

By Representative Safley

1                                   A bill to be entitled  
2           An act relating to marine fisheries; amending  
3           s. 370.021, F.S.; providing that specified  
4           violations of administrative rules, the Florida  
5           Statutes, and the constitutional ban on the use  
6           of certain nets are major violations; providing  
7           penalties; prohibiting a court from suspending,  
8           deferring, or withholding adjudication of guilt  
9           in specified circumstances; providing for the  
10          suspension of violators' licenses and  
11          prohibiting participation in the fishing during  
12          the period of suspension; providing  
13          restrictions on operation; deleting obsolete  
14          provisions; requiring a court to notify the  
15          Department of Environmental Protection of the  
16          disposition of cases; providing for the  
17          admissibility of Marine Fisheries Commission  
18          rules into evidence; amending s. 370.025, F.S.;  
19          deleting a requirement that Marine Fisheries  
20          Commission rules be approved by the Board of  
21          Trustees; permitting the adoption of  
22          conservation and management measures when  
23          available information is incomplete or  
24          inconclusive; amending s. 370.026, F.S.;  
25          placing the Marine Fisheries Commission within  
26          the Department of Environmental Protection;  
27          amending s. 370.027, F.S.; deleting a  
28          limitation on the power of the Marine Fisheries  
29          Commission to regulate fishing gear; providing  
30          procedures for filing rules with the Department  
31          of State; conforming provisions; amending s.

1 370.062, F.S.; deleting a requirement for  
2 rulemaking for the issuance of tarpon tags;  
3 deleting a requirement for the annual issuance  
4 of tarpon tags; amending s. 370.0821, F.S.;  
5 revising the mesh size of a recreational net  
6 allowed in St. Johns County; amending s.  
7 370.092, F.S.; deleting provisions relating to  
8 the carriage of proscribed nets across Florida  
9 waters, major violations, and fines and  
10 penalties; prohibiting the harvest of marine  
11 life with nets inconsistent with s. 16, Art. X  
12 of the State Constitution; prohibiting the use  
13 of any net not approved by the Marine Fisheries  
14 Commission; defining the terms "net" or  
15 "netting" and "miles"; providing for forfeiture  
16 of nets illegally used; amending s. 370.14,  
17 F.S.; deleting a requirement that a marine  
18 patrol officer be present at the weighing of  
19 crawfish during the closed season; amending s.  
20 370.142, F.S.; providing additional penalties  
21 for violation of crawfish laws; amending s.  
22 370.15, F.S.; revising shrimp trawling  
23 regulations; amending s. 370.25, F.S.;  
24 providing the department with discretionary  
25 rulemaking authority relating to grant programs  
26 for construction of artificial fishing reefs;  
27 prescribing unlawful activities; providing  
28 criminal, civil, and administrative penalties;  
29 providing for revocation of licenses and  
30 permits of violators; repealing s. 370.08(7),  
31 F.S., relating to the use of gear and other

1 equipment; repealing s. 370.0821(3), F.S.,  
2 relating to the use of nets in St. Johns  
3 County; repealing s. 370.11(2) and (3), F.S.,  
4 relating to the length of saltwater fish and  
5 the use of nets to harvest shad; repealing s.  
6 370.1125, F.S., relating to the harvest of  
7 permit; repealing s. 370.114, F.S., relating to  
8 the taking of corals and sea fans; repealing s.  
9 370.13(2), F.S., relating to a major violation  
10 involving stone crabs; repealing s. 370.135(2),  
11 (3), and (4), F.S., relating to the harvest and  
12 sale of blue crabs; repealing s. 370.14(6),  
13 F.S., relating to a major violation involving  
14 crawfish; repealing s. 370.15(2) and (3), F.S.,  
15 relating to the harvest of shrimp; repealing s.  
16 370.151(2), F.S., relating to the Tortugas  
17 shrimp beds; repealing s. 370.153(4)(c), (d),  
18 (e), and (5)(b), (d), F.S., relating to the  
19 harvest of shrimp in Clay, Duval, Nassau,  
20 Putnam, Flagler, and St. Johns Counties;  
21 repealing s. 370.156, F.S., relating to the  
22 Florida East Coast Shrimp Bed; repealing s.  
23 370.157, F.S., relating to the harvest of  
24 shrimp in the Cedar Key closed area; providing  
25 an effective date.

26  
27 Be It Enacted by the Legislature of the State of Florida:

28  
29 Section 1. Subsections (2) and (3) of section 370.021,  
30 Florida Statutes, 1996 Supplement, are amended to read:

31

1           370.021 Administration; rules, publications, records;  
2 penalty for violation of chapter; injunctions.--

3           (2) PENALTY FOR VIOLATION.--Unless otherwise provided  
4 by law, any person, firm, or corporation who is convicted for  
5 violating any provision of this chapter, any rule of the  
6 department adopted pursuant to this chapter, or any rule of  
7 the Marine Fisheries Commission, shall be punished:

8           (a) Upon a first conviction, by imprisonment for a  
9 period of not more than 60 days or by a fine of not less than  
10 \$100 nor more than \$500, or by both such fine and  
11 imprisonment.

12           (b) On a second or subsequent conviction within 12  
13 months, by imprisonment for not more than 6 months or by a  
14 fine of not less than \$250 nor more than \$1,000, or by both  
15 such fine and imprisonment.

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

20           1. For a violation involving more than 100 illegal  
21 blue crabs, crawfish, or stone crabs, an additional penalty of  
22 \$10 for each illegal blue crab, crawfish, stone crab, or part  
23 thereof.

24           2. For a violation involving the taking or harvesting  
25 of shrimp from a nursery or other prohibited area, an  
26 additional penalty of \$10 for each pound of illegal shrimp or  
27 part thereof.

28           3. For a violation involving the taking or harvesting  
29 of oysters from nonapproved areas or the taking or possession  
30 of unculled oysters, an additional penalty of \$10 for each  
31 bushel of illegal oysters.

- 1           4. For a violation involving the taking or harvesting  
2 of clams from nonapproved areas, an additional penalty of \$100  
3 for each 500 count bag of illegal clams.
- 4           5. For a violation involving the taking, harvesting,  
5 or possession of any of the following species, which are  
6 endangered, threatened, or of special concern:
- 7           a. Shortnose sturgeon (*Acipenser brevirostrum*);  
8           b. Atlantic sturgeon (*Acipenser oxyrinchus*);  
9           c. Common snook (*Centropomus undecimalis*);  
10          d. Atlantic loggerhead turtle (*Caretta caretta*  
11 *caretta*);  
12          e. Atlantic green turtle (*Chelonia mydas mydas*);  
13          f. Leatherback turtle (*Dermochelys coriacea*);  
14          g. Atlantic hawksbill turtle (*Eretmochelys imbricata*  
15 *imbricata*);  
16          h. Atlantic ridley turtle (*Lepidochelys kempfi*); or  
17          i. West Indian manatee (*Trichechus manatus*  
18 *latirostris*),  
19
- 20 an additional penalty of \$100 for each unit of marine life or  
21 part thereof.
- 22          6. For a second or subsequent conviction within 24  
23 months for any violation of the same law or rule involving the  
24 taking or harvesting of more than 100 pounds of any finfish,  
25 an additional penalty of \$5 for each pound of illegal finfish.
- 26          7. For any violation involving the taking, harvesting,  
27 or possession of more than 1,000 pounds of any illegal  
28 finfish, an additional penalty equivalent to the wholesale  
29 value of the illegal finfish.
- 30          8.a. It shall be a major violation for any person,  
31 firm, or corporation to be simultaneously in possession of any

1 species of mullet in a quantity that is in excess of the  
2 recreational daily bag limit and any gill or other entangling  
3 net as defined in s. 16(c), Art. X of the State Constitution.  
4 Simultaneous possession under this provision shall include  
5 possession of mullet and gill or other entangling nets on  
6 separate vessels or vehicles if such vessels or vehicles are  
7 operated in coordination with one another, including vessels  
8 towed behind a main vessel.

9 b. It shall be a major violation for any person to be  
10 in possession of any species of snook, tarpon, bonefish, or  
11 redfish in a quantity that is three fish in excess of the  
12 recreational or commercial daily bag limit, or any species of  
13 trout in a quantity that is in excess of 10 fish more than the  
14 recreational or commercial daily bag limit.

15 9.a. In addition to being subject to the other  
16 penalties provided in this chapter, any violation of s. 16,  
17 Art. X of the State Constitution, subparagraph 8., s.  
18 370.092(2), or any rules of the Marine Fisheries Commission  
19 which implement the gear prohibitions and restrictions  
20 specified therein shall be considered a major violation; and  
21 any person, firm, or corporation receiving any judicial  
22 disposition other than acquittal or dismissal of such  
23 violation shall be subject to the following additional  
24 penalties:

25 (I) For a first major violation, a civil penalty of  
26 \$2,500 and suspension of all saltwater products license  
27 privileges for 90 calendar days following final disposition  
28 shall be imposed.

29 (II) For a second major violation under this  
30 subparagraph charged within 7 years of a previous judicial  
31 disposition of a violation under this subparagraph, which

1 results in a second judicial disposition other than acquittal  
2 or dismissal, a civil penalty of \$5,000 and suspension of all  
3 saltwater products license privileges for 12 months shall be  
4 imposed.

5 (III) For a third major violation under this  
6 subparagraph, charged within a 7-year period following the  
7 first major violation, resulting in a third judicial  
8 disposition other than acquittal or dismissal, a civil penalty  
9 of \$5,000, lifetime revocation of the saltwater products  
10 license, and forfeiture of all gear and equipment used in the  
11 violation shall be imposed.

12 (IV) A fourth or subsequent major violation under this  
13 subparagraph charged within a 7-year period following the  
14 first major violation, resulting in a fourth or subsequent  
15 judicial disposition other than acquittal or dismissal, shall  
16 be a felony of the third degree punishable as provided in s.  
17 775.082, s. 775.083, or s. 775.084.

18  
19 A court may suspend, defer, or withhold adjudication of guilt  
20 or imposition of sentence only for any first violation of s.  
21 16, Art. X of the State Constitution, or any rule or statute  
22 implementing its restrictions, and only when determined by a  
23 court after consideration of competent evidence of mitigating  
24 circumstances to be a nonflagrant or minor violation of those  
25 restrictions upon the use of nets. Any violation of s. 16,  
26 Art. X of the State Constitution, or any rule or statute  
27 implementing its restrictions, occurring within a 7-year  
28 period commencing upon the conclusion of any judicial  
29 proceeding resulting in any outcome other than acquittal shall  
30 be punished as a second, third, or subsequent violation  
31 accordingly.

1           b. During the period of suspension or revocation of  
2 saltwater license privileges under this section, the licensee  
3 may not participate in the taking or harvesting or attempt the  
4 taking or harvesting of saltwater products from any vessel  
5 within the waters of the state, or any other activity  
6 requiring a license, permit, or certificate issued pursuant to  
7 this chapter. Any person who violates the provisions of this  
8 sub-subparagraph is:

9           (I) Upon a first conviction, guilty of a misdemeanor  
10 of the first degree, punishable as provided in s. 775.082 or  
11 s. 775.083.

12           (II) Upon a second or subsequent conviction, guilty of  
13 a felony of the third degree, punishable as provided in s.  
14 775.082, s. 775.083, or s. 775.084.

15           c. Upon reinstatement of saltwater license privileges  
16 suspended pursuant to a violation of this section, a licensee  
17 owning or operating a vessel containing or otherwise  
18 transporting in or on Florida waters any gill net or other  
19 entangling net, or containing or otherwise transporting in  
20 nearshore and inshore Florida waters any net containing more  
21 than 500 square feet of mesh area shall remain restricted for  
22 a period of 12 months following reinstatement, to operation  
23 under the following conditions:

24           (I) Vessels subject to this reinstatement period shall  
25 be restricted to the corridors established by department rule.

26           (II) A violation of the reinstatement period  
27 provisions shall be punishable pursuant to s. 370.021(2)(a)  
28 and (b).

29           d. Rescission and revocation proceedings under this  
30 section shall be governed by chapter 120.

31

1           ~~8.a. In addition to being subject to the other~~  
2 ~~penalties provided in this chapter, any intentional violation~~  
3 ~~of rule 46-4.007(1), Florida Administrative Code, shall be~~  
4 ~~considered a major violation, and any person, firm, or~~  
5 ~~corporation committing such violation shall be subject to the~~  
6 ~~following additional penalties:~~

7           ~~(I) For a first violation within a 7-year period,~~  
8 ~~suspension of the saltwater products license for 90 days.~~

9           ~~(II) For a second major violation within a 7-year~~  
10 ~~period, a civil penalty of \$5,000 and suspension of the~~  
11 ~~saltwater products license for 12 months.~~

12           ~~(III) For a third or subsequent major violation within~~  
13 ~~a 7-year period, a civil penalty of \$5,000, lifetime~~  
14 ~~revocation of the saltwater products license, and forfeiture~~  
15 ~~of all gear and equipment used in the violation.~~

16           ~~b. During any period of license suspension or~~  
17 ~~revocation under this section, the licensee may not fish from~~  
18 ~~any vessel that is harvesting saltwater products.~~

19           ~~c. The Department of Environmental Protection may~~  
20 ~~bring a civil action to enforce the civil penalties prescribed~~  
21 ~~in this section.~~

22

23 Notwithstanding the provisions of s. 948.01, and except as  
24 provided under sub-subparagraph 9.a., a ~~no~~ court may not  
25 suspend, defer, or withhold adjudication of guilt or  
26 imposition of sentence for any major violation prescribed in  
27 this paragraph.

28           (d) The proceeds from the penalties assessed pursuant  
29 to paragraph (c) shall be deposited into the Marine Resources  
30 Conservation Trust Fund to be used for marine fisheries  
31 research.

1 (e) Permits issued to any person, firm, or corporation  
2 by the department to take or harvest saltwater products, or  
3 any license issued pursuant to s. 370.06 or s. 370.07 may be  
4 suspended or revoked by the department, pursuant to the  
5 provisions and procedures of s. 120.60, for any major  
6 violation prescribed in paragraph (c):

7 1. Upon a second conviction for a violation which  
8 occurs within 12 months after a prior violation, for up to 60  
9 days.

10 2. Upon a third conviction for a violation which  
11 occurs within 24 months after a prior violation, for up to 180  
12 days.

13 3. Upon a fourth conviction for a violation which  
14 occurs within 36 months after a prior violation, for a period  
15 of 6 months to 3 years.

16 (f) Upon the arrest and conviction for a major  
17 violation involving stone crabs, the licenseholder must show  
18 just cause why his or her license should not be suspended or  
19 revoked. For the purposes of this paragraph, a "major  
20 violation" means a major violation as prescribed in s.  
21 370.021(2)(c) for illegal stone crabs; any single violation  
22 involving possession of more than 25 stone crabs during the  
23 closed season or possession of 25 or more whole-bodied or  
24 egg-bearing stone crabs; any violation for trap molestation,  
25 trap robbing, or pulling traps at night; or any combination of  
26 violations in any 3-consecutive-year period wherein more than  
27 75 illegal stone crabs in the aggregate are involved.

28 (g) Upon the arrest and conviction for a major  
29 violation involving crawfish, the licenseholder must show just  
30 cause why his or her license should not be suspended or  
31 revoked. For the purposes of this paragraph, a "major

114-263-97

1 violation" means a major violation as prescribed in s.  
2 370.021(2)(c) for illegal crawfish; any single violation  
3 involving possession of more than 25 crawfish during the  
4 closed season or possession of more than 25 wrung crawfish  
5 tails or more than 25 egg-bearing or stripped crawfish; any  
6 violation for trap molestation, trap robbing, or pulling traps  
7 at night; or any combination of violations in any  
8 3-consecutive-year period wherein more than 75 illegal  
9 crawfish in the aggregate are involved.

10 (h) Upon the arrest and conviction for a major  
11 violation involving blue crabs, the licenseholder shall show  
12 just cause why his or her saltwater products license should  
13 not be suspended or revoked. This paragraph shall not apply  
14 to an individual fishing with no more than five traps. For  
15 the purposes of this paragraph, a "major violation" means a  
16 major violation as prescribed in s. 370.021(2)(c) for illegal  
17 blue crabs, any single violation wherein 50 or more illegal  
18 blue crabs are involved, or any combination of violations in  
19 any 3-consecutive-year period wherein more than 100 illegal  
20 blue crabs in the aggregate are involved.

21 (i) Upon the conviction for a major violation  
22 involving finfish, the licenseholder must show just cause why  
23 his or her saltwater products license should not be suspended  
24 or revoked. For the purposes of this paragraph, a major  
25 violation is as prescribed in s. 370.021(2)(c) for the taking  
26 and harvesting of illegal finfish, any single violation  
27 involving the possession of more than 100 pounds of illegal  
28 finfish, or any combination of violations in any  
29 3-consecutive-year period wherein more than 200 pounds of  
30 illegal finfish in the aggregate are involved.

31

114-263-97

1       (j) Upon final disposition of any alleged offense for  
2 which a citation for any violation of this chapter or the  
3 rules of the Marine Fisheries Commission has been issued, the  
4 court shall, within 10 days, certify the disposition to the  
5 department.

6       ~~(f)1. In cases involving the intentional or~~  
7 ~~unintentional killing of any species of tarpon, snook in~~  
8 ~~excess of five fish per person, sailfish, or bonefish during a~~  
9 ~~fishing operation wherein the targeted species is legal to~~  
10 ~~harvest, the method of fishing and type of gear used are~~  
11 ~~legal, and the fish are killed as a direct result of such~~  
12 ~~otherwise legal fishing operations, the department shall~~  
13 ~~assess a civil penalty of \$100 for each snook killed in excess~~  
14 ~~of five fish per person, or tarpon, sailfish, or bonefish~~  
15 ~~killed in excess of any bag limit. In collecting penalties,~~  
16 ~~the department shall assess an equal share of the applicable~~  
17 ~~penalty to each fisher actually involved in the fishing~~  
18 ~~operation.~~

19       ~~2. The civil penalty shall be paid in full to the~~  
20 ~~department within 30 calendar days of official notification.~~  
21 ~~The department may suspend the saltwater products license or~~  
22 ~~other saltwater fishing license of any person or boat not~~  
23 ~~paying the required civil penalty within the specified time~~  
24 ~~period. Persons contesting the assessment of any civil~~  
25 ~~penalties or any license suspension pursuant to this section~~  
26 ~~shall be entitled to a hearing pursuant to the provisions of~~  
27 ~~chapter 120.~~

28       ~~3. All moneys collected by the department pursuant to~~  
29 ~~this paragraph shall be deposited into the Marine Resources~~  
30 ~~Conservation Trust Fund.~~

31

1           (3) RULES; ADMISSIBILITY AS EVIDENCE.--Rules and  
2 regulations of the department shall be admitted as evidence in  
3 the courts of the state when accompanied by an affidavit from  
4 the secretary of the department certifying that the rule or  
5 regulation has been lawfully adopted, promulgated, and  
6 published. Rules of the Marine Fisheries Commission shall be  
7 admitted as evidence in the courts of the state when  
8 accompanied by such an affidavit from the executive director  
9 of the commission or his or her designee.~~and~~ Such affidavit  
10 shall be prima facie evidence of proper adoption,  
11 promulgation, and publication of the rule or regulation.

12           Section 2. Subsection (2) of section 370.025, Florida  
13 Statutes, is amended to read:

14           370.025 Marine fisheries; policy and standards.--

15           (2) All rules relating to saltwater fisheries adopted  
16 by the department pursuant to this chapter or adopted by the  
17 Marine Fisheries Commission ~~and approved by the Governor and~~  
18 ~~Cabinet as the Board of Trustees of the Internal Improvement~~  
19 ~~Trust Fund~~ shall be consistent with the following standards:

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

23           (b) Conservation and management measures shall be  
24 based upon the best information available, including  
25 biological, sociological, economic, and other information  
26 deemed relevant by the commission. This standard must not be  
27 construed to prevent the adoption of conservation and  
28 management measures in accordance with paragraph (a), when the  
29 available biological information is incomplete or inconclusive  
30 as to the exact status of a particular species or groups of  
31 species.

1           (c) Conservation and management measures shall permit  
2 reasonable means and quantities of annual harvest, consistent  
3 with maximum practicable sustainable stock abundance on a  
4 continuing basis.

5           (d) When possible and practicable, stocks of fish  
6 shall be managed as a biological unit.

7           (e) Conservation and management measures shall assure  
8 proper quality control of marine resources that enter  
9 commerce.

10          (f) State marine fishery management plans shall be  
11 developed to implement management of important marine fishery  
12 resources.

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

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

23          (i) Conservation and management decisions must take  
24 into account enforcibility of measures being used, in order to  
25 achieve a high level of compliance with the measures and the  
26 expected benefits to the continuing health and abundance of  
27 the marine fisheries resources of this state.

28          Section 3. Subsection (1) of section 370.026, Florida  
29 Statutes, is amended to read:

30               370.026 Marine Fisheries Commission.--

31

1           (1) There is created within the Department of  
2 Environmental Protection ~~Board of Trustees of the Internal~~  
3 ~~Improvement Trust Fund~~ a Marine Fisheries Commission which  
4 shall be composed of seven members who have resided in the  
5 state for at least 5 years. The seven members shall be  
6 appointed by the Governor, subject to confirmation by the  
7 Senate, and shall be exempt from the Career Service System.  
8 The Governor shall consider affected interests when making  
9 appointments to the commission. No single interest group shall  
10 dominate the membership of the commission. As soon as  
11 practicable after this act becomes a law, two members shall be  
12 appointed for terms ending August 1, 1985; three members shall  
13 be appointed for terms ending August 1, 1986; and the  
14 remaining members shall be appointed for terms ending August  
15 1, 1987. Thereafter, all appointments shall be for 4-year  
16 terms. If a vacancy occurs, a member shall be appointed by the  
17 Governor for the unexpired term. A commission member whose  
18 term has expired shall continue sitting on the commission with  
19 full rights until he or she has been replaced.

20           Section 4. Subsections (1), (2), and (3) of section  
21 370.027, Florida Statutes, 1996 Supplement, are amended to  
22 read:

23           370.027 Rulemaking authority with respect to marine  
24 life.--

25           (1) Pursuant to the policy and standards in s.  
26 370.025, the Marine Fisheries Commission is delegated full  
27 rulemaking authority over marine life, with the exception of  
28 endangered species, ~~subject to final approval by the Governor~~  
29 ~~and Cabinet sitting as the Board of Trustees of the Internal~~  
30 ~~Improvement Trust Fund~~, in the areas of concern herein  
31 specified. The commission is instructed to make

1 recommendations annually to the secretary ~~Governor and Cabinet~~  
2 regarding the marine fisheries research priorities and funding  
3 of the Department of Environmental Protection. All  
4 administrative and enforcement responsibilities which are  
5 unaffected by the specific provisions of ss. 370.025-370.029  
6 are ~~this act continue to be~~ the responsibility of the  
7 Department of Environmental Protection. ~~The authority to~~  
8 ~~regulate fishing gear in residential, manmade saltwater canals~~  
9 ~~is specifically not delegated to the commission and is~~  
10 ~~retained by the Legislature.~~

11 (2) Exclusive rulemaking authority in the following  
12 areas relating to marine life, with the exception of  
13 endangered species, is vested in the commission; any  
14 conflicting authority of any division or bureau of the  
15 department or any other agency of state government is  
16 withdrawn as of the effective date of the rule approved  
17 ~~proposed~~ by the commission ~~and approved by the Governor and~~  
18 ~~Cabinet~~, and the inconsistent rule, or the inconsistent part  
19 thereof, is superseded to the extent of the inconsistency:

- 20 (a) Gear specifications;
- 21 (b) Prohibited gear;
- 22 (c) Bag limits;
- 23 (d) Size limits;
- 24 (e) Species that may not be sold;
- 25 (f) Protected species;
- 26 (g) Closed areas, except for public health purposes;
- 27 (h) Quality control, except for oysters, clams,  
28 mussels, and crabs;
- 29 (i) Seasons; and
- 30 (j) Special considerations relating to eggbearing  
31 females.

1           (3)(a) The commission, pursuant to ss. 370.025-370.029  
2 ~~<O>this act~~, shall adopt rules under ~~pursuant to~~ chapter 120.  
3 When rules are ready for final adoption, the proposed rules  
4 shall be filed for adoption with the Department of State  
5 ~~submitted by the secretary for final action by the Governor~~  
6 ~~and Cabinet sitting as the Board of Trustees of the Internal~~  
7 ~~Improvement Trust Fund. The filing shall take place within 7~~  
8 days after receipt by the secretary of the approved rules from  
9 the commission in the case of permanent rules and within 24  
10 hours after receipt of any emergency rules. ~~In considering a~~  
11 ~~proposed rule recommended by the commission, the Governor and~~  
12 ~~Cabinet may only approve or disapprove the proposed rule. If~~  
13 ~~the rule is disapproved, it shall be withdrawn. The commission~~  
14 ~~shall file a rule for adoption with the Department of State~~  
15 ~~only after the rule is approved by the Governor and Cabinet.~~  
16 The secretary and department staff have ~~has~~ no authority to  
17 change any proposed rule ~~or recommendation~~ submitted by the  
18 commission or to refuse to file commission rules for adoption  
19 with the Department of State. Rules of the commission are not  
20 reviewable under s. 20.255(5).

21           (b) The secretary of the department shall appoint a  
22 management-level staff member to coordinate with the director  
23 of the commission the submission by the commission of annual  
24 research recommendations ~~proposed rules~~ for consideration  
25 ~~final approval~~ by the Governor and Cabinet.

26           Section 5. Subsection (2) of section 370.062, Florida  
27 Statutes, 1996 Supplement, is amended to read:

28           370.062 Department of Environmental Protection license  
29 program for tarpon; fees; penalties.--

30           (2) The number of tags to be ~~annually~~ issued shall be  
31 determined by rule of the Marine Fisheries Commission. ~~The~~

114-263-97

1 ~~rule shall be adopted prior to November 30 of each year for~~  
2 ~~the upcoming calendar year.~~ The commission shall in no way  
3 allow the issuance of tarpon tags to adversely affect the  
4 tarpon population.

5 Section 6. Paragraph (a) of subsection (5) of section  
6 370.0821, Florida Statutes, is amended to read:

7 370.0821 St. Johns County; use of nets.--

8 (5)(a) The term "recreational net" means a seine or  
9 similar net not exceeding 100 feet in length, ~~with mesh no~~  
10 ~~smaller than 2 1/2 inches,~~ set and hauled solely by hand and  
11 without use of any motor-driven boat or vehicle.

12 Section 7. Section 370.092, Florida Statutes, 1996  
13 Supplement, is amended to read:

14 370.092 Carriage of proscribed nets across Florida  
15 waters.--

16 (1) This section applies to all vessels containing or  
17 otherwise transporting in or on Florida waters any gill net or  
18 other entangling net and to all vessels containing or  
19 otherwise transporting in or on Florida waters any net  
20 containing more than 500 square feet of mesh area the use of  
21 which is restricted or prohibited by s. 16, Art. X of the  
22 State Constitution. This section does not apply to vessels  
23 containing or otherwise transporting in or on Florida waters  
24 dry nets which are rolled, folded, or otherwise properly  
25 stowed in sealed containers so as to make their immediate use  
26 as fishing implements impracticable.

27 (2) Every vessel containing or otherwise transporting  
28 in or on Florida waters any gill net or other entangling net  
29 and every vessel containing or otherwise transporting in or on  
30 nearshore and inshore Florida waters any net containing more  
31 than 500 square feet of mesh area shall proceed as directly,

1 continuously, and expeditiously as possible from the place  
2 where the vessel is regularly docked, moored, or otherwise  
3 stored to waters where the use of said nets is lawful and from  
4 waters where the use of said nets is lawful back to the place  
5 where the vessel is regularly docked, moored, or otherwise  
6 stored or back to the licensed wholesale dealer where the  
7 catch is to be sold. Exceptions shall be provided for docked  
8 vessels, for vessels which utilize nets in a licensed  
9 aquaculture operation, and for vessels containing trawl nets  
10 as long as the trawl's doors or frame are not deployed in the  
11 water. Otherwise, hovering, drifting, and other similar  
12 activities inconsistent with the direct, continuous, and  
13 expeditious transit of such vessels shall be evidence of the  
14 unlawful use of such nets. The presence of fish in such a net  
15 is not evidence of the unlawful use of the net if the vessel  
16 is otherwise in compliance with this section.

17 (3) ILLEGAL USE OF NETS.--

18 (a) It is unlawful to take or harvest, or to attempt  
19 to take or harvest, any marine life in Florida waters with any  
20 net that is not consistent with the provisions of s. 16, Art.  
21 X of the State Constitution. It is also unlawful to take or  
22 harvest, or to attempt to take or harvest, any marine life in  
23 Florida waters with any net, other than a handheld cast or dip  
24 net, that has not been expressly authorized for such use by  
25 rule of the Marine Fisheries Commission under s. 370.027.

26 (b) As used in s. 16, Art. X of the State Constitution  
27 and this subsection, the term "net" or "netting" must be  
28 broadly construed to include all manner or combination of mesh  
29 or webbing or any other solid or semi-solid fabric or other  
30 material used to comprise a device that is used to take or  
31 harvest marine life.

1           (c) As used in s. 16, Art. X of the State  
2 Constitution, the term "miles" must be construed as  
3 international nautical miles, each of which is equal to 1,852  
4 meters.

5           (d) Upon the arrest of any person for violation of  
6 this subsection, the arresting officer shall seize the nets  
7 illegally used. Upon conviction of the offender, the arresting  
8 authority shall destroy the nets.

9           ~~(3)(a) It shall be a major violation pursuant to this~~  
10 ~~section for any person, firm, or corporation to be~~  
11 ~~simultaneously in possession of any species of mullet in~~  
12 ~~excess of the recreational daily bag limit and any gill or~~  
13 ~~other entangling net as defined in s. 16(c), Art. X of the~~  
14 ~~State Constitution. Simultaneous possession under this~~  
15 ~~provision shall include possession of mullet and gill or other~~  
16 ~~entangling nets on separate vessels or vehicles where such~~  
17 ~~vessels or vehicles are operated in coordination with one~~  
18 ~~another including vessels towed behind a main vessel.~~

19           ~~(b) It shall be a major violation pursuant to this~~  
20 ~~section for any person to be in possession of any species of~~  
21 ~~trout, snook, or redfish which is three fish in excess of the~~  
22 ~~recreational or commercial daily bag limit.~~

23           ~~(4)(a) In addition to being subject to the other~~  
24 ~~penalties provided in this chapter, any violation of s. 16,~~  
25 ~~Art. X of the State Constitution or any rules of the Marine~~  
26 ~~Fisheries Commission which implement the gear prohibitions and~~  
27 ~~restrictions specified therein shall be considered a major~~  
28 ~~violation; and any person, firm, or corporation receiving any~~  
29 ~~judicial disposition other than acquittal or dismissal of such~~  
30 ~~violation shall be subject to the following additional~~  
31 ~~penalties:~~

114-263-97

1           1. ~~For a first major violation within a 7-year period,~~  
2 ~~a civil penalty of \$2,500 and suspension of all saltwater~~  
3 ~~products license privileges for 90 calendar days following~~  
4 ~~final disposition shall be imposed.~~

5           2. ~~For a second major violation under this paragraph~~  
6 ~~charged within 7 years of a previous judicial disposition,~~  
7 ~~which results in a second judicial disposition other than~~  
8 ~~acquittal or dismissal, a civil penalty of \$5,000 and~~  
9 ~~suspension of all saltwater products license privileges for 12~~  
10 ~~months shall be imposed.~~

11           3. ~~For a third and subsequent major violation under~~  
12 ~~this paragraph, charged within a 7-year period, resulting in a~~  
13 ~~third or subsequent judicial disposition other than acquittal~~  
14 ~~or dismissal, a civil penalty of \$5,000, lifetime revocation~~  
15 ~~of the saltwater products license, and forfeiture of all gear~~  
16 ~~and equipment used in the violation shall be imposed.~~

17  
18 ~~A court may suspend, defer or withhold adjudication of guilt~~  
19 ~~or imposition of sentence for any first violation of s. 16,~~  
20 ~~Art. X of the State Constitution, or any rule or statute~~  
21 ~~implementing its restrictions, determined by a court only~~  
22 ~~after consideration of competent evidence of mitigating~~  
23 ~~circumstances to be a nonflagrant or minor violation of those~~  
24 ~~restrictions upon the use of nets. Any violation of s. 16,~~  
25 ~~Art. X of the State Constitution, or any rule or statute~~  
26 ~~implementing its restrictions, occurring within a 7-year~~  
27 ~~period commencing upon the conclusion of any judicial~~  
28 ~~proceeding resulting in any outcome other than acquittal shall~~  
29 ~~be punished as a second, third, or subsequent violation~~  
30 ~~accordingly.~~

31

1           ~~(b) During the period of suspension or revocation of~~  
2 ~~saltwater license privileges under this section, the licensee~~  
3 ~~may not participate in the taking or harvesting of saltwater~~  
4 ~~products from any vessel within the waters of the state, or~~  
5 ~~any other activity requiring a license, permit, or certificate~~  
6 ~~issued pursuant to this chapter.~~

7           ~~(c) Upon reinstatement of saltwater license privileges~~  
8 ~~suspended pursuant to a violation of this section, a licensee~~  
9 ~~owning or operating a vessel containing or otherwise~~  
10 ~~transporting in or on Florida waters any gill net or other~~  
11 ~~entangling net, or containing or otherwise transporting in~~  
12 ~~nearshore and inshore Florida waters any net containing more~~  
13 ~~than 500 square feet of mesh area shall remain restricted for~~  
14 ~~a period of 12 months following reinstatement, to operation~~  
15 ~~under the following conditions:~~

16           ~~1. Vessels subject to this reinstatement period shall~~  
17 ~~be restricted to the corridors established by department rule.~~

18           ~~2. A violation of the reinstatement period provisions~~  
19 ~~shall be punishable pursuant to s. 370.021(2)(a) and (b).~~

20           ~~(d) Rescission and revocation proceedings under this~~  
21 ~~section shall be governed by chapter 120.~~

22           (4)(5) The department is authorized to make and adopt  
23 reasonable rules, regulations, and orders, including emergency  
24 rules, to implement this section. The department shall adopt  
25 emergency rules to implement the provisions of subparagraph  
26 (4)(c)1. by August 1, 1996.

27           Section 8. Subsection (8) of section 370.14, Florida  
28 Statutes, 1996 Supplement, is amended to read:

29           370.14 Crawfish; regulation.--

30           (8)(a) By a special permit granted by the Division of  
31 Law Enforcement, a Florida-licensed seafood dealer may

1 lawfully import, process, and package saltwater crawfish or  
2 uncooked tails of the species *Panulirus argus* during the  
3 closed season. However, crawfish landed under special permit  
4 shall not be sold in the state.

5 (b) The licensed seafood dealer importing any such  
6 crawfish under the permit shall, 12 hours prior to the time  
7 the seagoing vessel or airplane delivering such imported  
8 crawfish enters the state, notify the Division of Law  
9 Enforcement as to the seagoing vessel's name or the airplane's  
10 registration number and its captain, location, and point of  
11 destination.

12 (c) At the time the crawfish cargo is delivered to the  
13 permitholder's place of business, the crawfish cargo shall be  
14 ~~weighed in the presence of the marine patrol officer, and~~  
15 shall be available for inspection by the department. A signed  
16 receipt of such quantity in pounds shall be forwarded to  
17 ~~furnished to said officer, which receipt shall be filed by the~~  
18 ~~marine patrol officer with~~ the Division of Law Enforcement's  
19 local Florida Marine Patrol office within 48 hours after  
20 shipment weigh-in completion. If requested by the department,  
21 the weigh-in process must be delayed up to 4 hours to allow a  
22 department representative to be present during the process  
23 Enforcement.

24 (d) Within 48 hours after the shipment weigh-in  
25 completion, ~~from the time the receipt is given to the marine~~  
26 ~~patrol officer,~~ the permitholder shall submit to the Division  
27 of Law Enforcement, on forms provided by the division, a sworn  
28 report of the quantity in pounds of the saltwater crawfish  
29 received, which report shall include the location of said  
30 crawfish and a sworn statement that said crawfish were taken  
31 at least 50 miles from Florida's shoreline. The landing of

1 crawfish or crawfish tails from which the eggs, swimmerettes,  
2 or pleopods have been removed; the falsification of  
3 information as to area from which crawfish were obtained; or  
4 the failure to file the report called for in this section  
5 shall be grounds to revoke the permit.

6 (e) Each permitholder shall keep throughout the period  
7 of the closed season copies of the bill of sale or invoices  
8 covering each transaction involving crawfish imported under  
9 this permit. Such invoices and bills shall be kept available  
10 at all times for inspection by the division.

11 Section 9. Paragraph (c) of subsection (2) of section  
12 370.142, Florida Statutes, 1996 Supplement, is amended to  
13 read:

14 370.142 Spiny lobster trap certificate program.--

15 (2) TRANSFERABLE TRAP CERTIFICATES; TRAP TAGS; FEES;  
16 PENALTIES.--The Department of Environmental Protection shall  
17 establish a trap certificate program for the spiny lobster  
18 fishery of this state and shall be responsible for its  
19 administration and enforcement as follows:

20 (c) Prohibitions; penalties.--

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

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

1           3. In addition to any other penalties provided in s.  
2 370.021, and unless otherwise provided in this section, a  
3 commercial harvester, as defined by rule 46-24.002(1), Florida  
4 Administrative Code, who violates the provisions of this  
5 section, or the provisions of chapter 46-24, Florida  
6 Administrative Code relating to traps, shall be punished as  
7 follows:

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

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

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

30  
31

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

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

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

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

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

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

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

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

31

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

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

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

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

22           Section 10. Subsection (6) of section 370.15, Florida  
23 Statutes, is amended to read:

24           370.15 Shrimp; regulation.--

25           (6) SHRIMP TRAWLING.--All persons, firms, and  
26 corporations desiring to trawl for shrimp within areas in  
27 which trawling is permitted shall have a noncommercial trawl  
28 or net registration or purchase a saltwater products license  
29 issued to a valid boat registration or in the name of an  
30 individual pursuant to s. 370.06. The saltwater products  
31 license shall remain on board at all times and is subject to

1 immediate revocation upon conviction for violation of this  
2 section or when it becomes apparent that the best interests of  
3 saltwater conservation will be served by such action. A  
4 noncommercial trawl or net registration must be issued to each  
5 net used to take shrimp for noncommercial purposes. ~~Such net  
6 or trawl shall have a corkline measurement of 16 feet or less.  
7 Possession of shrimp under a noncommercial registration is  
8 limited to 25 pounds while on the water. Due to the varied  
9 habitats and types of bottoms and hydrographic conditions  
10 embraced by the open fishing area, the division shall have the  
11 authority to specify and regulate the types of gear that may  
12 be used in the different sections of the open areas.~~

13 Section 11. Subsection (2) of section 370.25, Florida  
14 Statutes, is amended and subsections (4) and (5) are added to  
15 that section to read:

16 370.25 Artificial fishing reef program; construction  
17 grants to local governments.--

18 (2) The department may ~~shall~~ adopt by rule procedures  
19 for submitting a grant application and criteria for allocating  
20 available funds. Such criteria may ~~shall~~ include, ~~but not be~~  
21 ~~limited to,~~ the following:

22 (a) The number of artificial fishing reefs currently  
23 located in the general vicinity;

24 (b) The demand and public support for the proposed  
25 reef;

26 (c) The number of public and private access points to  
27 the proposed reef;

28 (d) The commitment of the local government to provide  
29 funds to construct and maintain the proposed reef; and

30 (e) The estimated cost of constructing the proposed  
31 reef.

1           (4) It is unlawful for any person to:  
2           (a) Transport across state waters potential  
3 reef-construction materials, unless a valid  
4 artificial-reef-construction permit issued by the department  
5 and either an inspection manifest issued by the department or  
6 a department-certified inspector is on board the transporting  
7 vessel. The permit and manifest must be available for  
8 inspection upon request. The owner of the vessel must return a  
9 copy of the permit and manifest to the department upon  
10 placement of the inspected reef materials.  
11           (b) Store on a vessel potential reef-construction  
12 materials, unless the materials have been inspected and  
13 approved or are scheduled to be inspected.  
14           (c) Place artificial-reef-construction materials in  
15 state waters outside zones permitted under the terms and  
16 conditions defined in the applicable environmental permits and  
17 under United States Army Corps of Engineers permits held by  
18 the department or a local government.  
19           (d) Place in state waters artificial-reef-construction  
20 materials that have not been inspected and approved by the  
21 department or a department-certified inspector.  
22           (5)(a) An initial violation of subsection (4) is a  
23 misdemeanor of the first degree, punishable as provided in s.  
24 775.082 or s. 775.083. A violation of subsection (4) which is  
25 committed within 12 months after a previous violation of that  
26 subsection is a felony of the third degree, punishable as  
27 provided in s. 775.082 or s. 775.083.  
28           (b) If the operator of a vessel violates paragraph  
29 (a), paragraph (c), or paragraph (d) of subsection (4), a law  
30 enforcement officer must order the vessel operator to return  
31 immediately to port. The vessel operator must immediately

1 dispose of the materials according to applicable  
2 waste-disposal laws.

3 (c) If, at the time of the violation, the vessel:

4 1. Is moored, the registered owner of the vessel is  
5 responsible for the violation.

6 2. Is underway, the operator of the vessel and the  
7 registered owner of the vessel are responsible for the  
8 violation.

9 (d) In addition to seeking criminal penalties, the  
10 department may levy an administrative fine for a violation of  
11 subsection (4) in an amount not to exceed \$5,000, may seek  
12 civil penalties, and may revoke existing reef-construction  
13 permits and other state marine licenses held by the violator.

14 Section 12. Subsection (7) of section 370.08, Florida  
15 Statutes, is repealed.

16 Section 13. Subsection (3) of section 370.0821,  
17 Florida Statutes, is repealed.

18 Section 14. Subsections (2) and (3) of section 370.11,  
19 Florida Statutes, are repealed.

20 Section 15. Section 370.1125, Florida Statutes, is  
21 repealed.

22 Section 16. Section 370.114, Florida Statutes, is  
23 repealed.

24 Section 17. Subsection (2) of section 370.13, Florida  
25 Statutes, is repealed.

26 Section 18. Subsections (2), (3), and (4) of section  
27 370.135, Florida Statutes, are repealed.

28 Section 19. Subsection (6) of section 370.14, Florida  
29 Statutes, 1996 Supplement, is repealed.

30 Section 20. Subsections (2) and (3) of section 370.15,  
31 Florida Statutes, are repealed.

