

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: SB 174

SPONSOR: Senator Geller

SUBJECT: Protection of Marine Turtles

DATE: March 12, 2003 REVISED: 03/25/03 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Molloy</u>	<u>Kiger</u>	<u>NR</u>	<u>Fav/1 amendment</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill provides that it is a major violation of chapter 370, Florida Statutes, for any person, firm, or corporation to be involved in taking, harvesting, or possessing any eggs of certain marine turtle species. In addition to other penalties already provided in law, an additional fine of \$100 per egg must be assessed. The bill further amends provisions relating to the protection of marine turtles to create third degree felony penalties for any person, firm, or corporation that takes, possesses, disturbs, mutilates, destroys or causes to be destroyed, sells or offers for sale, transfers, molests, or harasses any marine turtle or its nest or eggs at any time. The offense severity ranking chart of the Criminal Punishment Code is amended for sentencing purposes to include the felony penalties created in this bill.

This bill amends sections 370.021, 370.12, 777.04, and 921.0022 of the Florida Statutes:

II. Present Situation:

The Endangered Species Act of 1973 - 16 U.S.C. 1531

In 1973, the United States Congress enacted the federal "Endangered Species Act" to replace the 1966 federal program called the "Endangered Species Preservation Act". The 1966 program allowed the listing of native species as endangered but provided limited protection. The 1973 program, which was created to provide that protection, has been reauthorized seven times. The Act was due for reauthorization in 1993 but legislation has not yet been enacted. Program activities continue because Congress keeps appropriating funding.

Civil penalties assessed under the Endangered Species Act can include individual fines of up to \$100,000 and fines against organizations of up to \$200,000. Criminal penalties can include fines and imprisonment.

The Lacey Act - 16 U.S.C. 3371

The Lacey Act was originally enacted in 1900 to outlaw interstate traffic in illegally killed birds and other animals. The Act, administered by the Secretary of the Interior, is generally considered to be America's first wildlife conservation law. It prohibits the importation, exportation, transportation, sale, or purchase of fish and wildlife taken or possessed in violation of state, federal, tribal and foreign laws, and is used as an important tool to control the smuggling and trade of illegally taken fish and wildlife. Criminal and civil penalties fall into two categories. Felony offenders can receive fines of up to \$250,000 per individual or \$500,000 per organization, and/or prison terms of up to five years for each violation. Misdemeanor offenders can receive fines of up to \$100,000 per individual and \$200,000 per organization, and/or up to 1 year in jail.

Protection of Marine Turtles - Florida

The Florida "Endangered and Threatened Species Act" was enacted in 1977, and established the Legislature's intent to provide for the research, management and protection of endangered or threatened species. The former Game and Fresh Water Fish Commission was responsible for research and management of fresh water and upland species. The former Department of Natural Resources (now the Department of Environmental Protection) was responsible for the research and management of marine species. The Florida Fish & Wildlife Conservation Commission (FWC) was given all research and management responsibilities for endangered and threatened species when the agency was created in 1999.

Under the "Endangered and Threatened Species Act" it is a third degree felony for persons to intentionally destroy the eggs or nests of endangered fish and wildlife, or to intentionally kill or wound any endangered fish or wildlife. If convicted, a violator could receive a jail sentence of up to five years, a fine of up to \$5,000, or both. A habitual offender can be sentenced for an extended term of imprisonment if convicted of two or more felonies in Florida, or under certain other conditions. No penalties are provided for the possession of eggs of endangered or threatened species.

In 1991, the Florida Legislature enacted Chapter 91-215, Laws of Florida, known as the "Marine Turtle Protection Act" (s. 370.12, F.S.). The former Department of Natural Resources was given authority for implementation of recovery plans of the US Fish and Wildlife Service for the five species of marine turtles described below. That authority was transferred to the FWC when the agency was created in 1999.

Unless authorized by the federal endangered species act, no person can take, possess, disturb, mutilate, destroy, cause to be destroyed, sell, offer for sale, transfer, molest or harass turtles, turtle nests, or turtle eggs at any time. No penalty provisions were created in the Act, so violators fall under the general punishment provisions of s. 370.021, Florida Statutes. For a first offense, a convicted person can receive up to 60 days in jail, or a fine of not less than \$100 and not more than \$500, or both. For a second or subsequent offense, a convicted person can received up to six months in jail, or a fine of not less than \$250 or more than \$1,000, or both.

The FWC estimates that over the past twenty years, more than 60,000 turtle eggs have been stolen.

James Bivens v State of Florida 586 So.2d 442 (Fla. 1991)

In the above referenced case, the defendant was convicted of possession of marine turtle eggs in violation of s. 370.12, Florida Statutes. He was fined \$500 and sentenced to 60 days in jail. Under the "major violation" provisions of s. 370.021, Florida Statutes, the county court also fined the defendant a penalty of \$100 per egg as a unit of marine life. Since he was found in possession of 1,088 eggs, the defendant was fined a total of \$108,800. The case was appealed to the circuit court on the grounds that the statute did not define turtle eggs as a "unit of marine life". The circuit court upheld the county court sentence, and the defendant then appealed to the District Court of Appeals in the Fourth District. The appellate court ruled in favor of the plaintiff and found that since the Legislature had distinguished between marine turtles and marine turtle eggs in other contexts, because some of the eggs were infertile and the fine was imposed on every egg, and because statutory ambiguity existed, the \$100 fine per egg could not be applied.

Leatherback sea turtle (*Dermochelys coriacea*)¹ - Leatherback turtles are the largest sea turtles, weigh up to 1,300 pounds and can reach up to 8 feet in length. Nesting occurs during the fall and winter, with an egg incubation period ranging between 50-78 days. In 1970, the leatherback sea turtle was listed as an endangered species under the 1966 Endangered Species Preservation Act within its entire range which includes Florida. In the "Convention on International Trade in Endangered Species", the leatherback is listed as one of the most highly endangered species in the world. In the past, leatherbacks were harvested for oil which was used in oil lamps and in caulking wooden boats. Now, the most serious threat to leatherbacks is nest disturbance for harvesting eggs.

Atlantic Hawksbill sea turtle (*Eretmochelys imbricata*)² - The hawksbill turtle is a small to medium sized turtle which can reach up to 36 inches in length. Nesting occurs from April through November, with females laying as many as 200 eggs per nest. The incubation period ranges from 47-75 days. The hawksbill sea turtle was designated as an endangered species within its entire range under the Endangered Species Preservation Act. Its shell is the source of "tortoise-shell" used throughout the world in making jewelry. Primary threats also include harvesting the hawksbill sea turtle as a food source for both the meat and the eggs.

Kemp's ridley sea turtle (*Lepidochelys kempii*)³ - Kemp's ridley sea turtles measure around 28 inches in length and weigh between 75 and 100 pounds. There is only one known major nesting beach in the world for the Kemp's ridley sea turtle which is on the east coast of Mexico. Although nesting occurs in large groups, each turtle lays about 100 eggs in individual nests. The incubation period ranges from 50-55 days. In 1970, the Kemp's ridley sea turtle was designated as endangered species within its entire range under the Endangered Species Preservation Act. The primary threat to ridley sea turtles today is egg harvesting.

Loggerhead sea turtle (*Caretta caretta*)⁴ - Loggerhead turtles can have a carapace that is up to 45 inches in length and can weigh up to 500 pounds. Nesting can occur several times during the

¹ <http://www.tpwd.state.tx.us/nature/endang/animals/lethback.htm>

² <http://www.tpwd.state.tx.us/nature/endang/animals/hawkturt.htm>

³ <http://www.tpwd.state.tx.us/nature/endang/animals/kempstrid/htm>

⁴ <http://www.tpwd.state.tx.us/nature/endang/animals/logghead.htm>

nesting season which runs from April to September. Females can lay up to 190 eggs per nest and the incubation period ranges from 55 to 62 days. In 1978, the loggerhead sea turtle was designated as a threatened species within its entire range under the federal Endangered Species Act. Although originally harvested for meat, eggs, leather, and fat, the primary threats today include harvesting for meat and eggs, and predatory threats especially during incubation.

Green sea turtle (*Chelonia mydas*)⁵ - Green sea turtles can have a shell length of 55 inches and can weigh up to 850 pounds. Nesting can occur several times during a season which runs from June to August. Females can lay up to 145 eggs per nest, and the incubation period ranges from 48 to 70 days. In 1978, the green sea turtle was listed as an endangered species within the breeding colony (which includes Florida) under the federal Endangered Species Act. Green sea turtles and their eggs are still harvested as a food source although international trade of wild green sea turtles is against the law.

III. Effect of Proposed Changes:

This bill provides that any person, firm, or corporation committing a violation involving the taking, harvesting, or possession of marine turtle eggs commits a major violation under the provisions of s. 370.021, Florida Statutes. A penalty of \$100 per egg is created and must be assessed in addition to other penalties created in the bill.

The bill provides that any person, firm, or corporation intentionally committing a violation of the Marine Turtle Protection Act created in s. 370.12, Florida Statutes, commits a third degree felony, and is subject to imprisonment for a term of not more than five years, a fine of up to \$5,000, or both. Repeat offenders can be sentenced under the habitual felony offender provisions of s. 775.084, Florida Statutes. For purposes of sentencing, the bill creates a Level 2 offense in the offense severity ranking chart of the Criminal Punishment Code created in s. 921.0022, Florida Statutes.

The bill further provides that any person, firm, or corporation intentionally committing a violation of the Marine Turtle Protection Act which involves more than 12 marine turtle eggs, commits a third degree felony, and is subject to imprisonment for a term of not more than five years, a fine of up to \$5,000, or both. Repeat offenders can be sentenced under the habitual felony offender provisions of s. 775.084, Florida Statutes. For purposes of sentencing, the bill creates a Level 3 offense in the offense severity ranking chart of the Criminal Punishment Code created in s. 921.0022, Florida Statutes.

Finally, this bill provides that any person, firm, or corporation who solicits or conspires with another person, firm, or corporation to commit a violation of the Marine Turtle Protection Act commits a third degree felony, and is subject to imprisonment for a term of not more than five years, a fine of up to \$5,000 or both. Repeat offenders can be sentenced under the habitual felony offender provisions of s. 775.084, Florida Statutes. For purposes of sentencing, no amendments to the offense severity ranking chart of the Criminal Punishment Code are created.

⁵ <http://www.tpwd.state.tx.us/nature/endang/animals/greentur.htm>

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:

This bill will impact the private sector due to the monetary fines and felony penalties which are created in the bill. Persons caught harvesting or in possession of marine turtle eggs will be fined \$100 per egg in addition to other penalties provided in the bill.

C. Government Sector Impact:

Government sector impacts include the costs of increased law enforcement efforts, additional court dates, and possible jail sentences. On March 14, 2003, the Criminal Justice Impact Conference held by the Legislature's Office of Economic and Demographic Research Services determined that this bill will have an insignificant fiscal impact on the criminal justice system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Natural Resources:

The substitute strike amendment adopted by the Senate Natural Resources Committee makes technical corrections to existing statutory language, and reorganizes and clarifies the provisions of the Marine Turtle Protection Act. The amendment creates a misdemeanor penalty for a first illegal possession of 11 or fewer marine turtle eggs. Second or subsequent possessions of 11 or

fewer eggs are a third degree felony. The amendment creates a \$100 per egg penalty for illegal possession of any eggs of any turtle species identified in the Marine Turtle Protection Act. Additional provisions created in the amendment include third degree felony penalties for possession of more than 11 marine turtle eggs; for illegally taking, destroying, selling or offering to sell any marine turtles, marine turtle nests or marine turtle eggs; and for soliciting to commit or conspiring to commit violations of the Marine Turtle Protection Act. Finally, the amendment clarifies provisions of the original bill relating to sentencing requirements for persons found guilty of violating the Marine Turtle Protection Act. (WITH TITLE AMENDMENT)

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