

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1050

SPONSOR: Appropriations Subcommittee on General Government and Senator Smith

SUBJECT: Fish & Wildlife Conservation Commission

DATE: April 10, 2003                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Molloy</u>	<u>Kiger</u>	<u>NR</u>	<u>Favorable</u>
2.	<u>Hayes</u>	<u>Hayes</u>	<u>AGG</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>AP</u>	<u>Withdrawn: Fav/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The committee substitute provides that it is a major violation for unlicensed persons required to be licensed to sell or purchase saltwater products, or to harvest or attempt to harvest any saltwater product with the intent to sell. The committee substitute makes technical corrections to section 370.021, Florida Statutes. The bill creates additional misdemeanor penalties and fines, felony penalties, civil penalty assessments, mandatory jail sentences, and suspension or revocation of all hunting and fishing license privileges for persons committing multiple violations. Felony penalties with mandatory jail sentences and civil penalty assessments are created for persons who sell or purchase, or who attempt to sell or purchase, any saltwater products after all fishing license privileges have been suspended or permanently revoked.

The bill raises the threshold for reporting damage to vessels or other property in the case of collision, accident, or other casualties involving a vessel in, upon, or entering into the water, from \$500 to \$2000. Laws requiring the Fish & Wildlife Conservation Commission (FWC) to establish permanent anchorage buoys within Silver Glen Run and Silver Glen Springs are repealed.

This bill repeals provisions relating to FWC licensing requirements for live bait shrimp licenses, and equipment required to maintain live shrimp on board shrimp fishing vessels.

This bill provides consistency among penalties for blue crab, stone crab, and lobster trap theft and removal of trap contents. The bill provides a definition and willful standard for the molestation of traps among all three fisheries.

This bill substantially amends the following sections of the Florida Statutes: 370.021, 327.30, 327.43, 370.1535, 370.154, 370.01, 370.061, 370.1107, 370.13, 370.135, 370.142.

This bill repeals the following subsections of the Florida Statutes: 370.15 (6) and 370.153(3)(c).

## II. Present Situation:

### Illegal Harvest, Sale or Purchase of Saltwater Products

Licensed commercial fishermen who are convicted of fishing illegally may be assessed criminal and administrative penalties which can include jail time, fines, civil penalties, and suspension or revocation of a saltwater products license. Licensed wholesale and retail dealers who are convicted of illegally purchasing or selling saltwater products also are subject to criminal and administrative penalties which can include jail time, fines, civil penalties, and suspension or revocation of a dealer's license. However, unlicensed commercial fishermen and unlicensed saltwater product dealers who harvest, attempt to harvest, purchase, or sell saltwater products are only subject to misdemeanor penalties of up to 6 months of imprisonment or fines of up to \$1,000, or both.

### Reporting Vessel Damage

The FWC's criteria for reporting damage to vessels or other property from boating collisions or accidents is \$500 which was consistent with the United States Coast Guard's reporting criteria. In 2001, the Coast Guard proposed raising the threshold of property damage for reports of accidents involving recreational vessels from \$500 to \$2,000, and in July 2002, 33 CFR 173.55 was revised to provide that the operators of vessels must submit casualty or accident reports to the proper authority if damage to the vessel or other property totals \$2,000 or more, or there is a complete loss of vessel. The threshold does not apply to accidents involving injuries requiring treatment or resulting in death which must always be reported.

### Silver Glen Run and Silver Glen Springs

In 1994, the Legislature enacted Chapter 94-341, Laws of Florida, which directed that the Department of Environmental Protection mark a navigation channel and establish permanent anchorage buoys within Silver Glen Run and Silver Glen Springs, located in the Ocala National Forest. Silver Glen Run flows from the Springs to Lake George, which is one of the chain of lakes along the St. Johns River. Chapter 94-341 prohibited vessel anchoring or mooring except on the permanent buoys, and provided that persons violating this provision will receive a uniform boating citation requiring an appearance in county court and a possible fine of not more than \$500.

In 1999, the FWC was created and the Legislature transferred the responsibility for the navigation channel markers and the permanent buoys from the Department to the FWC. The FWC confirms that markers have been placed in the navigation channel but no permanent mooring buoys have been installed due to a lack of funding. According to the FWC, local ordinances enacted by both Marion and Lake counties prohibit the possession of alcohol in Silver Glen Springs and Silver Glen Run, which has resulted in less boating traffic in the Run and eliminated the need for anchorage buoys for boating safety purposes.

### Live Bait Shrimp Licenses / Dead Shrimp Production

Subsection (6) of s. 370.15, F.S., provides that live bait shrimp can be caught at any time but only by persons holding a license issued by the FWC. Licensees may only use gear approved by the FWC and can only fish for live bait shrimp under conditions specified by the FWC. Any vessel fishing for live bait shrimp must be equipped with live bait shrimp tanks. No more than 5 pounds of dead shrimp can be on board any live bait shrimp fishing vessel at any time.

The FWC can now track live bait shrimp harvests using saltwater product license information so a live bait shrimp license is no longer necessary. Also, as authorized by the State Constitution, FWC rules regulate the gear and conditions under which live bait shrimp may be harvested, so statutory provisions can be repealed.

### **III. Effect of Proposed Changes:**

This bill provides that it is a major violation for an unlicensed person who is required to have a saltwater products license, or a wholesale or retail dealer's license, to sell, purchase, harvest, or attempt to harvest saltwater products. In addition to being subject to misdemeanor penalties and fines, and monetary assessments for possession of certain illegal saltwater products, the bill creates the following penalties:

#### Illegally selling or purchasing saltwater products

1. Upon a first conviction, unlicensed persons who are required to have a license to sell or purchase saltwater products can be imprisoned for not more than 60 days, or fined not less than \$100 but not more than \$500, or both.
2. Upon a second violation, unlicensed persons who are required to have a license to sell or purchase saltwater products commit a 1st degree misdemeanor. Punishment can include up to 1 year of jail time, or a fine of no more than \$1,000, or both. In addition, a civil penalty of up to \$2,500 may be assessed and all chapter 370 and 372 license privileges can be suspended for not more than 90 days.
3. A third violation is a 1st degree misdemeanor punishable by up to 1 year of jail time, or a fine of no more than \$1,000, or both. A mandatory jail term of 6 months is imposed, a civil penalty of up to \$5,000 may be assessed and all chapter 370 and 372 license privileges can be suspended for not more than 6 months.
4. A third violation committed within one year after a second violation is a 3rd degree felony, punishable by up to 5 years in jail, or a fine of up to \$5,000 or both. A mandatory jail term of 1 year is imposed, and a civil penalty in the amount of \$5,000 must be assessed. All license privileges under chapters 370 and 372 are permanently revoked.
5. A fourth violation committed at any time is a 3rd degree felony, punishable by up to 5 years in jail, or a fine of no more than \$5,000, or both. A mandatory jail term of 1 year and

assessment of a civil penalty of \$5,000 are required. All chapter 370 and 372 license privileges are permanently revoked.

6. Persons whose licenses have been permanently revoked commit a 3rd degree felony if they are found guilty of selling or purchasing saltwater products, or are found guilty of selling or attempting to sell saltwater products. Punishment includes a fine of up to \$5,000, or a jail sentence of up to 5 years, or both. Mandatory punishment includes 1 year in jail, and assessment of a civil penalty of \$5,000. All property involved in the commission of the violation is forfeited.

7. Persons whose licenses have been suspended and who are found guilty of selling or purchasing saltwater products, or attempting to sell or purchase saltwater products, commit the following:

a. For a first or second violation, a misdemeanor of the 2nd degree, punishable by up to 60 days in jail, or a fine of not more than \$500, or both. Also, a civil penalty of up to \$2,500 can be assessed, and all chapter 370 and 372 license privileges can be suspended for an additional 90 days.

b. For a second violation within 12 months after a first violation, a 3rd degree felony, punishable by up to 5 years in jail, or a fine of \$5,000, or both, with mandatory imprisonment of 1 year. Also, civil penalties can be assessed up to \$5,000, and all license privileges under chapters 370 and 372 are subject to a 6-month suspension. All property involved in the commission of the violation is forfeited.

c. For a third violation occurring within 2 years after a second violation or any subsequent violation is committed, a 3rd degree felony, carrying a mandatory jail term of 1 year and a mandatory civil penalty of up to \$5,000. All chapter 370 and 372 license privileges must be suspended for not more than 24 months. All property involved in the commission of the offense is forfeited.

Illegally harvesting or attempting to harvest saltwater product with intent to sell without purchasing a saltwater products license with required endorsements, if any.

1. A first violation is punishable by a jail term of not more than 60 days, or a fine of not less than \$100 or more than \$500, or both.

2. A second violation is a 1st degree misdemeanor, punishable by up to 1 year in jail, or a fine of up to \$1,000, or both. In addition, a civil penalty of up to \$2,500 can be assessed, and all license privileges under chapters 370 and 372 can be suspended for up to 90 days.

3. A third violation is a 1st degree misdemeanor, punishable up to 1 year in jail, or a fine of up to \$1,000, or both. Mandatory jail time of 6 months must be imposed. A civil penalty of up to \$5,000 may be assessed, and all license privileges under chapters 370 and 372 can be suspended for up to 6 months.

4. A third violation committed within 1 year after a second violation is a 3rd degree felony, punishable by up to 5 years in jail, or a fine of up to \$5,000, or both. Mandatory jail time of 1 year must be imposed, and an additional civil penalty of \$5,000 must be assessed. All chapters 370 and 372 license privileges must be permanently revoked.

5. A fourth violation committed at any time is a 3rd degree felony, punishable by up to 5 years in jail, or a fine of up to \$5,000, or both. Mandatory jail time of 1 year must be imposed, and an additional civil penalty of \$5,000 must be assessed. All chapters 370 and 372 license privileges must be permanently revoked.

The bill provides that for these purposes, "violation" means any judicial disposition other than acquittal or dismissal.

#### Confiscation and Sale of Perishable Saltwater Products

This bill provides consistency among penalties for blue crab, stone crab, and lobster trap theft and removal of trap contents. The bill provides a definition and willful standard for the molestation of traps among all three fisheries.

#### Other Issues

This bill raises the threshold for reporting damage to vessels or other property in the case of collision, accident, or other casualties involving a vessel in, upon, or entering into the water, from \$500 to \$2000. Laws requiring the Fish & Wildlife Conservation Commission (FWC) to establish permanent anchorage buoys within Silver Glen Run and Silver Glen Springs are repealed. License and equipment requirements to take and store live bait shrimp on board vessels are repealed, and conforming revisions are made to statutory provisions regulating dead shrimp production permits.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

The economic impact on the private sector is indeterminate. The bill does provide for the mandatory assessment of civil penalties imposed in the amount of \$2,500 or \$5,000 against persons committing multiple violations. Also, all new penalties created in the bill are in addition to penalties already established in s. 370.021, Florida Statutes. For persons convicted under the new provisions of the bill who illegally possess saltwater product such as stone crabs, blue crabs, lobster, shrimp, or certain other finfish, additional monetary penalties apply.

**C. Government Sector Impact:**

The bill requires mandatory jail terms for persons committing multiple violations so some impact on the criminal justice system is expected. This bill was reviewed on April 4, 2003 by the Criminal Justice Impact Conference conducted by the Legislature's Office of Economic & Demographic Research and determined to have an insignificant economic impact on the need for additional state prison beds.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.