

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7021 PCB ANRS 15-02 Fish and Wildlife Conservation Commission

**SPONSOR(S):** Agriculture & Natural Resources Subcommittee, Sullivan

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Agriculture & Natural Resources Subcommittee	12 Y, 0 N	Gregory	Blalock
1) Agriculture & Natural Resources Appropriations Subcommittee	10 Y, 0 N	Massengale	Massengale
2) State Affairs Committee			

### SUMMARY ANALYSIS

In 1998, voters amended the Florida Constitution to create the Florida Fish and Wildlife Conservation Commission (FWC or commission). Generally, FWC has the power to adopt rules regulating wildlife and fresh water aquatic life without a grant of authority from the Legislature. FWC may also adopt rules regulating marine life without a legislative grant of authority, but only to the extent such rulemaking authority was held by the Marine Fisheries Commission on March 1, 1998.

HB 7021 revises various statutes governing fish and wildlife as follows:

#### **Modify Tarpon Tag Requirements**

In 2013, FWC modified its rules through its constitutional authority to restrict tarpon to a catch-and-release only fishery unless an angler is pursuing an International Game Fish Association (IGFA) record. In those cases, anglers must first purchase a \$50 tarpon tag to possess the tarpon. The bill eliminates angler reporting requirements for the tarpon tag because FWC may obtain the same information from the IGFA. In addition, the bill modifies the effective and expiration dates of tarpon tags so that each tag is valid for a full calendar year. This change allows anglers to use one tarpon tag during the height of the tarpon fishing season and then renew at the end of the calendar year.

#### **Repeal Restricted Species Endorsement Regulations from Statute**

Current law requires a commercial saltwater fisher to obtain a free restricted species (RS) endorsement to commercially harvest and sell the 32 groups of species designated as "restricted" by FWC. In June 2014, the same RS endorsement regulations were adopted into rule by FWC pursuant to its constitutional authority. The bill removes RS endorsement regulations from statute, but does not remove the requirement to obtain a RS endorsement. The removal of the statutory regulations eliminates potential future conflicts between the statutes and FWC rules.

#### **Modify Alligator Statutes**

The bill provides certain exemptions from alligator trapping and alligator trapping agent licenses for children under 16 years of age, military and disabled veterans during an FWC-sponsored event, and contracted nuisance alligator trappers. In addition, totally and permanently disabled residents are exempt from paying the fee for an alligator trapping license and trapping agent license. The bill also repeals sections of statutes that have been incorporated into FWC's rules or that are obsolete, and clarifies a funding transfer to the Department of Agriculture and Consumer Services for marketing and education services for alligator products.

#### **Modify Penalties for Violations of Wildlife Feeding Rules**

FWC rules prohibit the feeding of bears, alligators/crocodylia, foxes, raccoons, sandhill cranes, pelicans, and bald eagles. The bill modifies statutory penalties for violating those wildlife feeding rules. Under current law, it is a 2<sup>nd</sup> degree misdemeanor for the first violation of FWC rules governing feeding of fish or wildlife species. However, wildlife officers are generally hesitant to issue a criminal citation to a first time offender for feeding animals illegally, so they usually just issue a warning. The bill reduces the first time offender penalty to a non-criminal infraction with a \$100 mandatory fine, but makes a second violation a 2<sup>nd</sup> degree misdemeanor, and imposes more serious criminal penalties up to a 3<sup>rd</sup> degree felony for repeat offenders who feed bears and alligators/crocodylia.

The bill appears to have a fiscal impact on state and local government, and the private sector. See Fiscal Analysis & Economic Impact section below.

The bill is effective upon becoming a law.

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

**STORAGE NAME:** h7021a.ANRAS

**DATE:** 3/24/2015

**FULL ANALYSIS**  
**I. SUBSTANTIVE ANALYSIS**

A. EFFECT OF PROPOSED CHANGES:

**Background**

In 1998, voters amended the Florida Constitution to create the Florida Fish and Wildlife Conservation Commission (FWC or commission).<sup>1</sup> The amendment eliminated the Florida Game and Fresh Water Fish Commission and the Marine Fisheries Commission.<sup>2</sup> The powers of these two agencies were consolidated into FWC.

Article IV, Section 9 of the Florida Constitution provides FWC with the authority to “exercise the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life,” and to “exercise regulatory and executive powers of the state with respect to marine life. . . .” Further, Article IV, Section 9 provides “the legislature may enact laws in aid of the Commission, not inconsistent with this section. . . .” This section of the Constitution must also be read in conjunction with Article XII, Section 23 of the Constitution, which states, “The jurisdiction of the marine fisheries commission as set forth in statutes in effect on March 1, 1998, shall be transferred to the fish and wildlife conservation commission. The jurisdiction of the marine fisheries commission transferred to the commission shall not be expanded except as provided by general law.”

Generally, FWC has the constitutional authority to adopt rules regulating wildlife and fresh water aquatic life without a grant of authority from the Legislature.<sup>3</sup> FWC also possesses the constitutional authority to adopt rules related to marine life without a legislative grant of authority, but only to the extent such rulemaking authority was held by the Marine Fisheries Commission on March 1, 1998. It appears that the Marine Fisheries Commission possessed full rulemaking authority over marine life, with the exception of endangered species.<sup>4</sup> The specific areas under the Marine Fisheries Commission’s authority included:

- Gear Specification; Prohibited Gear; Bag Limits; Size Limits; species that may not be sold; Protected Species; Closed Areas; Quality Control, except for oysters, clams, mussels, and crabs; Seasons; and special considerations relating to egg bearing females;<sup>5</sup>
- Designation of Restricted Species;<sup>6</sup>
- Marine Life Fishing Endorsements;<sup>7</sup>
- Saltwater Fishing Licenses;<sup>8</sup>
- Limiting Tarpon Harvest;<sup>9</sup>
- Crawfish Harvest;<sup>10</sup>
- Prohibiting the use of certain fish nets;<sup>11</sup>
- Traps used to take saltwater products;<sup>12</sup>
- Regulation of Snook;<sup>13</sup> and
- Spiny Lobster Trap Reduction.<sup>14</sup>

**Tarpon Tag Requirements**

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<sup>1</sup> Caribbean Conservation Corp., Inc. v. Florida Fish and Wildlife Conservation Com’n, 838 So.2d 492, 494 (Fla. 2003).

<sup>2</sup> Caribbean Conservation Corp., at 494.

<sup>3</sup> Wakulla Commercial Fisherman’s Ass’n, Inc. v. Florida Fish and Wildlife Conservation Com’n, 951 So. 2d 8, 9 (Fla. 1st DCA 2007) (citing Whitehead v. Rogers, 223 So.2d 330 (Fla. 1969)).

<sup>4</sup> Section 370.027(1), F.S. (1997).

<sup>5</sup> *Id.*

<sup>6</sup> Section 370.01(20), F.S. (1997).

<sup>7</sup> Section 370.06(2)(d)1. (1997).

<sup>8</sup> Sections 370.0605(1)(a)&(6)(b) and 370.0615(1) F.S. (1997).

<sup>9</sup> Section 370.062(1)&(2), F.S. (1997).

<sup>10</sup> Section 370.063, F.S. (1997).

<sup>11</sup> Section 370.093, F.S. (1997).

<sup>12</sup> Section 370.1107, F.S. (1997).

<sup>13</sup> Section 370.1111, F.S. (1997).

<sup>14</sup> Section 370.142, F.S. (1997).

## Present Situation

Tarpon are a popular sport fish found throughout Florida's coastal environment. In June 2013, FWC approved a series of changes to the tarpon tag rules.<sup>15</sup> Previously, individuals could harvest two tarpon per day.<sup>16</sup> The rule amendments restricted tarpon to a catch-and-release only fishery.<sup>17</sup> FWC's rule does allow for the temporary possession of tarpon for the purpose of photography, measuring length and girth, and taking scientific samples.<sup>18</sup> However, tarpon greater than 40 inches in length must remain in the water at all times during temporary possession.<sup>19</sup>

Under FWC rules, individuals may harvest tarpon only when in pursuit of an International Game Fish Association (IGFA) record.<sup>20</sup> Further, individuals may not possess or harvest a tarpon without first purchasing a tarpon tag and securely attaching the tag through the lower jaw of the tarpon.<sup>21</sup> Each tarpon tag costs \$50.<sup>22</sup> A person may not use more than one tarpon tag during a single license year.<sup>23</sup> Tarpon tags are valid from July 1 through June 30,<sup>24</sup> making the expiration fall during the summer, which is the height of tarpon season.

An individual who harvests a tarpon must submit a form to FWC indicating the length, weight, and physical condition of the tarpon when caught; the date and location of where the fish was caught; and any other pertinent information which may be required by the commission.<sup>25</sup> FWC may refuse to issue new tags to an individual or guide who fails to provide the required information.

## Effect of Proposed Changes

The bill amends s. 379.357, F.S., to eliminate angler reporting requirements found in statute for each harvested tarpon. This requirement is no longer necessary because, under FWC rules, the tarpon fishery is catch-and-release only<sup>26</sup> and the FWC states that it can collect the same data from IGFA due to the limited harvest requirement.<sup>27</sup> In addition, the bill modifies the effective and expiration dates of tarpon tags so that the tags are valid for an entire calendar year rather than the period from July 1 to June 30. This change allows anglers to use one tarpon tag during the height of the tarpon fishing season and renew the tag at the end of the calendar year. Lastly, the bill removes the requirement for tax collectors to return unused tarpon tags to FWC. This requirement was added to FWC rules.<sup>28</sup>

The power to enact rules to regulate the number of tarpon that may be harvested was held by the Marine Fisheries Commission on March 1, 1998.<sup>29</sup> Thus, it appears FWC does not need statutory authority to limited tarpon harvest.

## Restricted Species Endorsement

### Present Situation

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<sup>15</sup> 39 Fla. Admin. R. 94 (May 14, 2013).

<sup>16</sup> Rule 68B-32.004, F.A.C. (2005).

<sup>17</sup> Rule 68B-32.001, F.A.C.

<sup>18</sup> Rule 68B-32.004(2), F.A.C.

<sup>19</sup> Rule 68B-32.004(3), F.A.C.

<sup>20</sup> Rule 68B-32.009(1)(a), F.A.C.

<sup>21</sup> Rule 68B-32.009(1)(b), F.A.C.

<sup>22</sup> Section 379.361(1), F.S.

<sup>23</sup> Rule 68B-32.009(1)(c), F.A.C.

<sup>24</sup> Section 379.357(1), F.S.

<sup>25</sup> Section 379.357(3), F.S.

<sup>26</sup> Rule 68B-32.001, F.A.C.

<sup>27</sup> Florida Fish and Wildlife Conservation Commission, Summary of FWC Proposals for 2015 Session, p. 1 (September 10, 2014).

<sup>28</sup> Rule 68B-32.009(5), F.A.C.

<sup>29</sup> Section 370.062, F.S. (1997)

Under current law, persons who wish to commercially harvest and sell “restricted species” to a licensed wholesale dealer must possess a restricted species (RS) endorsement.<sup>30</sup> “Restricted species” are any species of saltwater products which the state by law, or FWC by rule, has found it necessary to so designate.<sup>31</sup> The purpose of the RS endorsement is to help ensure the sustainability of the state’s most important commercially harvested species and to ensure that the higher bag limits are being harvested for commercial purposes.<sup>32</sup> The RS endorsement may be issued to any person who is at least 16 years old or a firm who certifies that over twenty-five percent or \$5000 of its income, whichever is less, is attributed to the sale of saltwater products pursuant to a saltwater products license.<sup>33</sup> The RS endorsement may be issued to any for-profit corporation who certifies that at least \$5000 of its income is attributed to the sale of saltwater products pursuant to a saltwater products license.<sup>34</sup> There is no charge to receive an RS endorsement. Current law also provides the following exceptions from the income requirements:

- An RS endorsement must be available to persons age 62 and older who have been qualified for the RS endorsement for at least 3 of the last 5 years;
- Active military duty time must be excluded from consideration of time necessary to qualify for the RS endorsement;
- A purchaser of a used commercial fishing vessel that possesses or is eligible for an RS endorsement is exempt from the qualifying income requirement for a complete license year after purchase of the vessel;
- Upon the death or permanent disability of a person possessing an RS endorsement, an immediate family member wishing to carry on the fishing operation is exempt from the qualifying income requirement for a complete license year;
- A person age 62 or older who documents that at least \$2,500 of such person’s income is attributable to the sale of saltwater products may be issued an endorsement;
- A permanent RS endorsement may be issued to persons age 70 and older who have held a saltwater products license for at least 3 of the last 5 years;
- Any resident<sup>35</sup> who is certified to be totally and permanently disabled is exempted from the income requirements if he or she also has held a saltwater products license for at least 3 of the last 5 years before the date of the disability;
- An honorably discharged, resident military veteran certified to have a service-connected permanent disability rating of 10 percent or higher is not required to provide documentation for the income requirement with his or her initial application for an RS endorsement; and
- Beginning July 1, 2014, a resident military veteran who applies to the commission within 48 months after receiving an honorable discharge from any branch of the United States Armed Forces, the United States Coast Guard, the military reserves, the Florida National Guard, or the United States Coast Guard Reserve is not required to provide documentation for the income requirement with his or her initial application for an RS endorsement.<sup>36</sup>

## Effect of Proposed Changes

The bill amends s. 379.361, F.S., to remove the RS endorsement requirements from statute. In June 2014, FWC adopted the RS endorsement regulations into Rule 68B-2.006, F.A.C., through its constitutional authority.<sup>37</sup> The rule is nearly identical to the statute. FWC adopted the RS endorsement

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<sup>30</sup> Section 379.361(2)(b), F.S.

<sup>31</sup> Section 379.101(32), F.S.; There are currently 32 groups of restricted species. A complete list can be found at: <http://myfwc.com/license/saltwater/commercial-fishing/restricted-species/>. (Florida Fish and Wildlife Conservation Commission, *Commercial Food and Bait Species*, last visited Dec. 5, 2014).

<sup>32</sup> 40 Fla. Admin. R. 144 (July 25, 2014).

<sup>33</sup> Section 379.361(2)(b)1., F.S.

<sup>34</sup> *Id.*

<sup>35</sup> “Resident” is defined for chapter 379, F.S., in section 379.101(30), F.S.

<sup>36</sup> Section 379.361(2)(b)5., F.S.

<sup>37</sup> 40 Fla. Admin. R. 144 (July 25, 2014).

requirements into rule to more timely respond to stakeholder needs or requests for changes.<sup>38</sup> The repeal of the statutory language would eliminate potential future conflicts should rule requirements change.<sup>39</sup> The requirement to possess an RS endorsement in order to commercially fish such species is retained in the statute. According to FWC, the industry requested that this requirement remain in statute.

The power to enact rules to regulate restricted species was held by the Marine Fisheries Commission on March 1, 1998.<sup>40</sup> Thus, it appears FWC does not need statutory authority to implement the RS endorsement requirements.

## **Regulation of Alligator Harvest**

### **Present Situation**

Each year, FWC establishes alligator management units and surveys the population of alligators in a given area to establish quotas to provide recreational opportunities for the public to harvest alligators within the alligator management units.<sup>41</sup> Persons wishing to take an alligator or the eggs of an alligator must obtain an alligator trapping permit and license from FWC.<sup>42</sup> Applicants must first apply for an alligator harvest permit. Applicants for an alligator harvest permit must be 18 years of age and not convicted of any violation of the laws governing alligator or alligator egg harvesting<sup>43</sup> or the rule relating to illegally taking of any crocodylian species.<sup>44</sup> There is no cost to apply for a permit.

Participants in the annual alligator harvest are selected at random to receive permits. Once selected, FWC assigns participants to a specific one-week harvest period during the annual season and a specific location.<sup>45</sup> In 2014, FWC conducted the annual harvest between August 15th and November 1st.<sup>46</sup> Harvest permits are only valid for a particular management unit and are not transferable.<sup>47</sup> Participants who receive a permit must obtain an alligator trapping license by paying a \$250 license fee for Florida residents or a \$1,000 license fee for nonresidents.<sup>48</sup> Participants are not required to possess a recreational hunting license.

Those who do not receive an alligator trapping license may apply for an alligator trapping agent's license. Such individuals may act as an agent to the individual holding the alligator trapping license.<sup>49</sup> An alligator trapping agent may only take an alligator in the presence of the alligator trapping permit holder.<sup>50</sup> Alligator trapping permit holders may use an unlimited number of alligator trapping agents. The fee to receive an alligator trapping agent's license is \$50.<sup>51</sup>

The exceptions available for other forms of hunting licenses (minors under 16, disabled veterans in FWC sponsored events and permanently disabled residents) are not available for alligator trapping licenses or alligator trapping agent's licenses.

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<sup>38</sup> Id.

<sup>39</sup> Id.

<sup>40</sup> Section 370.06, F.S. (1997).

<sup>41</sup> Section 379.3013, F.S.; Rule 68A-25.042, F.A.C.

<sup>42</sup> Section 379.3751(1), F.S.

<sup>43</sup> Sections 379.3015 and 379.409, F.S.; while minors under the age of 18 may not obtain an alligator harvest permit, they may obtain an alligator trapping agent's license to assist in the harvest of alligators.

<sup>44</sup> Section 379.3751(1)(c), F.S.; Rule 68A-25.042(2)(b), F.A.C.

<sup>45</sup> Rule 68A-25.042(2)(e), F.A.C.; Florida Fish and Wildlife Conservation Commission, 2014 Statewide Alligator Harvest Training and Orientation Manual, p. 11. Available at <http://myfwc.com/wildlifehabitats/managed/alligator/harvest/> (last visited January 29, 2015).

<sup>46</sup> Id.

<sup>47</sup> Rule 25.042(2)(e), F.A.C.

<sup>48</sup> Section 379.3751(2), F.S.

<sup>49</sup> Section 379.3751(2)(c), F.S.

<sup>50</sup> Rule 68A-25.042(3)(g), F.A.C.

<sup>51</sup> Id.

FWC issues Convention on International Trade in Endangered Species (CITES) tags with each alligator trapper license.<sup>52</sup> After an alligator is killed, the trapper must attach a CITES tag 6 inches from the tip of the alligator's tail.<sup>53</sup> The statutes authorize the FWC to assess a fee up to \$30 for each CITES tag issued.<sup>54</sup> Currently, FWC charges a \$10 or \$30 fee for each CITES tag.<sup>55</sup> Irrespective of whether a fee is assessed, \$5 per validated hide must be transferred from FWC to the General Inspection Trust Fund.<sup>56</sup> Further, FWC may assess a fee up to \$5 for each egg collected under an alligator egg collection permit.<sup>57</sup> Irrespective of whether a fee is assessed, \$1 per egg collected and retained, excluding eggs collected on private wetland management areas, must be transferred from FWC to the General Inspection Trust Fund.<sup>58</sup> The Department of Agriculture and Consumer Services administers this fund for the purpose of providing marketing and education services with respect to alligator products produced in this state.<sup>59</sup>

Alternatively, land owners may apply to harvest alligators on their land.<sup>60</sup> FWC issues permits to landowners who meet the criteria in FWC rules.<sup>61</sup> FWC will review data of the alligator population on the lands and recommends a quota for the number of alligators that may be taken.<sup>62</sup> Upon approval of the harvest quota, FWC issues a harvest permit and CITES tags for each alligator that may be taken in the approved area.<sup>63</sup> Individuals must still possess an alligator trapping license or alligator trapping agent's license to hunt on such lands.<sup>64</sup>

FWC also regulates the trade of alligator products by:

- Regulating the marketing and sale of alligators, their eggs, hide, meat, and byproducts, including the development and maintenance of a state sanctioned sale;
- Regulating the handling and processing of alligators, their eggs, hide, meat, and byproducts;
- Regulating commercial alligator farming facilities and operations; and
- Providing hide grading services.<sup>65</sup>

FWC regulations of the trade of alligator products may not supersede the lawful responsibilities of the Department of Agriculture and Consumer Services, the Department of Health, or local governmental entities.<sup>66</sup>

Under s. 379.3016, F.S., it is a first degree misdemeanor for persons to sell alligator products in the form of a stuffed baby alligator or crocodile or to sell alligator products from a species declared endangered by the U.S. Fish and Wildlife Service or FWC. It is also a misdemeanor offense for a person to use the words "alligator" or "gator" when selling a product derived or made from the skin of a crocodile or in connection with the sale of other crocodiles.<sup>67</sup>

Persons who engage in the business of a dealer or buyer of alligator hides must possess a license from FWC.<sup>68</sup> The annual fee for such license is \$100 for residents<sup>69</sup> and \$500 for nonresidents.<sup>70</sup> Every two

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<sup>52</sup> Rule 68A-25.042(2)(d), F.A.C.

<sup>53</sup> Rule 68A-25.042(3)(h), F.A.C.

<sup>54</sup> Section 379.3752(2), F.S.

<sup>55</sup> Rule 68A-25.042(2)(a), F.A.C.; the \$10 charge is for individuals who are paying for an alligator trapping license at the same time as paying for the CITES tag. The \$30 charge is for individuals who already possess a valid alligator trapping license at the time they purchase a CITES tag.

<sup>56</sup> Section 379.3752(2), F.S.

<sup>57</sup> Section 379.3751(4), F.S.

<sup>58</sup> Id.

<sup>59</sup> Id.; Section 379.3752(2), F.S.

<sup>60</sup> Rule 68A-25.032(1), F.A.C.

<sup>61</sup> Rule 68A-25.032, F.A.C.

<sup>62</sup> Rule 68A-25.032(2), F.A.C.

<sup>63</sup> Id.

<sup>64</sup> Id.

<sup>65</sup> Section 379.3012(1), F.S.

<sup>66</sup> Section 379.3012(2), F.S.

<sup>67</sup> Section 379.3017, F.S.

<sup>68</sup> Section 379.364(1), F.S.

weeks during open season, dealers and buyers must report to FWC the number and kind of hides bought, the name of the trapper they bought from, and the trapper's license number or exemption.<sup>71</sup>

Lastly, FWC regulates the control of nuisance alligators. Individuals with concerns about an alligator may contact FWC's Nuisance Alligator Hotline at 1-866-FWC-GATOR (866-392-4286).<sup>72</sup> An alligator may be deemed a nuisance if it is at least 4 feet long and the caller believes it poses a threat to people, pets, or property.<sup>73</sup> Only individuals under contract with FWC and who possess an alligator trapper license may take, possess, and kill a nuisance alligator.<sup>74</sup> Individuals may apply for a nuisance alligator contract by submitting a Nuisance Alligator Trapper Application.<sup>75</sup> FWC issues a CITES tag to the nuisance alligator trapper when an alligator must be removed. Once the nuisance alligator is removed, it becomes the property of the nuisance alligator trapper.<sup>76</sup>

## Effect of Proposed Changes

The bill repeals or amends sections of statutes that have been incorporated into FWC's alligator rules or that are obsolete. The bill:

- Deletes subsections (1) and (2) of s. 379.3012, F.S., that granted FWC the power to regulate the trade, marketing, and farming of alligator products, such as hides, eggs, and meat. FWC adopted most of these statutory provisions in rule pursuant to their constitutional authority,<sup>77</sup> while other portions of the statute are being deleted because they are obsolete. The only portion of s. 379.3012, F.S., that remains is the provision specifying that FWC's powers to implement the Alligator Management Program may not supersede the responsibilities of the Department of Agriculture and Consumer Services, the Department of Health, and local government entities.
- Amends s. 379.364, F.S., to specify the type of alligator hides for which a person must have a license in order to deal in, and remove the requirement for dealers and buyers to report to FWC the number and kind of hides bought as well as the name of the trapper from whom bought and the trapper's license number or exemption.<sup>78</sup> FWC adopted the requirement for reporting in Rule 68A-24.004(2), F.A.C.
- Amends s. 379.3751, F.S., to:
  - Remove from statute FWC's power to limit the number of participants engaged in the taking of alligators or their eggs in the wild. FWC adopted this provision in Rule 68A-25.002(1), F.A.C.
  - Remove from statute the requirement to spend one-third of the revenue collected from issuance of the alligator hatching tag for alligator husbandry research. FWC states that it directs this money to the area of research of most need.
  - Exempt persons taking alligators who are contracted with FWC to take nuisance alligators from obtaining an alligator trapping license. These individuals will still be required to possess the appropriate alligator related license when taking part in other alligator management activities. Persons assisting contracted nuisance alligator trappers will still be required to possess an alligator trapping agent's license, unless exempt under statute.
  - Exempt minors under the age of 16 from obtaining an alligator trapping agent's license.
  - Exempt any person taking alligators under a Commission Military/Disabled Veterans Event Permit issued by FWC from obtaining an alligator trapping license or alligator trapping agent license.

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<sup>69</sup> Section 379.364(2), F.S.

<sup>70</sup> Section 379.364(3), F.S.

<sup>71</sup> Section 379.364(4), F.S.

<sup>72</sup> Florida Fish and Wildlife Conservation Commission, *Statewide Nuisance Alligator Program*, <http://myfwc.com/wildlifehabitats/managed/alligator/nuisance/> (last visited January 29, 2015).

<sup>73</sup> Id.

<sup>74</sup> Rule 68A-25.003(1), F.A.C.

<sup>75</sup> Rule 68A-25.003(2), F.A.C.

<sup>76</sup> Id.

<sup>77</sup> See Rules 68A-25.042 and 68A-25.052, F.A.C.

<sup>78</sup> Section 379.364(4), F.S.

- Exempt disabled residents from paying the alligator trapping license and alligator trapping agent license fee, but will still be required to possess an alligator trapping license or alligator trapping agent's license.
- Exempt any person engaged in the taking of alligators under any permit issued by FWC authorizing the take of alligators from possessing a management area permit.
- Specifies that the \$1 per egg fee and \$5 per hide fee for marketing and education services regarding alligator products will be transferred to the Department of Agriculture and Consumer Services when the Fish and Wildlife Conservation Commission has an appropriation for the transfer.
- Amends s. 379.3752, F.S., to:
  - Remove from statute FWC's authority to require CITES tags to be affixed to the hide of any alligator taken from the wild. This requirement is now found throughout Chapter 68A-25, F.A.C.
  - Remove from statute the requirement that the number of CITES tags available for alligators taken pursuant to a collection permit be limited to the number of tags determined by FWC to equal the safe yield of alligators. FWC adopted this provision in Rule 68A-25.042, F.A.C.
  - Provide that funding transfers to the Department of Agriculture and Consumer Services for each alligator hide will be made when appropriated by the Legislature.
- Repeals s. 379.3011, F.S., containing the definitions for "alligator," "alligator hatchling," and "process" or "processing." FWC adopted the definition of "alligator hatchling" in Rule 68A-1.004(4), F.A.C. According to FWC, the remaining definitions are no longer necessary.
- Repeals s. 379.3013, F.S., requiring FWC to study portions of the state that it intends to open to alligator collection permits. FWC adopted this requirement in Rule 68A-25.042, F.A.C.
- Repeals s. 379.3016, F.S., making it a first-degree misdemeanor to sell alligator products in the form of a stuffed baby alligator or other baby crocodile and selling alligator product manufactured from a species that has been declared to be endangered by the United States Fish and Wildlife Service or FWC. These provisions are now found in Rule 68A-25.002(2), F.A.C., and s. 379.401(2) (a) 9. F.S. A first time violation of these prohibitions will be a second degree misdemeanor (as opposed to a first degree misdemeanor) and will escalate based on repeat offenses.
- Repeals s. 379.3017, F.S., which made it a misdemeanor to use the words "alligator" or "gator" in connection with the sale of any product derived or made from the skin of other crocodiles or in connection with the sale of other crocodiles. These prohibitions are now found in Rule 68A-25.002(4), F.A.C., and s. 379.401(2)(a)9., F.S. A first time violation of this prohibition will be a second-degree misdemeanor and will escalate based on repeat offenses.

Alligators are a fresh water aquatic species. Thus, it appears FWC does not require statutory authority to regulate alligator management, except for the power to set license fees and penalties.

## **Penalties for Violations of Wildlife Feeding Rules**

### **Present Situation**

FWC adopted rules to prohibit intentionally feeding bears, foxes, and raccoons;<sup>79</sup> pelicans;<sup>80</sup> sandhill cranes;<sup>81</sup> bald eagles;<sup>82</sup> and alligators and crocodiles.<sup>83</sup> FWC designed these rules to protect both species and people. According to FWC, feeding an animal may reduce the animal's natural fear of people, resulting in more frequent contact.<sup>84</sup> Such behavior may result in nuisance or aggressive behavior. Further, animals fed by humans spend more time in developed areas. This may lead to

<sup>79</sup> Rule 68A-4.001(3), F.A.C.

<sup>80</sup> Rule 68A-4.001(4), F.A.C.

<sup>81</sup> Rule 68A-4.001(5), F.A.C.

<sup>82</sup> Rule 68A-16.002(1), F.A.C.

<sup>83</sup> Rule 68A-25.001, F.A.C.

<sup>84</sup> Florida Fish and Wildlife Conservation Commission, 2015 Legislative Proposal Wildlife Feeding Rule Penalties, p. 2 (September 10, 2014).



increased vehicles strikes, sickness from disrupted natural diets and behavior, killing by the public, euthanizing by FWC to protect human safety, and killing by domesticated pets.

Section 379.401(2)(a)4., F.S., makes it a level two violation to violate rules or orders of FWC relating to feeding wildlife, freshwater fish, or saltwater fish (there are currently no rules prohibiting the feeding of freshwater fish). Section 379.401(2)(a)20., F.S., makes it a level two violation to violate rules or orders of FWC relating to feeding or enticing alligators or crocodiles.

The current penalty structure is as follows:

#### Current Penalties for Violating Wildlife Feeding Rules

Past Violations	Penalties
No convictions within past 3 years	<ul style="list-style-type: none"> <li>2nd Degree Misdemeanor (up to \$500 fine and/or up to 60 days in jail)<sup>85</sup></li> </ul>
Convicted of a Level Two violation or higher in the past 3 years	<ul style="list-style-type: none"> <li>1st Degree Misdemeanor (up to a \$1,000 fine and/or up to a year in jail)</li> <li>Minimum fine of \$250<sup>86</sup></li> </ul>
Convicted of 2 Level Two violations or higher in the past 5 years	<ul style="list-style-type: none"> <li>1st Degree Misdemeanor (up to a \$1,000 fine and/or up to a year in jail)</li> <li>Minimum fine of \$500</li> <li>1 year suspension of any recreational license, including the ability to use any exemption from license or exemption from license fee<sup>87</sup></li> </ul>
Convicted of 3 Level Two violations or higher in the past 10 years	<ul style="list-style-type: none"> <li>1st Degree Misdemeanor (up to a \$1,000 fine and/or up to a year in jail)</li> <li>Minimum fine of \$750</li> <li>3 year suspension of any recreational license, including the ability to use any exemption from license or exemption from license fee<sup>88</sup></li> </ul>

#### Effect of Proposed Changes

The bill creates s. 379.412, F.S., to revise the penalty structure for violations of the wildlife and freshwater fish feeding rules. The violations of the saltwater fish feeding rules will remain unchanged.

The new penalty structure created by the bill is as follows:

#### Proposed Penalties for Violating Wildlife Feeding Rules

	Bears, Alligators, and other Crocodilia	All Other Species of Wildlife or Freshwater Fish
1 <sup>st</sup> Offense	Noncriminal Infraction (\$100 fine)	Noncriminal Infraction (\$100 fine)
2 <sup>nd</sup> Offense	2nd Degree Misdemeanor (up to \$500 fine and/or up to 60 days in jail)	2nd Degree Misdemeanor (up to \$500 fine and/or up to 60 days in jail)
3 <sup>rd</sup> Offense	1st Degree Misdemeanor (up to a \$1,000 fine and/or up to a year in jail)	2nd Degree Misdemeanor (up to \$500 fine and/or up to 60 days in jail)
4 <sup>th</sup> or Subsequent Offense	3rd Degree Felony (up to \$5,000 fine and/or up to five years in prison)	2nd Degree Misdemeanor (up to \$500 fine and/or up to 60 days in jail)

The proposed penalties will not apply to rules or orders of FWC relating to:

<sup>85</sup> Section 379.401(2)(b)1., F.S.

<sup>86</sup> Section 379.401(2)(b)2., F.S.

<sup>87</sup> Section 379.401(2)(b)3., F.S.

<sup>88</sup> Section 379.401(2)(b)4., F.S.

- Animals held in captivity,
- Restricting the taking or hunting of species over bait or intentionally placed or deposited food; or
- Restricting the taking or hunting of species in proximity to feeding stations.

According to FWC, the changes are designed to deter individuals from feeding wildlife. Between 2007 and 2013, Assistant State Attorneys (ASAs) rejected 28 percent of the citations for violations of the feeding rules while 25 percent of those charged had their adjudication withheld (no criminal misdemeanor finding, but fines are assessed).<sup>89</sup> Communications with ASAs revealed that some believe that the current criminal penalty for first time offenders is too severe.<sup>90</sup>

FWC believes the new penalty structure will likely result in fewer criminal citations. More severe penalties will be imposed for those who continually violate the law despite receiving education, warnings, and civil penalties. While FWC intends for law enforcement to continue to rely heavily on education before regulation, the revised penalty structure will provide an effective tool in the form of a civil penalty for first time offenders. Once issued a civil penalty, first time offenders should better understand the serious nature of violating the feeding rules. Therefore, these individuals will be less likely to incur criminal violations for future violations.

FWC believes there may be an initial increase in the number of citations issued following the implementation of this proposal. However, the agency believes the number of citations issued will decrease over time as the public becomes aware of the consequences of feeding wildlife.

#### B. SECTION DIRECTORY:

- Section 1. Amends s. 379.3012, F.S., pertaining to the alligator management and trapping program.
- Section 2. Amends s. 379.357, F.S. pertaining to FWC's license program for tarpon.
- Section 3. Amends s. 379.361, F.S., pertaining to the RS endorsement.
- Section 4. Amends s. 379.364, F.S., pertaining licenses required for fur and hide dealers.
- Section 5. Amends s. 379.3751, F.S., pertaining to the taking and possession of alligators and trapping licenses.
- Section 6. Amends s. 379.3752, F.S., pertaining to the tagging of alligators and hides.
- Section 7. Amends s. 379.401, F.S., pertaining to penalties for violating certain FWC rules or orders.
- Section 8. Creates s. 379.412, F.S., to create new penalties for violations of the wildlife and freshwater fish feeding rules.
- Section 9. Repeals ss. 379.3011, 379.3013, 379.3016, and 379.3017, F.S., pertaining to the alligator trapping program, alligator study requirements, unlawful selling of alligator products, and use of the word "alligator" or "gator."
- Section 10. Provides an effective date of upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

The bill appears to have an indeterminate, but likely insignificant, positive fiscal impact on FWC's revenues by increasing certain civil penalties for feeding wildlife.

<sup>89</sup> Florida Fish and Wildlife Conservation Commission, 2015 Legislative Proposal Wildlife Feeding Rule Penalties, p. 3 (September 10, 2014).

<sup>90</sup> Id. at 4.

The bill appears to have an insignificant, negative fiscal impact on FWC's revenues by decreasing the number of people required to obtain an alligator trapping license and an alligator agent's license. FWC estimates that it will sell ninety less resident alligator trapping licenses and one hundred less alligator trapping agent's licenses, resulting in a \$27,500 reduction in revenues for FWC.<sup>91</sup>

2. Expenditures:

On March 12, 2015, the Criminal Justice Impact Conference estimated that the new felony created in the bill would have an insignificant negative fiscal impact (increase of 10 or fewer prison beds) on the state.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Fines assessed for conviction of violations of wildlife feeding rules are deposited in the Clerk of the Circuit Court Fine and Forfeiture Fund.<sup>92</sup> There may be an indeterminate, but likely insignificant, negative fiscal impact on this fund initially because the fine for a first time violation will be reduced from \$500 to \$100.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

**Alligator Trapping Licenses**

Children less than sixteen years old will no longer be required to pay \$50 for the Alligator Trapping Agent's License.

Current military and disabled veterans taking alligators as part of a FWC sanctioned event will no longer be required to pay \$250 for the Alligator Trapping License or \$50 for the Alligator Trapping Agent's License.

Disabled residents will no longer be required to pay \$250 for the Alligator Trapping License or \$50 for the Alligator Trapping Agent's License.

Contracted nuisance alligator trappers will no longer be required to pay \$250 for the Alligator Trapping License when trapping nuisance alligators at the request of FWC.

**Wildlife Feeding Violations**

There may be an indeterminate, but likely positive, fiscal impact on individuals or companies that violate feeding prohibitions initially because the fine for a first time violation will be reduced from \$500 to \$100. Repeat offenders may experience negative fiscal impacts because penalties increase for subsequent violations.

D. FISCAL COMMENTS:

None.

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<sup>91</sup> Florida Fish and Wildlife Conservation Commission, 2015 Legislative Proposal Alligator Statutes, p.20 (September 10, 2014).

<sup>92</sup> Section 142.01, F.S.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

Not applicable.

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

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

N/A