

CHAPTER 98-227

House Bill No. 4561

An act relating to marine fisheries; amending s. 370.01, F.S.; redefining the terms “closed season” and “nonresident alien” and alphabetizing definitions; amending s. 370.021, F.S.; providing that specified violations of administrative rules, the Florida Statutes, and the constitutional ban on the use of certain nets are major violations; providing penalties; prohibiting a court from suspending, deferring, or withholding adjudication of guilt in specified circumstances; providing for the suspension of violators’ licenses and prohibiting participation in the fishing during the period of suspension; providing restrictions on operation; deleting obsolete provisions; requiring a court to notify the Department of Environmental Protection of the disposition of cases; amending s. 370.026, F.S.; deleting obsolete references to commissioners’ terms; amending s. 370.0605, F.S.; authorizing agents of the Game and Fresh Water Fish Commission to enforce provisions relating to licenses; amending s. 370.062, F.S.; deleting a requirement for rulemaking for the issuance of tarpon tags; deleting a requirement for the annual issuance of tarpon tags; amending s. 370.0821, F.S.; revising the mesh size of a recreational net allowed in St. Johns County; amending s. 370.12, F.S.; relating to protection of mammalian dolphins; amending s. 370.1405, F.S.; relating to reporting requirements for crawfish wholesalers and retailers; amending s. 370.25, F.S.; clarifying criminal, civil, and administrative penalties; repealing s. 370.015, F.S., relating to obsolete Suwannee River Authority; repealing s. 370.08(7), F.S., relating to the use of gear and other equipment; repealing s. 370.0821(3), F.S., relating to the use of nets in St. Johns County; repealing s. 370.092(3) and (4), F.S., relating to penalties on use of proscribed nets; repealing s. 370.11(2) and (3), F.S., relating to the length of saltwater fish and the use of nets to harvest shad; repealing s. 370.1125, F.S., relating to the harvest of permit; repealing s. 370.114, F.S., relating to the taking of corals and sea fans; repealing s. 370.12(4), F.S.; related to manta rays; repealing s. 370.13(2), F.S., relating to a major violation involving stone crabs; repealing s. 370.135(2), (3), and (4), F.S., relating to the harvest and sale of blue crabs; repealing s. 370.14(6), F.S., relating to a major violation involving crawfish; repealing s. 370.15(2) and (3), F.S., relating to the harvest of shrimp; repealing s. 370.151(2), F.S., relating to the Tortugas shrimp beds; repealing s. 370.153(4)(c), (d), (e), and (5)(b), (d), F.S., relating to the harvest of shrimp in Clay, Duval, Nassau, Putnam, Flagler, and St. Johns Counties; repealing s. 370.156, F.S., relating to the Florida East Coast Shrimp Bed; repealing s. 370.157, F.S., relating to the harvest of shrimp in the Cedar Key closed area; repealing section 370.1611, F.S., relating to an oyster depuration plant; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 370.01, Florida Statutes, is amended to read:

370.01 Definitions.—In construing these statutes, where the context does not clearly indicate otherwise, the word, phrase, or term:

~~(1)~~(26) “Authorization” means a number issued by the Game and Fresh Water Fish Commission, or its authorized agent, which serves in lieu of a license or permits and affords the privilege purchased for a specified period of time.

~~(2)~~(15) “Beaches” and “shores” shall mean the coastal and intracoastal shoreline of this state bordering upon the waters of the Atlantic Ocean, the Gulf of Mexico, the Straits of Florida, and any part thereof, and any other bodies of water under the jurisdiction of the State of Florida, between the mean high-water line and as far seaward as may be necessary to effectively carry out the purposes of this act.

~~(3)~~(4) “Closed season” shall be that portion of the year wherein the laws or rules of Florida forbid the taking of particular species of game or varieties of fish.

~~(4)~~(17) “Coastal construction” includes any work or activity which is likely to have a material physical effect on existing coastal conditions or natural shore processes.

~~(5)~~(6) “Common carrier” shall include any person, firm, or corporation, who undertakes for hire, as a regular business, to transport persons or commodities from place to place offering his or her services to all such as may choose to employ the common carrier and pay his or her charges.

~~(6)~~(10) “Coon oysters” are oysters found growing in bunches along the shore between high-water mark and low-water mark.

~~(7)~~(14) “Department” shall mean the Department of Environmental Protection.

~~(8)~~(16) “Erosion control,” “beach preservation,” and “hurricane protection” shall include any activity, work, program, project, or other thing deemed necessary by the Division of Marine Resources of the Department of Environmental Protection to effectively preserve, protect, restore, rehabilitate, stabilize, and improve the beaches and shores of this state, as defined above.

~~(9)~~(25) “Exhibit” means to present or display upon request.

~~(10)~~(19) “Finfish” means any member of the classes Agnatha, Chondrichthyes, or Osteichthyes.

~~(11)~~(12) “Food fish” shall include mullet, trout, redfish, sheepshead, pompano, mackerel, bluefish, red snapper, grouper, and all other fish generally used for human consumption.

~~(12)~~(8) “Guide” shall include any person engaged in the business of guiding hunters or hunting parties, fishers or fishing parties, for compensation.

~~(13)~~(21) “Marine fish” means any saltwater species of finfish of the classes Agnatha, Chondrichthyes, and Osteichthyes, and marine invertebrates in the classes Gastropoda, Bivalvia, and Crustacea, or the phylum Echinodermota, but does not include nonliving shells or Echinoderms.

~~(14)~~(13) A “natural oyster or clam reef” or “bed” or “bar” shall be considered and defined as an area containing not less than 100 square yards of the bottom where oysters or clams are found in a stratum.

~~(15)~~(23) “Nonresident alien” shall mean those individuals from other nations states who can provide documentation from the Immigration and Naturalization Service evidencing permanent residency status in the United States. For the purposes of this chapter, a “nonresident alien” shall be considered a “nonresident.”

~~(16)~~(3) “Open season” shall be that portion of the year wherein the laws of Florida for the preservation of fish and game permit the taking of particular species of game or varieties of fish.

~~(17)~~(11) “Reef bunch oysters” are oysters found growing on the bars or reefs in the open bay and exposed to the air between high and low tide.

~~(18)~~(4) “Resident” or “resident of Florida” includes citizens of the United States who have continuously resided in this state, next preceding the making of their application for hunting, fishing, or other license, for the following period of time, to wit: For 1 year in the state and 6 months in the county when applied to all fish and game laws not related to freshwater fish and game.

~~(19)~~(22) “Resident alien” shall mean those persons who have continuously resided in this state for at least 1 year and 6 months in the county and can provide documentation from the Immigration and Naturalization Service evidencing permanent residency status in the United States. For the purposes of this chapter, a “resident alien” shall be considered a “resident.”

(20) “Restricted species” means any species of saltwater products for which the state by law, or the Marine Fisheries Commission by rule, has found it necessary to so designate. The term includes a species of saltwater products designated by the commission as restricted within a geographical area or during a particular time period of each year. Designation as a restricted species does not confer the authority to sell a species pursuant to s. 370.06 if the law or rule prohibits the sale of the species.

~~(21)~~(5) “Salt water,” except where otherwise provided by law, shall be all of the territorial waters of Florida excluding all lakes, rivers, canals, and other waterways of Florida from such point or points where the fresh and salt waters commingle to such an extent as to become unpalatable because of the saline content, or from such point or points as may be fixed for conservation purposes by the Division of Marine Resources of the Department of Environmental Protection and the Game and Fresh Water Fish Commission, with the consent and advice of the board of county commissioners of the county or counties to be affected.

~~(22)~~(2) "Saltwater fish" shall include all classes of pisces, shellfish, sponges, and crustacea indigenous to salt water.

~~(23)~~(24) "Saltwater license privileges," except where otherwise provided by law, means any license, endorsement, certificate, or permit issued pursuant to this chapter.

~~(24)~~(18) "Saltwater products" means any species of saltwater fish, marine plant, or echinoderm, except shells, and salted, cured, canned, or smoked seafood.

~~(25)~~(9) "Shellfish" shall include oysters, clams, and whelks.

~~(26)~~(7) "Transport" shall include shipping, transporting, carrying, importing, exporting, receiving or delivering for shipment, transportation or carriage or export.

Section 2. Section 370.021, Florida Statutes, is amended to read:

370.021 Administration; rules, publications, records; penalty for violation of chapter; injunctions.—

(1) RULES AND REGULATIONS.—The Department of Environmental Protection shall make, adopt, promulgate, amend, and repeal all rules and regulations necessary or convenient for the carrying out of the duties, obligations, powers, and responsibilities conferred on the department or any of its divisions. The director of each division shall submit to the department suggested rules and regulations for that division. Any person violating or otherwise failing to comply with any of the rules and regulations adopted as aforesaid is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, unless otherwise provided by law.

(2) PENALTY FOR VIOLATION.—Unless otherwise provided by law, any person, firm, or corporation who is convicted for violating any provision of this chapter, any rule of the department adopted pursuant to this chapter, or any rule of the Marine Fisheries Commission, shall be punished:

(a) Upon a first conviction, by imprisonment for a period of not more than 60 days or by a fine of not less than \$100 nor more than \$500, or by both such fine and imprisonment.

(b) On a second or subsequent conviction within 12 months, by imprisonment for not more than 6 months or by a fine of not less than \$250 nor more than \$1,000, or by both such fine and imprisonment.

(3) MAJOR VIOLATIONS.—~~(c)~~In addition to the penalties provided in paragraphs (a) and (b) of subsection (2), the court shall assess additional penalties against any person, firm, or corporation convicted of major violations as follows:

~~(a)1.~~ For a violation involving more than 100 illegal blue crabs, crawfish, or stone crabs, an additional penalty of \$10 for each illegal blue crab, crawfish, stone crab, or part thereof.

(b)2. For a violation involving the taking or harvesting of shrimp from a nursery or other prohibited area, an additional penalty of \$10 for each pound of illegal shrimp or part thereof.

(c)3. For a violation involving the taking or harvesting of oysters from nonapproved areas or the taking or possession of unculled oysters, an additional penalty of \$10 for each bushel of illegal oysters.

(d)4. For a violation involving the taking or harvesting of clams from nonapproved areas, an additional penalty of \$100 for each 500 count bag of illegal clams.

(e)5. For a violation involving the taking, harvesting, or possession of any of the following species, which are endangered, threatened, or of special concern:

- 1.a. Shortnose sturgeon (*Acipenser brevirostrum*);
- 2.b. Atlantic sturgeon (*Acipenser oxyrinchus*);
- 3.c. Common snook (*Centropomus undecimalis*);
- 4.d. Atlantic loggerhead turtle (*Caretta caretta caretta*);
- 5.e. Atlantic green turtle (*Chelonia mydas mydas*);
- 6.f. Leatherback turtle (*Dermochelys coriacea*);
- 7.g. Atlantic hawksbill turtle (*Eretmochelys imbricata imbricata*);
- 8.h. Atlantic ridley turtle (*Lepidochelys kempi*); or
- 9.i. West Indian manatee (*Trichechus manatus latirostris*),

an additional penalty of \$100 for each unit of marine life or part thereof.

(f)6. For a second or subsequent conviction within 24 months for any violation of the same law or rule involving the taking or harvesting of more than 100 pounds of any finfish, an additional penalty of \$5 for each pound of illegal finfish.

(g)7. For any violation involving the taking, harvesting, or possession of more than 1,000 pounds of any illegal finfish, an additional penalty equivalent to the wholesale value of the illegal finfish.

8.a. ~~In addition to being subject to the other penalties provided in this chapter, any intentional violation of rule 46-4.007(1), Florida Administrative Code, shall be considered a major violation, and any person, firm, or corporation committing such violation shall be subject to the following additional penalties:~~

(I) ~~For a first violation within a 7-year period, suspension of the saltwater products license for 90 days.~~

~~(II) For a second major violation within a 7-year period, a civil penalty of \$5,000 and suspension of the saltwater products license for 12 months.~~

~~(III) For a third or subsequent major violation within a 7-year period, a civil penalty of \$5,000, lifetime revocation of the saltwater products license, and forfeiture of all gear and equipment used in the violation.~~

~~b. During any period of license suspension or revocation under this section, the licensee may not fish from any vessel that is harvesting saltwater products.~~

~~c. The Department of Environmental Protection may bring a civil action to enforce the civil penalties prescribed in this section.~~

~~Notwithstanding the provisions of s. 948.01, no court may suspend, defer, or withhold adjudication of guilt or imposition of sentence for any major violation prescribed in this paragraph.~~

~~(h)(d) The proceeds from the penalties assessed pursuant to subsection (3) paragraph (c) shall be deposited into the Marine Resources Conservation Trust Fund to be used for marine fisheries research.~~

~~(i)(e) Permits issued to any person, firm, or corporation by the department to take or harvest saltwater products, or any license issued pursuant to s. 370.06 or s. 370.07 may be suspended or revoked by the department, pursuant to the provisions and procedures of s. 120.60, for any major violation prescribed in subsection (3) paragraph (c):~~

~~1. Upon a second conviction for a violation which occurs within 12 months after a prior violation, for up to 60 days.~~

~~2. Upon a third conviction for a violation which occurs within 24 months after a prior violation, for up to 180 days.~~

~~3. Upon a fourth conviction for a violation which occurs within 36 months after a prior violation, for a period of 6 months to 3 years.~~

~~(j) Upon the arrest and conviction for a major violation involving stone crabs, the licenseholder must show just cause why his or her license should not be suspended or revoked. For the purposes of this paragraph, a "major violation" means a major violation as prescribed for illegal stone crabs; any single violation involving possession of more than 25 stone crabs during the closed season or possession of 25 or more whole-bodied or egg-bearing stone crabs; any violation for trap molestation, trap robbing, or pulling traps at night; or any combination of violations in any 3-consecutive-year period wherein more than 75 illegal stone crabs in the aggregate are involved.~~

~~(k) Upon the arrest and conviction for a major violation involving crawfish, the licenseholder must show just cause why his or her license should not be suspended or revoked. For the purposes of this paragraph, a "major violation" means a major violation as prescribed for illegal crawfish; any single violation involving possession of more than 25 crawfish during the closed season or possession of more than 25 wrung crawfish tails or more~~

than 25 egg-bearing or stripped crawfish; any violation for trap molestation, trap robbing, or pulling traps at night; or any combination of violations in any 3-consecutive-year period wherein more than 75 illegal crawfish in the aggregate are involved.

(l) Upon the arrest and conviction for a major violation involving blue crabs, the licenseholder shall show just cause why his or her saltwater products license should not be suspended or revoked. This paragraph shall not apply to an individual fishing with no more than five traps. For the purposes of this paragraph, a "major violation" means a major violation as prescribed for illegal blue crabs, any single violation wherein 50 or more illegal blue crabs are involved; any violation for trap molestation, trap robbing, or pulling traps at night; or any combination of violations in any 3-consecutive-year period wherein more than 100 illegal blue crabs in the aggregate are involved.

(m) Upon the conviction for a major violation involving finfish, the licenseholder must show just cause why his or her saltwater products license should not be suspended or revoked. For the purposes of this paragraph, a major violation is prescribed for the taking and harvesting of illegal finfish, any single violation involving the possession of more than 100 pounds of illegal finfish, or any combination of violations in any 3-consecutive-year period wherein more than 200 pounds of illegal finfish in the aggregate are involved.

(n) Upon final disposition of any alleged offense for which a citation for any violation of this chapter or the rules of the Marine Fisheries Commission has been issued, the court shall, within 10 days, certify the disposition to the department.

(f)1. In cases involving the intentional or unintentional killing of any species of tarpon, snook in excess of five fish per person, sailfish, or bonefish during a fishing operation wherein the targeted species is legal to harvest, the method of fishing and type of gear used are legal, and the fish are killed as a direct result of such otherwise legal fishing operations, the department shall assess a civil penalty of \$100 for each snook killed in excess of five fish per person, or tarpon, sailfish, or bonefish killed in excess of any bag limit. In collecting penalties, the department shall assess an equal share of the applicable penalty to each fisher actually involved in the fishing operation.

2. The civil penalty shall be paid in full to the department within 30 calendar days of official notification. The department may suspend the saltwater products license or other saltwater fishing license of any person or boat not paying the required civil penalty within the specified time period. Persons contesting the assessment of any civil penalties or any license suspension pursuant to this section shall be entitled to a hearing pursuant to the provisions of chapter 120.

3. All moneys collected by the department pursuant to this paragraph shall be deposited into the Marine Resources Conservation Trust Fund.

Notwithstanding the provisions of s. 948.01, no court may suspend, defer, or withhold adjudication of guilt or imposition of sentence for any major violation prescribed in this subsection.

(4) PENALTIES FOR USE OF ILLEGAL NETS.—

(a) It shall be a major violation pursuant to subsection (3) and shall be punished as provided below for any person, firm, or corporation to be simultaneously in possession of any species of mullet in excess of the recreational daily bag limit and any gill or other entangling net as defined in s. 16(c), Art. X of the State Constitution. Simultaneous possession under this provision shall include possession of mullet and gill or other entangling nets on separate vessels or vehicles where such vessels or vehicles are operated in coordination with one another including vessels towed behind a main vessel. This subsection does not prohibit a resident of this state from transporting on land, from Alabama to this state, a commercial quantity of mullet together with a gill net if:

1. The person possesses a valid commercial fishing license that is issued by the State of Alabama and that allows the person to use a gill net to legally harvest mullet in commercial quantities from Alabama waters.

2. The person possesses a trip ticket issued in Alabama and filled out to match the quantity of mullet being transported, and the person is able to present such trip ticket immediately upon entering this state.

3. The mullet are to be sold to a wholesale saltwater products dealer located in Escambia County or Santa Rosa County, which dealer also possesses a valid seafood dealer's license issued by the State of Alabama. The dealer's name must be clearly indicated on the trip ticket.

4. The mullet being transported are totally removed from any net also being transported.

(b) In addition to being subject to the other penalties provided in this chapter, any violation of s. 16, Art. X of the State Constitution, paragraph (b), or any rules of the Marine Fisheries Commission which implement the gear prohibitions and restrictions specified therein shall be considered a major violation; and any person, firm, or corporation receiving any judicial disposition other than acquittal or dismissal of such violation shall be subject to the following additional penalties:

1. For a first major violation within a 7-year period, a civil penalty of \$2,500 and suspension of all saltwater products license privileges for 90 calendar days following final disposition shall be imposed.

2. For a second major violation under this paragraph charged within 7 years of a previous judicial disposition, which results in a second judicial disposition other than acquittal or dismissal, a civil penalty of \$5,000 and suspension of all saltwater products license privileges for 12 months shall be imposed.

3. For a third and subsequent major violation under this paragraph, charged within a 7-year period, resulting in a third or subsequent judicial disposition other than acquittal or dismissal, a civil penalty of \$5,000, life-time revocation of the saltwater products license, and forfeiture of all gear and equipment used in the violation shall be imposed.

A court may suspend, defer or withhold adjudication of guilt or imposition of sentence only for any first violation of s. 16, Art. X of the State Constitution, or any rule or statute implementing its restrictions, determined by a court only after consideration of competent evidence of mitigating circumstances to be a nonflagrant or minor violation of those restrictions upon the use of nets. Any violation of s. 16, Art. X of the State Constitution, or any rule or statute implementing its restrictions, occurring within a 7-year period commencing upon the conclusion of any judicial proceeding resulting in any outcome other than acquittal shall be punished as a second, third, or subsequent violation accordingly.

(c) During the period of suspension or revocation of saltwater license privileges under this subsection, the licensee 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 pursuant to this chapter. Any person who violates this paragraph is:

1. Upon a first or second conviction, to be punished as provided by paragraph (2)(a) or (b).

2. Upon a third or subsequent conviction, guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) Upon reinstatement of saltwater license privileges suspended pursuant to a violation of this section, a licensee owning or operating a vessel containing or otherwise transporting in or on Florida waters any gill net or other entangling net, or containing or otherwise transporting in nearshore and inshore Florida waters any net containing more than 500 square feet of mesh area shall remain restricted for a period of 12 months following reinstatement, to operation under the following conditions:

1. Vessels subject to this reinstatement period shall be restricted to the corridors established by department rule.

2. A violation of the reinstatement period provisions shall be punishable pursuant to paragraph (2)(a) and (b).

(e) Rescission and revocation proceedings under this section shall be governed by chapter 120.

(5) ADDITIONAL PENALTIES FOR MAJOR VIOLATIONS INVOLVING CERTAIN FINFISH.—It shall be a major violation pursuant to this section and punishable pursuant to paragraph (4)(b) for any person to be in possession of any species of trout, snook, or redfish which is three fish in excess of the recreational or commercial daily bag limit.

(6)(3) RULES; ADMISSIBILITY AS EVIDENCE.—Rules and regulations shall be admitted as evidence in the courts of the state when accompanied by an affidavit from the secretary of the department certifying that the rule or regulation has been lawfully adopted, promulgated, and published; and such affidavit shall be prima facie evidence of proper adoption, promulgation, and publication of the rule or regulation.

(7)(4) PUBLICATIONS BY DEPARTMENT.—The department through the Division of Administration and Technical Services is given authority, from time to time in its discretion, to cause the statutory laws under its jurisdiction, together with any rules and regulations promulgated by it, to be published in pamphlet form for free distribution in this state. The department is authorized to make charges for technical and educational publications and mimeographed material of use for educational or reference purposes. Such charges shall be made at the discretion of the Division of Administration and Technical Services. Such charges may be sufficient to cover cost of preparation, printing, publishing, and distribution. All moneys received for publications shall be deposited into the fund from which the cost of the publication was paid. The department is further authorized to enter into agreements with persons, firms, corporations, governmental agencies, and other institutions whereby publications may be exchanged reciprocally in lieu of payments for said publications.

(8)(5) POWERS OF OFFICERS.—

(a) The department may designate such employees of the several divisions, as it may deem necessary in its discretion, as law enforcement officers, who shall meet the provisions of s. 943.13(1)-(10) and have the powers and duties conferred in this subsection, except that such employees shall comply with the provisions of chapter 943. Such officers and the Director of the Division of Law Enforcement, are constituted law enforcement officers of this state with full power to investigate and arrest for any violation of the laws of this state and the rules and regulations of the department under their jurisdiction and for violations of chapter 253 and the rules and regulations promulgated thereunder. The general laws applicable to arrests by peace officers of this state shall also be applicable to such law enforcement officers. Such law enforcement officers may enter upon any land or waters of the state for performance of their lawful duties and may take with them any necessary equipment, and such entry will not constitute a trespass. It is lawful for any boat, motor vehicle, or aircraft owned or chartered by the department or its agents or employees to land on and depart from any of the beaches or waters of the state. Such law enforcement officers have the authority, without warrant, to board, inspect, and search any boat, fishing appliance, storage or processing plant, fishhouse, spongehouse, oysterhouse, or other warehouse, building, or vehicle engaged in transporting or storing any fish or fishery products. Such authority to search and inspect without a search warrant is limited to those cases in which such law enforcement officers have reason to believe that fish or any saltwater products are taken or kept for sale, barter, transportation, or other purposes in violation of laws or rules promulgated under this law. Any such law enforcement officer may at any time seize or take possession of any saltwater products or contraband which have been unlawfully caught, taken, or processed or which are unlawfully possessed or transported in violation of any of the laws of this state or any rule or regulation of the department. Such law enforcement officers may arrest any person in the act of violating any of the provisions of this law, the rules or regulations of the department, the provisions of chapter 253 and the rules and regulations promulgated thereunder, or any of the laws of this state. It is hereby declared unlawful for any person to resist such arrest or in any manner interfere, either by abetting or assisting such resistance or

otherwise interfering, with any such law enforcement officer while engaged in the performance of the duties imposed upon him or her by law or regulation of the department.

(b) The Legislature finds that the checking and inspection of saltwater products aboard vessels is critical to good fishery management and conservation and that, because almost all saltwater products are either iced or cooled in closed areas or containers, the enforcement of seasons, size limits, and bag limits can only be effective when inspection of saltwater products so stored is immediate and routine. Therefore, in addition to the authority granted in paragraph (a), a law enforcement officer of the department who has probable cause to believe that the vessel has been used for fishing prior to the inspection shall have full authority to open and inspect all containers or areas where saltwater products are normally kept aboard vessels while such vessels are on the water, such as refrigerated or iced locations, coolers, fish boxes, and bait wells, but specifically excluding such containers that are located in sleeping or living areas of the vessel.

(9)(6) DUTIES OF DEPARTMENT OF LEGAL AFFAIRS.—The Department of Legal Affairs shall attend to the legal business of the Department of Environmental Protection and its divisions; but, if at any time any question of law or any litigation arises and the Department of Legal Affairs is otherwise occupied and cannot give the time and attention necessary to such question of law or litigation as the occasion demands, the several state attorneys shall attend to any such question of law or litigation arising within their respective circuits; and, if such state attorney is otherwise occupied and cannot give the time and attention necessary to such question of law or litigation as the case may demand, the Department of Environmental Protection may employ additional counsel for that particular cause, with the advice and consent of the Department of Legal Affairs. Such additional counsel's fees shall be paid from the moneys appropriated to the Department of Environmental Protection.

(10)(7) RETENTION, DESTRUCTION, AND REPRODUCTION OF RECORDS.—Records and documents of the Department of Environmental Protection created in compliance with and in the implementation of this chapter or former chapter 371 shall be retained by the department as specified in record retention schedules established under the general provisions of chapters 119 and 257. Further, the department is authorized to:

(a) Destroy, or otherwise dispose of, those records and documents in conformity with the approved retention schedules.

(b) Photograph, microphotograph, or reproduce such records and documents on film, as authorized and directed by the approved retention schedules, whereby each page will be exposed in exact conformity with the original records and documents retained in compliance with the provisions of this section. Photographs or microphotographs in the form of film or print of any records, made in compliance with the provisions of this section, shall have the same force and effect as the originals thereof would have and shall be treated as originals for the purpose of their admissibility in evidence. Duly certified or authenticated reproductions of such photographs or microphotographs shall be admitted in evidence equally with the original photographs

or microphotographs. The impression of the seal of the Department of Environmental Protection on a certificate made pursuant to the provisions hereof and signed by the Secretary of Environmental Protection shall entitle the same to be received in evidence in all courts and in all proceedings in this state and shall be prima facie evidence of all factual matters set forth in the certificate. A certificate may relate to one or more records, as set forth in the certificate, or in a schedule continued on an attachment to the certificate.

(c) Furnish certified copies of such records for a fee of \$1 which shall be deposited in the Marine Resources Conservation Trust Fund.

~~(11)~~⁽⁸⁾ COURTS OF EQUITY MAY ENJOIN.—Courts of equity in this state have jurisdiction to enforce the conservation laws of this state by injunction.

~~(12)~~⁽⁹⁾ BOND OF EMPLOYEES.—The department may require, as it determines, that bond be given by any employee of the department or divisions thereof, payable to the Governor of the state and the Governor's successor in office, for the use and benefit of those whom it may concern, in such penal sums with good and sufficient surety or sureties approved by the department conditioned for the faithful performance of the duties of such employee.

~~(13)~~⁽⁴⁰⁾ REVOCATION OF LICENSES.—Any person licensed under this chapter who has been convicted of taking aquaculture species raised at a certified facility shall have his or her license revoked for 5 years by the Department of Environmental Protection pursuant to the provisions and procedures of s. 120.60.

Section 3. Subsection (1) of section 370.026, Florida Statutes, is amended to read:

370.026 Marine Fisheries Commission.—

(1) There is created within the Board of Trustees of the Internal Improvement Trust Fund a Marine Fisheries Commission which shall be composed of seven members who have resided in the state for at least 5 years. The seven members shall be appointed by the Governor, subject to confirmation by the Senate, and shall be exempt from the Career Service System. The Governor shall consider affected interests when making appointments to the commission. No single interest group shall dominate the membership of the commission. ~~As soon as practicable after this act becomes a law, two members shall be appointed for terms ending August 1, 1985; three members shall be appointed for terms ending August 1, 1986; and the remaining members shall be appointed for terms ending August 1, 1987. Thereafter,~~ All appointments shall be for 4-year terms. If a vacancy occurs, a member shall be appointed by the Governor for the unexpired term. A commission member whose term has expired shall continue sitting on the commission with full rights until he or she has been replaced.

Section 4. Subsection (2) of section 370.062, Florida Statutes, is amended to read:

370.062 Department of Environmental Protection license program for tarpon; fees; penalties.—

(2) The number of tags to be ~~annually~~ issued shall be determined by rule of the Marine Fisheries Commission. ~~The rule shall be adopted prior to November 30 of each year for the upcoming calendar year.~~ The commission shall in no way allow the issuance of tarpon tags to adversely affect the tarpon population.

Section 5. Subsections (10) and (13) of section 370.0605, Florida Statutes, are amended to read:

370.0605 Saltwater fishing license required; fees.—

(10) The department, ~~the Game and Fresh Water Fish Commission~~, or any other law enforcement agency may make any investigation necessary to secure information required to carry out and enforce this section.

(13) The department ~~or the Game and Fresh Water Fish Commission~~ may designate by rule no more than 2 consecutive or nonconsecutive days in each year as “Disabled Angler Fishing Days.” Notwithstanding any other provision of this chapter, any disabled person may take marine fish for noncommercial purposes on a Disabled Angler Fishing Day without obtaining or possessing a license or paying a license fee as prescribed in this section. A disabled person who takes marine fish on a Disabled Angler Fishing Day without obtaining a license or paying a fee must comply with all laws and regulations governing holders of a license and all other conditions and limitations regulating the taking of marine fish as are imposed by law or rule.

Section 6. Paragraph (a) of subsection (5) of section 370.0821, Florida Statutes, is amended to read:

370.0821 St. Johns County; use of nets.—

(5)(a) The term “recreational net” means a seine or similar net not exceeding 100 feet in length, ~~with mesh no smaller than 2½ inches~~, set and hauled solely by hand and without use of any motor-driven boat or vehicle.

Section 7. Subsection (3) of section 370.12, Florida Statutes, is amended to read:

370.12 Marine animals; regulation.—

(3) PROTECTION OF MAMMALIAN DOLPHINS (PORPOISES).—

(a) It is unlawful to catch, attempt to catch, molest, injure, kill, or annoy, or otherwise interfere with the normal activity and well-being of, mammalian dolphins (porpoises), except as may be authorized as a federal permit hereinafter provided.

~~(b) Any person, firm, or corporation desiring to take one or more mammalian dolphins from the waters of this state for scientific, educational, or exhibitional purposes shall apply for a permit to the Division of Marine~~

Resources. Upon determining that the interests of science or education will be served thereby, the division may issue a permit specifying the number of mammalian dolphins to be taken.

~~(c) Any person, firm, or corporation desiring to hold one or more mammalian dolphins in captivity shall provide and maintain facilities which meet the requirements of the division.~~

~~(d) No mammalian dolphin shall be shipped within or outside the state without a special permit from the division, which may require such information as it deems necessary relative to the adequacy of holding facilities of the recipients; and a permit for such shipment may be granted only when the division determines the facilities are adequate.~~

~~(e) Notwithstanding the other provisions of this section, it is unlawful to capture at any time any nursing female mammalian dolphin or her calf, or both.~~

Section 8. Subsections (1), (3), and (5) of section 370.1405, Florida Statutes, are amended to read:

370.1405 Crawfish reports by dealers during closed season required.—

(1) Within 3 days after the commencement of the closed season for the taking of saltwater crawfish, each and every seafood dealer, either retail or wholesale, intending to possess whole crawfish, crawfish tails, or crawfish meat during closed season shall submit to the Department of Environmental Protection, on forms provided by the department, a sworn report of the quantity, in pounds, of saltwater whole crawfish, crawfish tails, and crawfish meat in the dealer's name or possession as of the date the season closed. This report shall state the location and number of pounds of whole crawfish, crawfish tails, and crawfish meat. The department shall not accept any reports not delivered or postmarked by midnight of the 3rd calendar day after the commencement of the closed season, and any stocks of crawfish reported therein are declared a nuisance and may be seized by the department.

(3) All dealers having reported stocks of crawfish may sell or offer to sell such stocks of crawfish; however, such dealers shall submit an additional report on the last day of each month during the duration of the closed season. Reports shall be made on forms supplied by the department. Each dealer shall state on this report the number of pounds brought forward from the previous report period, the number of pounds sold during the report period, the number of pounds, if any, acquired from a licensed wholesale dealer during the report period, and the number of pounds remaining on hand. In every case, the amount of crawfish sold plus and the amount reported on hand shall equal the amount acquired plus the amount reported remaining on hand in the last submitted report. Copies of records or invoices documenting the number of pounds acquired during the closed season must be maintained by the wholesale or retail dealer and shall be kept available for inspection by the department for a period not less than 3 years from the date of the recorded transaction. Reports postmarked later than midnight on the 3rd calendar day of each month during the duration of the closed season will

not be accepted by the department. Dealers for which late supplementary reports are not accepted by the department must show just cause why their entire stock of whole crawfish, crawfish tails, or crawfish meat should not be seized by the department. Whenever a dealer fails to timely submit make the monthly supplementary report as described in this subsection, the dealer may be subject to the following civil penalties:

(a) For a first violation, the department shall assess a civil penalty of \$500.

(b) For a second violation within the same crawfish closed season, the department shall assess a civil penalty of \$1,000.

(c) For a third violation within the same crawfish closed season, the department shall assess a civil penalty of \$2,500 and may seize said dealer's entire stock of whole crawfish, crawfish tails, or crawfish meat and carry the same before the court for disposal. The dealer shall post a cash bond in the amount of the fair value of the entire remaining quantity of crawfish as determined by the judge. After posting the cash bond, a dealer shall have 24 hours to transport said products outside the limits of Florida for sale as provided by s. 370.061. Otherwise, the product shall be declared a nuisance and disposed of by the department according to law.

(5) Each wholesale and retail dealer in whole crawfish, crawfish tails, or crawfish meat shall keep throughout the period of the crawfish closed season copies of the bill of sale or invoice covering each transaction involving whole crawfish, crawfish tails, or crawfish meat. Such invoices and bills shall be kept available at all times for inspection by the department.

Section 9. Subsection (7) of section 370.25, Florida Statutes, is amended to read:

370.25 Artificial fishing reef program; construction grants to local governments.—

(7)(a) An initial violation of subsection ~~(6)~~ (4) is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A subsequent violation of subsection ~~(6)~~ (4) which is committed within 12 months after a previous violation of that subsection is a felony of the third degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.

(b) If a violation of paragraph ~~(6)(4)(a)~~, ~~paragraph (4)(c)~~, or paragraph ~~(4)(a)(d)~~ occurs, a law enforcement officer may ~~must~~ terminate a vessel's voyage and order the vessel operator to return immediately to port. The vessel operator must immediately dispose of the materials on shore according to applicable waste disposal laws.

(c) If, at the time of the violation, the vessel that is involved in the violation:

1. Is moored, the registered owner of the vessel is responsible for the violation.

2. Is underway, the captain or operator of the vessel and the registered owner of the vessel are jointly responsible for the violation.

(d) In addition to the penalties imposed in subsection (7) paragraph (5)(a), any person convicted of violating subsection (4), regardless of whether adjudication was withheld or imposition of sentence deferred or suspended, the department shall assess civil penalties of up to \$5,000 against any person convicted of violating subsection (6) and may suspend or revoke the vessel registration and may revoke existing reef-construction permits and other state marine licenses held by the violator. For the purposes of this section, conviction includes any judicial disposition other than acquittal or dismissal.

Section 10. Section 370.015, Florida Statute, is repealed.

Section 11. Subsection (7) of section 370.08, Florida Statutes, is repealed.

Section 12. Subsection (3) of section 370.0821, Florida Statutes, is repealed.

Section 13. Subsections (3) and (4) of section 370.092, Florida Statutes, are repealed.

Section 14. Subsections (2) and (3) of section 370.11, Florida Statutes, are repealed.

Section 15. Section 370.1125, Florida Statutes, is repealed.

Section 16. Section 370.114, Florida Statutes, is repealed.

Section 17. Subsection (4) of section 370.12, Florida Statutes, is repealed.

Section 18. Subsection (2) of section 370.13, Florida Statutes, is repealed.

Section 19. Subsections (2), and (3), and (4) of section 370.135, Florida Statutes, are repealed.

Section 20. Subsection (6) of section 370.14, Florida Statutes, is repealed.

Section 21. Subsections (2) and (3) of section 370.15, Florida Statutes, are repealed.

Section 22. Subsection (2) of section 370.151, Florida Statutes, is repealed.

Section 23. Paragraphs (c), (d), and (e) of subsection (4) and paragraphs (b) and (d) of subsection (5) of section 370.153, Florida Statutes, are repealed.

Section 24. Section 370.156, Florida Statutes, is repealed.

Section 25. Section 370.157, Florida Statutes, is repealed.

Section 26. Section 370.1611, Florida Statutes, is repealed.

Section 27. This act shall take effect upon becoming a law.
Became a law without the Governor's approval May 24, 1998.
Filed in Office Secretary of State May 22, 1998.