

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 Appropriations

BILL: SB 1228

INTRODUCER: Senators Gainer and Hutson

SUBJECT: Marine Turtle Protection Act

DATE: April 28, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Hrdlicka</u>	<u>CJ</u>	Favorable
2.	<u>Istler</u>	<u>Rogers</u>	<u>EP</u>	Favorable
3.	<u>Reagan</u>	<u>Hansen</u>	<u>AP</u>	Favorable

I. Summary:

SB 1228 amends the offense severity ranking chart provided in section 921.0022(3), Florida Statutes, to:

- Update the cross-reference to section 379.2431(1)(e)7., Florida Statutes, relating to soliciting or conspiring to commit a violation of the Marine Turtle Protection Act; and
- Add section 379.2431(1)(e)6., Florida Statutes, relating to the possession of a marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species.

Under the bill, both offenses are Level 3 offenses.

The bill contains no significant fiscal impact to state revenues or expenditures.

The bill takes effect July 1, 2017.

II. Present Situation:

Marine Turtle Protection Act

The “Marine Turtle Protection Act” (MTPA) was created to ensure that the Fish and Wildlife Conservation Commission (FWC) has the appropriate authority and resources to implement its responsibilities under the recovery plans of the U.S. Fish and Wildlife Services for the following five species of marine turtles:

- Atlantic loggerhead turtle (*Caretta caretta*);
- Atlantic green turtle (*Chelonia mydas*);
- Leatherback turtle (*Dermochelys coriacea*);
- Atlantic hawksbill turtle (*Eretmochelys imbricata*); and

- Atlantic ridley turtle (*Lepidochelys kempi*).¹

The MTPA prohibits a person, firm, or corporation from knowingly possessing, taking, disturbing, mutilating, destroying or causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing any marine turtle species or hatchling, or parts thereof, or the eggs or nest of any marine turtle species.²

The FWC is authorized to:

- Issue a special permit or loan agreement to a person, firm, or corporation to possess a marine turtle species or hatchling, or parts thereof, including nests or eggs, for scientific, education, or exhibition purposes, or for conservation activities such as the relocation of nests, eggs, or marine turtles or hatchlings away from construction sites.
- Issue a special permit or loan agreement to a properly accredited person³ for marine turtle conservation purposes.
- Adopt rules pursuant to ch. 120, F.S., to prescribe terms, conditions, and restrictions for marine turtle conservation, and to permit the possession of marine turtle species, hatchlings, or parts thereof, including nests or eggs.⁴

Penalties for violations of the MTPA are provided in the table below.

Marine Turtle Violations ⁵	Type of Infraction	Civil Penalty or Imprisonment
1st offense for possession of 11 or fewer marine turtle eggs	1st Degree Misdemeanor ⁶	Max. \$1,000 ⁷ and Max. 1 year ⁸
2nd and subsequent offense for possession of 11 or fewer marine turtle eggs	3rd Degree Felony ⁹	Max. \$5,000 ¹⁰ or Max. 5 years ¹¹
1st offense for possession of more than 11 marine turtle eggs	3rd Degree Felony ¹²	Max. \$5,000 or Max. 5 years
Illegally taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing any marine turtle species or hatchling, or parts thereof, or the eggs or nest of any marine turtle species	3rd Degree Felony ¹³	Max. \$5,000 or Max. 5 years

¹ Section 379.2431(1), F.S.

² This provision applies unless authorized in this paragraph or otherwise provided by the Federal Endangered Species Act or its implementing regulations. Section 379.2431(1)(d), F.S.

³ The term “properly accredited person” is defined in s. 379.2431(1)(c), F.S.

⁴ Section 379.2431(d), F.S.

⁵ Section 379.2431(1)(e), F.S.

⁶ Section 379.2431(1)(e)2., F.S.

⁷ Section 775.083(1)(d), F.S.

⁸ Section 775.082(4)(a), F.S.

⁹ Section 379.2431(1)(e)3., F.S.

¹⁰ Section 775.083(1)(c), F.S.

¹¹ Section 775.082(3)(e), F.S.

¹² Section 379.2431(1)(e)4., F.S.

¹³ Section 379.2431(1)(e)5., F.S.

Marine Turtle Violations ⁵	Type of Infraction	Civil Penalty or Imprisonment
Possession of any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species	3rd Degree Felony ¹⁴	Max. \$5,000 or Max. 5 years
Soliciting or conspiring to commit a violation of the MTPA	3rd Degree Felony ¹⁵	Max. \$5,000 or Max. 5 years
Additional penalty for each egg associated with the above violations		\$100 per egg ¹⁶

The Criminal Punishment Code (Code), ss. 921.002-921.0027, F.S., provides the sentencing scores for all felony convictions. There are 10 offense levels, ranked from least severe (Level 1 offenses) to most severe (Level 10 offenses). Until the Legislature assigns a specific severity level to an offense, under the Code the severity level defaults, as follows:

- A third degree felony is within a Level 1 offense.
- A second degree felony is within a Level 4 offense.
- A first degree felony is within a Level 7 offense.
- A life felony is within a Level 10 offense.¹⁷

If the Legislature determines that the severity level for a specific felony offense should be more or less severe than the default, the Legislature may assign such felony offense to any specific severity level by placing the felony offense on the offense severity ranking chart provided in s. 921.0022(3), F.S.

According to the FWC, the possession of marine turtle species, hatchlings, or their parts was implied to be illegal along with other prohibitions in s. 379.2431(1)(d), F.S.¹⁸ However, in 2013, a person was charged with a felony of the third degree for knowingly taking a marine turtle in violation of the MTPA. The person placed a live turtle in a cooler and the turtle subsequently died from hypothermia. The statute defines the term “take” to specifically mean “an act that actually kills or injures marine turtles.”¹⁹ Because the person’s actions did not constitute a taking under state law and the possession of sea turtles was not specifically prohibited, the verdict was not guilty.²⁰

To clarify that possession of a marine turtle species was a violation of the MTPA, the Legislature enacted HB 7013 (ch. 2016-107, L.O.F.), which amended s. 379.2431, F.S., to prohibit a person, firm, or corporation from knowingly possessing a marine turtle species or hatchling, or parts thereof, unless otherwise authorized by the Federal Endangered Species Act or its implementing regulations. Chapter 2016-107, L.O.F., added a new subparagraph 6. to provide that a person,

¹⁴ Section 379.2431(1)(e)6., F.S.

¹⁵ Section 379.2431(1)(e)7., F.S.

¹⁶ Section 379.2431(1)(e)1., F.S.

¹⁷ Section 921.0023, F.S.

¹⁸ FWC, 2017 Legislative Proposal Agenda Item 17, 1 (Nov. 17, 2016), available at <http://myfwc.com/media/4089156/17-proposal.pdf> (last visited April 14, 2017).

¹⁹ Section 379.2431(1)(c), F.S.

²⁰ See FWC, 2017 Legislative Proposal Agenda Item 17, 1 (Nov. 17, 2016). In a 2015 circuit court case, a judge found a defendant not guilty of violating s. 379.2431(1)(d), F.S. *State v. Alvarez*, Case No. 2013-CF-101AM (Fla. 16th Jud. Cir. 2015).

firm, or corporation that illegally possesses any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species commits a felony of the third degree, punishable by a maximum fine of \$5,000 or a maximum of five years of imprisonment. Adding the new subparagraph 6 made solicitation or conspiracy to commit a violation of the MTPA subparagraph 7.²¹

In ch. 2016-107, L.O.F., the cross-reference to s. 373.2431(1)(e)6., F.S., relating to soliciting to commit or conspiring to commit a violation of the MTPA, on the offense severity ranking chart was not updated to reflect the change in numbering from subparagraph 6 to subparagraph 7. Consequently, the offense severity ranking chart provides a description of the offense of s. 379.2431(1)(e)6., F.S., as soliciting to commit or conspiring to commit a violation of the MTPA and makes no reference to the new language in subparagraph 6 regarding possession.

In ch 2017-3, L.O.F., the cross-reference was amended to conform to the redesignation of subparagraph 6 to subparagraph 7. Therefore, under current law the felony offense for possessing any marine turtle species or hatchling, or parts thereof, is not on the offense severity ranking chart and defaults to a Level 1 offense.

III. Effect of Proposed Changes:

Section 1 amends the offense severity ranking chart provided in s. 921.0022(3), F.S., to:

- Update the cross-reference to s. 379.2431(1)(e)7., F.S., relating to soliciting or conspiring to commit a violation of the Marine Turtle Protection Act; and
- Add s. 379.2431(1)(e)6., F.S., relating to the possession of a marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species.

Section 1 also provides that both offenses are Level 3 offenses.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²¹ Florida Fish and Wildlife Conservation Commission (FWC), *2017 Legislative Proposal* (November 17, 2016) (on file with the Senate Committee on Criminal Justice).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates that the bill will have a positive insignificant prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 921.0022 of the Florida Statutes.

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.