

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1639 Saltwater Products
SPONSOR(S): Davis
TIED BILLS: **IDEN./SIM. BILLS:** SB 1050

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Public Lands & Water Resources (Sub)</u>	<u>11 Y, 0 N</u>	<u>Camechis</u>	<u>Lotspeich</u>
2) <u>Natural Resources</u>	<u></u>	<u>Camechis</u>	<u>Lotspeich</u>
3) <u>Finance & Tax</u>	<u></u>	<u></u>	<u></u>
4) <u>Agriculture & Environment App. (Sub)</u>	<u></u>	<u></u>	<u></u>
5) <u>Appropriations</u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

This bill:

- Transfers from the Florida Fish & Wildlife Conservation Commission to the Department of Environmental Protection the authority 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, and 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; and
- Repeals provisions regarding live bait shrimping licenses and equipment requirements for live bait shrimping vessels.

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

STORAGE NAME: h1639a.nr.doc
DATE: April 2, 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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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.

B. EFFECT OF PROPOSED CHANGES:

Issue: Buoy 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 Regulation (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 transfer authority to the DEP to establish permanent anchorage buoys within Silver Glen Run and Silver Glen Springs, and makes it unlawful for any vessel to anchor to the bottom within either area after the permanent anchors are established. Violation of this provision constitutes a violation of the boating laws of Florida and is punishable as provided in s. 327.73, F.S. ,

Issue: 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.¹ 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

¹ s. 370.021, F.S.

dealer's license.² 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 imprisonment for not more than 6 months or by a fine between \$250 and \$1,000, or by both fine and imprisonment.³ 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. Upon a second or subsequent violation, any person who sells or purchases any saltwater product without the required permit is subject to the following penalties in addition to those otherwise provided in ch. 370, F.S.:

- A second violation is a first degree misdemeanor subject to imprisonment for up to one year, 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 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 6 months.
- A third violation within 1 year of a second violation is a third degree felony 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 is a third degree felony 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.

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 with a mandatory minimum term of imprisonment of 1 year and a 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 is a first degree misdemeanor with penalties including imprisonment for up to one year, 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.

² s. 370.021(5), F.S.

³ s. 370.021(1), F.S.

- 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 6 months. All property involved in the offense must be forfeited pursuant to s. 370.061.
- A third or subsequent violation occurring within 2 years of a second 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 24 months. All property involved in the offense must be forfeited pursuant to s. 370.061.

IV. In addition to being subject to other penalties provided in ch. 370, upon a second or subsequent violation, 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 second violation is a first degree misdemeanor with penalties including 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 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 6 months.
- A third violation within 1 year of a second violation is a third degree felony with a mandatory minimum term of imprisonment of 1 year, a civil penalty of \$5,000, and a permanent revocation of all commercial and recreational hunting and fishing license privileges.
- A fourth violation is a third degree felony with a mandatory minimum term of imprisonment of 1 year, a civil penalty of \$5,000, and a permanent revocation of all commercial and recreational hunting and fishing license privileges.

Issue: 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.

Issue: 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, if applicable.

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 2002.⁴

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.

C. SECTION DIRECTORY:

- Section 1. Amends s. 253.035, F.S., to direct DEP to establish certain permanent buoys.
- Section 2. Amends s. 327.30, F.S., to increase the reporting threshold for damage to vessels or other property.
- Section 3. Amends s. 327.43, F.S., to delete requirement for FWCC to install certain permanent buoys.
- Section 4. Amends s. 370.021, F.S., to increase penalties for unlicensed saltwater products wholesalers, retailers, and commercial fisherman.
- Section 5. Amends s. 370.15, F.S., to delete live bait shrimp license requirements.
- Section 6. Amends s. 370.153, F.S., to delete live bait shrimping equipment requirements.
- Section 7. Amends s. 370.1535, F.S., to delete reference to live bait shrimping.
- Section 8. Amends s. 370.154, F.S., to delete reference to live bait shrimping.
- Section 9. Amends s. 370.0603, F.S., to reenact statutory subdivisions to incorporate changes made by the bill.
- Section 10. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues: None.

⁴ 33 CFR 173.55

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, and retail sale of saltwater products.

D. FISCAL COMMENTS: None.

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:

The bill amends s. 253.035, F.S., to provide that violation of that section is punishable as provided in s. 327.73, F.S. However, s. 327.73, F.S., does not contain a cross-reference to s. 253.035, F.S.; therefore, it is questionable as to whether s. 327.73, F.S., would be applicable.

There appear to be inconsistencies in the penalties provided in new s. 370.021, F.S., or technical deficiencies in the language. An amendment will be offered to the bill to correct these deficiencies in the Subcommittee on Public Lands and Water Resources.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 2, 2003, the Subcommittee on Public Lands and Water Resources recommended two amendments to the Full Committee.