

STORAGE NAME: h1243s1z.nrep.doc
DATE: May 22, 2002

****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2002-264, Laws of Florida

HOUSE OF REPRESENTATIVES

HOUSE NATURAL RESOURCES & ENVIRONMENTAL PROTECTION FINAL ANALYSIS

BILL #: CS/HB 1243, 2ND ENGROSSED
RELATING TO: Fish & Wildlife Conservation Commission
SPONSOR(S): Council for Ready Infrastructure and Representative(s) Pickens; Harrington

TIED BILL(S):

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

- (1) NATURAL RESOURCES & ENVIRONMENTAL PROTECTION YEAS 12 NAYS 0
- (2) COUNCIL FOR READY INFRASTRUCTURE YEAS 16 NAYS 1
- (3)
- (4)
- (5)

I. SUMMARY:

CS/HB 1243, 2nd Engrossed, amends provisions of Chapters 370 and 372, Florida Statutes, to revise existing penalties and create new penalties for 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 from freshwater fishing gear.

The bill 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. Provisions of statute relating to commercial saltwater products licenses are revised and clarified. Existing statutory forfeiture proceedings contained Chapter 372, Florida Statutes, are repealed.

CS/HB 1243, 2nd Engrossed, provides for increased public access to the Fish & Wildlife Conservation Commission's (FWCC) rule development process by requiring counties to create local rule review committees to review and make recommendations on rules that propose to regulate the operation and speed of motorboats for purposes of manatee protection. The bill provides for an equal balance of environmental, manatee, and waterway interests to participate in the rule review, and provides for majority and minority reports to be submitted to the FWCC for consideration prior to the agency moving forward with rulemaking. The bill further requires that the FWCC and the United States Fish & Wildlife Service work to establish a measurable biological goal to define manatee recovery, and authorizes the FWCC to conduct boater compliance studies that should lead to higher levels of protection for manatees and boaters. Finally, the bill provides that counties that should have already adopted a manatee protection plan as required by executive policy, must do so by a date certain, and establishes elements that must be contained in a manatee protection plan.

CS/HB 1243, 2nd Engrossed, takes effect July 1, 2002.

(This bill contains provisions of CS/HB 1473, 1st Engrossed, relating to the Protection of Manatees which passed the House but died in the Senate Natural Resources Committee. Please see "Other Comments" section of bill analysis.)

SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input checked="" 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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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:

Less Government: CS/HB 1243, 2nd Engrossed, 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 gear.

The bill requires county commissions to appoint members to a local rule review committee and requires that the counties provide logistical and administrative staff support to the local rule review committees. However, by providing for a balance of input from local citizens affected by proposed rules, CS/HB 1243, 2nd Engrossed, may provide relief from the administrative rule challenge process, and prevent lawsuits against the FWCCC for failure to adequately protect manatees. Also, the bill authorizes the FWCC to conduct studies and implement measures that will result in increased compliance with manatee protection rules. Further, the FWCC is authorized to adopt rules to define "counties at substantial risk for manatee mortality" and create criteria for those counties to use when adopting manatee protection plans. Finally, the bill requires that counties that have adopted manatee protection plans must amend local comprehensive plans to include a boat facility siting plan if one is not already included.

Individual Freedom: CS/HB 1243, 2nd Engrossed, does support individual freedom by providing local citizens with the opportunity to participate in the development of rules that will impact their use and enjoyment of state waters.

Personal Responsibility: CS/HB 1243, 2nd Engrossed, does support personal responsibility by providing that upon a first seizure of a vessel for an illegal activity, the FWCC is responsible for proving that the owner had no knowledge of the illegal activity which resulted in seizure of the vessel, and the owner is put on notice. Upon a second seizure of a vessel for an illegal activity, the owner must prove that he or she had no knowledge of the illegal activity before a vessel can be returned.

B. PRESENT SITUATION:

Major Violations, Penalties & Illegal Purchase Of Saltwater Products

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 that 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 Fact'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.

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.

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.

FWCC – Forfeiture & Seizure Proceedings

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 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

State of Florida, Petitioner -vs- Sergio Valdes, et al, Respondents In the Supreme Court of Florida, Case No. SC01-1735

In September of 1997, Sergio Valdes was cited by the Florida Marine Patrol, then at the Department of Environmental Protection (DEP), for illegal possession of undersize crawfish in an amount that was determined to be a “major violation”. At the time of the citation, Mr. Valdes was not the registered owner of the vessel and he was not driving the vessel. After Mr. Valdes pled guilty, the vessel was seized pursuant to the provisions of s. 370.061, F.S. Forfeiture proceedings were initiated in July, 1998 and granted by the Monroe County Court in August, 1998. In October of 1998, Mr. Valdes filed a Motion to Dismiss with the trial court claiming that s. 370.061, F.S., was unconstitutional on its face because it violated the due process requirements of the Florida and United States Constitutions by not providing a claimant or any third party (which would include an innocent property owner) with notice of the hearing prior to forfeiture of seized property.

Mr. Carlos Valdes, the registered owner of the vessel, filed for and was granted an opportunity to intervene in the case. He then filed a Motion to Dismiss the Final Order of Forfeiture by arguing that his due process rights had been violated because he did not receive notice of and had not been able to appear during the forfeiture proceedings. Mr. Valdes also claimed equal protection violations since the state statute provided protection for persons holding liens against automobiles but not for persons holding liens against vessels. In May of 2000, the trial court granted Mr. Valdes’ motion and entered an Order to Dismiss.

The DEP appealed the trial court decision to the 3rd District Court of Appeals and in April of 2001, the 3rd DCA affirmed the county court’s dismissal of the case and stated that unless the state followed the procedures established in *Department of Law Enforcement v Real Property*, 588 So. 2d 957 (Fla. 1991)¹ when implementing the provisions of s. 370.061, F.S., the statute was unconstitutional. Petitions for rehearing before the appeals court were denied and the Florida Supreme Court subsequently granted review of the case (pending).

¹ In *Department of Law Enforcement v. Real Property*, 588 So. 2d 957 (Fla. 1991), the 3rd DCA found that the forfeiture procedures described in the case were not inconsistent with the Florida Contraband Forfeiture Act, but did find that the State had not complied with the due process provisions of law because it had seized real property before it had provided the claimants with notice or an opportunity to be heard.

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 cannot transfer trap certificates and endorsements, and are assessed an additional administrative penalty of \$5,000. However, these provisions apply only to saltwater fishing gear.

Florida Manatee (West Indian Manatee species): *Trichechus manatus latirostris*

Manatees in Florida are members of the West Indian manatee species, and can be found throughout our rivers, estuaries, and bays. Manatees are warm-blooded and seek refuge from cold temperatures in natural springs, such as Blue Springs on the St. Johns River, and the springs that form the Homosassa and Crystal Rivers on Florida's west coast. Manatees also congregate in man-made sources of warm water such as power plants and other industrial facilities with thermal plumes. The water temperature danger level for manatees is about 55°F.

Manatees breath air and surface about every four minutes, although they are capable of remaining submerged for up to twenty minutes. Manatees average 10 feet in length, about 1200 pounds in weight, and weigh approximately 66 pounds at birth. Two front flippers help manatees gather as much as 200 pounds of seagrass and other aquatic plants per day. Manatees have a wide, paddle-shaped tail, small eyes that can distinguish colors, shapes, and patterns, and ear openings that allow them to hear at low frequencies.²

Florida's first manatee protection law was enacted in 1893 and restricted manatee hunting. Additional protections include the federal Marine Mammal Protection Act of 1972 which prohibited the hunting of marine mammals, the federal Endangered Species Act of 1973 which declare manatees as an "endangered species", and the Florida Manatee Sanctuary Act of 1978, which authorized the state to establish and enforce boating restrictions to protect manatee habitat (further discussed below). Aerial surveys conducted by the FWCC show that manatee populations have increased in recent years. In February of 1991, the aerial count was 1,462. In January of 1997, the aerial count was 2,229. In March of 1999, the aerial county was 2,353, and in January of 2001, 3,276 manatees were counted in surveys conducted throughout Florida.

However, the number of manatee deaths from water-related incidents, such as collisions with boats and other watercraft, continues to be of concern. In 1990, 47 manatee deaths were attributed to collisions with watercraft. In 1995, there were 42 watercraft-related deaths, and in 2001, the FWCC reported 81 watercraft-related deaths.³ In 1997, Florida had 755,000 registered recreational vessels, and in 2000, Florida had almost 841,000 registered recreational vessels.⁴ Manatee activists point to the high rates of incidences resulting in manatee deaths as proof of the state's failure to provide adequate protections. Boating enthusiasts point to the increasing number of recreational boaters accessing the waters of the state in relation to the number of incidences resulting in manatee deaths as proof that education and law enforcement efforts are working.

Marine Mammal Protection Act of 1972 (Federal)

The Marine Mammal Protection Act (MMPA), enacted in 1972 and reauthorized in 1994, designates manatees as a marine mammal in danger of extinction or depletion due to human activities. The

² "Manatees, Florida's Gentle Giants", Sea Stats, June-2001, Florida Marine Research Institute, FWCC

³ "Manatee Mortality Statistics", 1990-2001, Florida Marine Research Institute, FWCC

⁴ Florida Boating Accident Statistical Reports, 1997-2000, Division of Law Enforcement, FWCC

primary purpose of the Act is to prohibit the taking of marine mammals except under certain conditions such as conducting scientific research, or enhancing the recovery or survival of a species. Portions of the Act authorize the “incidental taking” of marine mammals but only upon the condition that such a taking will have a negligible impact upon a species. This “incidental taking” by industries such as development or commercial fishing can not be intentional.

In circumstances where persons possessing “incidental take” permits are found to have violated the “incidental take” permit, or failed to comply with provisions of the Marine Mammal Protection Act, the Secretary of the Interior is authorized to withdraw or suspend “incidental take” permits, thereby effectively stopping construction of marinas, docks, boating facilities, or any other structure, including single-family homes, where destruction of manatee habitat may result in an “incidental take” of the species.

Endangered Species Act of 1973 (Federal)

The Endangered Species Act (ESA), enacted in 1973 and amended in 1996, designates that species of fish (including marine mammals), wildlife, and plants which are so depleted they are in danger of or threatened with extinction must be conserved. Section 9 of the Act provides that it is illegal for persons to “take” any species, or violate any regulation protecting any species that are designated as threatened or endangered. Section 10 of the Act provides for “incidental take” permits in the same manner as the MMPA, and Section 17 of the ESA provides that no provision of the Act may take precedence over provisions contained in the Marine Mammal Protection Act.

Florida Manatee Sanctuary Act – s. 370.12(2), Florida Statutes (Chapter 78-252, L.O.F.)

The “Florida Manatee Sanctuary Act” was adopted in 1978 and is designed to protect the West Indian manatee (“sea cow”) from injury or harm due to the operation and speed of motorboats in the areas specified within the Act. The Act declared that the entire State was a refuge and sanctuary for manatees, and provided that in order to protect manatees from harmful collisions with boats, the Department of Natural Resources (DNR) was to initiate rules under chapter 120, F.S., to establish seasonal speed zones within Lee, Brevard, Indian River, St. Lucie, Palm Beach, Broward, Citrus, Volusia, and Hillsborough counties. Areas affected by the rules included springs, rivers, and power plant discharge areas. The DNR was directed to adopt rules regulating the operation and speed of motorboat traffic for any new power plant, or other new source of warm water discharge, whenever a concentration of manatees were attracted to the area. Responsibility for law enforcement was shared with the Game and Fresh Water Fish Commission.

In 1982, the Legislature amended the Florida Manatee Sanctuary Act to provide for seasonal speed zones in Sarasota, Collier, and Martin counties, and added language stating that the Legislature did not intend for DNR to generally regulate boat speeds within the areas thereby interfering with recreational or commercial waterway users. In 1983, the Legislature enacted Chapter 83-81, Laws of Florida, which removed requirements for seasonal speed zones, and provided the DNR with authority to regulate the operation and speed of motorboats in areas on a year-round basis. Additional areas in Manatee and Dade counties were identified, further provisions for Brevard county were added, and the DNR was authorized to adopted manatee protection rules in all areas of the state where manatees were frequently sighted.

Amendments to the Florida Manatee Sanctuary Act in 1984 included an appropriation of \$250,000 from the Motorboat Revolving Trust Fund to fund the DNR’s manatee protection efforts. Chapter 84-338, Laws of Florida, also provided that the appropriation could be reduced **when the federal and state governments delisted manatees.**

The last major amendment to the Florida Manatee Sanctuary Act occurred in 1990, when the Legislature enacted chapter 90-219, Laws of Florida. This change was made in response to a DNR recommendation for manatee protection plans for thirteen specific counties, and also recommended

the counties develop an Interim Boating Facility Expansion Policy to address marinas with wet slips and dry storage, and boat ramps. The Legislature enacted the CS/SB 760, which among other things, directed DNR to follow chapter 120 procedures when adopting rules for the expansion of existing, or construction of new marine facilities and mooring or docking slips, by the addition or construction of five or more powerboat slips.

Manatee Protection Plans

In June of 1989, the Governor and the Cabinet directed the Department of Natural Resources to develop recommendations for specific actions to protect manatees, and to make the state's waters safe for boaters. These recommendations were presented to the Governor and the Cabinet in October of 1989, and were contained in a report entitled **Recommendations to Improve Boating Safety and Manatee Protection for Florida Waterways**. The DNR report recommended the following actions with relation to manatee protections:

- Establishing shoreline slow speed zones
- Creating new manatee protection zones
- Designating manatee preserves
- Improving speed zone sign posting
- Instituting an Interim Boating Facility Expansion Policy
- Legislative amendments to the Florida Manatee Sanctuary Act
- Education and Information Campaign

The report recommended that in thirteen key manatee protection counties (Brevard, Broward, Citrus, Collier, Dade, Duval, Indian River, Lee, Martin, Palm Beach, St. Lucie, Sarasota and Volusia) shoreline slow speed zones should be established for all inland waters accessible to manatees. The counties would be responsible for posting manatee information signs and speed zone signs at key access points such as marinas, boat ramps, and waterfront parks. Further, the report suggested that county governments develop site-specific manatee protection regulations and recommended a schedule for development of those regulations. To provide an incentive, the report suggested that boundaries for shoreline slow speed zones should be increased if manatee regulations were not in place by the recommended deadline.

The report suggested that the construction of new or expanded boating facilities within the thirteen counties would be limited to a maximum of one powerboat slip per hundred linear feet of shoreline owned or controlled by the permit applicant unless a county had developed and implemented a manatee protection plan approved by DNR and a boating facility siting policy applicable to facilities with more than five boat slips or expanding to more than five boat slips. DNR's approval of a local ordinance was to be based on a determination that the ordinance did not permit dock densities harmful to manatees, did not allow destruction of essential habitat, and did not allow dock construction in areas used by manatees. Manatee protection plans were to be based on comprehensive manatee mortality, abundance and distribution data, and interim plans could be developed using the best available information as approved by DNR.⁵

The Governor and the Cabinet adopted the recommendations contained in the report, and the requirement for counties to adopt and implement a manatee protection plan was put in place through the permitting process. **There are no statutory provisions or agency rules requiring the development or implementation of manatee protection plans.**

To date, the FWCC has approved manatee protection plans for Citrus, Collier, Dade, Duval and Indian River counties.

⁵ "Recommendations to Improve Boating Safety and Manatee Protection for Florida Waterways", Final Report to the Governor and Cabinet, October 24, 1989, Florida Department of Natural Resources

Save the Manatee Club vs US Fish & Wildlife Service – Settlement Agreement

In January of 2000, Save the Manatee Club and others sued the Army Corps of Engineers (Corps) and the US Fish & Wildlife Service at the Department of the Interior (DOI) for failure to protect manatees under the Marine Mammal Protection Act and the Endangered Species Act. The lawsuit claimed that by authorizing dredge and fill projects, and the construction of boat marinas, DOI and the Corps adversely modified habitat critical to manatees. The lawsuit further claimed that by authorizing the construction of marinas and boat slips, the Corps was responsible for increased boat traffic which resulted in harm to manatees and caused an intentional “taking” of an endangered species, without requiring the projects to apply for an “incidental take permit” under the terms of the MMPA.

In January, 2001, the United States District Court ratified a settlement agreement between the Save the Manatee Club and the defendants. The settlement agreement established target dates for completion of manatee protection tasks, including a comprehensive review of current manatee protection areas throughout Florida, and establishing additional areas of protection where necessary, some of which duplicate the areas involved in the lawsuit against the state (discussed below).

However, in October, 2001, the plaintiffs in this case served the defendants with a formal notice that the terms of the settlement agreement have been breached by the DOI’s failure to adopt a comprehensive network of manatee refuges and sanctuaries as called for in the settlement. The notice further states that the interim management policy adopted by DOI is more harmful than what was agreed to because the federal government is still permitting marinas, docks, and boat slips but is not collecting an impact fee to be assessed against single-family and other dock permit applicants to pay for the implementation of manatee conservation measures.

Save the Manatee Club vs FWCC – Settlement Agreement

In January of 2000, Save the Manatee Club and others sued Dr. Allan Egbert as Executive Director of the FWCC. The lawsuit, also filed in federal court, charged the FWCC with violations of the ESA and the MMPA for failure to provide adequate protection for manatees by allowing motorboats and other watercraft to travel at high speed through manatee habitat. The Save the Manatee Club charged that the FWCC was authorizing the illegal taking of manatees due to the increasing numbers of manatees that were killed, injured, maimed or harassed by collisions with boats.

In November 2001, the United States District Court entered a settlement agreement that called for protective measures very similar to those required in the settlement with the federal agencies. The FWCC is required to revise the Brevard County speed zone rules. Upon completion of the Brevard County rules, the FWCC will propose speed zone rules or changes to eight “hot spots” in the state where manatee mortality has been identified as a special problem. These areas include Lemon Bay and the Peace River in Charlotte County, the Alafia River in Hillsborough County, Terra Ceia Bay in Manatee County, portions of the Halifax River in Volusia County, the Jungle Trail Area in Indian River County, the Crossroads Area in Martin County, and the confluence of the Loxahatchee River and the Intracoastal Waterway in Palm Beach County.

At the same time the “hot spot” rules are being developed, the FWCC will prepare a rulemaking proposal to include eight areas as “safe havens” which can include “limited entry” or “no access” restrictions. The areas proposed for the safe havens include the Blue Waters in the Homosassa River in Citrus County, Warm Mineral Springs in Sarasota County, a portion of Turtle Bay in Charlotte County, the Vero Beach Power Plant discharge areas in Indian River County, the Blue Lagoon and Sky Lakes in Dade County, DeLeon Springs in Volusia County, and Pansy Bayou in Sarasota County.

When rules for the eight "hot spots" and eight "safe havens" have been completed, the FWCC will prepare a rulemaking proposal for Tampa Bay, and a rulemaking proposal for six additional safe havens in Hillsborough, Marion, Putnam, St. Lucie and Palm Beach counties. Finally, under the settlement agreement, the FWCC will study boating and manatee conflicts in the Caloosahatchee River and Mullock Creek in Lee County, evaluate existing rules for Lee County and the downtown portions of Duval County, and the Ten Thousand Islands in Collier County. The FWCC must provide enhanced law enforcement statewide, and must specifically increase law enforcement in the Caloosahatchee River.

Brevard County

Brevard County, located on Florida's East Coast, encompasses most of the Indian River Lagoon system which provides a natural forage area for manatees by containing large seagrass beds and other aquatic plants. Brevard County has a large year round and migratory manatee population, and also has one of the highest watercraft-related manatee mortality rates in the state. Prior to the settlement agreement, the FWCC was drafting amendments to rules regulating the speed and operation of motorboats within Brevard County. The rules proposed new limits on motorboat speeds which were being calculated to reduce manatee injuries and mortality.

As part of the settlement agreement, the FWCC was required to move forward with revisions to the Brevard County rule. Under the settlement agreement, rule proposals to create eight "hot spots" could not move forward until the Brevard County rule had been adopted, or until final adjudication of any legal challenges to the Brevard rule amendments.

In May of 2001, the FWCC approved the Brevard County amendments with some minor changes, and in June of 2001, the FWCC published a Notice of Change regarding the revised rule in the Florida Administrative Weekly. Administrative challenges to the proposed amendments were dismissed by the Division of Administrative Hearings (DOAH) on April 17, 2002. As of May 21, 2002, two separate appeals of the DOAH Final Order dismissing the administrative challenge have been filed with the 5th District Court of Appeals.

The FWCC is moving forward with proposals to develop rules for the eight "hot spots" as listed in the settlement agreement pending resolution of the appeals to the Brevard rules.

C. EFFECT OF PROPOSED CHANGES:

CS/HB 1243, 2nd Engrossed, provides the following:

Major Violations, Penalties, Notice of Seizure, Forfeiture of Seized Property, Trap Molestation

- 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 possessing a commercial quantity of saltwater products through an activity requiring a saltwater products license.
- 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 before 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, hoop nets, 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.

Rule Review Committee

- County commissions of counties affected by proposed manatee protection rules must appoint local rule review committees consisting of an equal balance of fishers, boaters, water skiers, other water users, and manatee and other environmental advocates.
- Existing advisory groups may function as local rule review committees so long as a balance of interests is maintained.
- Authorizes other state, federal, county, municipal, or local agency representatives to participate in the local rule review committee as nonvoting members.
- Requires that the counties provide staff support to the local rule review committees.

Rule Review Process

- Proposed rules of the FWCC must be submitted to counties where the rules will take effect for review by local rule review committees.
- Provides that local rule review committees will have sixty days from receipt of a draft rule and the supporting data to review the draft rule and submit a written report to FWCC members and staff (**rule development process**).
- Requires that the FWCC respond in writing to a local rule review committee report prior to moving forward with rulemaking.
- Provides for majority and minority opinions of local rule review committee reports.
- Provides that local rule review committees must conduct a review of a proposed rule and submit a written report to the FWCC (**rulemaking process**).
- Requires the FWCC members to fully consider timely submitted local rule review committee written reports, and provides that written reports are part of the rulemaking record.
- Provisions may not be retroactively applied to current rules or rules in the process of being adopted on the effective date of the bill. Proposed rules that are the subject of an administrative challenge pending as of February 12, 2002, are not subject to the provisions of the bill unless the proposed rules are declared invalid and all appeals are exhausted.

Manatee Protection Plans

- Counties identified in the Governor and Cabinet October 1998 Policy Directive must develop manatee protection plans consistent with the criteria contained in the Directive.
- By July 1, 2006, counties identified by the FWCC as "counties at substantial risk for manatee mortality" must complete manatee protection plans.
- Manatee protection plans must include education about manatees and manatee habitat, boater education, an assessment of the need for new or revised manatee protection speed zones and local law enforcement, and a boat facility siting plan.

- Counties required to adopt manatee protection plans must incorporate a boat facility siting element into their respective local comprehensive plans.
- By July 1, 2003, counties that have already adopted manatee protection plans must incorporate an approved boat facility siting plan into their respective local comprehensive plans.

Other Issues

- Provides that the FWCC will regulate the operation and speed of motorboats only in areas where manatee sightings are frequent, and the best available science justifies the conclusion that manatees inhabit these areas on a frequent basis.
- Establishes the Legislature's intent that the FWCC may establish access lanes or corridors in areas where such lanes or corridors are consistent with manatee protection and recovery goals.
- Authorizes local governments to adopt ordinances regulating motorboat speed and operation within jurisdictional waters only when the best available science justifies the conclusion that manatees inhabit those waters on a regular or continuous basis.
- Requires that no later than February 15, 2003, the FWCC (in conjunction with US Fish & Wildlife Service) must develop a measurable biological goal that defines manatee recovery.
- Authorizes the FWCC to develop and conduct standardized studies to determine levels of public compliance with manatee protection rules, to identify impediments in achieving high levels of compliance, and to adjust enforcement and boater education efforts so that high levels of compliance are maintained.

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 penalty provisions relating to convictions for major violations of laws and rules concerning 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 is possessed through an activity requiring a saltwater products license. Provides that said persons shall not engage in any other activity requiring a license, permit, or certificate issued through Chapter 370, Florida Statutes. Provides that any person found guilty of violating this provision a first or second time, commits a first degree misdemeanor and is 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 by a commercial wholesale dealer or restaurant facility of any saltwater product taken in violation of the net limitation requirements established in s. 16, Art. X of the State Constitution 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. Provides that if the person committing the violation is not the

license or permit holder, the license or permit may only be suspended or revoked after the license or permit holder has been notified that the license or permit has been cited in a major violation, and is now subject to suspension or revocation for subsequent violations. 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 received by a wholesale dealer are presumed to have been purchased by that wholesale dealer.

Section 3. Substantially rewords s. 370.061, F.S., to clarify procedures related to the seizure and forfeiture of property used in the illegal taking of saltwater products, or the possession of illegal saltwater products. Provides that upon conviction, a court may make a finding that property found in the possession of the convicted person was used in the commission of a saltwater products violation and may be subject to forfeiture. Provides that for seizure and forfeiture purposes, a conviction is any disposition other than acquittal.

Creates new subsection (2) of s. 370.061, F.S., to provide notice requirements before the forfeiture of property seized for saltwater products violations. Clarifies that a requirement for conviction before forfeiture of property is proof that the property was used in connection with a violation resulting in conviction. Provides that before the issuance of a forfeiture order and within 14 days of seizure, the FWCC must notify a registered owner by certified mail that the property has been seized. Provides that upon a first conviction for a saltwater products violation, property seized by the FWCC must be returned to the registered owner if the FWCC fails to prove by a preponderance of the evidence that the registered owner aided in, abetted in, participated in, gave consent to, knew of, or had reason to know of the violation. Provides upon a second or subsequent conviction, the burden of proof of innocence is on the registered property owner before seized property can be returned to that owner. Provides that a registered property owner asserting innocence must request a hearing for the recovery of seized property within 21 days of receipt of the FWCC's 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.

Creates subsection (3) of s. 370.061, F.S., to clarify provisions relating to the county court ordered forfeiture of illegal or illegally used gear, and illegal or illegally taken saltwater products, belonging to unidentifiable owners.

Creates subsection (4) of s. 370.061, F.S., to clarify requirements for the destruction or disposition of forfeited property.

Renumbers existing subsection (2) of s. 370.061, F.S., as subsection (5) and clarifies requirements relating to the confiscation of and sale of illegal or illegally taken saltwater products. Provides that for purposes of confiscation, the term "saltwater products" does not include saltwater products harvested under a recreational license unless the amount of the harvested products exceeds three times the recreational bag limit for trout, snook, or redfish.

Renumbers existing subsection (3) of s. 370.061, F.S., as subsection (6) to clarify that municipal or county law enforcement agencies that enforce, or assist the FWCC in enforcement, shall receive all

or a share of forfeited property, or proceeds from the sale of forfeited property, based upon participation in such enforcement effort.

Section 4. Amends subsection (4) of s. 370.07, F.S., to provide 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, saltwater products received by a retail dealer or a restaurant are presumed to have been purchased.

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 (5) 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 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. Substantially rewords s. 372.9901, F.S., relating to the seizure of illegal hunting devices, to provide for seizure and forfeiture of property in cases where persons have been convicted of illegally taking or possessing deer or wild turkey. Provides that for seizure and forfeiture purposes, a conviction is any disposition other than acquittal or dismissal.

Provides that upon a first conviction of a person who had possession of the property, the court may find that the property was used in connection with the violation and may order the property forfeited. Provides that upon a second or subsequent conviction of a person who had possession of the property, the court shall order forfeiture of the property. Provides that the requirement for conviction before forfeiture, establishes that the property was used in the commission of the violation.

Provides that before the issuance of a forfeiture order and within 14 days after seizure, the FWCC must notify a registered property owner by certified mail that the property has been seized. Provides that upon a first conviction for a violation, property seized by the FWCC must be returned to the registered owner if the FWCC fails to prove by a preponderance of the evidence that the registered owner aided in, abetted in, participated in, gave consent to, knew of, or had reason to know of the violation. Provides that upon a second or subsequent conviction, the burden of proof of innocence is on the registered property owner before seized property can be returned to that owner. Provides a registered property owner asserting innocence must request a hearing for the recovery of seized property within 21 days of receipt of the FWCC's 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. 372.99021, F.S., to appropriately follow s. 372.99, F.S., relating to the illegal taking of deer and turkey. Amends s. 372.99021, F.S., to incorporate provisions relating to the exercise of police power contained in s. 372.321, F.S., which is being repealed.

Section 11. Creates s. 372.99022, F.S., relating to the illegal molestation of or theft from freshwater fishing gear. Establishes that the willful molestation of freshwater fishing gear without written permission from the owner is a third degree felony. Establishes that 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 prison sentence of up to 5 years, a fine of up to \$5,000, or both. 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 trap theft or trap 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. Defines "freshwater fishing gear" as haul seines, slat baskets, wire traps, hoop nets, or pound nets, and includes that lines or buoys attached thereto.

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. Repeals s. 372.9902, F.S., relating to the inapplicability of seizure and forfeiture proceedings.

Section 16. Amends paragraph (b) of s. 370.12, F.S., to provide that the protections created by the Florida Manatee Sanctuary Act are independent of the manatee's status as a state or federal listed species.

Amends subsection (2) of s. 370.12, F.S., to create a new paragraph (f) to provides that rules of the FWCC proposing to govern the speed and operation of motorboats for purposes of manatee protection must be submitted to the counties where the rules will take effect for review by local rule review committees. Provides that no less than 60 days prior to filing a notice of rule development, the FWCC must notify the affected counties that a rule is being proposed.

Provides that counties so notified must establish local rule review committees, and provides that several counties can combine local rule review committees. Provides that the county commission of each affected county shall designate the members of the local rule review committee, and provides for a balance of fishers, boaters, environmentalists, water skiers, other waterway users, and manatee advocates. Provides that existing manatee advisory committees can be local rule review committees if an equal balance of membership is established. Authorizes the counties to invite other state, federal, county, municipal, or local agency representatives to participate in the local rule review committee as non-voting members. Requires the counties to provide logistical and administrative staff support to the local rule review committee. Authorizes the local rule review committee to elect a chair and a recording secretary from among the voting members.

Requires staff of the FWCC to submit a proposed rule and the supporting data used to develop the proposed rule to the local rule review committee. Provides that the local rule review committee will have 60 days from receipt of the draft rule and the supporting data to submit a written report to the

FWCC members and staff. Provides that the written report may contain any local rule review committee recommendations for changes to the proposed rule, including a recommendation that no rule be adopted.

Provides that prior to filing a Notice of Proposed Rulemaking, the FWCC staff shall provide a written response to the local rule review committee reports to the appropriate counties, and to FWCC members. Provides that when reviewing a proposed manatee protection rule to balance manatee protection and public access to the waters being regulated under the proposed rule, the local rule review committee may consider factors such as whether or not the best available science supports the proposed rule.

Provides that local rule review committee written reports will contain a majority opinion and a minority opinion, if the majority opinion is not unanimous. Requires that FWCC members fully consider all timely submitted local rule review committee reports prior to authorizing FWCC staff to move forward with proposed rulemaking, and prior to adoption of a final rule. Provides that the local rule review committee reports and the FWCC staff written responses are part of the rulemaking record. Provides that the FWCC is relieved of any obligations regarding the local rule review process if a local rule review committee is not appointed within the required time.

Renumbers existing paragraph (f) as paragraph (g). Clarifies the FWCC's authority to provide comments to agencies that permit the expansion of or construction of new marine facilities, and mooring or docking slips. Clarifies that the FWCC will adopt rules under Chapter 120, Florida Statutes, to regulate the operation and speed of motorboat traffic in specified areas only where manatee sightings are frequent, and the best available science supports the conclusion that manatee inhabit these areas on a regular or continuous basis.

Clarifies the Legislature's intent that the FWCC's regulation of boat speeds within state waters shall not unduly interfere with the rights of fishers, boaters, and other waterway users, who access state waters for recreational and commercial purposes. Further clarifies the Legislature's intent that the FWCC may provide for access lanes and corridors in areas where such access lanes and corridors are consistent with manatee protection and recovery goals.

Provides that local governments may regulate by ordinance the operation and speed of motorboats within waters under their jurisdiction, only when the best available science supports the conclusion that manatees inhabit those waters on a regular basis. Local ordinances may not take effect until reviewed and approved by the FWCC.

Creates new paragraph (t) to provide that in order to protect manatees and manatee habitat, counties identified in a policy directive issued by the Governor and Cabinet in October, 1998, must develop manatee protection plans based upon criteria contained in the Directive. Provides that any county that has not submitted a manatee protection plan by July 1, 2004, and any county that has not had a submitted plan subsequently approved, is subject to designation by the FWCC as a "substantial risk county" for manatee mortality. Provides that "substantial risk counties" are required to complete manatee protection plans by July 1, 2006 using criteria established by the FWCC but including a manatee and manatee habitat education component, a boater education component, needs assessments for new or revised manatee protection speed zones, additional local law enforcement, and a boat facility siting plan. Provides that counties that have already adopted approved manatee protection plans, or counties that adopt subsequently approved manatee protection plans by July 1, 2002, are in compliance with the provisions of paragraph (t) if they incorporate an approved Boat Facility Siting Plan into a local comprehensive plan no later than July 1, 2003.

Section 17. Amends s. 372.072, F.S., by creating subsection (6) to provide that no later than February 15, 2003, the FWCC, working in conjunction with the United States Fish & Wildlife Service shall develop measurable biological goals that define manatee recovery. Provides that the FWCC shall use the measurable biological goals in developing manatee management plans or work plans, in evaluating existing and proposed manatee protection rules, and in determining progress in achieving manatee recovery.

Section 18. Amends s. 327.41, F.S., to correct a cross-reference.

Section 19. Establishes the Legislature's intent that the FWCC request the funding and staffing necessary to ensure that manatees receive the maximum protection possible. Provides that the FWCC shall conduct standardized studies to determine the level of public compliance with manatee protection rules. Provides that the FWCC shall use the results of the studies, together with other relevant information, to develop and implement law enforcement initiatives and boater education plans. Provides that the FWCC will use the studies and enforcement initiatives to identify and correct impediments in achieving high levels of public compliance with manatee protection rules.

Section 20. Establishes the Legislature's intent that provisions of the bill that relate to manatee protection may not be retroactively applied to manatee protection rules existing or in the process of being adopted on July 1, 2002, unless the FWCC proposes to amend or revise such rules after the bill takes effect. Provides that proposed rules that are subject to an administrative challenge pending as of February 12, 2002, are not subject to the manatee protection provisions of the bill unless a court or administrative hearing officer finds such proposed rules to be invalid, and all appeals have been exhausted. After such rules become final, any revision or amendment of such rules must be conducted pursuant to the provisions of the "Florida Manatee Sanctuary Act" in effect in July 1, 2002.

Section 21. Provides an effective date of July 1, 2002.

II. 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 CS/HB 1243, 2nd Engrossed. Also, the FWCC may see an increase in general revenue appropriations from the Legislature as provisions of the bill provide that the FWCC must request the funding and staffing necessary to provide manatees with the maximum protection possible.

2. Expenditures:

The FWCC may see an increase in law enforcement expenditures due to the enforcement of additional restrictions, penalties, and violations required in the bill. Also, the FWCC may see an expenditure of funds for staff to participate in the local rule review process for manatee protection rules, in reviewing and approving manatee protection plans for counties identified as "counties of substantial risk for manatee mortality", and in conducting standardized studies to be used in achieving high public compliance with manatee protection rules.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

CS/HB 1243, 2nd Engrossed, requires counties to provide logistic and administrative support to local committees participating in manatee rule reviews. Also, the bill also requires that counties identified in a 1989 Governing and Cabinet Policy Directive must adopt manatee protection plans using specific criteria, and must submit those plans to the FWCC for approval by July 1, 2004. Any county that has not submitted a plan by July 1, 2004, and any county with a plan that is not subsequently approved by the FWCC, must submit a manatee protection plan by July 1, 2006, using criteria established by the FWCC for counties identified as having "substantial risks for manatee mortality". Also, counties with manatee protection plans already in place and counties that adopt manatee protection plans prior to the effective date of the bill, must go back and incorporate a boating facility siting element as part of the local comprehensive plan no later than July 1, 2003.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

CS/HB 1243, 2nd Engrossed, 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,

After a second violation has occurred, 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 the bill may bear the expense of court proceedings to retrieve seized property.

D. FISCAL COMMENTS:

CS/HB 1243, 2nd Engrossed, does require that the FWCC request the funding and staff necessary to ensure that manatees are receiving the maximum protection possible. The bill creates an additional workload on the staff of the FWCC which must be performed even if the Legislature does not fully fund the FWCC's budget request.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

CS/HB 1243, 2nd Engrossed, does not require municipalities or counties to spend money.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

CS/HB 1243, 2nd Engrossed, does not reduce the authority that municipalities or counties have to raise revenues.

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

CS/HB 1243, 2nd Engrossed, does not reduce the percentage of state tax revenues shared with counties or municipalities.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

CS/HB 1243, 2nd Engrossed, 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 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.

Finally, the Legislature's ability to statutorily delegate manatee regulation to the FWCC is the subject of a lawsuit filed immediately after the merger of the Game & Fresh Water Fish Commission with the Marine Fisheries Commission in 1999. Although the Florida 1st DCA ruled that the Legislature's statutory delegation of authority over manatees to the FWCC was constitutional, that decision has been appealed. The Florida Supreme Court will hear oral arguments on August 27, 2002. (see Caribbean Conservation Corporation, Inc., and Save the Manatee Club, Inc., et al vs. FWCC – Trial Court No. 99-4188. FWCC, Appellant vs. CCC, Inc., et al, Appellees – Case No. 1D00-1389& 1D00-1804. Caribbean Conservation Corporation, Inc., et al, Petitioners vs. FWCC, et al, Respondents – Case No. SC01-1885.)

B. RULE-MAKING AUTHORITY:

CS/HB 1243, 2nd Engrossed, provides the FWCC with the authority to adopt rules pursuant to s. 120.54, F.S., for identifying counties that are "substantial risk counties" for manatee mortality and establishing criteria for approval of manatee protection plans for counties so identified.

C. OTHER COMMENTS:

Comments relating to HB 1243:

At the February 20, 2002 meeting of the Natural Resources & Environmental Protection Committee, members expressed concerns about the following issues:

- Notification requirements to registered property owners after seizure of property used in the commission of a violation.
- Hearing requirements for innocent property owners to retrieve seized or forfeited property.
- “Presumption of purchase” provisions of the bill.

The issues were addressed in a “strike-everything” amendment adopted by the Council for Ready Infrastructure. Please see “Amendments or Committee Substitute Changes” section of bill analysis.

Comments relating to HB 1473:

CS/HB 1473, 1st Engrossed, relating to the protection of manatees, was passed by the Florida House of Representatives on March 15, 2002, and died in the Senate Natural Resources Committee. The provisions of the bill were amended onto CS/HB 1243, 2nd Engrossed, which was passed by the Florida Senate and the Florida House of Representatives, sent to the Governor on May 6, 2002, and signed into law on May 15, 2002. **(Please see final bill analysis for CS/HB 1473, 1st Engrossed, for a complete description of the action taken on this bill.)**

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 20, 2002, the Natural Resources & Environmental Protection Committee unanimously adopted a traveling “strike-everything” amendment to HB 1243 that incorporated the following provisions:

- Amended subsection (3) of s. 370.021, F.S., to clarify that persons with a suspended or revoked saltwater products license may not aboard any vessel with a commercial quantity of saltwater products possessed through an activity requiring a saltwater products license.
- Created subsection (12) of s. 370.021, F.S., to allow the suspension or revocation of a saltwater products license after a second conviction has been received by a crew fishing under the license. Provided that the saltwater products license holder must be notified of the first offense, and must be notified that the saltwater products license is subject to suspension or revocation for subsequent offenses.
- Amended subsection (1) of s. 370.061, F.S., to provide that unless a court withholds adjudication on a first-time offense, conviction is anything except acquittal or dismissal for purposes of forfeiture proceedings.
- Amended s. 372.9901, F.S., to provide that the court is not required to order forfeiture of equipment used in the illegal taking of deer or turkey until a second or subsequent conviction.

On February 26, 2002, the Council for Ready Infrastructure adopted amendments to the traveling “strike-everything” amendment to HB 1243 adopted by the House Natural Resources & Environmental Protection Committee, and the bill was moved as a council substitute. The amendments adopted by the Council for Ready Infrastructure provided the following:

- Clarified that saltwater products are considered purchased when they are received at the premises of a wholesale dealer, retail dealer, or restaurant facility.
- Substantially reworded and amended s. 370.061, F.S., relating to the seizure and of property, and the confiscation of illegally taken, or illegal saltwater products (see Section 3 of “Section-by-Section” portion of this bill analysis).
- Substantially reworded and amended s. 372.9901, F.S., relating to the seizure and forfeiture of illegal hunting devices (see Section 9 of “Section-by-Section” portion of this bill analysis).

On March 13, 2002, CS/HB 1243 was placed on the House Special Order Calendar. Amendments were adopted that provided the following:

- Clarified that saltwater products are considered purchased when they are received by a wholesale dealer, a retail dealer, or a restaurant.
- Clarified that upon conviction, the court may determine that property used in connection with a saltwater products violation may be forfeited to the FWCC except with respect to first time offenses when adjudication is withheld. Clarified that for purposes of forfeiture, a conviction is any disposition other than acquittal or dismissal.

CS/HB 1243, 1st Engrossed, passed by the Florida House of Representatives by a vote of 115-0

On March 21, 2002, CS/HB 1243, 1st Engrossed, was considered by the Florida Senate in lieu of CS/CS/SB 556. An amendment was adopted which incorporated most of the manatee protection provisions of CS/HB 1473, 1st Engrossed, and the following provisions:

- Counties identified in the Governor and Cabinet October 1998 Policy Directive must develop manatee protection plans consistent with the criteria contained in the Directive.
- By July 1, 2006, counties identified by the FWCC as "counties at substantial risk for manatee mortality" must complete manatee protection plans.
- Manatee protection plans must include education about manatees and manatee habitat, boater education, an assessment of the need for new or revised manatee protection speed zones and local law enforcement, and a boat facility siting plan.
- Counties required to adopt manatee protection plans must incorporate a boat facility siting element into their respective local comprehensive plans.

The amended bill was read a third time, passed the Senate with a vote of 33-0, and was returned to the House. On March 22, 2002, the House passed CS/HB 1243, 2nd Engrossed, with a vote of 116-0. Governor Bush signed CS/HB 1243, 2nd Engrossed, into law on May 15, 2002.

VI. SIGNATURES:

COMMITTEE ON HOUSE NATURAL RESOURCES & ENVIRONMENTAL PROTECTION:

Prepared by:

Karon A. Molloy

Staff Director:

Wayne S. Kiger

AS REVISED BY THE COUNCIL FOR READY INFRASTRUCTURE:

Prepared by:

C. Scott Jenkins

Council Director:

Thomas J. Randle

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON HOUSE NATURAL RESOURCES & ENVIRONMENTAL PROTECTION:

Prepared by:

Karon A. Molloy

Staff Director:

Wayne S. Kiger
