

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 556

SPONSOR: Natural Resources Committee and Senator Smith

SUBJECT: The Fish and Wildlife Conservation Commission

DATE: February 5, 2002      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gee	Voigt	NR	Favorable/CS
2.	_____	_____	JU	_____
3.	_____	_____	APJ	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill provides penalties for the use of illegal nets and for the purchase or sale of illegally harvested marine life. It provides for the issuance of a disability notice by a licensed physician and provides a presumption when saltwater products are delivered to a wholesale dealer, retail dealer, or restaurant. The bill provides procedures for confiscation of property used in connection with the illegal taking of saltwater products, prohibits the purchase or sale of illegally harvested marine life, and provides penalties for the illegal molestation of or theft from freshwater traps. The bill provides procedures for seizure and forfeiture of personal property used in the illegal taking of deer and turkey and provides for the applicability of seizure and forfeiture requirements. Provisions relating to forfeiture proceedings, delivery of property to a claimant, proceeding when a claim is filed or no claims filed, judgments of forfeiture, and service charges, with respect to illegal fishing gear, are repealed.

This bill amends ss. 370.021, 370.06, 370.061, 370.07, 372.9901, and 372.9902 of the Florida Statutes. It creates s. 372.635, F.S., and repeals ss. 372.311, 372.312, 372.313, 372.314, 372.315, 372.317, and 372.318 of the Florida Statutes.

**II. Present Situation:**

Since the constitutional limitations on the use of gill and other entangling nets became effective July 1, 1995, the Legislature has enacted a number of provisions designed to enhance enforcement of the net limitations. These provisions have focused variously on net materials; penalties; the sale, purchase, and transportation of illegal saltwater products; confiscation of property; and other enforcement methods. Nevertheless, the Fish and Wildlife Conservation Commission (FWC) reports continued difficulties in effective enforcement and has recommended further statutory changes to increase enforceability and increase penalties.

Pursuant to s. 370.021(3), F.S., a licensee whose saltwater products license (SPL) privileges have been suspended for the illegal use of nets in violation of the constitutional limitations may not participate in the taking or harvesting or attempt the taking or harvesting of saltwater products from any vessel within the waters of the state, or any other activity requiring a license, permit, or certificate issued under ch. 370, F.S. For a first conviction for violating these prohibitions the penalty is imprisonment for not more than 60 days or a fine of not less than \$100 nor more than \$500, or both; for a second conviction the penalty is imprisonment for not more than six months or a fine of not less than \$250 nor more than \$1000, or both. Among other changes, the FWC seeks increased penalties and prohibitions.

Section 370.021(5), F.S., provides that violations involving the purchase of saltwater products by a commercial wholesale dealer, retail dealer, or restaurant facility for public consumption from an unlicensed person, firm, or corporation, or the sale of saltwater products by an unlicensed person, firm, or corporation are major violations, and the FWC may assess the following penalties:

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

The FWC seeks to expand these penalties to violations involving the purchase or sale by a commercial wholesale dealer, retail dealer, or restaurant facility for public consumption of any marine life known to be taken in violation of Section 16, Article X of the State Constitution, or any rule or statute implementing its provisions.

The FWC reports a need to address situations in which a licensee hires others to fish under his or her license. When the FWC believes it can prove the license holder had knowledge that fishers proceeding under that license were fishing illegally, the FWC would like to have the discretion, depending on the facts, to proceed against either the fishers or the license holder.

Section 370.06(2) (a) 2.g., F.S., provides an exemption from the income requirements for issuance of a restricted species endorsement on a SPL to any resident who is certified to be totally and permanently disabled by the Railroad Retirement Board, by the United States Department of Veterans Affairs or its predecessor, or by any branch of the United States Armed Forces, or who holds a valid identification card issued by the Department of Veterans' Affairs pursuant to s. 295.17, F.S., or any resident certified to be disabled by the United States Social Security Administration, if he or she also has held an SPL for at least 3 of the last 5 license years prior to the date of the disability. This exemption is not available, however, to a person certified as disabled by a licensed physician.

A primary law enforcement tool is the ability to confiscate property used in the commission of a crime. This is a nationwide practice, provided for under federal and state law. In Florida,

forfeitures may be pursued under the “Florida Contraband Forfeiture Act,” ss. 932.701-932.707, F.S., by any law enforcement agency. Under this act, an adversarial preliminary hearing must be conducted prior to forfeiture, in addition to the criminal proceeding. For the FWC, an alternative is to proceed under s. 370.061, F.S., which provides, in part:

“In all cases of arrest and conviction for the illegal taking, or attempted taking, sale, possession, or transportation of saltwater fish or other saltwater products, such saltwater products and seines, nets, boats, motors, other fishing devices or equipment, and vehicles or other means of transportation used in connection with such illegal taking or attempted taking are hereby declared to be nuisances and may be seized and carried before the court having jurisdiction of such offense, and said court may order such nuisances forfeited to the Fish and Wildlife Conservation Commission immediately after trial and conviction of the person or persons in whose possession they were found...”

The FWC would prefer to proceed under ch. 370, F.S., rather than ch. 932, F.S., when seeking confiscation of property used in illegal activities, and has proposed statutory changes to facilitate such action. These changes include designating property used as an instrumentality of or aiding or abetting in illegal activity as subject to confiscation and clarifying that jurisdictional limitations on the amount in controversy do not limit a court’s authority to find that the property was used in connection with a saltwater violation. Other requested changes include clarifying that confiscation may only result from a conviction and adding specific procedural language to conform to case law regarding the need for notification of the rightful owner of seized property, as well as including provisions providing a hearing for a person holding title to seized property who asserts that he or she is an innocent owner.

Changes proposed by the FWC are intended to respond to a recent decision in the Third District Court of Appeal in Case No. 3D00-1469, which urged the legislature to revisit this statute to assure that it operates fairly with respect to citizens and the agency to improve notice and opportunity to be heard for persons with interests in personal property subject to forfeiture.

Section 370.07, F.S., governs the transportation, sale, and delivery of saltwater products. This statute requires that appropriate invoices, bills of lading, or other similar instruments accompany saltwater products in the course of commerce. However, no specific provisions exists in this section to ensure that illegally-obtained products are not purchased or sold. Although it is unlawful for a licensed retail seafood dealer or any licensed restaurant to buy saltwater products from anyone other than a licensed wholesale or retail dealer, the FWC reports that it has experienced difficulty in proving that seafood products suspected to have been illegally obtained by such dealers and restaurants were in fact purchased. The FWC has proposed changes to address this issue.

Pursuant to ss. 370.13(2) (b), 370.135(1), and 370.142(2)(c) 3., F.S., with respect to the stone crab, blue crab, and crawfish fisheries, the statutes generally hold that it is unlawful for any person to remove the contents of another harvester’s trap without the express written consent of the trap owner available for immediate inspection. Such unauthorized removal constitutes theft. Any person convicted of theft from a trap shall, in addition to penalties specified elsewhere in ch. 370, F.S., permanently lose all his or her saltwater fishing privileges, including SPLs, and all

trap certificates. In such cases, trap certificates and endorsements are nontransferable. In addition to other penalties, any person, firm, or corporation convicted of violating these prohibitions will also be assessed an administrative penalty of up to \$5,000 and is guilty of a third degree felony. There is no equivalent provision prohibiting the molestation of freshwater traps and fishing gear.

Section 972.9901, F.S., provides for the seizure by the FWC of any vehicle, vessel, animal, gun, light, or other hunting device used in the illegal taking or possession of deer and wild turkey. Standing alone, these provisions do not appear to provide sufficient guidance to comply with current case law regarding confiscation of property in such circumstances. The FWC proposes language similar to that found in section 3 of this bill to provide appropriate procedures.

Section 372.9902, F.S., provides that the provisions of ss. 372.99, F.S., and 372.9901, F.S., relating to seizure and forfeiture of vehicles, vessels and animals shall not apply when such vehicles, vessels or animals are owned by, or titled in the name of, innocent parties. This provision will be unnecessary if the amendments to s. 372.9901, F.S., are enacted.

Currently, ss. 372.311, 372.312, 372.313, 372.314, 372.315, 372.317, and 372.318, F.S., provide procedures for the forfeiture of illegally used nets, traps, and fishing devices. The FWC reports that these provisions are outdated. Originally enacted in 1959, they were intended to apply to the confiscation of illegal fishing devices no longer in common use. The FWC reports it no longer confiscates property under these statutes.

### III. Effect of Proposed Changes:

**Section 1.** Section 370.021, F.S., is amended to prohibit a person whose SPL has been suspended or revoked for violation of the constitutional net limitations from being aboard any vessel on which a commercial quantity of saltwater products is possessed through an activity requiring a license pursuant to ch. 370, F.S. The penalty for violation of this provision or for the existing prohibitions against participating in the taking or harvesting or attempting the taking or harvesting of saltwater products from any vessel within the waters of the state, or engaging in any other activity requiring a license, permit, or certificate issued pursuant to ch. 370, F.S., with a SPL which has been suspended or revoked for constitutional net limitation violations is increased to a first degree misdemeanor.

This section also provides that, in addition to being subject to other penalties provided in ch. 370, F.S., any violation involving the purchase or sale by a commercial wholesale dealer, retail dealer, or restaurant facility for public consumption of any marine life known to be taken in violation of Section 16, Article X of the State Constitution, or any rule or statute implementing its provisions, is a major violation, subject to existing penalties.

Finally, section 1 provides that for purposes of imposing license or permit suspensions or revocations authorized by ch 370, F.S., the license or permit under which the violation was committed is subject to suspension or revocation by the FWC. For purposes of assessing monetary civil or administrative penalties authorized by ch. 370, F.S., the person, firm, or corporation cited and subsequently receiving a judicial disposition of other than dismissal or acquittal in a court of law is subject to the monetary penalty assessment by the FWC. However, if the license or permit holder of record is not the person, firm or corporation receiving the

citation and judicial disposition, then the license or permit may be suspended or revoked only after the license or permit holder has been notified by the FWC that the license or permit has been cited in a major violation and is now subject to suspension or revocation should the license be cited in subsequent major violations.

**Section 2.** Section 370.06(2), F.S., is amended to exempt a resident who has been certified by a physician to be disabled from the income requirements for a restricted-species endorsement on a SPL, if the resident also has held a SPL for at least 3 of the last 5 license years prior to the disability. This section also provides that a restricted-species endorsement issued based on disability may be issued only on an individual SPL, and specifies that any saltwater products delivered to the premises of a wholesale dealer are, for the purpose of s. 370.06(2), F.S., presumed to have been purchased.

**Section 3.** Section 370.061, F.S., is amended to clarify that property used in connection with the illegal taking of saltwater products is subject to forfeiture as part of the FWC's efforts to protect the state's marine life. Existing provisions providing for confiscation of gear and means of transportation used in the illegal taking of, attempted taking, sales, possession, or transportation of saltwater products are amended to include the confiscation of such equipment attempted to be used in connection with, as an instrumentality of, or aiding or abetting in such illegal taking or attempted taking of saltwater products. The bill provides that in a criminal offense, notwithstanding any jurisdictional limitations on the amount in controversy, the court may make a finding that the property was used in connection with a saltwater violation and may order the property forfeited to the FWC. The requirement of a conviction before forfeiture establishes, to the exclusion of any reasonable doubt, that the property was used in connection with the violation. The procedures of ch. 932, F.S., do not apply to such forfeiture. For these purposes a conviction, except for a first time offender for whom adjudication is withheld, is any disposition other than acquittal or dismissal. The bill clarifies that the FWC's existing authority to confiscate illegally taken saltwater products or illegal fishing gear is unaffected by the changes. For purposes of confiscation, the term "saltwater products" has the meaning set out in s. 370.01 (25), F.S., except that the term does not include saltwater products harvested under the authority of a recreational license, unless the amount of such harvested products exceeds three times the applicable recreational bag limit for trout, snook, or redfish.

The bill provides that, prior to the issuance of a forfeiture order for any vessel, vehicle, or other property under these procedures, the FWC must seize the property and notify the registered owner, if any, that the property has been seized by the FWC. Notification must be sent within 14 days after the seizure of the property. If the FWC, after diligent inquiry, cannot ascertain the registered owner, the notice is satisfied. Any such property seized which is not otherwise unlawful may be returned to the person or persons holding title thereto at the time of the illegal act causing the forfeiture if such person proves by a preponderance of the evidence before the court having jurisdiction over the criminal offense that he or she in no way aided, abetted, participated in, gave consent to, or knew or had reason to know of the act. A request for such a hearing from a person holding title and asserting that he or she is an innocent owner must be received by the Assistant State Attorney who prosecuted the case and the FWC's Division of Law Enforcement within 15 days after receipt of the notice of seizure. If a request for a hearing is not timely received, the court may forfeit the right to, title to, and interest in the property to the

FWC, subject only to the rights and interests of bona fide lien holders. Provisions permitting an innocent titleholder to purchase specified forfeited property from the FWC for \$1.00 are deleted.

**Section 4.** Section 370.07(4) and (8), F.S., are amended to provide that a wholesale dealer, retail dealer, or restaurant facility for public consumption may not purchase or sell any marine life known to be taken illegally, or known to be taken in violation of Section 16, Article X of the State Constitution, or any rule or statute implementing its provisions.

This section also provides that any saltwater products delivered to the premises of a retail dealer or a restaurant are presumed, for purposes of s. 370.07(8), F.S., to have been purchased.

**Section 5.** Section 372.635, F.S., is created. This section provides that it is a third degree felony for any person, firm, or corporation to willfully molest any authorized and lawfully permitted freshwater fishing gear belonging to another without the express written consent of the gear's owner which is available for immediate inspection, or to willfully remove the contents of any authorized and lawfully permitted freshwater gear belonging to another without the express written consent of the gear's owner available for immediate inspection. Any person, firm, or corporation convicted of removing the contents of freshwater fishing gear shall permanently lose all of his or her freshwater and saltwater fishing privileges, including his or her recreational and commercial licenses and endorsements. In addition, any person, firm, or corporation convicted of violating these provisions will also be assessed an administrative penalty of up to \$5,000. In such cases, endorsements are nontransferable. Immediately upon receiving a citation for a violation of removing the contents of freshwater fishing gear and until adjudicated for such a violation, or if convicted of such a violation, the person, firm, or corporation committing the violation is prohibited from transferring any endorsements.

For purposes of this section, the term "freshwater fishing gear" means haul seines, slat baskets, wire traps, hoop nets, or pound nets, and includes the lines or buoys attached thereto.

**Section 6.** Section 372.9901, F.S., is amended to provide that any vehicle, vessel, animal, gun, light, or other hunting device attempted to be used in connection with, as an instrumentality of, or aiding and abetting the commission of an offense prohibited by s. 372.99, F.S., is subject to forfeiture. The new provisions provide that upon conviction of the person in whose possession the property was found, the court having jurisdiction over the criminal offense, notwithstanding any jurisdictional limitations on the amount in controversy, may make a finding that the property was used in connection with a violation of s. 372.99, F.S., and, upon such a finding, order the property forfeited to the FWC. Upon a second or subsequent conviction, the court must order forfeiture. The requirement for a conviction before forfeiture establishes, to the exclusion of any reasonable doubt, that the property was used in connection with a violation. The procedures of ch. 932, F.S., do not apply to any forfeiture under this section. For purposes of this section, a conviction is any disposition other than acquittal or dismissal.

Prior to the issuance of a forfeiture order for any vessel, vehicle, or other property, the FWC is directed to seize the property and notify the registered owner, if any, that the property has been seized by the FWC. Notification must be sent within 14 days after the seizure of the property. If the FWC after diligent inquiry, cannot ascertain the registered owner, the notice requirement is satisfied. Any property seized under this section which is not otherwise unlawful may be

returned to the person or persons holding title thereto at the time of the illegal act causing the seizure if such person proves by a preponderance of the evidence before the court having jurisdiction over the criminal offense that he or she in no way aided, abetted, participated in, gave consent to, or knew or had reason to know of the act. A request for such a hearing from a person holding title and asserting that he or she is an innocent owner must be received by the Assistant State Attorney who prosecuted the case and the FWC's Division of Law Enforcement within 15 days after receipt of the notice of seizure. If a request for a hearing is not timely received, the court shall forfeit to the FWC the right to, title to, and interest in the property, subject only to the rights and interests of bona fide lien holders.

Existing provisions providing for the seizure of property used in the violation of s. 372.99, F.S., are repealed.

**Section 7.** Section 372.9902, F.S., is amended to conform with the provisions of section 6.

**Section 8.** Sections 372.311, 372.312, 372.313, 372.314, 372.315, 372.317, and 372.318, F.S., are repealed.

**Section 9.** This act takes effect July 1, 2002.

#### **IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

There are several increased penalties; however, payment of such penalties based on future wrongdoing is speculative.

**C. Government Sector Impact:**

Increased penalties could lead to increased revenues; however the amount of such revenues based on future illegal acts is speculative.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

---

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

---