

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 Environmental Preservation and Conservation

BILL: SB 1470

INTRODUCER: Senator Latvala

SUBJECT: Crustaceans

DATE: February 8, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinton</u>	<u>Rogers</u>	<u>EP</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>ACJ</u>	_____
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 1470 provides for revised penalties for offenses concerning spiny lobsters and stone crabs. The bill:

- Revises penalties for violations of rules concerning the regulation of stone crab trap certificates and trap tags;
- Provides additional penalties for violations involving 100 or more untagged stone crab traps;
- Revises penalties for violation of rules concerning the possession or use of spiny lobster traps without the required trap tags;
- Provides additional penalties for violations involving 100 or more untagged spiny lobster traps or use of unlawful trap tags; and
- Provides penalties for possession of undersized spiny lobsters by recreational or commercial harvesters.

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

An SPL is required to do any of the following:

- Sell, barter, or exchange for merchandise any saltwater products;

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).

- 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 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.”

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 letter.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

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;

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.

- 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:

- 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

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.

²² Section 379.407(1)(a), F.S.

- 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 licenseholder 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:

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.

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.*

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 revise penalties for violations related to stone crabs.

For violations of rules concerning regulation of stone crab trap certificates and trap tags involving fewer than 100 stone crab traps, each untagged trap may be charged as a separate misdemeanor count.²⁷ The bill provides that the total misdemeanor penalty for any one scheme or course of conduct may not exceed four years of imprisonment and a civil fine of \$4,000.

The bill revises the penalties related to violations of the rules regulating stone crab trap certificates and trap tags for commercial harvesters as follows:

Violation	Type of Infraction	FWC Penalty	Civil Penalty or Jail Time	Restrictions
1 st offense	2 nd degree misdemeanor	Max. \$1,000 (unchanged)	Max. \$500 or Max. 60 days	None (unchanged)
2 nd offense	1 st degree misdemeanor	Max. \$2,000 (unchanged)	Min. \$250; Max. \$1000 or Max. 1 year	Suspension of all license privileges under ch. 379, F.S. for up to 12 months.
3 rd offense	1 st degree misdemeanor	Max. \$5,000 (unchanged)	Min. \$500; Max. \$1000 or Max. 1 year	Suspension of all license privileges under ch. 379, F.S. for up to 24 months.
4 th offense	None designated	No specific penalty	None designated	Permanent revocation of all license privileges under ch. 379, F.S.

Note, however, that the language states that these penalties are *in addition* to penalties provided in s. 379.407, F.S., which authorizes fines or imprisonment for these types of offenses. See the

²⁷ The existing statute prohibits: (1) expired tags, (2) tags not issued by the commission, and (3) untagged traps. The new authorization only mentions “untagged traps.” This may create ambiguity about whether the other violations can be charged as individual misdemeanors and are subject to the penalty cap. See Related Issues section.

Constitutional Issues Section of this bill analysis. Additionally, s. 379.401(2)(a)16., F.S., could be interpreted to mean that tag violations are misdemeanors because that section states that tag violations are listed as Level Two Violations.

The bill provides that for a commercial harvester, any violation involving 100 or more untagged²⁸ stone crab traps:

- Is punishable as a third degree felony, which can result in a fine of up to \$5,000 and a term of imprisonment of up to five years;
- Results in a mandatory civil fine of at least \$500;
- Subjects the violator to an administrative penalty of up to \$2,000; and
- The FWC may suspend the violator's license privileges under ch. 379, F.S. for up to 12 months.

The administrative penalty and suspension may be assessed in addition to the penalties listed above.

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

The bill provides that if the violation involves fewer than 100 spiny lobster traps, each untagged trap may be charged as a separate misdemeanor count.²⁹ 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.

If a person is not in possession of the necessary number of certificates on record for the number of lobster trap tags the person possesses, the bill provides that if the violation involves fewer than 100 spiny lobster trap tags, each unlawful trap tag may be charged as a separate misdemeanor count. 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.

²⁸ See note 36. The same issue exists for this provision. Note also that section 4 of the bill lists only untagged traps as a felony.

²⁹ The bill revises s. 379.3671, F.S., which (1) makes it unlawful for a person to possess or use a spiny lobster trap without a trap tag and (2) makes it unlawful for a person to possess or use any other gear or device designed to attract and enclose or otherwise aid in the taking of a spiny lobster that is not a trap. Note, that revised bill provision does not include the second offense. This may create ambiguity See the Related Issues Section of this analysis.

The bill provides the following revisions to penalties for commercial harvesters for violations of s. 379.3671, F.S., or rules of the FWC, relating to spiny lobster traps:

Violation	Type of Infraction	FWC Penalty	Civil Penalty or Jail Time	Restrictions
1 st offense	2 nd degree misdemeanor	Max. \$1,000 (unchanged)	Max. \$500 or Max. 60 days	None (unchanged)
2 nd offense	1 st degree misdemeanor	Max. \$2,000 (unchanged)	Min. \$250; Max. \$1000 or Max. 1 year	Suspension of all license privileges under ch. 379, F.S. for up to 12 months.
3 rd or subsequent offense	1 st degree misdemeanor	Max. \$5,000 (unchanged)	Min. \$500; Max. \$1000 or Max. 1 year	Suspension of all license privileges under ch. 379, F.S. for up to 24 months or revocation of the spiny lobster endorsement.

Note, however, that the language states that these penalties are *in addition* to penalties provided in s. 379.407, F.S., which authorizes fines or imprisonment for these types of offenses. See the Constitutional Issues Section of this bill analysis. Additionally, s. 379.401(2)(a)18., F.S., could be interpreted to mean that tag violations are misdemeanors because that section states that tag violations are listed as Level Two Violations.

The bill provides that for a commercial harvester any violation involving 100 or more untagged spiny lobster traps or unlawful trap tags:³⁰

- Is punishable as a third degree felony, which can result in a fine of up to \$5,000 and a term of imprisonment of up to five years;
- Results in a mandatory civil fine of at least \$500;
- Subjects the violator to an administrative penalty of up to \$2,000; and
- The FWC may suspend the violator’s license privileges under ch. 379, F.S. for up to 12 months.

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.

³⁰ See note 38. The same issue exists for this provision. Note also that section 4 of the bill lists only untagged traps or unlawful trap tags as a felony, not unlawful gear or devices.

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 offense	1 st degree misdemeanor	None	Min. \$250; Max. \$1000 or Max. 1 year	None
A violation involving more than 100 spiny lobsters	3 rd degree felony	Max. \$2,000 (unchanged)	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 incorporate the following violations in the Offense Severity Ranking Chart:

Statute	Felony Degree	Description
379.365(2)(a)1.e.	3rd	Possession or use of more than 100 untagged stone crab traps
379.365(2)(b)	3rd	Possession or removal of the contents of another harvester’s stone crab trap
379.365(2)(c)1.	3rd	Violation of rules relating to molestation of stone crab traps, lines, or buoys; or rules relating to stone crab trap tags
379.3671(2)(c)4.d.	3rd	Possession or use of more than 100 untagged spiny lobster traps or unlawful trap tags
379.407(5)(b)3.	3rd	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.

D. Other Constitutional Issues:

The Fifth Amendment to the United States Constitution provides, in part, that no person shall be "subject for the same offence to be twice put in jeopardy of life or limb." This is known as the "double jeopardy" clause of the U.S. Constitution. The provision protects a person from being charged twice for the same crime. Article I, Section 9, of the Constitution of the State of Florida contains a similar provision, which states that no person shall "be twice put in jeopardy for the same offense. . ."

For tag violations related to stone crab and for tag violations related to spiny lobster the bill provides that in addition to penalties provided in s. 379.407, F.S., a commercial harvester can be subject to varying degrees of misdemeanors depending on whether the harvester is a repeat offender. Section 379.407(1), F.S., sets forth baseline penalties that may include a term of imprisonment. The fact that the possible term of imprisonment under s. 379.407, F.S., is in addition to the misdemeanor added in the bill may raise a question about whether double jeopardy would apply.

In *U.S. v. Dixon*, 509 U.S. 688 (1993), the United States Supreme Court held that in the contexts of both multiple punishments and successive prosecution, the double jeopardy bar applies if the two offenses for which the defendant is punished or tried cannot survive the "same-elements" test, which inquires whether each offense contains an element not contained in the other; if not, they are the same offence within the Clause's meaning, and double jeopardy bars subsequent punishment or prosecution.

However, In *Missouri v. Hunter*, 459 U.S. 359 (1983), the United States Supreme Court instructed that where a legislature specifically authorizes cumulative punishment under two statutes, regardless of whether those two statutes proscribe the same conduct, the prosecutor may seek and the trial court or jury may impose cumulative punishment under those statutes in a single trial. Simply because two criminal statutes may be construed to proscribe the same conduct, added the Court, does not mean that the Double Jeopardy Clause precludes the imposition, in a single trial, of cumulative punishments pursuant to those statutes.

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 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 added 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 this bill is likely to result in a positive indeterminate impact on the prison beds in the state, which would likely have a negative fiscal impact on the state and local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In section 1 of the bill, existing law prohibits: (1) expired tags, (2) tags not issued by the commission, and (3) untagged traps. The language authorizing individual misdemeanors and a cap on the total penalty (lines 44-49) that is inserted into the section only mentions “untagged traps.” If the intent is to provide that all violations of the paragraph may be charged as separate misdemeanors, the language should be revised to cover all three types of violations or “all violations of this paragraph.” Similarly, provisions related to felony charges for more than 100 violations in sections 1 and 4 of the bill are limited to “untagged traps.”

Section 2 of the bill revises s. 379.3671, F.S., which (1) makes it unlawful for a person to possess or use a spiny lobster trap without a trap tag and (2) makes it unlawful for a person to possess or use any other gear or device designed to attract and enclose or otherwise aid in the taking of a spiny lobster that is not a trap. The bill provides that if the violation involves fewer than 100 spiny lobster traps, each untagged trap may be charged as a separate misdemeanor count. Note, that this provision does not include the second offense specified in this paragraph. If the intent is to provide that all violations of the paragraph may be charged as separate misdemeanors, the language should be revised to include using or possessing items that are not a trap or “all violations of this paragraph.” Similarly, provisions related to felony charges for more than 100 violations in sections 1 and 4 of the bill are limited to untagged or unlawful traps.

Section 3 of the bill does not specify the penalty for violations involving exactly 100 spiny lobster. Lines 325-326 refer to violations involving less than 100 spiny lobsters. In a related part of the bill, on line 336, there is a reference to violations involving more than 100 spiny lobsters.

Line 355 of the bill refers to “possession or removal of the contents of another harvester’s stone crab trap” and cites s. 379.365(2)(b), F.S., indicating that this is a 3rd degree felony. The subject is referred to correctly but the paragraph it refers to does not provide for a 3rd degree felony. Section 379.401(a)16., F.S., states that violation of s. 379.365(2)(b), F.S., is a Level Two violation, which would be a misdemeanor, not a felony.

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.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
