

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 6, 1998 Revised: _____

Subject: Marine Resources

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Gee</u>	<u>Voigt</u>	<u>NR</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>WM</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill prohibits the harvesting of shellfish within 25 feet of a marked aquaculture lease, exempts disabled persons from the income requirements for a restricted species endorsement on a saltwater products license and provides criteria for the transfer and reissuance of, and the qualifications for, a marine life fishing endorsement on a saltwater products license. It revises the distribution of funds collected from recreational saltwater fishing licenses, and prohibits the possession of gill and entangling nets on vessels of less than specified lengths. The bill provides for a surcharge on the initial transfer of a crawfish trap certificate outside of the immediate family of the holder, prohibits the lease of lobster trap certificates after July 1, 2003, and clarifies the intent to impose additional penalties on commercial harvesters for violations relating to crawfish traps. The bill provides for the continuation of the Marine Fisheries Commission (MFC), notwithstanding its scheduled 1999 abolition, extends the moratorium on the issuance of stone crab trap numbers, and provides a moratorium on the issuance of blue crab endorsements.

This bill provides civil penalties for marine fisheries violations relating to unlicensed dealing in saltwater products and violations of record-keeping requirements, and requires that major violators show cause why their licenses should not be revoked. The bill also requires clerks of the court to report the disposition of marine fisheries cases to the Department of Environmental Protection (DEP), clarifies the definition of "conviction" and permits the sharing of marine fisheries information with other states. Finally, several provisions of the Florida Statutes are repealed because they are no longer needed due to MFC rules covering these subject matters.

This bill amends sections 253.72, 370.021, 370.06, 370.07, 370.0608, 370.092, 370.093, 370.13, 370.135, and 370.142 of the Florida Statutes. It also repeals the following provisions of the Florida Statutes: 370.08(7), 370.0821(3), 370.11(2) and (3), 370.1125, 370.114, 370.135(2) and

(3), 370.15(2) and (3), 370.151(2), 370.153(4)(c), (d), and (e), and (5)(b) and (d), 370.156, 370.157, and 370.1127.

II. Present Situation:

The state's marine resources are managed by the DEP, pursuant to ch. 370, F.S., and rules of the MFC and the DEP. As marine fisheries management has become increasingly important and complex due to decreasing resources, the DEP reports a need for increased enforcement capability to conserve marine resource and the public health. Section 370.021, F.S., contains penalties for a number of marine fisheries violations. This section does not, however, authorize the DEP to impose civil penalties for unlicensed dealing in saltwater products. The DEP reports that, because the fisheries laws do not clearly prohibit and penalize the back-door sale or purchase of saltwater products to dealers and restaurants, a black market in unlawfully harvested fisheries products is flourishing, damaging the fishery and endangering the public health. Although the department has had some success in prosecuting these offenses against wholesale dealers and saltwater products licensees, the laws have been difficult to enforce against restaurants and retail dealers. Moreover, even when prosecutions are possible, the penalties obtainable under the present statute are not sufficient to deter this unlawful conduct.

Although many provisions of state fisheries laws provide for escalating penalties for second or subsequent convictions, there is no mechanism for tracking convictions of Florida fisheries laws. The courts must report dispositions of traffic and boating violations, but there are no similar requirements for fishing violations.

The DEP reports that many fisheries violations occur because a fisher does not fully understand the law and that it has had success in counseling and educating first-time violators, rather than suspending or revoking licenses. The department believes that formalizing this process by requiring major violators to defend continuation of their license privileges would be beneficial in providing an opportunity for education, where warranted.

Section 370.07, F.S., requires wholesale dealers to keep records of their business dealings; although one's license may be suspended, revoked, or denied renewal for violation of the requirements, no civil penalty is authorized. The burden of proof in such licensure actions is on the department to show why the license should be revoked, suspended, or denied renewal. The department has conducted 46 suspension hearings for cited violators. Of these, 39 had their license privilege re-instituted. The seven cited violators who were withheld privileges either had automatic suspension, net ban violations, or did not appear for the hearing. This section also provides an exemption from the public records provisions of s. 119.07(1), F.S., for wholesale dealers records, which does not allow the DEP to share necessary information with other states in developing regional fisheries management strategies.

The MFC, which is responsible for developing rules to govern the state's marine resources, is currently assigned to the Board of Trustees of the Internal Improvement Trust Fund (Trustees). The Trustees must approve all MFC rules. With the exception of endangered species and the

regulation of fishing gear in residential, manmade saltwater canals, the MFC has exclusive rulemaking authority over marine resources. Whenever a MFC rule and a provision of the Florida Statutes are in conflict, the conflicting statute is implicitly repealed. The revisor, however, has not deleted the ineffective provisions and the Florida Statutes contain a number of obsolete provisions due to MFC rulemaking.

Section 253.72, F.S., requires that aquaculture leases be marked and that reasonable public ingress and egress be provided. There is no prohibition on harvesting shellfish near a marked lease.

Pursuant to s. 370.06, F.S., a restricted species endorsement on a saltwater products license is required to sell to a licensed wholesale dealer any species designated as “restricted” by law or rule. Most commercial species have been so designated. To qualify for the endorsement, a person must have earned over 25 percent of his income, or \$5,000, whichever is less, from the sale of saltwater products in at least one of the previous 3 years.

Pursuant to s. 370.06(2)(d), F.S., persons wishing to harvest marine life species must have a marine life endorsement on their saltwater products license. The endorsement is issued by the DEP for a fee of \$75.00. There is currently no minimum age to apply for the endorsement. This is a concern, as marine life fishery stocks are in danger of being overharvested. Rather than allow persons under the age necessary to be effective harvesters to obtain the endorsement, the fishery needs to be limited in a manner designed to preserve marine life stocks.

Pursuant to s. 370.0608(1), F.S., not more than 2.5 percent of the revenues from sales of recreational saltwater fishing licenses can be used by the MFC to carry out its responsibilities and to fund marine research. An additional 30 percent of these revenues is used for fishery enhancement. It does not appear that this level of funding for the MFC will be sufficient to maintain current functions.

Section 370.092, F.S., contains provisions designed to implement the constitutional limitation on nets. Since the adoption of s. 16, Art. X of the State Constitution, the Legislature has enacted provisions designed to make the limitation on nets more enforceable, although violations continue. Because the limitation does not apply in federal waters, unless fishers are observed using illegal nets in state waters, they can claim their catch was taken in federal waters even though the boat in use does not appear to be able to safely travel that distance.

The 1991 Legislature created the state’s first limited-entry fishery when it created the program codified in s. 370.142, F.S., to restrict the number of spiny lobster (crawfish) traps in use. The program requires that for each trap and tag, the owner must have a trap certificate on file with the DEP. The tags, originally issued a cost of \$.15 each, may be sold at their market value, which the DEP reports is between \$35.00 and \$40.00. Because “ownership” of traps certificates entitles members of a relatively small, and strictly limited, fishery to harvest a state resource previously available to anyone, a surcharge of 25 percent of the fair market value given to the transferor is assessed the first time a certificate is transferred outside the original owner’s immediate family. To

reduce this surcharge, many fishers have reported sale prices as low as \$.75. Also, to avoid transfer fees, some fishers lease their certificates rather than sell them.

Pursuant to s. 370.13, F.S., a moratorium on the issuance of new stone crab trap numbers exists until July 1, 1999. It appears that fishers impacted by the net ban are entering the stone crab and blue crab fisheries in numbers that could make the overall fisheries unprofitable to individuals over time.

Pursuant to s. 370.142(2)(c), F.S., a civil penalty is assessed for violations relating to lobster traps, in addition to criminal penalties under s. 370.021, F.S. Because of the way these provisions were drafted, at least one judge has refused to assess civil penalties.

Section 2 of ch. 94-247, L.O.F., schedules ss. 370.025 - 370.028, F.S., for repeal on October 1, 1999, and provides for prior review of these sections by the Legislature. These provisions authorize and empower the MFC.

III. Effect of Proposed Changes:

Section 1. Section 253.72, F.S., is amended to prohibit the harvesting of shellfish within 25 feet outside lawfully marked aquaculture lease boundaries or within setback and access corridors within designated high-density aquaculture lease areas and use zones.

Section 2. Section 370.06, F.S., is amended to provide that the marine life fishing endorsement may only be issued to a person aged 16 or older or to a corporation holding a valid restricted species endorsement.

This section also temporarily limits entry into the marine life fishery. Beginning July 1, 1998, and until July 1, 2002, no new marine life endorsements will be issued, although endorsements that were active during FY 1997-1998 may be renewed.

In 1998, persons or corporations holding a marine life fishing endorsement that was active in FY 1997-1998 or an immediate family member of that person must request renewal of the marine life fishing endorsement before December 31, 1998. In subsequent years and until July 1, 2002, a marine life endorsement holder, or member of his or her immediate family, must request renewal of the marine life endorsement before September 30 of each year. If a person or corporation holding an active marine life fishing endorsement or a member of that person's immediate family does not request renewal of the endorsement before the applicable dates specified, the DEP must deactivate that marine life fishing endorsement.

In the event of the death or disability of a person holding an active marine life fishing endorsement, the endorsement may be transferred by the person to a member of his or her immediate family or may be renewed by any person designated to do so by the executor of the person's estate.

Persons or corporations who hold saltwater product licenses with marine life fishing endorsements issued to their vessel registration numbers and who subsequently replace their existing vessels with new vessels may transfer the existing marine life fishing endorsement to the new boat registration numbers. Persons or corporations who hold saltwater product licenses with marine life fishing endorsements issued to their name and who subsequently incorporate or unincorporate may transfer the existing marine life fishing endorsement to the new corporation or person.

The MFC, by July 1, 2000, is to prepare a report regarding options for the establishment of a limited-entry program for the marine life fishery and submit the report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the Senate and House committees having jurisdiction over marine resources.

This section also exempts from the income requirements for a restricted species endorsement on a saltwater products license any resident who is certified to be totally and permanently disabled by a verified written statement, based upon the criteria for permanent and total disability in chapter 440, F.S., from a physician licensed in this state, by any branch of the United States Armed Services, by the Social Security Administration, or by the United States Department of Veterans Affairs or its predecessor, or any resident who holds a valid identification card issued by the Department of Veterans' Affairs pursuant to s. 295.17, if he or she also has held a saltwater products license for at least 3 of the last 5 license years prior to the date of the disability. A Disability Award Notice issued by the United States Social Security Administration is not sufficient certification for obtaining the income exemptions unless the notice certifies that the resident is totally and permanently disabled.

Section 3. Section 370.0608, F.S., is amended to revise the distribution of recreational saltwater fishing license revenues. Rather than not more than 2.5 percent of these funds, the MFC will be provided not more than 5 percent, and the amount provided for fishery enhancement is lowered from not less than 30 percent to not less than 27.5 percent.

Section 4. Section 370.092, F.S., is amended to provide that, notwithstanding s. 370.092(1) and (2), F.S., and unless authorized by MFC rule, it is a major violation punishable pursuant to s. 370.092(4), F.S., for any person, firm, or corporation to possess any gill or entangling net, or seine net larger than 500 square feet in mesh area, on any airboat or on any other vessel less than twenty-two feet in length, or twenty-five feet in length if the primary power of the vessel is mounted forward of the vessel center point. Gill or entangling nets will be as defined in s. 16, Art. X of the State Constitution, s. 370.093(2)(b), F.S., or in a rule of the MFC implementing s. 16, Art. X of the State Constitution. Vessel length will be determined in accordance with current U. S. Coast Guard regulations specified in the Code of Federal Regulations, or as titled by the State of Florida. The MFC is authorized to adjust by rule the use of gear on vessels of lengths different than those specified in s. 370.092, F.S., in order to prevent the illegal use of gill and entangling nets in state waters and to provide reasonable opportunities for the use of legal net gear in adjacent federal waters.

MFC is also directed to adopt rules to prohibit the possession and sale of mullet taken in illegal gill or entangling nets. Violations of such rules shall be punishable as provided in s. 370.092(4), F.S.

Section 5. Section 370.093, F.S., is amended to authorize the MFC to adopt rules implementing s. 370.093, F.S.

Section 6. Section 370.142, F.S., is amended to change the surcharge assessed on the first transfer of a lobster trap certificate outside the original holder's immediate family from 25 percent of the fair market value received by the transferor to \$5.00 per certificate transferred or 25 percent of the actual market value, whichever is greater.

This section also prohibits the leasing of lobster trap tags or certificates, beginning July 1, 2003. The prohibition is applicable to the 2003-2004 lobster season and thereafter.

Finally, this section clarifies that the existing civil penalties for violations relating to lobster traps under s. 370.142(c), F.S., are in addition to criminal penalties under s. 370.021(2)(c), F.S.

Section 7. This section provides that, notwithstanding the provisions of s. 2 of ch. 94-247, L.O.F., the statutory authorization for the creation and functions of the MFC, contained in ss. 370.025-370.028, F.S., shall not stand repealed as scheduled by those provisions, but shall continue in full force and effect.

Section 8. Section 370.13, F.S., is amended to extend the moratorium period for issuing new stone crab trap numbers from 1999 to 2000. In the event of death or disability of a person holding an active stone crab endorsement, the endorsement may be transferred to a member of his or her immediate family or may be renewed by any person so designated by the executor of the person's estate.

The bill provides that no person may harvest stone crabs with more than five traps, harvest stone crabs in commercial quantities or sell stone crabs unless such person holds a valid saltwater products license with a restricted species endorsement and stone crab endorsement.

Section 9. Section 370.135, F.S., is amended to provide that no person may harvest blue crabs with more than five traps, harvest blue crabs in commercial quantities, or sell blue crabs, unless such person holds a valid saltwater products license with a restricted species endorsement and a blue crab endorsement (trap number).

This section also establishes a moratorium on issuing new blue crab endorsements, as follows:

- Effective June 1, 1998, and until July 1, 2002, no blue crab endorsement (trap number), except those endorsements that are active during the 1997-1998 fiscal year, may be renewed or replaced.

- In 1998, persons holding an endorsement that was active in the 1997-1998 fiscal year, or an immediate family member of that person, must request renewal of the endorsement prior to December 31, 1998.
- In subsequent years and until July 1, 2002, a trap number holder, or members of his or her immediate family, must request renewal of the endorsement prior to September 30 of each year.
- If a person holding an active blue crab endorsement, or a member of that person's immediate family, does not request renewal of the endorsement before the applicable dates specified, the DEP must deactivate that endorsement.
- In the event of the death or disability of a person holding an active blue crab endorsement, the endorsement may be transferred by the person to a member of his or her immediate family or may be renewed by any person so designated by the executor of the person's estate.
- Persons who hold saltwater products licenses with blue crab endorsements issued to their boat registration numbers and who subsequently replace their existing vessels with new vessels shall be permitted to transfer the existing licenses to the new boat registration numbers.

Section 10. Section 370.021, F.S., is amended to provide civil penalties, in addition to any other penalties under ch. 370, F.S., for any violation of s. 370.06 or s. 370.07, F.S., or rules of the DEP implementing those sections, which involve buying saltwater products from an unlicensed person, firm, or corporation by a commercial wholesale dealer, retail dealer, or restaurant facility for public consumption, or selling saltwater products by an unlicensed person, firm, or corporation to a commercial wholesale dealer, retail dealer, or restaurant facility for public consumption. The offense is a major violation, having the following penalties:

- For a first violation, the department may assess a civil penalty of up to \$2,500 and may suspend the wholesale or retail dealer's license privileges for up to 90 calendar days.
- For a second violation occurring within 12 months of a prior violation, the department may assess a civil penalty of up to \$5,000 and may suspend the wholesale or retail dealer's license privileges for up to 180 calendar days,
- For a third or subsequent violation occurring within a 24-month period, the department shall assess a civil penalty of \$5,000 and shall suspend the wholesale or retail dealer's license privileges for up to 24 months.

The DEP may waive or reduce the penalties for just cause, if such can be demonstrated by the violator. All proceeds from the penalties will be deposited into the Marine Resources Conservation Trust Fund (MRCTF).

The section is also amended to require a license holder to show just cause why his or her license or licenses should not be suspended, revoked, or denied renewal upon conviction for any of the following major violations.

- Any violation described elsewhere in s. 370.021(2)(c), F.S., for the taking or harvesting or the attempted taking or harvesting of finfish, any single violation involving the possession of more than 10 percent over the legal amount of finfish prescribed by law; or any combination of violations in any 3-consecutive-year period in which more than 25 percent of the annual aggregate of the legal amount of finfish prescribed by law are involved.
- Any violation described elsewhere in s. 370.021(2)(c), F.S., for the taking or harvesting or the attempted taking or harvesting of shrimp from a nursery or other prohibited area; or any two violations occurring within a 12-month period, involving gear, size count, or season.
- Any violation described elsewhere in s. 370.021(2)(c), F.S., for the taking or harvesting or the attempted taking or harvesting of marine life species; any violation involving use of chemicals or gear not authorized by rule of the MFC; any violation involving the taking or harvesting or the attempted taking or harvesting of marine life species from a closed area or during a closed season; any violation involving the taking or harvesting or the attempted taking or harvesting of marine life species prohibited by rule of the MFC; any violation involving the possession of 25 or more illegal specimens of marine life in the aggregate; or any combination of violations in any 3-consecutive-year period in which more than 70 illegal specimens of marine life species in the aggregate are involved. For the purposes of this provision, the term “marine life species” has the meaning ascribed by rule of the MFC.
- Any violation described elsewhere in s. 370.021(2)(c), F.S., or in s. 370.14(6), F.S., involving the taking or harvesting or the attempted taking or harvesting of crawfish.
- Any violation described elsewhere in s. 370.021(2)(c), F.S., or in s. 370.13(2), F.S., involving the taking or harvesting or the attempted taking or harvesting of stone crabs.
- Any violation described elsewhere in s. 370.021(2)(c), F.S., or in s. 370.135(4), F.S., involving the taking or harvesting or the attempted taking or harvesting of blue crabs.

The bill clarifies that, for purposes of s. 370.021(2)(c)9. and 10., F.S., “conviction” includes any disposition other than acquittal or dismissal, and deletes a requirement that the proceeds from penalties assessed under s. 370.021(2)(c), F.S., be used for marine fisheries research.

Finally, this section requires that, upon final disposition of any alleged violation of s. 16, Art. X, State Constitution, ch. 370, F.S., or rules of the DEP or the MFC implementing s. 16, Art. X, State Constitution or ch. 370, F.S., the clerk of the court shall certify the disposition to the department within 10 days.

Section 11. Section 370.07, F.S., is amended to permit the DEP to share wholesale dealer saltwater products sales reports with another state if that state is a member of an interstate fisheries compact, and if that state has signed a Memorandum of Agreement or a similar instrument agreeing to preserve confidentiality as established by Florida law. Any breach of the confidentiality provisions of any such instrument will result in the immediate termination of the agreement by the State of Florida.

The section also authorizes civil penalties to be imposed on dealers for failure to make and keep required records, for failure to make required reports, for failure or refusal to permit the examination of required records, or for falsifying any such record. These penalties for violation of s. 370.07(6)(b), F.S., or rules adopted under s. 370.0607, F.S., may be in addition to, or in lieu of, other penalties and include:

- For the first violation, a civil penalty of up to \$1,000;
- For the second violation committed within 24 months of any previous violation, a civil penalty of up to \$2,500; and
- For a third or subsequent violation committed within 36 months of any previous two violations, a civil penalty of up to \$5,000.

The proceeds of the penalties will be deposited into the MRCTF and used for administration, auditing, and law enforcement.

Finally, the section provides that it is unlawful for any licensed retail dealer or any restaurant licensed by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to buy saltwater products from any person other than a licensed wholesale or retail dealer.

Sections 12 - 23 repeal provisions of the Florida Statutes that are no longer needed due to MFC rules covering these subject matters. They include: ss. 370.08(7), 370.0821(3), 370.11(2) and (3), 370.1125, 370.114, 370.135(2) and (3), 370.15(2) and (3), 370.151(2), 370.153(4)(c), (d), and (e), and (5) (b) and (d), 370.156, 370.157, and 370.1127, F.S.

Section 24. The act will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The surcharge imposed on the initial transfer of a lobster trap certificate out of the original holder's immediate family is increased from 25 percent of the certificate's fair market value to \$5 or 25 percent of the actual market value, whichever is greater.

B. Private Sector Impact:

The increased surcharge on lobster trap certificate sales will be an additional expense for fishers who have been selling certificates at prices under \$5.

The prohibition on leasing lobster trap certificates, effective in 2003, could result in increased expenses from surcharges for those who may sell tags they would otherwise have leased.

Clarifying that the existing civil penalties for violations relating to lobster traps are in addition to existing criminal penalties could result in increased fines for violators.

The creation of civil penalties will be a detriment to violators, and may increase economic opportunities for lawful seafood dealers and restaurants.

Limiting entry into the marine life and blue crab fisheries until 2002 will negatively impact persons who would otherwise enter the fisheries during that period, and could benefit those in the fishery by reducing competition; extending the stone crab fishery moratorium by 1 year will have the same effect.

C. Government Sector Impact:

Although the increased surcharge on lobster trap certificate sales should result in increased revenues for the DEP's MRCTF, the revenues cannot be determined at this time.

The prohibition on leasing lobster trap certificates, effective in 2003, should result in increased sales leading to increased revenues from surcharges, in undetermined amounts.

Revising the distribution of recreational saltwater fishing license fees could result in an increase of approximately \$300,000 for the MFC and a decrease of that amount in fishery enhancement funding, based on annual license sales of approximately \$12 million.

Although there will likely be revenues from the new civil penalties, their impact cannot be evaluated at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.