certificate and trap tags will now be punishable under the commercial fishing penalty statute, s. 379.407, F.S.

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<sup>68</sup> Section 379.3502, F.S.

<sup>69</sup> Sections 379.354(16) and 379.401(4)(a)5., F.S.

<sup>70</sup> Sections 831.01 and 831.02, F.S.

<sup>71</sup> FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 11 (October 23, 2015).

<sup>72</sup> Section 379.361, F.S.

<sup>73</sup> Section 379.365(2)(a), F.S.

<sup>74</sup> Section 379.3671(2)(c), F.S.

<sup>75</sup> Sections 379.365(2)(a)2. and 379.401(2)(a)13., 16., and 18., F.S.

<sup>76</sup> Sections 379.401(2)(a)16. and 18., F.S.

Theft of stone crab and spiny lobster trap contents and gear will remain Level 2 violations under the new subparagraphs 379.401(2)(a)26. and 28., F.S.

## **Authorized Spearfishing**

### Present Situation

Subsection 379.2425(2), F.S., prohibits spearfishing within the boundaries of the John Pennekamp Coral Reef State Park, the waters of Collier County, and the area in Monroe County known as Upper Keys. However, rule 68B-20.003, F.A.C., allows spearfishing in these areas if authorized in other marine fisheries rules.<sup>77</sup>

In addition, it appears unclear whether violating spearfishing regulations are:

- Level 2 violations under the catch all provision of subparagraph 379.401(2)(a)9, F.A.C., for violations of a rule or order of the commission which are not otherwise categorized;
- Level 2 violations under the catch all provisions of subparagraph 379.401(2)(a)11., F.S., for violations of all prohibitions in ch. 379, F.S., which are not otherwise classified; or
- Second degree misdemeanors under the catch all provision of subsection 379.401(5), F.S., for violations of ch. 379, F.S.

From 2012 to 2014, FWC officers issued 38 citations for spearfishing where prohibited.<sup>78</sup>

### Effect of Proposed Changes

The bill amends subsection 379.2425(2), F.S., to allow spearfishing within the boundaries of the John Pennekamp Coral Reef State Park, the waters of Collier County, and the area in Monroe County known as Upper Keys when authorized by rule.

The bill also creates subsection 379.2425(4), F.S., and subparagraph 379.401(2)(a)16., F.S., to make violations of the spearfishing regulations a Level 2 violation.

## **Unlawful Use of Traps Penalties**

### Present Situation

FWC sets forth numerous regulations on the use of traps.<sup>79</sup> Individuals who violate FWC rules or orders prohibiting unlawful use of finfish traps commit a Level 2 violation. However, the statute does not indicate the penalty for the unlawful use of other traps. Thus, it appears unclear whether violating the trap regulations are:

- Level 2 violations under the catch all provision of subparagraph 379.401(2)(a)9, F.A.C., for violations of a rule or order of the commission which are not otherwise categorized;
- Level 2 violations under the catch all provisions of subparagraph 379.401(2)(a)11., F.S., for violations of all prohibitions in ch. 379, F.S., which are not otherwise classified; or
- Second degree misdemeanors under the catch all provision of subsection 379.401(5), F.S., for violations of ch. 379, F.S.

### Effect of Proposed Changes

The bill amends subparagraph 379.401(2)(a)10., F.S., to make violations of all trap regulations a Level 2 violation.

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<sup>77</sup> See rules 68B-20.003 and 68B-20.004, F.A.C.

<sup>78</sup> FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 10 (October 23, 2015).

<sup>79</sup> See e.g., rule 68A-24.002, F.A.C. (relating to fur bearing animals); rule 68A-23.002, F.A.C. (relating to taking freshwater fish); and rule 68A-9.010 (relating to taking nuisance animals).

## **Enforcement of Commission Rules**

### Present Situation

Section 379.33, F.S., states, “[e]xcept as provided under s. 379.401, any person who violates or otherwise fails to comply with any rule adopted by the commission shall be punished pursuant to s. 379.407(1).” Section 379.401, F.S., contains most of the recreational fishing and hunting penalties while s. 379.407, F.S., contains the penalties for commercial saltwater fishing regulations. However, other penalties enforced by FWC are found in other statutes.<sup>80</sup> Thus, the statement in s. 379.33, F.S., is inaccurate and confusing.

### Effect of Proposed Changes

The bill amends s. 379.33, F.S., to remove the inaccurate statement.

## **Control and Management of State Game Lands Penalties**

### Present Situation

The Legislature authorized FWC to make, adopt, promulgate, amend, repeal, and enforce all reasonable rules and regulations necessary for the protection, control, operation, management, or development of lands or waters owned by, leased by, or otherwise assigned to, FWC for fish or wildlife management purposes.<sup>81</sup>

State game lands include Wildlife Management Areas (WMAs), Wildlife and Environmental Areas (WEAs), and Fish Management Areas (FMAs). FWC manages a WMA system in order to sustain the widest possible range of native wildlife in their natural habitats. These lands are more rugged than parks, with fewer developed amenities. The WMA system includes more than 5.8 million acres of land established as WMAs or WEAs.<sup>82</sup>

Chapter 68A-15, F.A.C., establishes the rules for Florida’s WMAs, and ch. 68A-17, F.A.C., establishes the rules for Florida’s WEAs. These regulations include requiring hunting and fishing licenses, restricting hunting during certain times of the year, regulating how game is taken, regulating camping, and regulating vehicle access.

Individuals who violation these rules commit a second degree misdemeanor,<sup>83</sup> punishable by a maximum civil penalty of \$500<sup>84</sup> or a maximum 60 days in jail.<sup>85</sup>

### Effect of Proposed Changes

The bill amends subsection 379.2223(2), F.S., to make violations of WMA and FMA rules subject to the penalties in the recreational penalties statute. Thus, the penalties in subparagraphs 379.401(1)(a)2., 379.401(1)(a)3., and 379.401(2)(a)3., F.S., will apply to violations of WMA and FMA rules.

## **Contamination of Freshwater Penalties**

### Present Situation

Individual, firms, and corporations may not cause any dyestuff, coal tar, oil, sawdust, poison, or deleterious substances to be thrown, run, or drained into any of the fresh running waters of this state in

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<sup>80</sup> See ch. 372, F.S., and s. 379.4015, F.S.

<sup>81</sup> Section 379.2223(1), F.S.

<sup>82</sup> FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 8 (October 23, 2015).

<sup>83</sup> Section 379.2223(2), F.S.

<sup>84</sup> Section 775.083(1)(e), F.S.

<sup>85</sup> Section 775.082(4)(b), F.S.

quantities sufficient to injure, stupefy, or kill fish.<sup>86</sup> Violators of this prohibition commit a second degree misdemeanor for first offense, and first degree misdemeanor for the second or subsequent offense.<sup>87</sup> Thus, the first offense carries a maximum civil penalty of \$500<sup>88</sup> or maximum 60 days in jail.<sup>89</sup> The second or subsequent offense carries a maximum fine of \$1000<sup>90</sup> or maximum 1 year in jail.<sup>91</sup>

### Effect of Proposed Changes

The bill amends subsection 379.29(2), F.S., and adds subparagraph 379.401(2)(a)17., F.S., to make contaminating fresh water in a way that injures fish a Level 2 violation.

### **Use of Explosives or Other Substances Penalties**

#### Present Situation

Individuals may not use explosives or other similar substances in freshwaters of the state to injure fish.<sup>92</sup> It appears unclear whether violating this provision is a:

- Level 2 violations under the catch all provisions of subparagraph 379.401(2)(a)11., F.S., for violations of all prohibitions in ch. 379, F.S., which are not otherwise classified; or
- Second degree misdemeanors under the catch all provision of subsection 379.401(5), F.S., for violations of ch. 379, F.S.

#### Effect of Proposed Change

The bill amends s. 379.295, F.S., and creates subparagraph 379.401(2)(a)18., F.S., to make violations of the use of explosives prohibition a Level 2 violation.

### **Freshwater Fish Dealer's and Fur and Hide Dealer's License Penalties**

#### Present Situation

An individual who wishes to engage in the business of taking for sale or selling any frogs or freshwater fish, including live bait, of any species or size, or importing any exotic or nonnative fish must obtain a freshwater fish dealer's license.<sup>93</sup> Further, individuals who wish to engage in the business of a dealer or buyer in green or dried alligator hides or green or dried furs or purchase such hides or furs must obtain a fur and hide dealer's license.

It appears unclear whether violating of these license requirements are:

- Level 2 violations under the catch all provisions of subparagraph 379.401(2)(a)11., F.S., for violations of all prohibitions in ch. 379, F.S., which are not otherwise classified; or
- Second degree misdemeanors under the catch all provision of subsection 379.401(5), F.S., for violations of ch. 379, F.S.

From 2012 to 2014, FWC officers issued 51 citations for violations of the freshwater fish dealer's license requirements.<sup>94</sup> From 2012 to 2014, FWC officers did not issue any citations for violations of the fur and hide dealer's license requirements.<sup>95</sup>

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<sup>86</sup> Section 379.29(1), F.S.

<sup>87</sup> Section 379.29(2), F.S.

<sup>88</sup> Section 775.083(1)(e), F.S.

<sup>89</sup> Section 775.082(4)(b), F.S.

<sup>90</sup> Section 775.083(1)(d), F.S.

<sup>91</sup> Section 775.082(4)(a), F.S.

<sup>92</sup> Section 379.295, F.S.

<sup>93</sup> Section 379.363(1), F.S.

<sup>94</sup> FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 18 (October 23, 2015).

<sup>95</sup> *Id.* at 19.

## Effect of Proposed Changes

The bill amends ss. 379.363 and 379.364, F.S., and creates subparagraphs 379.401(1)(a)24. and 379.401(2)(a)25., F.S., to make violations of the freshwater fish dealer's and fur and hide dealer's license requirements a Level 2 violation.

### **False Statement on License, Permit, or Application Penalties**

#### Present Situation

Individuals who swear or affirm to a false statement on an application for a license or permit violates ch. 379, F.S.<sup>96</sup> Such statement also make the license or permit void.<sup>97</sup>

Likewise, individuals who knowingly and willfully enter false information on, or allow or cause false information to be entered on or shown upon any license or permit in order to avoid prosecution or to assist another to avoid prosecution, or for any other wrongful purpose must be punished under s. 379.401, F.S.<sup>98</sup>

It is unclear whether violations of these provisions are:

- Level 2 violations under the catch all provisions of subparagraph 379.401(2)(a)11., F.S., for violations of all prohibitions in ch. 379, F.S., which are not otherwise classified; or
- Second degree misdemeanors under the catch all provision of subsection 379.401(5), F.S., for violations of ch. 379, F.S.

From 2012 to 2014, FWC officers issued three citations for making false statements on an application for a license or permit.<sup>99</sup> From 2012 to 2014, FWC officers issued two citations for entering false information on, or allowing or causing false information to be entered on or shown upon any license or permit.<sup>100</sup>

## Effect of Proposed Changes

The bill amends ss. 379.3503 and 379.3504, F.S., and creates subparagraphs 379.401(2)(a)20. and 21., F.S., to make false statements in an application for a license or permit or entering false information on licenses or permits Level 2 violations.

### **License Subagent Penalties**

#### Present Situation

The Legislature authorized FWC to appoint subagents to act on the behalf of FWC to sell hunting, fishing, and trapping licenses and permits.<sup>101</sup> FWC may prohibit subagents from selling certain types of licenses and permits.<sup>102</sup> Further, only individuals appointed by FWC may handle licenses or permits for a fee or compensation of any kind.<sup>103</sup>

As of July 2015, FWC has contracted with 883 bonded subagents to sell hunting, fishing, and trapping licenses and permits.<sup>104</sup> The subagents include 215 Florida tax collectors offices, as well retail stores, sporting goods stores, hardware stores, bait and tackle establishments, and others.<sup>105</sup>

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<sup>96</sup> Section 379.3503, F.S.

<sup>97</sup> Id.

<sup>98</sup> Section 379.3504, F.S.

<sup>99</sup> FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 12 (October 23, 2015).

<sup>100</sup> Id.

<sup>101</sup> Section 379.3511, F.S.

<sup>102</sup> Section 379.3511(1)(b), F.S.

<sup>103</sup> Section 379.3511(1)(c), F.S.

<sup>104</sup> FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 13 (October 23, 2015).

<sup>105</sup> Id.

Individuals who violate the subagent regulations and rules commit a second degree misdemeanor.<sup>106</sup> Thus, violators face a maximum civil penalty of \$500<sup>107</sup> or a maximum 60 days in jail.<sup>108</sup>

From 2012 to 2014, FWC officers did not issue any citations for violations of the subagent licensing requirements.<sup>109</sup>

### Effect of Proposed Change

The bill repeals paragraph 379.3511(1)(d), F.S., creates subsection 379.3511(4), F.S., and adds subparagraph 379.401(2)(a)22., F.S., to make violations of the subagent regulations and rules a Level 2 violation.

## **Illegal Killing, Possessing, or Capturing of Alligators or Other Crocodilia or Eggs Penalties**

### Present Situation

Individuals may not intentionally kill, injure, possess, or capture, or attempt to kill, injure, possess, or capture, an alligator or other crocodilian, or the eggs of an alligator or other crocodilian, unless authorized by the FWC. Subsection 379.409(1), F.S., makes a violation of this prohibition a third degree felony. Subparagraph 379.401(4)(a), F.S., makes a violation of this provision a Level 4 violation. Both carry a maximum fine of \$5000<sup>110</sup> or a maximum jail time of 5 years for the first offense.<sup>111</sup> These penalties may increase if the individual is a habitual felony offender or a habitual violent felony offender.<sup>112</sup>

From 2012 to 2014, FWC officers issued 32 citations for intentionally killing, injuring, possessing, or capturing, or attempting to kill, injure, possess, or capture, an alligator or other crocodilian, or the eggs of an alligator or other crocodilian.<sup>113</sup>

### Effect of Proposed Changes

The bill amends subsection 379.409(1), F.S., and creates subsection 379.409(4), F.S., to clarify that violations of this prohibition are a Level 4 violation.

## **Intentional Killing or Wounding Species Designated as Endangered, Threatened, or of Special Concern Penalties**

### Present Situation

Individuals may not intentionally kill or wound any fish or wildlife of a species designated by the FWC as endangered, threatened, or of special concern, or to intentionally destroy the eggs or nest of any such fish or wildlife without authorization from FWC.<sup>114</sup> Violators of this prohibition face a third degree felony.<sup>115</sup> Third degree felonies carry a maximum fine of \$5000<sup>116</sup> or a maximum jail time of 5 years.<sup>117</sup>

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<sup>106</sup> Section 379.3511(1)(d), F.S.

<sup>107</sup> Section 775.083(1)(e), F.S.

<sup>108</sup> Section 775.082(4)(b), F.S.

<sup>109</sup> FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 13 (October 23, 2015).

<sup>110</sup> Section 775.083, F.S.

<sup>111</sup> Section 775.082, F.S.

<sup>112</sup> Section 379.409(1), F.S.

<sup>113</sup> FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 21 (October 23, 2015).

<sup>114</sup> Section 379.411, F.S.

<sup>115</sup> Id.

<sup>116</sup> Section 775.083, F.S.

<sup>117</sup> Section 775.082, F.S.

These penalties may increase if the individual is a habitual felony offender or a habitual violent felony offender.<sup>118</sup>

From 2012 to 2014, FWC officers issued 12 citations for intentionally killing or wounding any fish or wildlife of a species designated by the FWC as endangered, threatened, or of special concern, or intentionally destroying the eggs or nest of any such fish or wildlife.<sup>119</sup>

### Effect of Proposed Change

The bill amends s. 379.411, F.S., and creates subparagraph 379.401(4)(a)9., F.S., to make violations of this prohibition a Level 4 violation.

## **Killing Florida or Wild Panther Penalties**

### Present Situation

Individuals may not kill any Florida panther or wild panther.<sup>120</sup> Violators of this prohibition face a third degree felony.<sup>121</sup> Third degree felonies carry a maximum fine of \$5000<sup>122</sup> or a maximum jail time of 5 years for the first offense.<sup>123</sup> These penalties may increase if the individual is a habitual felony offender or a habitual violent felony offender.<sup>124</sup>

From 2012 to 2014, FWC officers did not issue any citations for killing any Florida panther or wild panther.<sup>125</sup>

### Effect of Proposed Changes

The bill amends s. 379.4115, F.S., and creates subparagraph 379.401(4)(a)10., F.S., to make violations of this prohibition a Level 4 violation.

## **Repeat Offense of a Level 4 Violation**

### Present Situation

Currently, an individual who commits a Level 4 violation commits a third degree felony, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.<sup>126</sup> Thus, such individual is subject to a maximum fine of \$5000<sup>127</sup> or a maximum jail term of 5 years.<sup>128</sup> Section 379.401, F.S., does not provide for increased penalties for repeat offenders. However, specific sections provide for enhanced penalties for Level Four violations if the individual is a habitual felony offender or a habitual violent felony offender.<sup>129</sup>

A “habitual felony offender” is a defendant for whom the court may impose an extended term of imprisonment if it finds that:

- The defendant has previously been convicted of any combination of two or more felonies in this state or other qualified offenses;

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<sup>118</sup> Section 379.411, F.S.

<sup>119</sup> FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 21 (October 23, 2015).

<sup>120</sup> Section 379.4115, F.S.

<sup>121</sup> Id.

<sup>122</sup> Section 775.083, F.S.

<sup>123</sup> Section 775.082, F.S.

<sup>124</sup> Section 379.4115(3), F.S.

<sup>125</sup> FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 22 (October 23, 2015).

<sup>126</sup> Section 379.401(4)(b), F.S.

<sup>127</sup> Section 775.083, F.S.

<sup>128</sup> Section 775.082, F.S.

<sup>129</sup> See s. 379.409(1), F.S. (illegal killing, possessing, or capturing of alligators or other crocodilian or eggs), s. 379.411, F.S. (intentional killing or wounding species designated as endangered, threatened, or of special concern), and s. 379.4115(3), F.S. (killing Florida or wild panther).



- The felony for which the defendant is to be sentenced was committed:
  - While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for a felony or other qualified offense; or
  - Within 5 years of the date of the conviction of the defendant's last prior felony or other qualified offense, or within 5 years of the defendant's release from a prison sentence, probation, community control, control release, conditional release, parole or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for a felony or other qualified offense, whichever is later;
- The felony for which the defendant is to be sentenced, and one of the two prior felony convictions, is not a violation relating to the purchase or the possession of a controlled substance;
- The defendant has not received a pardon for any felony or other qualified offense used in the habitual felony offender determination; and
- A conviction of a felony or other qualified offense used in the habitual felony determination has not been set aside in any post-conviction proceeding.<sup>130</sup>

A habitual felony offender may face a penalty not to exceed 10 years in prison.<sup>131</sup>

A "habitual violent felony offender" is a defendant for whom the court may impose an extended term of imprisonment if it finds that:

- The defendant has previously been convicted of a felony or an attempt or conspiracy to commit a felony and one or more of such convictions was for:
  - Arson;
  - Sexual battery;
  - Robbery;
  - Kidnapping;
  - Aggravated child abuse;
  - Aggravated abuse of an elderly person or disabled adult;
  - Aggravated assault with a deadly weapon;
  - Murder;
  - Manslaughter;
  - Aggravated manslaughter of an elderly person or disabled adult;
  - Aggravated manslaughter of a child;
  - Unlawful throwing, placing, or discharging of a destructive device or bomb;
  - Armed burglary;
  - Aggravated battery; or
  - Aggravated stalking;
- The felony for which the defendant is to be sentenced was committed:
  - While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for an enumerated felony; or
  - Within 5 years of the date of the conviction of the last prior enumerated felony, or within 5 years of the defendant's release from a prison sentence, probation, community control, control release, conditional release, parole, or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for an enumerated felony, whichever is later.
- The defendant has not received a pardon on the ground of innocence for any crime used in the habitual violent felony offender determination; and
- A conviction of a crime used in the habitual violent felony offender determination has not been set aside in any post-conviction proceeding.<sup>132</sup>

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<sup>130</sup> Section 775.084(1)(a), F.S.

<sup>131</sup> Section 77.084(4)(a)3., F.S.

<sup>132</sup> Section 775.084(1)(b), F.S.

A habitual violent felony offender may face a penalty not to exceed 10 years in prison and may not be eligible for release for 5 years.<sup>133</sup>

### Effect of the Proposed Changes

The bill amends paragraph 379.401(4)(b), F.S., to authorize penalties for all Level 4 violations to increase if the court determines the individual is a habitual felony offender or a habitual violent felony offender. This is consistent with the current penalties for:

- Illegally killing, possessing, or capturing of alligators or other crocodilia or eggs,<sup>134</sup>
- Intentionally killing or wounding species designated as endangered, threatened, or of special concern;<sup>135</sup> and
- Killing Florida or wild panther.<sup>136</sup>

### **Catch All Chapter Violation Penalties**

#### Present Situation

Subparagraph 379.401(2)(a)11., F.S., makes violations of ch. 379, F.S., Level 2 violations. Whereas, subsection 379.401(5), F.S., makes violations of ch. 379, F.S., a second degree misdemeanor for the first offense and a first degree misdemeanor for the second and subsequent offenses.

#### Effect of the Proposed Changes

The bill removes subsection 379.401(5), F.S., to eliminate this inconsistency. Thus, the catch all penalty for violations of ch. 379, F.S., will be a Level 2 violation under subparagraph 379.401(2)(a)13., F.S.

### **Southeastern Guide Dogs, Inc.**

#### Present Situation

Individuals purchasing a license or permit from FWC may voluntarily check a box on their application to authorize an additional \$2 fee.<sup>137</sup> FWC must retain \$0.90 to cover administrative costs.<sup>138</sup> Southeastern Guide Dogs, Inc., must use the money they receive to breed, raise, and train guide dogs for the blind, specifically for the “Paws for Patriots” program, which includes in-residence training for veterans who are provided guide dogs by Southeastern Guide Dogs, Inc.<sup>139</sup>

Southeastern Guide Dogs, Inc., a 501(c)(3) nonprofit organization, formed in 1982. The organization places more than 100 trained dogs each year into careers benefitting people with visual impairments and veterans. The organization provides all services free of charge and receives no government funding. The Paws for Patriots Program matches guide dogs, service dogs, facility therapy dogs, and emotional support dogs with active duty soldiers and retired servicemen and women who have one of the needs these dogs can help meet.<sup>140</sup>

When s. 379.359, F.S., passed, FWC contracted with a third-party vendor to operate a system that issues recreational licenses. As part of that contract, the vendor charged FWC \$0.90 to process each individual voluntary contribution made to Southeastern Guide Dogs, Inc. In practice, FWC retained

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<sup>133</sup> Section 775.084(4)(b)3., F.S.

<sup>134</sup> Section 379.409(1), F.S.

<sup>135</sup> Section 379.411, F.S.

<sup>136</sup> Section 379.4115(3), F.S.

<sup>137</sup> Section 379.359, F.S.

<sup>138</sup> Id.

<sup>139</sup> Id.

<sup>140</sup> Southeastern Guide Dogs, *About Us*, <http://www.guidedogs.org/about/about-us/> (last visited October 8, 2015).

\$0.90 of each contribution made to cover this processing fee, and forwarded \$1.10 to Southeastern Guide Dogs, Inc.<sup>141</sup>

In October 2012, FWC contracted with a new company to process recreational licenses. Under the new contract, the new vendor does not charge FWC any fees to process the contributions to Southeastern Guide Dogs, Inc. Thus, FWC stopped retaining any fees from the contributions and began sending the entirety of each contribution (\$2.00) to Southeastern Guide Dogs, Inc.<sup>142</sup>

In 2015, the Department of Financial Services (DFS) contacted FWC staff and advised that because the statutes says that \$0.90 “shall” be retained from each voluntary contribution made under s. 379.359, F.S., FWC was not permitted to send the entirety of the contributions to Southeastern Guide Dogs, Inc. DFS temporarily authorized the agency to continue sending the entire contributions to Southeastern Guide Dogs, Inc., with an agreement that FWC will seek a legislative change that would eliminate the requirement that FWC retain the \$0.90 fee.<sup>143</sup>

### Effect of Proposed Changes

The bill amends s. 379.359, F.S., to eliminate the requirement that FWC retain the administrative fee. Instead, FWC may retain the fee at its discretion.

#### B. SECTION DIRECTORY:

- Section 1.** Amends s. 379.101, F.S., defining the term “fish and wildlife.”
- Section 2.** Amends s. 379.2223, F.S., relating to control and management of state game lands.
- Section 3.** Amends s. 379.2257, F.S., relating to penalties on U.S. Forest Service lands.
- Section 4.** Amends s. 379.2425, F.S., relating to spearfishing.
- Section 5.** Amends s. 379.29, F.S., relating to contaminating fresh water.
- Section 6.** Amends s. 379.295, F.S., relating to use of explosives and other substances.
- Section 7.** Amends s. 379.33, F.S., relating to enforcement of commission rules.
- Section 8.** Amends s. 379.3502, F.S., relating to prohibition on the transferring licenses and permits.
- Section 9.** Amends s. 379.3503, F.S., relating to false statements in application for licenses or permits.
- Section 10.** Amends s. 379.3594, F.S., relating to entering false information on licenses or permits.
- Section 11.** Amends s. 379.3511, F.S., relating to appointment of subagents for the sale of hunting, fishing, and trapping licenses and permits.
- Section 12.** Amends s. 379.354, F.S., relating to recreational licenses, permits, and authorization numbers.
- Section 13.** Amends s. 379.357, F.S., relating to FWC license program for tarpon.
- Section 14.** Amends s. 379.359, F.S., relating to license application provision for voluntary contribution to Southeastern Guide Dogs, Inc.

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<sup>141</sup> FWC, *2016 Agency Legislative Bill Analysis, Fish and Wildlife Conservation Commission*, p. 22 (October 23, 2015).

<sup>142</sup> Id.

<sup>143</sup> FWC, *2016 Legislative Proposal, Southeastern Guide Dogs, Inc. Donation Fee*, p. 2 (October 5, 2015).

- Section 15.** Amends s. 379.363, F.S., relating to freshwater fish dealer's license.
- Section 16.** Amends s. 379.364, F.S., relating to license required for fur and hide dealers.
- Section 17.** Amends s. 379.365, F.S., relating to stone crab regulations.
- Section 18.** Amends s. 379.3751, F.S., relating to taking and possession of alligators.
- Section 19.** Amends s. 379.3752, F.S., relating to required tagging of alligators and hides.
- Section 20.** Amends s. 379.401, F.S., relating to penalties for Level One, Level Two, Level Three, and Level Four violations; providing additional criminal penalties for Level Four violations; providing additional penalties for the illegal taking of fish and wildlife while trespassing.
- Section 21.** Repeals s. 379.403, F.S., relating to illegal killing, taking, possessing, or selling wildlife or game.
- Section 22.** Amends s. 379.409, F.S., relating to illegal killing, possessing, or capturing of alligators or other crocodilia or eggs.
- Section 23.** Amends s. 379.411, F.S., relating to intentionally killing or wounding of any species designated as endangered, threatened, or of special concern.
- Section 24.** Amends s. 379.4115, F.S., relating to prohibition of killing Florida or wild panther.
- Section 25.** Provides an effective date of July 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill may have an insignificant positive fiscal impact on FWC because it provides violators who hunt or fish without a license the option to purchase a recreational license when they are cited for not having one, rather than pay the clerk of court the cost of the recreational license. Currently, the clerks of courts collect these fines.<sup>144</sup> Now the money will be deposited in the Dedicated License Trust Fund,<sup>145</sup> the Lifetime Fish and Wildlife Trust Fund,<sup>146</sup> the State Game Trust Fund,<sup>147</sup> or the Marine Resources Conservation Trust Fund<sup>148</sup> if the individual chooses to purchase the appropriate license and permit. Based on FWC's estimation, if every violator chooses to purchase a license, the bill would increase funds collected by FWC by \$50,806.<sup>149</sup>

#### 2. Expenditures:

None.

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<sup>144</sup> Sections 142.01(1)(a) and 379.2203(1), F.S.

<sup>145</sup> Section 379.203, F.S.

<sup>146</sup> Section 379.207, F.S.

<sup>147</sup> Section 379.211, F.S.

<sup>148</sup> Section 379.2201, F.S.

<sup>149</sup> FWC, *Recreational Penalties Fiscal Impact*, p. 3 (October 23, 2015).

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill may have an insignificant negative fiscal impact on the clerks of court. The bill amends subparagraphs 379.401(1)(c)1. and 2., F.S., to provide persons who hunt or fish without a license the option to purchase a recreational license when they are cited for not having one, rather than pay the clerk of court the cost of the recreational license, thereby reducing the fines that may be collected by the clerks of courts.<sup>150</sup> However, the bill also increases the penalties collected by the clerks of court for certain violations. Based on FWC's estimation, if every judge imposes the maximum penalty and every violator chooses to purchase a license, the bill would reduce funds deposited with the clerks of court by approximately \$85,456.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may have an indeterminate fiscal impact on the individuals who violate the provisions of ch. 379, F.S. Depending on the specific violation, the bill may increase or decrease the penalty.

In addition, the bill may create a positive impact on Southern Guide Dogs, Inc., by amending s. 379.359, F.S., to authorize FWC to transfer all of the \$2 contribution to the non-profit rather than requiring FWC to retain \$.90 for administrative costs.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18, of the Florida Constitution may apply because this bill amends subparagraphs 379.401(1)(c)1. and 2., F.S., to provide persons who hunt or fish without a license the option to purchase a recreational license when they are cited for not having one, rather than pay the clerk of court the cost of the recreational license, thereby reducing the fines that may be collected by the clerks of court. However, an exemption may apply if the bill results in an insignificant fiscal impact to 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 November 17, 2015, the Agriculture & Natural Resources Subcommittee adopted one amendment and reported the bill favorably with committee substitute. The amendment authorizes enhanced penalties for Level 4 violations if the individual is a habitual felony offender or a habitual violent felony offender.

This analysis is drafted to the committee substitute as approved by the Agriculture & Natural Resources Subcommittee.