

STORAGE NAME: h1243.nrep.doc
DATE: February 15, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
HOUSE NATURAL RESOURCES & ENVIRONMENTAL PROTECTION
ANALYSIS**

BILL #: HB 1243
RELATING TO: Saltwater Fisheries & Products
SPONSOR(S): Representative(s) Pickens

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) NATURAL RESOURCES & ENVIRONMENTAL PROTECTION
 - (2) COUNCIL FOR READY INFRASTRUCTURE
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

HB 1243 amends provisions of Chapters 370 and 372, Florida Statutes, to revise existing penalties and create new penalties related to saltwater fisheries violations; to create additional restrictions on persons whose saltwater product licenses have been suspended or revoked; and to provide penalties for the purchase or sale of illegally harvested marine life. Felony penalties are created for the molestation of or theft of the contents of freshwater traps.

HB 1243 revises and clarifies requirements and procedures for confiscation and forfeiture of property used in the illegal taking, sale, or purchase of saltwater products, and the illegal taking or possession of deer and wild turkey. Notice requirements to the registered owner of property subject to forfeiture for violations are provided.

HB 1243 reorganizes and clarifies provisions of statute relating to commercial saltwater products licenses, and repeals existing statutory forfeiture proceedings contained Chapter 372, Florida Statutes.

HB 1243 takes effect July 1, 2002.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

HB 1243 does not support less government as the bill provides additional restrictions on certain saltwater products licenses; prohibits the purchase of illegally taken saltwater products by wholesale dealers, retail dealers, or restaurant facilities; and creates felony penalties for the molestation of or theft from freshwater traps.

B. PRESENT SITUATION:

Section 370.021, F.S.

Subsection (1) of s. 370.021, F.S., provides penalties for persons, firms, or corporations convicted for violating provisions of chapter 370, or rules of the FWCC, relating to the conservation of marine resources. For first convictions, the penalties are a jail sentence of not more than 60 days, a fine of not less than \$100 or more than \$500, or both. For a second or subsequent conviction committed within 12 months, the penalties are a jail sentence of not more than 6 months, a fine of not less than \$250 or more than \$1,000, or both.

Subsection (2) of s. 370.021, F.S., establishes major violations and penalties for those violations which must be assessed by the court as additional penalties. These violations include the illegal harvesting or taking of blue crabs, stone crabs, shrimp, oysters, turtles, and certain finfish. In addition to monetary penalties, saltwater products licenses and permits can be revoked or suspended if persons are found guilty of committing major violations. The proceeds of penalties assessed pursuant to subsection (2) are required to be deposited into the Marine Resources Conservation Trust Fund to be used for marine fisheries research, or to be deposited into the FWCC's Federal Law Enforcement Trust Fund, to be used for law enforcement efforts.

Subsection (3) of s. 370.021, F.S., establishes that the use of nets in violation of the net limitation requirements of s. 16, Art. X of the State Constitution, is a major violation and establishes penalties in addition to those contained in s. 370.021, F.S., as follows:

- For a first major violation in a 7-year period, a civil penalty of \$2,500 and a 90-day suspension of a saltwater products license.
- For a second major violation within a 7-year period from a previous judicial disposition, a civil penalty of \$5,000 and a 1-year suspension of all saltwater products licenses.
- For a third and subsequent major violation within a 7-year period, a civil penalty of \$5,000, lifetime revocation of a saltwater products license, and forfeiture of all gear and equipment used in committing the violation.

If at any time during the suspension or revocation listed above, a person is found taking, harvesting, or attempting to take saltwater products from any other vessel, that person can be assessed additional jail time and monetary fines under the provisions of subsection (1) of s. 370.021, F.S.

Subsection (5) of s. 370.021, F.S., provides that it is illegal for commercial wholesale dealers, retail dealer, or restaurant facilities, to purchase saltwater products for public consumption from persons, firms, or corporations not in possession of a valid saltwater products license, and authorizes monetary civil penalties and suspension of license proceedings for violations.

Section 370.06, F.S.

Subsection (2) of s. 370.06, F.S., provides that any person, firm, or corporation that sells, or offers for sale, saltwater products must possess a valid saltwater products license. A restricted species endorsement on a saltwater products license is required to sell restricted species to a licensed wholesale dealer in Florida, and is issued to persons, firms, or corporations, that meet specific income requirements. Exemptions from income requirements for restricted species endorsements include residents certified to be totally and permanently disabled by the Railroad Retirement Board, the United States Department of Veterans Affairs or by any branch of the United States Armed Forces, or any resident certified to be disabled by the United States Social Security Administration.

Subsection (2) further provides that it is unlawful for any licensed wholesale dealer to buy saltwater products designated as "restricted species" from any person, firm, or corporation not possessing a restricted species endorsement on a saltwater products license, except for another licensed wholesale dealer. Persons who sell saltwater products can only sell to a licensed wholesale dealer, and saltwater products license must be presented to the wholesale dealer at the time of each sale.

Section 370.061, F.S.

Chapter 932, Florida Statutes, is the "Florida Contraband Forfeiture Act" and establishes procedures for the confiscation and forfeiture of property. Section 370.061, F.S., establishes alternative forfeiture proceedings for the FWCC, by providing that when persons are convicted of illegally taking, harvesting, selling, possessing, or transporting saltwater fish or other saltwater products, the equipment, vehicles, and products resulting from that illegal activity may be seized by the FWCC, taken to the court of jurisdiction, and forfeited to the FWCC immediately after trial and conviction.

Section 370.07, F.S.

Subsection (4) of s. 370.07, F.S., provides for the transportation, sale, and delivery of saltwater products. Appropriate invoices and bills of lading must accompany saltwater products during the course of commerce. It is unlawful to sell, deliver, ship, or transport any saltwater products without all of the invoices concerning the products having the wholesale dealer's license number on the form. Subsection (8) of s. 370.07, F.S., provides that it is unlawful for any licensed retail dealer or any restaurant licensed by the Division of Hotels and Restaurants to buy saltwater products from any person other than a licensed wholesale dealer or retail dealer.

Section 372.9901, F.S.

Section 372.9901, F.S., authorizes the FWCC to seize any vehicle, vessel, animal, gun, light, or other hunting device used in the illegal taking or possession of deer and wild turkey, and deliver the property to the director of the FWCC. The officer's property return must describe what was seized and describe in detail why the property was seized, together with the name of any person known by

the ticketing officer to be interested in the seized property. The return of property to the person owning the property is authorized if that person is not the person committing the violation.

Molesting or stealing from blue crab, stone crab, or crawfish traps

Sections 370.13, 370.135, and 370.142, F.S., contain provisions relating to the removal of contents from blue crab, stone crab, and crawfish traps. The statutes generally hold that it is unlawful to remove the contents of another harvester's traps without express written permission, and provides that such unlawful removal constitutes theft. In addition to any other penalties, any person convicted of theft under these provisions will permanently lose all saltwater fishing privileges, including any saltwater products license, and all trap certificates. Persons convicted of theft or trap molestation under these provisions can not transfer trap certificates and endorsements, and are assessed an additional administrative penalty of \$5,000.

C. EFFECT OF PROPOSED CHANGES:

HB 1243 provides the following:

- Reorganizes and clarifies provisions of s. 370.021, F.S., relating to penalties for and major violations of laws and rules regulating the conservation of marine resources.
- Reorganizes and clarifies provisions of s. 370.06, F.S., relating to saltwater products licenses.
- Provides that persons who have a suspended or revoked saltwater products license shall not participate in the taking or harvesting of saltwater products from any vessel, and shall not be aboard any vessel containing a commercial quantity of saltwater products, net gear, or traps.
- Provides that the purchase or sale by a commercial wholesale dealer, retail dealer, or a restaurant facility of any saltwater products illegally taken under the net limitation provisions of the State Constitution is a major violation.
- Provides that for purposes of imposing suspensions or revocations, the saltwater products license or permit under which a violation is committed is subject to suspension or revocation. Further provides that for purposes of assessing monetary civil or administrative penalties, the person, firm, or corporation cited for the violation is responsible for paying the fine.
- Creates notification requirements from the FWCC to the registered owner of any vessel, vehicle, or other property prior to the issuance of a forfeiture order.
- Creates third degree felony penalties for the willful molestation of or theft from any freshwater fishing gear without the express written consent of the owner. Provides that persons, firm, or corporations convicted of violating these provisions will permanently lose all freshwater and saltwater fishing privileges, including recreational and commercial licenses and endorsements.
- Defines "freshwater fishing gear" to be haul seines, slat baskets, wire traps, or pound nets.
- Repeals existing provisions relating to forfeiture proceedings, delivery of property to a claimant, proceedings when a claim is filed, judgments of forfeiture, and service charges, with respect to illegal gear.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends subsection (1) of s. 370.021, F.S., to reorganize and clarify provisions relating to penalties for and major violations of laws and rules relating to the conservation of marine resources.

Amends subsection (2) of s. 370.021, F.S., to clarify penalties relating to convictions for major violations of laws and rules relating to the conservation of marine resources.

Amends subsection (3) of s. 370.021, F.S., to provide that persons whose saltwater products license privileges have been suspended or revoked, shall not be aboard any vessel on which a commercial quantity of saltwater products, or any net gear or any trap, are possessed. Provides that persons found guilty of violating this provision a first or second time, commit a first degree misdemeanor and are subject to fines of up to \$1,000, a jail term of up to 1 year, or both.

Amends subsection (4) of s. 370.021, F.S., to make technical and clarifying corrections.

Amends subsection (5) of s. 370.021, F.S., to provide that in addition to the purchase of or sale of saltwater products by or from an unlicensed seller, the purchase or sale of any saltwater product taken in violation of the net limitation requirements established in s. 16, Art. X of the State Constitution by a commercial whole dealer or restaurant facility, is a major violation and is subject to stricter penalties.

Amends subsections (6) through (11) of s. 370.021, F.S., to make technical and clarifying corrections.

Creates subsection (12) of s. 370.021, F.S., to provide that for purposes of imposing license or permit suspensions or revocations, the license or permit under which the violation was committed is subject to suspension or revocation, even if the person committing the violation is not the license or permit holder. Provides that for purposes of paying any monetary civil or administrative penalties assessed for violations, the person committing the violation is responsible for payment.

Section 2. Amends subsection (2) of s. 370.06, F.S., to reorganize and clarify provisions relating to saltwater products licenses. Amends provisions relating to the exemption from income requirements for restricted species endorsements on a saltwater products license to provide that such endorsement may be issued only on an individual saltwater products license, and not on a vessel saltwater products license. Amends provisions relating to prohibitions against the purchase of restricted species by licensed wholesale dealers from persons not possessing a restricted species endorsement on a saltwater products license, to provide that saltwater products delivered to the premises of a wholesale dealer are presumed to have been purchased by that wholesale dealer.

Section 3. Amends subsection (1) of s. 370.061, F.S., to clarify that property used in connection with illegally taking, selling, possessing or transporting saltwater products is subject to forfeiture. Provides that the requirement for conviction prior to forfeiture establishes that the property was used in connection with a violation. Provides that for purposes of forfeiture, the provisions of Chapter 932, Florida Statutes, relating to forfeiture, are not applicable. Provides that for purposes of forfeiture, any disposition other than acquittal or dismissal is a conviction.

Creates subsection (2) of s. 370.061, F.S., to provide for seizure of vessels, vehicles, or other property prior to the issuance of a forfeiture order. Provides that notice must be sent within 14 days after seizure to the registered owner of the seized property. Provides for return of property to the registered owner upon proof that such person did not participate in committing a violation in any way. Provides that a request for a hearing from a person asserting that he or she is an innocent property owner must be received by the assistant state attorney prosecuting the case, and the FWCC's Division of Law Enforcement, within 15 days after receipt of the notice of seizure. Provides that if a request for hearing is not timely received, the court may forfeit seized property to the FWCC, subject only to the rights of lien holders.

Amends subsections (3), (4), (5), and (6) of s. 370.061, F.S., to make technical and clarifying corrections.

Section 4. Amends subsection (4) of s. 370.07, F.S., to provide that wholesale dealers, retail dealers, or restaurant facilities shall not purchase or sell any saltwater products known to be taken illegally, or in violation of the net limitation requirements established in s. 16, Art. X of the State Constitution.

Amends subsection (8) of s. 370.07, F.S., to provide that in determining if licensed retail dealers or restaurant facilities are purchasing saltwater products from persons other than a licensed saltwater products dealer, the delivery of saltwater products to a retail dealer or restaurant creates a presumption of purchase.

Section 5. Reenacts subsections (3) and (4) of s. 370.092, F.S., relating to the carriage of proscribed nets across Florida waters, to incorporate revisions to s. 370.021, F.S.

Section 6. Reenacts subsection (3) of s. 370.093, F.S., relating to the illegal use of nets, to incorporate revisions to s. 370.021, F.S.

Section 7. Amends subsection (2) of s. 370.142, F.S., relating to the spiny lobster trap certification program, to correct a cross-reference.

Section 8. Amends s. 372.70, F.S., to incorporate the provisions of s. 372.316, F.S., which is repealed in this act, to provide that the state attorney will represent the state in forfeiture proceedings under Chapter 372, Florida Statutes. Provides that the Department of Legal Affairs will represent the state in all appeals from judgment of forfeiture to the Supreme Court. Authorizes the state to appeal any judgment denying forfeiture in whole or in part that may be adverse to the state.

Section 9. Amends s. 372.9901, F.S., relating to the seizure of illegal hunting devices, to provide for forfeiture of property in cases where persons have been convicted of illegally taking or possessing deer or wild turkey. Provides that for forfeiture purposes, a conviction is any disposition other than acquittal or dismissal. Provides that notice must be sent within 14 days after seizure to the registered owner of the seized property. Provides for return of property to the registered owner upon proof that such person did not participate in committing a violation in any way. Provides that a request for a hearing from a person asserting that he or she is an innocent property owner, must be received by the assistant state attorney prosecuting the case, and the FWCC's Division of Law Enforcement, within 15 days after receipt of the notice of seizure. Provides that if a request for hearing is not timely received, the court shall forfeit seized property to the FWCC, subject only to the rights of lien holders.

Section 10. Renumbers s. 372.31, F.S., relating to the disposition of illegal fishing devices, as s. 372.9901, F.S., to appropriately follow s. 372.99, F.S., relating to the illegal taking of deer and turkey. Amends s. 372.9901, F.S., to incorporate provisions relating to the exercise of police contained in s. 372.321, F.S., which is being repealed.

Section 11. Creates s. 372.9902, F.S., relating to the illegal molestation of or theft from freshwater traps. Establishes that the willful molestation of freshwater fishing gear without written permission from the owner is a third degree felony. Establishes the willful theft of the contents of authorized and lawfully permitted freshwater fishing gear is a third degree felony. Provides that persons found guilty of committing either violation may receive a jail sentence of up to 5 years, and a fine of up to \$5,000. Prohibits the transfer of any endorsements by any person, firm, or corporation receiving a citation under this provision until adjudication of the case.

Provides that persons convicted of willful theft or molestation shall permanently lose all commercial and recreational freshwater and saltwater fishing privileges, and provides for additional

administrative penalties of up to \$5,000. Provides that endorsements of persons punished under these provisions are not transferable.

Section 12. Amends s. 372.9904, F.S., to correct cross-references.

Section 13. Amends s. 372.9905, F.S., to incorporate provisions of s. 372.9902, F.S., which is being repealed.

Section 14. Amends s. 323.001, F.S., to correct a cross-reference.

Section 15. Repeals ss. 372.311 through 372.319 F.S., relating to current forfeiture proceedings. Repeals s. 372.321, F.S., relating to the exercise of police power and incorporates police power provisions into s. 372.99021, F.S., as established in this act. Repeals s. 372.9902, F.S., relating to the inapplicability of seizure and forfeiture proceedings, and incorporates provisions into s. s. 372.9905, F.S.

Section 16. Establishes an effective date of July 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The FWCC may see an increase in revenues due to additional fines and penalties created in HB 1243.

2. Expenditures:

The FWCC may see an increase in law enforcement expenditures due to the enforcement of additional restrictions, penalties, and violations required in HB 1243.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

HB 1243 will have a direct economic impact on persons, firms, and corporations in the private sector convicted of illegal activities under the provisions of the bill, including commercial fishers, wholesale dealers, retail dealers, and restaurant facilities. Economic impacts can include the loss of equipment, gear, and vessels, as well as the permanent loss of commercial fishing privileges, and the payment of monetary civil and administrative penalties,

In addition, registered owners of equipment, gear and vessels seized under the provisions of the act bear the expense of proving their innocence to regain possession of the seized property. Also, innocent persons that lose seized property for failure to meet the notification and time for hearing

requirements established in HB 1243, may bear the expense of court proceedings to retrieve seized property.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

HB 1243 does not require municipalities or counties to spend money.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

HB 1243 does not reduce the authority that municipalities or counties have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

HB 1243 does not reduce the percentage of state tax revenues shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

HB 1243 contains three provisions that may raise constitutional issues:

Section 1 of the bill amends subsection (10) of s. 370.021, F.S., by authorizing the FWCC to determine which employees may be required to give a bond, and authorizing the FWCC to set the amount of that bond. Even though current law allows the Department of Environmental Protection to perform that same task, this may be an unlawful delegation of legislative authority.

Section 1 of the bill relocates existing law to subsection (1) of s. 370.021, F.S., and requires that the court shall, within a specified period, certify disposition of certain cases to the FWCC. Current provisions of subsection (2) of s. 370.021, F.S., require that the court shall assess additional penalties for major violations of laws and rules relating to the conservation of marine resources. Both of these issues may be procedural rather than substantive which would violate the exclusive jurisdiction of the Supreme Court to adopt procedures for the courts under Article V, Section 2 of the Florida Constitution.

Section 9 of the bill creates subsection (3) of s. 372.9901, F.S., which requires the court to declare seized property forfeited to the FWCC if a request for a hearing relating to seized property is not timely received. While statutes of limitation have generally been considered to be substantive, and not procedural, the language of subsection (3) is not clearly expressed as a statute of limitation. It may, therefore, be determined by the courts to be a procedural matter which would be subject to the exclusive jurisdiction of the Supreme Court to adopt rules of procedure for the courts under Article V, Section 2 of the Florida Constitution.

B. RULE-MAKING AUTHORITY:

None.

STORAGE NAME: h1243.nrep.doc

DATE: February 15, 2002

PAGE: 9

C. OTHER COMMENTS:

CS/SB 556, by the Senate Natural Resources Committee and Senator Smith, is the companion bill to HB 1243. The bills contain few substantive differences but HB 1243 does contain some reorganization and clarification provisions not contained in CS/SB 556.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

CS/SB 556 contains several amendments adopted by the Senate Natural Resources Committee. The sponsor of HB 1243 may offer a "strike-everything" amendment to incorporate provisions contained in the Senate bill.

VII. SIGNATURES:

COMMITTEE ON HOUSE NATURAL RESOURCES & ENVIRONMENTAL PROTECTION:

Prepared by:

Staff Director:

Karon A. Molloy

Wayne S. Kiger