

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 Committee on Fiscal Policy

BILL: CS/SB 1470

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Latvala

SUBJECT: Crustaceans

DATE: February 26, 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>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1470 amends s. 379.365, F.S., to clarify that the administrative penalties that the Florida Fish and Wildlife Conservation Commission (FWC) must assess for commercial harvesters are in addition to the criminal penalties related to stone crab trap certificates and trap tags.

The bill amends s. 379.3671, F.S., to revise the administrative penalties for subsequent violations that the FWC must assess for commercial harvesters related to spiny lobster traps.

The bill amends s. 379.407, F.S., to provide that it is a major violation for a recreational or commercial harvester to possess an undersized spiny lobster, unless authorized to do so by a FWC rule. The bill also provides for violations involving fewer than 100 undersized spiny lobsters, each undersized spiny lobster may be charged as a separate misdemeanor offense. However, the total misdemeanor penalties for any one scheme or course of conduct may not exceed 4 years imprisonment and a civil fine of \$4,000. The bill provides penalties for such a violation.

The bill amends s. 921.0022, F.S., to make the changes to Level 5 of the Offense Severity Ranking Chart relating to stone crabs and spiny lobsters.

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 also has a fiscal impact on the private sector. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2016.

II. Present Situation:

The Caribbean spiny lobster is commonly referred to as the Florida spiny lobster and inhabits tropical and subtropical waters of the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico. Spiny lobsters get their name from the forward-pointing spines that cover their bodies to help protect them from predators.¹

Two species of stone crabs exist in the waters off Florida, the Florida stone crab and the gulf stone crab. However, these crabs were once one species. Changes in climate and sea level likely kept two populations separate over time until they became genetically distinct.² The Florida Fish and Wildlife Conservation Commission (FWC) regulates the seasons when spiny lobsters and stone crabs can be caught, including the minimum size and bag limits.³

Commercial Fishing Licenses

In order to commercially harvest and sell 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
- A Crawfish (C#) or (CD#) endorsement for spiny lobster:⁴ or
- A Stone Crab endorsement (X).⁵

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.
- 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.

¹ Fish and Wildlife Conservation Commission, Research, Saltwater, Crustaceans – Marine Arthropods, Lobster, *Spiny Lobster – General Facts*, available at <http://myfwc.com/research/saltwater/crustaceans/lobster/facts/> (last visited Feb. 25, 2016).

² Fish and Wildlife Conservation Commission, Research, Saltwater, Crustaceans – Marine Arthropods, Stone Crabs, *Stone Crab Speciation*, available at <http://myfwc.com/research/saltwater/crustaceans/stone-crabs/proposed-evolutionary-history/> (last visited Feb. 25, 2016).

³ See Fish and Wildlife Conservation Commission, Fishing, Saltwater Fishing, Commercial, *Commercial Regulations for Spiny Lobster (Crawfish)*, available at <http://myfwc.com/fishing/saltwater/commercial/spiny-lobster/> (last visited Feb. 25, 2016) and Fish and Wildlife Conservation Commission, Fishing, Saltwater Fishing, Commercial, *Stone Crab*, available at <http://myfwc.com/fishing/saltwater/commercial/stone-crab/> (last visited Feb. 25, 2016).

⁴ Fish and Wildlife Conservation Commission, Fishing, Saltwater Fishing, Commercial, *Commercial Regulations for Spiny Lobster (Crawfish)*, available at <http://myfwc.com/fishing/saltwater/commercial/spiny-lobster/> (last visited Feb. 25, 2016).

⁵ Fish and Wildlife Conservation Commission, Fishing, Saltwater Fishing, Commercial, *Stone Crab*, available at <http://myfwc.com/fishing/saltwater/commercial/stone-crab/> (last visited Feb. 25, 2016).

- 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

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.”⁷ Spiny lobster⁸ and stone crabs⁹ are 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.¹⁰

Criminal Penalties for the Possession of Spiny Lobsters

Section 379.407(5), F.S., provides that it is a major violation for any person, firm, or corporation to be in possession of spiny lobster during the closed season or, while on the water, to be in possession of spiny lobster tails that have been wrung or separated from the body, unless such possession is allowed by the FWC rule. It also provides the penalties for this violation, which include imprisonment, fines, civil penalties, and suspension and or revocation of a license.

Administrative Penalties Relating to Stone Crabs

Section 379.365, F.S., provides administrative penalties for commercial harvesters, in addition to the criminal penalties discussed above, who violate the FWC rules regulating stone crab trap certificates and trap tags. The FWC must assess the following administrative penalties for:

- A first violation, a penalty up to \$1,000;
- A second violation within 24 months of any previous violation, a penalty up to \$2,000 and the FWC may suspend the stone crab endorsement for 12 months;
- A third violation within 36 months of any two previous violations, a penalty up to \$5,000 and the FWC may suspend the stone crab endorsement for 24 months; and
- A fourth violation within 48 months of any three previous violations, a permanent revocation of all the violator’s saltwater fishing privileges including having the FWC proceed against the endorsement holder’s SPL.¹¹

Administrative Penalties Relating to Spiny Lobsters

Section 379.3671, F.S., provides administrative penalties for commercial harvesters, in addition to the criminal penalties discussed above, who violate the FWC rules regulating spiny lobster

⁶ Florida Fish and Wildlife Conservation Commission, Licenses and Permits, *Commercial Saltwater Products - Fishing & Dealers Licenses*, available at <http://myfwc.com/license/saltwater/commercial-fishing/#spl> (last visited Feb. 25, 2016).

⁷ Section 379.101, F.S., defines a “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 FWC as restricted within a geographical area or during a particular time period of each year.

⁸ Rule 68B-24.001, F.A.C.

⁹ Rule 68B-13.005, F.A.C.

¹⁰ Rule 68B-2.006, F.A.C.

¹¹ Section 379.365(2)(a)1., F.S.

traps and trap tags for commercial harvesters. The FWC must assess the administrative penalties for possessing or using:

- A spiny lobster trap without having trap tag affixed to the trap;
- Any other gear or device that is not a trap as defined by a FWC rule; or
- Spiny lobster trap tags without the necessary number of certificates on record as required.¹²

The FWC must assess the following administrative penalties:

- A first violation for the above listed offenses, a penalty of up to \$1,000, all other first violations, a penalty of up to \$500;
- A second violation of the above listed offenses within 24 months of any previous violation, a penalty of up to \$2,000 and the FWC may suspend the spiny lobster endorsement for the remainder of the current license year; and
- A third or subsequent violation of the above listed offenses or the offense of willfully molesting, taking possession of, or removing the contents of another harvester's spiny lobster trap, within 36 months of any two previous violations, a penalty of up to \$5,000 and the FWC may suspend the spiny lobster endorsement for up to 24 months or revoke the spiny lobster endorsement and if revoking the endorsement the FWC may proceed against the licenseholder's SPL.¹³

III. Effect of Proposed Changes:

Criminal Penalties for the Possession of Spiny Lobsters

The bill amends s. 379.407, F.S., to provide that it is a major violation for a recreational or commercial harvester to possess an undersized spiny lobster, unless authorized to do so by a FWC rule. For violations involving fewer than 100 undersized spiny lobsters, each undersized spiny lobster may be charged as a separate misdemeanor offense. However, the total misdemeanor penalties for any one scheme or course of conduct may not exceed 4 years imprisonment and a civil fine of \$4,000. A violation this subjects a person to the following penalties:

- A first violation is a second degree misdemeanor punishable by a fine up to \$500 or imprisonment not exceeding 60 days;
- A second or subsequent violation is a first degree misdemeanor punishable by a fine up to \$1000 or imprisonment not exceeding 1 year;
- A violation involving 100 or more undersized spiny lobsters is a third degree felony punishable by a fine up to \$5,000 or imprisonment of up to 5 years and a mandatory civil fine of at least \$500. In addition, the FWC must assess an administrative penalty of up to \$2,000 and may suspend the violator's of license privileges under ch. 379, F.S., for up to 12 months.

Administrative Penalties Relating to Stone Crabs

The bill amends s. 379.365, F.S., to clarify that the administrative penalties that the FWC must assess for commercial harvesters are in addition to the criminal penalties related to stone crab trap certificates and trap tags.

¹² Section 379.3671(c), F.S.

¹³ Section 379.3671(c)4., F.S.

Administrative Penalties Relating to Spiny Lobsters

The bill amends s. 379.3671, F.S., to make the following changes to the administrative penalties that the FWC must assess for commercial harvesters related to spiny lobster traps:

- A second violation penalty, by changing the amount of time a spiny lobster endorsement may be suspended from “the remainder of the current license year” to 12 months.
- A third violation penalty, by:
 - Removing “or subsequent” so it applies only to a third violation within 36 months of any two previous violations;
 - Removing a reference to the offense of willfully molesting, taking possession of, or removing the contents of another harvester’s spiny lobster trap;
 - Providing a spiny lobster endorsement may be suspended for 24 months, rather than *up to* 24 months; and
 - Removing the FWC’s ability to revoke a violator’s spiny lobster endorsement and proceed against the licenseholder’s SPL.

The bill creates administrative penalties for a fourth violation that occurs within 48 months after any three previous violations, which must result in the permanent revocation of all the violator’s saltwater fishing privileges, including having the FWC proceed against the endorsement holder’s SPL.

Offense Severity Ranking Chart

The bill amends s. 921.0022, F.S., to make the following changes to Level 5 of the Criminal Punishment Code Offense Severity Ranking Chart:

- The third degree felony offense in s. 379.365(2)(c)1., F.S., (a 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) is added;
- The third degree felony offense in s. 379.3671(2)(c)3., F.S., (the molestation, possession, or removal of a commercial harvester’s trap contents or trap gear) is removed. Section 379.367, F.S., provides for the penalties for s. 379.3671(2)(c), F.S, and is already listed as a Level 5 offense in the Offense Severity Ranking Chart; and
- The third degree felony offense in s. 379.407(5)(b)3., F.S., (possession of more than 100 undersized spiny lobsters) is added.

Effective Date

The bill is effective 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 the bill will have a negative, indeterminate impact on persons convicted of violations or assessed the administrative penalties 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 the present form of the bill, is likely to result in a positive indeterminate impact on state prison beds (unknown increase in the number of additional prison beds needed), which would likely have a negative indeterminate state fiscal impact.¹⁴

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.

¹⁴ Criminal Justice Impact Conference, Narrative Analyses and Adopted Impacts, *SB 1470 – Crustaceans (Identical HB 1227)*, (Jan. 29, 2016), available at <http://edr.state.fl.us/content/conferences/criminaljusticeimpact/SB1470.pdf> (last visited on Feb. 25, 2016).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial 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 be 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.