

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 194

INTRODUCER: Agriculture Committee and Senator Latvala

SUBJECT: Spiny Lobster

DATE: February 20, 2014

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|----------------|-----------|--------------------|
| 1. | <u>Akhvein</u> | <u>Becker</u> | <u>AG</u> | Fav/CS |
| 2. | <u>Hinton</u> | <u>Uchino</u> | <u>EP</u> | Favorable |
| 3. | <u>Sumner</u> | <u>Cannon</u> | <u>CJ</u> | Pre-meeting |

I. Summary:

CS/SB 194 amends s. 379.407, F.S., to provide specific enhanced penalties for any person, firm, or corporation in possession of spiny lobster during closed season or in possession of wrung spiny lobster tails while on State waters. Any exception would be granted by Fish and Wildlife Conservation Commission (FWC) rules.

II. Present Situation:

The spiny lobster fishery is one of the most valuable fisheries in Florida. For the past five years, the dockside value of this fishery has totaled \$133.6 million. Trap theft, illegal sales, and poaching of spiny lobster results in a direct loss to legitimate commercial fishermen.

One hundred percent of the spiny lobster that is commercially harvested in the United States comes from Florida. Florida's commercial spiny lobster fishery is concentrated in South Florida, with approximately 90 percent of lobster harvested in the Florida Keys.

The spiny lobster fishery is jointly managed in federal waters by the Gulf of Mexico and the South Atlantic Fishery Management Councils. Most spiny lobster harvest, however, occurs in state waters, which are managed by the FWC. Regulations that have been implemented to ensure the long-term sustainability of the spiny lobster fishery include minimum size limits, closed seasons/areas, gear restrictions, and a trap limitation and permitting program.

In order to commercially harvest spiny lobster in Florida, a person must possess:

- a valid Saltwater Products License (SPL), which is Florida's commercial fishing license,
- a restricted species (RS) endorsement, and

- either a commercial spiny lobster endorsement (a “C” endorsement) or a commercial divers permit (called a “CD” endorsement).¹

Florida offers three types of SPLs depending on the needs of the fisherman. An “Individual SPL” authorizes a person to engage in commercial fishing activities from the shore or a vessel. This SPL is not tied to any one vessel and is issued in the individual’s name. A “Crew SPL” is also issued in an individual’s name and it authorizes the named individual to engage in commercial fishing activities from the shore or a vessel. It also authorizes each person who is fishing with the named individual aboard a vessel to engage in such activities under the license holder’s SPL. The final type of SPL is a “Vessel SPL.” This license is issued to a valid commercial vessel registration number and authorizes each person aboard that registered vessel to engage in commercial saltwater fishing activities. This license differs from the two previous SPLs because it is not issued in an individual’s name, but is rather tied to a specific vessel.²

The costs of various SPLs are listed in the following table:

| Saltwater Products Licenses | Cost |
|------------------------------------|-----------------------|
| Individual Resident | \$50.00 |
| Individual Nonresident | \$200.00 |
| Individual Alien | \$300.00 |
| Crew Resident | \$150.00 |
| Crew Nonresident | \$600.00 |
| Crew Alien | \$900.00 |
| Vessel Resident | \$100.00 |
| Vessel Nonresident | \$400.00 |
| Vessel Alien | \$600.00 ³ |

A free RS is also required to commercially harvest spiny lobster, which the FWC lists as a restricted species. In order to acquire an RS, SPL holders must show that their annual income from landings during one of the three years prior to applying for the RS was either \$5,000 or 25 percent of the fisherman’s annual income. Reported income must be attributed to landings and sales of saltwater products to a Florida wholesale dealer, under the SPL, unless the commercial fisherman qualifies under a different provision or exception.⁴

¹ FWC, *Commercial Regulations for Spiny Lobster (Crawfish)*, <http://myfwc.com/fishing/saltwater/commercial/spiny-lobster/> (last visited Feb. 4, 2014).

² FWC, *Commercial Saltwater Fishing New Applicants*, <http://myfwc.com/license/saltwater/commercial-fishing/new-applicants/#spl> (last visited Feb. 4, 2014).

³ FWC, *Commercial Saltwater products License Fees*, <http://myfwc.com/license/saltwater/commercial-fishing/csl-fees/> (last visited Feb. 4, 2014).

⁴ FWC, *Qualifying for the Restricted Species Endorsement*, <http://myfwc.com/license/saltwater/commercial-fishing/qualifying-for-rs/> (last visited Feb. 4, 2014).

The C endorsement allows fishermen to harvest lobsters with traps or bully nets. The use of traps requires FWC-issued trap certificates and current year trap tags, permanently affixed to each trap. There are no daily bag limits under the C endorsement, however, a daily vessel limit of 250 spiny lobsters applies when lobsters are harvested using bully nets. The C endorsement costs \$125 if the SPL holder has trap certificates. The C endorsement costs \$100 if the SPL holder is only fishing with bully nets.

A CD endorsement is required to commercially harvest lobster by diving, and can only be issued on a single vessel SPL. Harvesting lobster is limited to 250 lobster per day, per vessel in Broward, Dade, Monroe, Collier, and Lee Counties and adjoining federal waters with a CD endorsement. A CD endorsement may not be issued if the SPL holder has trap certificates. Rules concerning CD endorsements preclude any new CD endorsements from being issued. They are now only being renewed under specific circumstances.⁵ The CD endorsement costs \$100.

Below are the numbers of commercial fishermen possessing a valid SPL, RS, and lobster endorsement in the past five years.

- FY 2008-2009 – 1,472
- FY 2009-2010 – 1,388
- FY 2010-2011 – 1,412
- FY 2011-2012 – 1,465
- FY 2012-2013 – 1,510

The commercial spiny lobster season runs August 6th through March 31st. Typically, a large proportion of landings occur in the first several months of the season followed by a steady decline the rest of the season. For example, in October many fishermen shift to harvesting stone crab, which contributes to decreased effort in the spiny lobster commercial fishery. This tends to happen for other species as the end of the commercial season for those species approaches.

In Florida waters, recreational harvesters may take lobsters during the 2-day “sport season,” which occurs each year on the last consecutive Wednesday and Thursday of July, and during the commercial spiny lobster season. During the 2-day sport season, up to 12 lobsters per harvester, per day may be taken except in Monroe County, where harvesters may only take six lobsters per day. Recreational harvesters are not permitted to use traps to harvest spiny lobsters. In addition to a recreational saltwater fishing license, a spiny lobster permit (also called a lobster stamp) is required to recreationally harvest lobster in all state waters. The costs of recreational saltwater fishing licenses, as well as the spiny lobster permit are in the following table:

| Resident Recreational Saltwater Fishing Licenses | Cost |
|---|-------------|
| Annual Saltwater Fishing | \$17.00 |
| Youth Saltwater Fishing | \$17.00 |
| 5-Year Saltwater Fishing | \$79.00 |
| Saltwater/Freshwater Fishing Combo | \$32.50 |
| Saltwater/Freshwater/Hunting Combo | \$48.00 |

⁵ See Rule 68b-24.0055, F.A.C.

| | |
|-------------------------|----------|
| Saltwater Shoreline | Free |
| Gold Sportsman | \$100.00 |
| Youth Gold Sportsman | \$100.00 |
| 5-Year Gold Sportsman | \$494.00 |
| Military Gold Sportsman | \$20.00 |

| Non-Resident Saltwater Fishing Licenses | Cost |
|---|---------|
| Nonresident Annual Saltwater Fishing | \$47.00 |
| Nonresident 3-Day Saltwater Fishing | \$17.00 |
| Nonresident 7-Day Saltwater Fishing | \$30.00 |

| Spiny Lobster Permits | Cost |
|--|----------------------|
| Annual Spiny Lobster Permit | \$5.00 |
| 5-Year Spiny Lobster Permit (residents only) | \$25.00 ⁶ |

During the past five fiscal years, approximately 140,000 to 150,000 recreational spiny lobster permits were sold annually.⁷

Section 379.407(1), F.S., provides that any person, firm, or corporation who violate any provision of ch. 379, F.S., or any rule of the FWC relating to the conservation of marine resources are subject to the following penalties:

- Upon a first conviction, by imprisonment for not more than 60 days or by a fine of no less than \$100 or more than \$500, or by both, at the discretion of the judge.
- Upon a second or subsequent conviction within 12 months, by imprisonment for not more than 6 months or by a fine of no less than \$250 or more than \$1,000, or by both, at the discretion of the judge.

There are also additional penalties for “Major Violations” that apply in certain situations. Section 379.407(2)(a), F.S., provides that a violation committed by a commercial harvester, involving more than 100 illegal spiny lobster, will result in an additional penalty of \$10.00 for each lobster or part thereof. Additionally, s. 379.407(2)(i), F.S., provides that a violator who, in any single violation, possesses more than 25 spiny lobster during closed season or possesses more than 25 wrung tails must show just cause as to why his or her license should not be revoked.⁸

III. Effect of Proposed Changes:

Section 1 amends s. 379.407, F.S., to enhance the penalty for any person, firm, or corporation to be in possession of spiny lobster during the closed season or, while on the water, being in possession of spiny lobster tails that have been separated from the body. The bill classifies such violations as major violations. The bill authorizes possession of such spiny lobster if allowed by FWC rule. The bill provides the following penalties for violations of this act:

⁶ FWC, *Recreational Saltwater licenses & Permits*, <http://myfwc.com/license/recreational/saltwater-fishing/> (last visited Feb. 4, 2014).

⁷ FWC, *Senate Bill 194 Agency Analysis* (December 19, 2013) (on file with the Senate Agriculture Committee).

⁸ *Id.*

- **First violation** – Second degree misdemeanor. If the violation involves 25 or more lobster, the violation is a first degree misdemeanor.
- **Second violation** – First degree misdemeanor and the possibility of license suspension for up to 90 days.
- **Third violation** – First degree misdemeanor with a six-month mandatory minimum sentence of imprisonment in a county detention facility. The violator may be assessed a civil penalty of up to \$2,500 and the possibility of license suspension for up to six months.
- **Third violation within one year of second violation** – Third degree felony with a one-year mandatory minimum prison term. The violator is also assessed a civil penalty of \$5,000 and has all license privileges permanently revoked.
- **Fourth violation** – Third degree felony with a one-year mandatory minimum prison term. The violator is assessed a civil penalty of \$5,000 and has all license privileges permanently revoked.

Section 2 amends s. 379.401, F.S., to conform a cross-reference.

Section 3 provides that this act shall take effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Violators of the provisions of this bill will be subject to significant additional penalties, fines, and imprisonment.

C. **Government Sector Impact:**

Indeterminate. There may be an initial increase in fines assessed due to the provisions of this act. There may also be an increase in incarceration costs for additional penalties in the bill mandating imprisonment.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 379.407 and 379.401.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Agriculture on January 13, 2014:

The committee substitute:

- Deletes provisions pertaining to stone crab regulation;
- Classifies violations of the provisions of the bill as major violations; and
- Provides penalties for specified violations relating to possession of spiny lobster.

B. **Amendments:**

None.