

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1639 w/CS Saltwater Products

**SPONSOR(S):** Davis

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1050

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Public Lands &amp; Water Resources (Sub)</u>	<u>11 Y, 0 N</u>	<u>Camechis</u>	<u>Lotspeich</u>
2) <u>Natural Resources</u>	<u>16 Y, 0 N w/CS</u>	<u>Camechis</u>	<u>Lotspeich</u>
3) <u>Finance &amp; Tax</u>	<u>20 Y, 2 N</u>	<u>Levin</u>	<u>Diez-Arguelles</u>
4) <u>Agriculture &amp; Environment Apps. (Sub)</u>	<u>11 Y, 0 N</u>	<u>Sneed</u>	<u>Dixon</u>
5) <u>Appropriations</u>		<u>Dixon</u>	<u>Hansen</u>

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### SUMMARY ANALYSIS

This bill:

- Deletes the requirement for the Florida Fish & Wildlife Conservation Commission to establish permanent anchor buoys within Silver Glen Run and Silver Glen Springs;
- Increases from \$500 to \$2000 the threshold for reporting damage to a vessel or other property in the case of collision, accident, or other casualties involving a vessel in, upon, or entering into water;
- Provides that it is a major violation for any unlicensed person (who is required by statute to be licensed) to sell or purchase saltwater products, or to harvest or attempt to harvest any saltwater product with the intent to sell. It creates additional penalties for unlicensed activities including felony penalties, civil penalty assessments, mandatory jail sentences, and suspension or revocation of all hunting and fishing license privileges for persons committing multiple violations;
- Revises penalties for theft of or from blue crab traps, stone crab traps, or spiny lobster traps; and
- Repeals provisions regarding live bait shrimping licenses and equipment requirements for live bait shrimping vessels.
- Due to increases in fines, the bill may result in increased revenue collections to the state.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1639g.ap.doc

**DATE:** April 17, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |  |   |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill does not expand individual freedom inasmuch as the bill increases penalties for unlicensed saltwater fishing with the intent to sell, unlicensed wholesale distribution of saltwater products, and unlicensed retail sale of saltwater products. In addition, the bill increases penalties for unauthorized possession of certain saltwater traps or removal of trap contents.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Buoys in Silver Glen Run and Silver Glen Springs Navigation Channel**

**Present Situation:** Section 327.43, F.S., requires the Florida Fish and Wildlife Commission (FWCC) to establish a navigation channel and permanent anchorage buoys within Silver Glen Run and Silver Glen Springs. The navigation channel has been created but the anchorage buoys have not been established.

According to the FWCC, this requirement was enacted when numerous boats anchored in the area, raising concerns regarding boater safety. Subsequent to enactment of s. 327.43, F.S., local governments adopted ordinances prohibiting possession of alcohol in these areas, resulting in a decline in boater usage.

According to the FWCC, the Department of Environmental Protection (DEP) has expressed concern relating to water turbidity, damage to submerged grasses, and concerns that hydrilla may proliferate in the areas.

**Effect of Proposed Changes:** This bill amends s. 253.035, F.S., to eliminate the requirement for the FWCC to establish a navigation channel and permanent anchor buoys within Silver Glen Run and Silver Glen Springs.

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

**Present Situation:** Licensed commercial fishermen who are convicted of fishing illegally are subject to criminal and administrative penalties which may include jail time, fines, civil penalties, and suspension or revocation of a saltwater products license.<sup>1</sup> Licensed wholesale and retail saltwater products dealers who are convicted of illegally purchasing or selling saltwater products also are subject to criminal and administrative penalties including jail time, fines, civil penalties, and suspension or revocation of a dealer's license.<sup>2</sup> However, unlicensed commercial fishermen and unlicensed saltwater product dealers who harvest, attempt to harvest, purchase, or sell saltwater products are subject to imprisonment for not more than 60 days, or fined between \$100 and \$500, or both, for a first conviction. On a second or subsequent conviction within 12 months, unlicensed activity is punishable by

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<sup>1</sup> s. 370.021, F.S.

<sup>2</sup> s. 370.021(5), F.S.

imprisonment for not more than 6 months or by a fine between \$250 and \$1,000, or by both fine and imprisonment.<sup>3</sup> FWCC asserts that low penalties for unlicensed activity results in an unfair marketing advantage benefiting those who purchase, sell, or fish without the appropriate commercial license. According to the FWCC, the penalties for unlicensed activities are so minor that they have become a cost of doing business for unlicensed persons and do not serve as a deterrent.

**Effect of Proposed Changes:** This bill provides that it is a major violation for any person to sell or purchase any saltwater product or harvest or attempt to harvest any saltwater product with intent to sell without the required saltwater products license, wholesale or retail dealer's license.

I. Any person who sells or purchases any saltwater product without the required permit is subject to the following penalties:

- A first violation is a second degree misdemeanor punishable as provided in s. 775.082 or 775.083, F.S., which includes an indefinite term of imprisonment not exceeding 60 days and a \$500 fine.
- A second violation is a first degree misdemeanor subject to imprisonment for up to one year under s. 775.082, F.S., a \$1,000 fine under s. 775.083, F.S., a civil penalty of up to \$2,500, and suspension of all FWCC commercial and recreational fishing and hunting licenses privileges for up to 90 days.
- A third violation is a first degree misdemeanor subject to imprisonment for up to one year under s. 775.082, F.S., a \$1,000 fine under s. 775.083, F.S., with a mandatory minimum term of imprisonment of 6 months. A civil penalty of up to \$5,000 may be assessed and all FWCC commercial and recreational hunting and fishing license privileges may be suspended for a period not exceeding 180 days.
- A third violation within 1 year of a second violation is a third degree felony subject to imprisonment for up to five years under s. 775.082, F.S., a \$5,000 fine under s. 775.083, F.S., with penalties including a mandatory minimum term of imprisonment of 1 year, a civil penalty of \$5,000, and a permanent revocation of all FWCC commercial and recreational hunting and fishing license privileges.
- A fourth violation and subsequent violation is a third degree felony subject to imprisonment for up to five years under s. 775.082, F.S., a \$5,000 fine under s. 775.083, with penalties including a mandatory minimum term of imprisonment of 1 year, a mandatory civil penalty of \$5,000, and a permanent revocation of all FWCC commercial and recreational hunting and fishing license privileges.

II. Any person whose commercial license privileges have been permanently revoked and who thereafter sells or purchases or attempts to sell or purchase any saltwater product is guilty of a third degree felony subject to imprisonment for up to five years under s. 775.082, F.S., a \$5,000 fine under s. 775.083, with a mandatory minimum term of imprisonment of 1 year and a mandatory civil penalty of \$5,000. All property involved in the offense must be forfeited pursuant to s. 370.061, F.S.

III. Any person whose commercial license privileges are under suspension and who during the period of suspension sells or purchases or attempts to sell or purchase any saltwater product is subject to the following additional penalties:

- A first violation or a second violation occurring more than 12 months after the first violation is a first degree misdemeanor with penalties that may include imprisonment for up to one year, a

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<sup>3</sup> s. 370.021(1), F.S.

civil penalty of up to \$2,500, and suspension of all commercial and recreational hunting and fishing license privileges for a period not exceeding 90 days.

- A second violation occurring within 12 months of a first violation is a third degree felony, with a mandatory minimum term of imprisonment of 1 year, a civil penalty of up to \$5,000, and an additional suspension of all commercial and recreational hunting and fishing license privileges for a period not exceeding 180 days. All property involved in the offense must be forfeited pursuant to s. 370.061.
- A third or subsequent violation is a third degree felony with a mandatory minimum term of imprisonment of 1 year, a mandatory civil penalty of up to \$5,000, and an additional suspension of all commercial and recreational hunting and fishing license privileges for a period not exceeding 24 months. All property involved in the offense must be forfeited pursuant to s. 370.061.

IV. Any person who harvests or attempts to harvest any saltwater product with intent to sell, without a saltwater products license and the requisite endorsements, is subject to the following additional penalties:

- A first violation is a misdemeanor of the second degree subject to a \$500 fine and a term of imprisonment not exceeding 60 days.
- A second violation is a first degree misdemeanor subject to a \$1000 fine and a term of imprisonment not exceeding 1 year under ch. 775, F.S., with additional penalties that may include a civil penalty of up to \$2,500 and suspension of all commercial and recreational hunting and fishing license privileges for a period not exceeding 90 days.
- A third violation is a first degree misdemeanor subject to a \$1000 fine and a term of imprisonment not exceeding 1 year under ch. 775, F.S., with a mandatory minimum term of imprisonment of 6 months, with other possible penalties including a civil penalty of up to \$5,000 and suspension of all commercial and recreational hunting and fishing license privileges for a period not exceeding 180 days.
- A third violation within 1 year after a second violation is a third degree felony subject to a \$5000 fine and a term of imprisonment not exceeding 5 years under ch. 775, F.S., with a mandatory minimum term of imprisonment of 1 year, a mandatory civil penalty of \$5,000, and mandatory permanent revocation of all commercial and recreational hunting and fishing license privileges.
- A fourth violation is a third degree felony subject to a \$5000 fine and a term of imprisonment not exceeding 5 years under ch. 775, F.S., with a mandatory minimum term of imprisonment of 1 year, a mandatory civil penalty of \$5,000, and mandatory permanent revocation of all commercial and recreational hunting and fishing license privileges.

### **Live Bait Shrimping**

**Present Situation:** Section 370.15(6), F.S., permits live bait shrimping at any time but only by persons holding a no-cost license issued by the FWCC. Licensees must use certain gear under conditions specified by rule of the FWCC. A license is revocable when the holder does not comply with the laws and regulations applicable to saltwater conservation. All vessels fishing for live bait shrimp must be equipped with live bait shrimp tanks, and no more than 5 pounds of dead shrimp are permitted on board a live bait shrimp fishing vessel at any time.

According to FWCC, the original purpose of the license was to allow the FWCC to track harvest of live bait shrimp and ensure that required gear was on board fishing vessels. The FWCC now believes that

the current harvest reporting requirement for all commercial fisheries tracks live bait shrimp harvests sufficiently, rendering the no-cost license required by s. 370.15(6), F.S., unnecessary.

**Effect of Proposed Changes:** This bill repeals the license and equipment requirements applicable to live bait shrimp fishing, and conforms related statutory provisions. However, the bill does not repeal the live bait shrimp license requirement in s. 370.153, F.S., applicable to Nassau, Duval, St. Johns, Putnam, Flagler, and Clay Counties.

### **Reporting Damage to Vessels.**

**Present Situation:** If there is a collision, accident, or other casualty involving a vessel in or upon or entering into or exiting from the water, including capsizing, collision with another vessel or object, sinking, personal injury requiring medical treatment beyond immediate first aid, death, disappearance of any person from on board under circumstances which indicate the possibility of death or injury, or damage to any vessel or other property in an apparent aggregate amount of at least \$500, the operator must immediately provide notice of the accident to one of the following agencies: the Division of Law Enforcement of the FWCC; the sheriff of the county within which the accident occurred; or the police chief of the municipality within which the accident occurred.

This reporting requirement tracked the Coast Guard's reporting requirements until the Coast Guard increased its property damage notice threshold from \$500 to \$2000 in July 2002.<sup>4</sup>

**Effect of Proposed Changes:** This bill raises the reporting threshold for damage to vessels or other property from \$500 to \$2000, conforming Florida's reporting requirements to the recently updated Coast Guard requirements. This modification does not alter the current practice of reporting every incident involving injuries requiring treatment or resulting in death.

### **Penalties for theft of or from saltwater traps.**

**Present Situation:** Pursuant to s. 370.1107(2)(c), F.S., if a person is arrested and convicted of the theft of a licensed trap, the person must show cause why his or her license should not be suspended or permanently revoked.

**Effect of Proposed Changes:** The bill amends s. 370.1107(2)(c), F.S., to provide that upon the receipt of any judicial disposition other than dismissal or acquittal on a charge of trap theft the person will permanently lose all saltwater fishing privileges, including licenses, trap certificates and the ability to transfer trap certificates.

### **Theft of stone crab traps or trap contents.**

**Present Situation:** Under s. 370.13(b), F.S., the unauthorized removal of the contents of a stone crab trap is theft and any person convicted of theft is subject to imprisonment, fines, and permanent revocation of saltwater fishing privileges.

**Effect of Proposed Changes:** The bill amends s. 370.13(b), F.S., to provide that possession of a trap or trap gear is also theft, and any person convicted of theft of or from a trap is subject to imprisonment, fines, and permanent revocation of saltwater fishing privileges.

### **Theft of blue crab traps or trap contents.**

**Present Situation:** Under s. 370.135(1), F.S., the willful molestation of traps, trap lines, or buoys or unauthorized removal of the contents of a blue crab trap is a third degree felony which subjects a

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<sup>4</sup> 33 CFR 173.55

person convicted of the willful molestation to up to 5 years of imprisonment and a fine of up to \$5,000. Additionally, the unauthorized removal of trap contents constitutes theft. Any person convicted of theft is subject to imprisonment, fines, and permanent revocation of saltwater fishing privileges.

**Effect of Proposed Changes:** The bill amends s. 370.135(1), F.S., to provide that any person convicted of the molestation of a trap, in addition to current penalties, will lose all saltwater fishing privileges for a period of 24 calendar months. Additionally, unauthorized possession of a trap or trap gear is also theft, and any person convicted of theft of or from a trap is subject to imprisonment, fines, and permanent revocation of saltwater fishing privileges.

### **Spiny Lobster trap certificates.**

**Present Situation:** Under s. 370.142, F.S., it is unlawful for any person to remove the contents of another harvester's trap without consent, and unauthorized removal constitutes theft. Any person convicted of theft of contents is subject to imprisonment, fines, and permanent revocation of saltwater fishing privileges.

**Effect of Proposed Changes:** This bill amends s. 370.142(2)(c), F.S., to provide that it is unlawful for any person to willfully molest or take possession of another harvester's trap, and that unauthorized possession or removal of contents is theft. Any person receiving a judicial disposition other than dismissal or acquittal on a charge of theft of or from a trap is subject to imprisonment, fines, and permanent revocation of saltwater fishing privileges. In addition, all saltwater fishing privileges will be lost for a period of 24 calendar months.

### **C. SECTION DIRECTORY:**

- Section 1. Amends s. 327.30, F.S., to increase the reporting threshold for damage to vessels or other property.
- Section 2. Amends s. 327.43, F.S., to delete requirement for FWCC to install certain permanent buoys.
- Section 3. Amends s. 370.01, F.S., to provide a definition of "molest."
- Section 4. Amends s. 370.021, F.S., to increase penalties for unlicensed saltwater products wholesalers, retailers, and commercial fisherman.
- Section 5. Amends s. 370.061, F.S., to correct cross-reference.
- Section 6. Amends s. 370.1107, F.S., to revise penalties for unauthorized possession of traps.
- Section 7. Amends s. 370.13, F.S., to revise penalties for thefts associated with stone crab traps.
- Section 8. Amends s. 370.135, F.S., to revise penalties for thefts associated with blue crab traps.
- Section 9. Amends s. 30.142, F.S., to revise penalties for thefts associated with spiny lobster traps.
- Section 10. Amends s. 370.15, F.S., to delete live bait shrimp license requirements.
- Section 11. Amends s. 370.153, F.S., to delete live bait shrimping equipment requirements.
- Section 12. Amends s. 370.1535, F.S., to delete reference to live bait shrimping.
- Section 13. Amends s. 370.154, F.S., to delete reference to live bait shrimping.
- Section 14. Reenacts ss. 370.07(5)(c) and (6)(b), F.S.; 370.0603(2)(d), and 372.5704(5), F.S., to incorporate changes made by the bill.
- Section 15. Provides an effective date.

## **II. FISCAL**

### **ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues: Increased fines for violations of ch. 370, F.S., may result in a positive impact on state revenues.

2. Expenditures: None.

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

1. Revenues: None.

2. Expenditures: None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:** This bill increases the monetary penalties for violating licensure provisions regarding commercial saltwater fishing, wholesale distribution of saltwater products, retail sale of saltwater products, and violations regarding certain saltwater traps.

**D. FISCAL COMMENTS:** This bill creates additional penalties for unlicensed activities including felony penalties, civil penalty assessments, and mandatory jail sentences. According to the Criminal Justice Impact Conference Report dated March 14, 2003, the increased offense levels proposed in this bill are expected to have an insignificant fiscal impact on the Department of Corrections.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not affect municipal or county government.

2. Other: N/A

**B. RULE-MAKING AUTHORITY:** N/A

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On April 9, 2003, the Committee on Natural Resources adopted two amendments summarized as follows:

Amendment No. 1: This amendment removed from the bill a requirement for the Department of Environmental Protection to establish permanent buoys in the Silver Glen Run and Silver Glen Springs areas. The amendment also corrected inconsistencies and technical deficiencies in the penalty provisions created in s. 370.021(6), F.S., related to unlicensed commercial fishing activities.

Amendment No. 2: This amendment creates a definition of "molest" in s. 370.01, F.S., and amends ss. 370.1107, 370.13, 370.135, and 370.142, F.S., to revise penalties associated with theft of or from certain stone crab, blue crab, and spiny lobster traps.

On April 15, 2003, the Subcommittee on Agriculture and Environment Appropriations adopted an amendment to s. 327.73, F.S., that provides that if a person cited for operating a vessel with an expired registration can show proof that a valid registration existed at the time of the offense, the clerk of the circuit court is authorized to dismiss the case.