

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 47 Spiny Lobster

SPONSOR(S): Agriculture & Natural Resources Subcommittee; Raschein and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 194

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N, As CS	Renner	Blalock
2) Criminal Justice Subcommittee	12 Y, 0 N	Cunningham	Cunningham
3) Agriculture & Natural Resources Appropriations Subcommittee		Massengale	Massengale
4) State Affairs Committee			

SUMMARY ANALYSIS

Pursuant to the Florida Fish and Wildlife Conservation Commission's (FWC) rules, both the commercial and recreational spiny lobster seasons run from August 6 through March 31. In addition, spiny lobsters may be harvested recreationally during the recreational two-day "sport season," which occurs on the last consecutive Wednesday and Thursday of July each year. FWC's rules also require spiny lobsters harvested in Florida to remain in a whole condition at all times while on or below the waters of the state. Possession of spiny lobster tails that have been wrung or separated, on or below the waters of the state, is prohibited.

Currently, s. 379.407, F.S., requires any person, firm, or corporation who violates FWC rule relating to the conservation of marine resources to be punished:

- 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 fine and imprisonment.
- 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 fine and imprisonment.

The bill creates s. 379.407(5), F.S., to prohibit the possession of spiny lobsters during the closed season and the possession, while on the water, of spiny lobster tails that have been wrung or separated from the body. The bill creates the following penalties for persons, firms, or corporations that violate this provision:

- A first violation is a second degree misdemeanor. If the violation involves 25 or more lobster, the violation is a first degree misdemeanor.
- A second violation is a first degree misdemeanor, and the violator is subject to a suspension of all license privileges for a period not to exceed 90 days.
- A third violation is a first degree misdemeanor with a mandatory minimum term of imprisonment of 6 months. The violator may be assessed a civil penalty of up to \$2,500 and is subject to a suspension of all license privileges for a period not to exceed 6 months.
- A third violation within one year after a second violation is a third degree felony with a mandatory minimum term of imprisonment of one year. The violator must be assessed a civil penalty of \$5,000 and all license privileges must be permanently revoked.
- A fourth or subsequent violation is a third degree felony with a mandatory minimum term of imprisonment of one year. The violator must be assessed a civil penalty of \$5,000 and all license privileges must be permanently revoked.

The bill increases criminal penalties, imposes civil fines, and requires suspension or revocation of licenses for certain offenses relating to spiny lobsters. The Criminal Justice Impact Conference met on January 30, 2014, and determined that this bill will have an insignificant negative prison bed impact on the Department of Corrections. The bill may also have a negative jail bed impact.

The bill is effective July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Spiny Lobsters

One hundred percent of spiny lobsters commercially harvested¹ in the U.S. come from Florida, with approximately 90 percent harvested in the Florida Keys.² Chapter 379, F.S., imposes regulations to ensure the long-term sustainability of the spiny lobster, including regulations that require licensure, establish closed seasons and areas, create a lobster trap certificate program, and that impose minimum size limits, gear restrictions, and trap specifications. The Florida Fish and Wildlife Conservation Commission (FWC) regulates spiny lobster fishing that occurs in Florida waters.³

Harvest Season

According to FWC's rules, both the commercial and recreational⁴ spiny lobster seasons run from August 6 through March 31.⁵ Consequently, no person is allowed to harvest, attempt to harvest, or have in his possession, regardless of where taken, any spiny lobster during the closed season of April 1 through August 5 of each year.⁶ FWC's rules provide one exception to this prohibition by allowing spiny lobsters to be harvested recreationally during the recreational two-day "sport season," which occurs on the last consecutive Wednesday and Thursday of July each year.⁷

Wrung Tails

FWC's rules require spiny lobsters harvested in Florida to remain in a whole condition at all times while on or below the waters of the state.⁸ Possession of spiny lobster tails that have been wrung or separated, on or below the waters of the state, is prohibited.⁹

Penalties

Section 379.407, F.S., requires any person, firm, or corporation who violates any provision of ch. 379, F.S., or any FWC rule relating to the conservation of marine resources to be punished:

- 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 fine and imprisonment.
- 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 fine and imprisonment.

A court must assess additional penalties against any commercial harvester convicted of major violations.¹⁰ For purposes of spiny lobster, a major violation is a violation of statute or FWC rules that involves more than 100 illegal spiny lobsters. In such instances, the court must impose an additional penalty of \$10 for each illegal spiny lobster, or part thereof, involved in the violation.¹¹

¹ "Harvest" means the catching or taking of spiny lobster by any means whatsoever, followed by a reduction of such spiny lobster to possession. Spiny lobsters that are caught but immediately returned to the water free, alive and unharmed are not harvested. In addition, temporary possession of a spiny lobster for the purpose of measuring it to determine compliance with the minimum size requirements does not constitute harvesting, provided that it is measured immediately after taking, and immediately returned to the water free, alive and unharmed if undersized. Rule 68B-24.002(6), F.A.C.

² FWC 2014 analysis. On file with the Agriculture & Natural Resources Subcommittee.

³ *Id.*

⁴ In Florida, in order to commercially harvest spiny lobster, a person must possess a Saltwater Products License, a Restricted Species Endorsement, and either a Spiny Lobster Endorsement (C) or a Lobster Dive Endorsement (CD). Recreational harvesting requires a valid recreational saltwater fishing license and a spiny lobster permit. FWC 2014 analysis. On file with the Agriculture & Natural Resources Subcommittee.

⁵ Rule 68B-24.005(1), F.A.C.

⁶ *Id.*

⁷ During the two-day sport season, persons may not harvest spiny lobster by any means other than by diving or with the use of a bully net or hoop net. In Monroe County, persons may not harvest spiny lobster by diving at night (from one hour after official sunset until one hour before official sunrise), or in or from the waters of John Pennekamp Coral Reef State Park. Rule 68B-24.005(2), F.A.C.

⁸ Rule 68B-24.003, F.A.C.

⁹ *Id.* Unless the spiny lobster are being imported pursuant to Rule 68B-24.0045, F.A.C., or were harvested outside the waters of the state and the wringing or separation was pursuant to a federal permit allowing such wringing or separation.

¹⁰ Section 379.407(2), F.S.

¹¹ *Id.*

Effect of the Bill

The bill creates s. 379.407(5), F.S., to specify that it is a major violation to possess spiny lobster during the closed season or, while on the water, to possess spiny lobster tails that have been wrung or separated from the body, unless the possession is allowed by FWC rule. Any person, firm, or corporation that violates this provision is subject to the following penalties:

- A first violation is a second degree misdemeanor.¹² If the violation involves 25 or more lobster, the violation is a first degree misdemeanor.¹³
- A second violation is a first degree misdemeanor, and the violator is subject to a suspension of all license privileges for a period not to exceed 90 days.
- A third violation is a first degree misdemeanor with a mandatory minimum term of imprisonment of 6 months. The violator may also be assessed a civil penalty of up to \$2,500 and is subject to a suspension of all license privileges for up to six months.
- A third violation within one year after a second violation is a third degree felony¹⁴ with a mandatory minimum term of imprisonment of one year. The violator must also be assessed a civil penalty of \$5,000 and all license privileges must be permanently revoked.
- A fourth or subsequent violation is a third degree felony with a mandatory minimum term of imprisonment of one year. The violator must also be assessed a civil penalty of \$5,000 and all license privileges must be permanently revoked.

The bill also amends s. 379.401, F.S., to conform a cross-reference.

B. SECTION DIRECTORY:

Section 1. Amends s. 379.407, F.S., relating to penalties for certain violations relating to spiny lobsters.

Section 2. Amends s. 379.401, F.S., conforming a cross-reference.

Section 3. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Although there is an increase in assessed fines based on certain offenses relating to spiny lobsters, the number of potential violators is unknown. Therefore, the amount of revenue to be collected by the Fish and Wildlife Conservation Commission is indeterminate.

2. Expenditures:

The Criminal Justice Impact Conference met on January 30, 2014, and determined that this bill will have an insignificant negative prison bed impact on the Department of Corrections.

¹² A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

¹³ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

¹⁴ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The number of potential violators is unknown. Therefore, the amount of revenue to be collected for court costs is indeterminate.

2. Expenditures:

The bill imposes minimum mandatory terms of imprisonment for certain offenses relating to spiny lobsters, which could have an indeterminate, negative jail bed impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Commercial and recreational violators of the provisions of this bill will be subject to significant increased penalties, fines, and imprisonment.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create a need for rulemaking or require additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 14, 2014, the Agriculture & Natural Resources Subcommittee adopted a strike-all amendment and passed HB 47 favorably as a committee substitute (CS). The CS creates s. 379.407(5), F.S., to prohibit the possession of spiny lobster during the closed season or, while on the water, the possession of spiny lobster tails that have been wrung or separated from the body, unless the possession is allowed by FWC rule. The CS increases criminal penalties, imposes minimum mandatory terms of imprisonment, imposes civil fines, and requires suspension or revocation of licenses for those who violate s. 379.407(5), F.S.

This analysis is drafted to the CS as passed by the Agriculture & Natural Resources Subcommittee.