

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 1470

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Latvala

SUBJECT: Crustaceans

DATE: February 24, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinton</u>	<u>Rogers</u>	<u>EP</u>	Fav/CS
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Favorable
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1470 revises penalties for violations of rules concerning spiny lobster traps and provides penalties for possession of undersized spiny lobsters by recreational or commercial harvesters.

The Criminal Justice Impact Conference determined that the bill is likely to result in a positive indeterminate impact on state prison beds, which would likely have a negative indeterminate state fiscal impact.

The bill is effective October 1, 2016.

II. Present Situation:

Commercial Fishing Licenses

In order to commercially harvest spiny lobster or stone crab in Florida, a person must possess:

- A valid Saltwater Products License (SPL), which is Florida's commercial fishing license,
- A restricted species (RS) endorsement, and
- Either a commercial spiny lobster endorsement ("C#" endorsement)¹ or a stone crab endorsement ("X" endorsement).²

¹ FWC, *Commercial Regulations for Spiny Lobster (Crawfish)*, available at <http://myfwc.com/fishing/saltwater/commercial/spiny-lobster/> (last visited Jan. 26, 2016).

² FWC, *Stone Crab*, available at <http://myfwc.com/fishing/saltwater/commercial/stone-crab/> (last visited Jan. 26, 2016).

An SPL is required to do any of the following:

- Sell, barter, or exchange for merchandise any saltwater products;
- Harvest over 100 pounds or 2 saltwater fish per person per day (whichever is greater) for species that do not have an established bag limit; or
- Use certain gear or equipment as specified by law.³

Florida offers three types of SPLs:

- An “Individual SPL” authorizes a person to engage in commercial fishing activities from shore or any commercially registered vessel.⁴
- A “Crew SPL” is also issued in an individual’s name and it authorizes commercial fishing by the person and anyone with them on a commercial vessel. The Crew SPL also allows the individual to fish commercially from shore or any commercially registered vessel.⁵
- A “Vessel SPL” is issued to a vessel registered for commercial use and authorizes each person aboard that registered vessel to engage in commercial fishing. This license differs from the two other SPLs in that it is not issued in an individual’s name, but is rather tied to a specific vessel.⁶

Saltwater Products Licenses	Cost
Individual Resident	\$50.00
Individual Nonresident	\$200.00
Individual Alien	\$300.00
Crew Resident	\$150.00
Crew Nonresident	\$600.00
Crew Alien	\$900.00
Vessel Resident	\$100.00
Vessel Nonresident	\$400.00
Vessel Alien	\$600.00 ⁷

A restricted species (RS) endorsement on an SPL is required to sell to a licensed wholesale dealer species which the state, by law or rule, has designated as “restricted species.”⁸ The FWC

³ FWC, *Commercial Saltwater Products - Fishing & Dealers Licenses*, available at <http://myfwc.com/license/saltwater/commercial-fishing/#spl> (last visited Jan. 27, 2016).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ FWC, *Commercial Saltwater Products License Fees*, available at <http://myfwc.com/license/saltwater/commercial-fishing/csl-fees/> (last visited Jan. 27, 2016).

⁸ Fla. Admin. Code R. 68B-2.006; see also s. 379.101, F.S., defining “restricted species” as “any species of saltwater products which the state by law, or the Fish and Wildlife Conservation Commission by rule, has found it necessary to so designate. The term includes a species of saltwater products designated by the commission as restricted within a geographical area or

has listed spiny lobster⁹ and stone crabs¹⁰ as restricted species. An RS may be issued to a person who is at least 16 years of age, or to a firm certifying that over 25 percent of its income or \$5,000 of its income, whichever is less, is attributable to the sale of saltwater products pursuant to an SPL.¹¹

Stone Crab and Spiny Lobster Traps

Section 379.365(2)(a), F.S., makes it unlawful to commit the following acts relating to stone crab traps:

- Violate FWC rules regulating stone crab trap certificates and trap tags;
- Use an expired tag;
- Use a tag not issued by the commission; or
- Possess or use a stone crab trap without having a trap tag attached.

Section 379.3671(2)(c), F.S., makes it unlawful to commit the following acts relating to spiny lobster traps:

- Possess or use a spiny lobster trap without having a trap tag attached;
- Possess or use any other gear or device designed to attract and enclose or otherwise aid in the taking of spiny lobster by trapping that is not a “trap” as defined by commission rule.

Recreational Harvesters

FWC rules only require recreational harvesters of stone crabs to have traps that:

- Have a legible “R”, at least two inches high, permanently affixed to its buoy; and
- Have the harvester's name and address permanently affixed to the trap in legible letters.¹²

Recreational harvesters may not use traps to harvest spiny lobster.¹³

Commercial Harvesters

For commercial stone crab traps, each holder of a stone crab trap endorsement must have a certificate on record for each stone crab trap used or possessed in or on the water. In addition, each trap requires a tag, issued annually by the FWC, which corresponds to a valid certificate. Similarly, each holder of an SPL who uses traps for taking or attempting to take spiny lobsters is required to have a certificate on record for each trap possessed or used.¹⁴ Each trap used to take or attempt to take spiny lobsters must also have a trap tag attached.¹⁵

during a particular time period of each year. Designation as a restricted species does not confer the authority to sell a species pursuant to s. 379.361, F.S., if the law or rule prohibits the sale of the species.”

⁹ Fla. Admin. Code R. 68B-24.001.

¹⁰ Fla. Admin. Code R. 68B-13.005.

¹¹ Fla. Admin Code R. 68B-2.006.

¹² Fla. Admin. Code R. 68B-13.009.

¹³ Fla. Admin. Code R. 68B-24.005.

¹⁴ Section 379.3671(2)(a), F.S.

¹⁵ Section 379.3671(2)(b), F.S.

The FWC provides specifications for construction of lobster traps and stone crab traps. These specifications apply to various aspects of trap design including:

- Trap material;
- Specific trap dimensions for wood and plastic traps;
- The allowable gauge of wire mesh used to reinforce a wood trap;
- Minimum slat width;
- Maximum spacing between slats; and
- Location of entrances.¹⁶

Spiny Lobster Size Requirements

By FWC rule, individuals may only harvest spiny lobsters whose carapace is at least 3 inches long, if the tail is separated from the body, or whose tails are a least 5 ½ inches long.¹⁷

Penalties Relating to Violation of Stone Crab and Spiny Lobster Trap Requirements

The following violations constitute Level Two Violations under s. 379.401(2)(a), F.S.:

- the possession or use of stone crab traps without trap tags and theft of trap contents or gear;
- the possession or use of spiny lobster traps without trap tags or certificates and theft of trap contents or trap gear;
- violating rules or orders of the FWC establishing bag, possession, or size limits or restricting methods of taking wildlife, freshwater fish, or saltwater fish.

Level Two Violations are punishable as follows:

Level 2 Violation	Type of Infraction	Civil Penalty or Jail Time	License Restrictions
1 st offense	2 nd Degree Misdemeanor ¹⁸	Max. \$500 or Max. 60 days	None
2 nd offense within 3 years of previous Level 2 violation (or higher)	1 st Degree Misdemeanor ¹⁹	Min. \$250; Max. \$1000 or Max. 1 year	None
3 rd offense within 5 years of two previous Level 2 violations (or higher)	1 st Degree Misdemeanor ²⁰	Min. \$500; Max. \$1000 or Max. 1 year	Max. suspension of recreational license for 1 year
4 th offense within 10 years of three previous Level 2 violations (or higher)	1 st Degree Misdemeanor ²¹	Min. \$750; Max. \$1000 or Max. 1 year	Max. suspension of recreational license for 3 years

Additionally, s. 379.407, F.S., sets out the following base penalties for violations related to stone crab and spiny lobster restrictions:

¹⁶ See Fla. Admin. Code R. 68B-24.006 and 68B-13.008, related to lobster traps and stone crab traps respectively.

¹⁷ Fla. Admin. Code R. 68B-24.003(1).

¹⁸ Section 379.401(2)(b)1., F.S.

¹⁹ Section 379.401(2)(b)2., F.S.

²⁰ Section 379.401(2)(b)3., F.S.

²¹ Section 379.401(2)(b)4., F.S.

- For a first conviction, imprisonment for not more than 60 days or by a fine of no less than \$100 and no more than \$500, or by both.²²
- For a second or subsequent conviction within 12 months, imprisonment for not more than 6 months or by a fine of not less than \$250 and no more than \$1,000, or by both.²³

Note that current law is ambiguous regarding whether commercial harvesters are subject to both the misdemeanor offenses (the Level Two Violations) set forth in s. 379.401, F.S., and the criminal penalties in s. 379.407, F.S.²⁴

For commercial harvesters, a violation involving more than 100 illegal spiny lobster or stone crabs is a “major violation” and results in an additional penalty of \$10 for each illegal stone crab or spiny lobster.

A “major violation” also means:

- any single violation involving possession of more than 25 stone crabs during the closed season or possession of 25 or more whole-bodied or egg-bearing spiny lobsters or stone crabs or possession of more than 25 wring spiny lobster tails;
- any violation for trap molestation, trap robbing, or pulling traps at night;
- or any combination of violations in any 3-consecutive-year period wherein more than 75 illegal stone crabs or spiny lobster in the aggregate are involved.²⁵

Upon the arrest and conviction for a major violation involving stone crabs or spiny lobster, the license holder must show just cause why his or her license should not be suspended or revoked.²⁶

In addition to the penalties in s. 379.407, F.S., s. 379.365, F.S., also provides the following administrative penalties for violations concerning FWC rules regulating stone crab trap certificates and trap tags for commercial harvesters:

²² Section 379.407(1)(a), F.S.

²³ Section 379.407(1)(b), F.S.

²⁴ Section 379.401(2)(a)16. & 17. F.S., both cite the entire section of law related to commercial and noncommercial violations of trap tag restrictions ss. 379.365(2)(a) (stone crab tags) and 379.3671(2)(c) (spiny lobster tags) and label those Level Two Violations (misdemeanors). However, s. 379.365(2)(a), F.S., specifies administrative penalties in addition to the provisions of s. 379.407, F.S., for commercial harvesters and then states “any other person” who violates the tag requirements commits a Level Two Violation, which would seem to indicate that only noncommercial harvesters are subject to Level Two Violations. A comparable provision exists for spiny lobster tags in s. 379.3671(2)(c)10., F.S. Furthermore, s. 379.407(1), F.S., which sets out the base criminal penalties for violations of ch. 379, F.S., does not limit those penalties to commercial harvesters (while s. 379.407(2), F.S., does specify that it only applies to commercial harvesters). The base criminal penalties read as if they would apply to both commercial and noncommercial harvesters. However, for stone crab tags and for spiny lobster tags, s. 379.407, F.S., is only directly cited when adding additional penalties for commercial harvesters.

²⁵ Section 379.407, F.S.(2)(i) and (j), F.S.

²⁶ *Id.*

Violation	Type of Infraction	FWC Penalty	Endorsement Restrictions
1 st offense	Noncriminal	Max. \$1,000	None
2 nd offense within 24 months of previous violation	Noncriminal	Max. \$2,000	12 month suspension
3 rd offense within 36 months of two previous violations	Noncriminal	Max. \$5,000	24 month suspension
4 th offense within 48 months of three previous violations	Noncriminal	No specific penalty	Permanent revocation of all the violator's saltwater fishing privileges.

In addition to the penalties in s. 379.407, F.S., s. 379.3671, F.S., also provides the following administrative penalties for violations concerning spiny lobster trap certificates and trap tags for commercial harvesters:

Violation	Type of Infraction	FWC Penalty	Restrictions
1 st offense	Noncriminal	Max. \$1,000	None
2 nd offense within 24 months of previous violation	Noncriminal	Max. \$2,000	Suspended for the remainder of the current license year
3 rd or subsequent offense within 36 months of two previous violations	Noncriminal	Max. \$5,000	24 month suspension or complete revocation

III. Effect of Proposed Changes:

Section 1 amends s. 379.365, F.S., to clarify existing law concerning violations of FWC rules regulating stone crab trap certificates and trap tags.

Section 2 amends s. 379.3671, F.S., to revise penalties for violations related to spiny lobster traps.

For violation of provisions concerning the possession or use of a spiny lobster trap without an attached trap tag; possession or use of any gear other than a trap as defined by FWC; and possession or use of spiny lobster trap tags without having the necessary number of certificates on record:

- For a second violation, the bill changes the amount of time a spiny lobster endorsement may be suspended from the remainder of the current license year to 12 months.
- For a third violation:
 - The bill removes “or subsequent” so that the sub-subparagraph applies only to a third violation within 36 months of any two previous violations;
 - The bill removes a reference to a prohibition on willfully molesting, taking possession of, or removing the contents of another harvester’s spiny lobster trap, so that the provision only applies to violations of the provisions stated above;
 - The bill provides for the suspension of a violator’s spiny lobster endorsement for 24 months, rather than up to 24 months; and
 - The bill removes authorization to revoke a violator’s spiny lobster endorsement and SPL.

The bill creates penalties for a fourth violation of s. 379.3671, F.S., or of FWC rules relating to spiny lobster traps that occurs within 48 months after any three previous violations. A fourth violation will result in the permanent revocation of all the violator’s saltwater fishing privileges, including having FWC proceed against the endorsement holder’s SPL.

Section 3 amends s. 379.407, F.S., to provide that it is a major violation for a recreational or commercial harvester to be in possession of an undersized spiny lobster, unless authorized to do so by FWC rule.

The bill provides that for violations involving fewer than 100 lobsters, each undersized spiny lobster may be charged as a separate misdemeanor count under the first two penalties on the following chart. However, the total misdemeanor penalty for any one scheme or course of conduct may not exceed four years imprisonment and a civil fine of \$4,000 under both penalties.

Any person who violates this provision is subject to the following penalties:

Violation	Type of Infraction	FWC Penalty	Civil Penalty or Jail Time	Restrictions
1 st offense	2 nd degree misdemeanor	None	Max. \$500 or Max. 60 days	None
2 nd or subsequent offense	1 st degree misdemeanor	None	Min. \$250; Max. \$1000 or Max. 1 year	None
A violation involving 100 or more undersized spiny lobsters	3 rd degree felony	Max. \$2,000	Min. \$500; Max. \$5000 or Max. 5 years	Suspension of all license privileges under ch. 379, F.S. for up to 12 months.

Section 4 amends s. 921.0022, F.S., to make the following changes to the Offense Severity Ranking Chart:

Statute	Felony Degree	Description
379.365(2)(c)1. This provision is added	3 rd	Violation of rules relating to stone crab traps, trap tags, trap certificates, and engaging in the commercial harvest of stone crabs while a license is suspended or revoked
379.3671(2)(c)3. This provision is removed	3 rd	Molestation, possession, or removal of a commercial harvester’s trap contents or trap gear
379.407(5)(b)3. This provision is added	3 rd	Possession of more than 100 undersized spiny lobsters

Section 5 provides an effective date of October 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Revised penalties provided for in CS/SB 1470 will have a negative, indeterminate impact on persons found guilty of violations amended or created in the bill.

C. Government Sector Impact:

The Marine Resources Conservation Trust Fund will see a positive impact as a result of the additional administrative penalties provided for in the bill. The clerks of the court would likely see a positive indeterminate impact as a result of the addition of criminal fines.

The Criminal Justice Impact Conference determined that the original bill language, containing language similar to CS/SB 1470, is likely to result in a positive indeterminate impact on state prison beds, which would likely have a negative indeterminate state fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 379.365, 379.3671, 379.407 and 921.0022.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation on February 9, 2016:

Provisions concerning stone crab trap regulation, proposed language concerning criminal penalties are removed.

Concerning spiny lobster trap regulation, the CS:

- Removes proposed language concerning criminal penalties;
- Provides that a spiny lobster endorsement may suspended for 12 months for a second violation of specified provisions;
- Provides that a spiny lobster endorsement may be suspended for 24 months for a third or subsequent violation of specified provisions. The following is removed from this provision:
 - suspension may be up to 24 months;
 - FWC may revoke the spiny lobster endorsement; and
 - FWC may also proceed against the violator's SPL;
- Provides penalties for a fourth violation within 48 months:
 - Results in a permanent revocation of all the violator's saltwater fishing privileges; and
 - FWC may proceed against the violator's SPL.

Concerning possession of undersized spiny lobsters, the CS:

- Changes "second violation" to "second or subsequent violation;" and
- Changes a provision concerning violations involving "more than 100" undersized spiny lobsters to "100 or more."

The amendment changes several items on the offense severity chart.

B. Amendments:

None.