

Council Substitute for House Bill No. 1243

An act relating to the Fish and Wildlife Conservation Commission; amending s. 370.021, F.S.; revising violations and penalties relating to saltwater fisheries; revising grounds and penalties for violation of restrictions imposed upon a saltwater products licensee during the period of license suspension or revocation; creating penalties for purchase or sale of illegally harvested saltwater products taken in violation of s. 16, Art. X of the State Constitution; clarifying that licenses or permits under which a violation is committed may be subject to suspension or revocation; clarifying that persons, firms, or corporations cited for violations are subject to monetary penalties assessed by the commission; amending s. 370.06, F.S.; revising and clarifying requirements for saltwater products licenses and endorsements; clarifying the saltwater products license income exemption for disabled persons; limiting the restricted species endorsement available to such persons; providing that saltwater products received by a wholesale dealer; are presumed to have been purchased; amending s. 370.061, F.S.; revising and clarifying requirements and procedures for confiscation and forfeiture of property used in a saltwater products violation; requiring notice of seizure to the registered owner of the property prior to issuance of a forfeiture order; authorizing the courts to order property forfeited to the commission for second or subsequent convictions; revising procedure for return of property to an innocent owner; amending s. 370.07, F.S.; prohibiting purchase or sale of illegally taken saltwater products; providing a penalty; providing that saltwater products received by a retail dealer or restaurant are presumed to have been purchased; correcting a cross reference; reenacting ss. 370.07(5), 370.092(3) and (4), and 370.093(5), F.S., to incorporate the amendment to s. 370.021, F.S., in references; amending s. 370.142, F.S.; correcting cross references; amending s. 372.70, F.S.; providing that the state attorney shall represent the state in prosecutions of violations of hunting and fishing laws; amending s. 372.9901, F.S.; revising procedures for seizure and forfeiture of property used in the illegal taking of deer or wild turkey; requiring notice of seizure to the registered owner of the property prior to issuance of a forfeiture order; authorizing the courts to order property forfeited to the commission for second or subsequent convictions; revising procedure for return of property to an innocent owner; amending and renumbering s. 372.31, F.S.; providing for exercise of the police power of the state in cases relating to illegal fishing; creating s. 372.99022, F.S.; providing penalties for molestation of or theft from certain freshwater fishing gear; prohibiting transfer of endorsements under certain circumstances; amending s. 372.9904, F.S.; correcting a cross reference; amending s. 372.9905, F.S.; combining and conforming provisions relating to applicability of seizure and forfeiture requirements; amending s. 323.001, F.S.; correcting a cross reference; repealing ss. 372.311, 372.312, 372.313, 372.314, 372.315, 372.316, 372.317, 372.318,

372.319, 372.321, and 372.9902, F.S., relating to forfeiture proceedings, delivery of property to a claimant, proceedings when no claim is filed or a claim is filed, representation of the state by the state attorney, judgments of forfeiture, service charges, disposition of proceeds of forfeiture, exercise of police power, and applicability of certain seizure and forfeiture requirements; amending s. 370.12, F.S.; requiring notice to counties where manatee protection zones or manatee speed zones may be imposed by the Fish and Wildlife Conservation Commission; providing for establishment of local rule review committees; providing duties and responsibilities of the counties, committees, and commission; providing for committee reports and recommendations; providing that written reports submitted to the commission by the committees and Fish and Wildlife Conservation Commission staff responses shall be part of the rulemaking record; clarifying the Fish and Wildlife Conservation Commission's authority to provide comments to permitting agencies relating to the protection of manatees; revising the circumstances under which the commission may post and regulate motorboat speeds to protect manatees; requiring specified counties to develop manatee protection plans that are consistent with specified policy directive; providing the commission with rulemaking authority; amending s. 372.072, F.S.; requiring that the commission develop a measurable biological goal to define manatee recovery; requiring the commission to use the goal in developing management plans and work plans and for determining the progress of manatee recovery; amending s. 327.41, F.S.; conforming a cross-reference; providing legislative intent regarding manatee protection; providing for compliance studies, enforcement initiatives, and boater education plans; requiring the commission to identify impediments to high rates of compliance; providing legislative intent that the provisions of the act not be retroactively applied except as otherwise provided; providing an exemption; providing an effective date.

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

Section 1. Section 370.021, Florida Statutes, is amended to read:

370.021 Administration; rules, publications, records; penalties; injunctions.—

(1) PENALTIES.—Unless otherwise provided by law, any person, firm, or corporation who is convicted for violating any provision of this chapter, or any rule of the Fish and Wildlife Conservation Commission relating to the conservation of marine resources, 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.

Upon final disposition of any alleged offense for which a citation for any violation of this chapter or the rules of the commission has been issued, the court shall, within 10 days, certify the disposition to the commission.

(2) MAJOR VIOLATIONS.—In addition to the penalties provided in paragraphs (1)(a) and (b), the court shall assess additional penalties against any person, firm, or corporation convicted of major violations as follows:

(a) 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) For a violation involving the taking or harvesting of shrimp from a nursery or other prohibited area, or any two violations within a 12-month period involving shrimping gear, minimum size (count), or season, an additional penalty of \$10 for each pound of illegal shrimp or part thereof.

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

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

1. Shortnose sturgeon (*Acipenser brevirostrum*);
2. Atlantic sturgeon (*Acipenser oxyrinchus*);
3. Common snook (*Centropomus undecimalis*);
4. Atlantic loggerhead turtle (*Caretta caretta caretta*);
5. Atlantic green turtle (*Chelonia mydas mydas*);
6. Leatherback turtle (*Dermochelys coriacea*);
7. Atlantic hawksbill turtle (*Eretmochelys imbricata imbricata*);
8. Atlantic ridley turtle (*Lepidochelys kempfi*); or
9. West Indian manatee (*Trichechus manatus latirostris*),

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

(f) 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) 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.

~~(h) The proceeds from the penalties assessed pursuant to this subsection shall be deposited into the Marine Resources Conservation Trust Fund to be used for marine fisheries research or into the commission's Federal Law Enforcement Trust Fund as provided in s. 372.107, as applicable.~~

(h)(i) Permits issued to any person, firm, or corporation by the commission 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 commission, pursuant to the provisions and procedures of s. 120.60, for any major violation prescribed in this subsection:

1. Upon a first conviction ~~for a major violation~~, for up to 30 calendar days.
2. Upon a second conviction ~~for a violation~~ which occurs within 12 months after a prior violation, for up to 90 calendar days.
3. Upon a third conviction ~~for a violation~~ which occurs within 24 months after a prior conviction ~~violation~~, for up to 180 calendar days.
4. Upon a fourth conviction ~~for a violation~~ which occurs within 36 months after a prior conviction ~~violation~~, for a period of 6 months to 3 years.

(i)(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.

(j)(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.

(k)(4) 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.

~~(l)(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 Fish and Wildlife Conservation Commission has been issued, the court shall, within 10 days, certify the disposition to the commission.

~~(m)(e)~~ For a violation involving the taking or harvesting of any marine life species, as those species are defined by rule of the commission, the harvest of which is prohibited, or the taking or harvesting of such a species out of season, or with an illegal gear or chemical, or any violation involving the possession of 25 or more individual specimens of marine life species, or any combination of violations in any 3-year period involving more than 70 such specimens in the aggregate, the suspension or revocation of the licenseholder's marine life endorsement as provided in paragraph (h) ~~(i)~~.

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. The proceeds from the penalties assessed pursuant to this subsection shall be deposited into the Marine Resources Conservation Trust Fund to be used for marine fisheries research or into the commission's Federal Law Enforcement Trust Fund as provided in s. 372.107, as applicable.

(3) PENALTIES FOR USE OF ILLEGAL NETS.—

(a) ~~It is shall be~~ a major violation pursuant to this section, punishable subsection (3) and shall be punished as provided in paragraph (b) 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(b), Art. X of the State Constitution, or any rules of the ~~Fish and Wildlife Conservation~~ 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 ~~or~~ 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, lifetime 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 ~~shall~~ 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; be aboard any vessel on which a commercial quantity of saltwater products is possessed through

an activity requiring a license pursuant to this section; or engage in, or any other activity requiring a license, permit, or certificate issued pursuant to this chapter. Any person who is convicted of violating violates this paragraph is:

1. Upon a first or second conviction, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083 ~~to be punished as provided by paragraph (1)(a) or paragraph (1)(b).~~

2. Upon a third or subsequent conviction, is 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 subsection ~~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 near-shore 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 operating operation ~~operation~~ under the following conditions:

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

2. A violation of the reinstatement period provisions shall be punishable pursuant to paragraphs (1)(a) and (b).

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

(4) ADDITIONAL PENALTIES FOR MAJOR VIOLATIONS INVOLVING CERTAIN FINFISH.—It ~~is~~ shall be a major violation pursuant to this section, and punishable as provided in pursuant to paragraph (3)(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.

(5) BUYING SALTWATER PRODUCTS; UNLICENSED SELLERS; ILLEGALLY HARVESTED PRODUCTS FROM UNLICENSED SELLER.—~~In addition to being subject to other penalties authorized provided in this chapter, any violation of s. 370.06 or s. 370.07, or rules of the commission implementing s. 370.06 or s. 370.07, 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 or the purchase or sale of any saltwater product known to be taken in violation of s. 16, Art. X of the State Constitution, or rule or statute implementing the provisions thereof, by a commercial wholesale dealer, retail dealer, or restaurant facility, for public consumption, is~~ shall be a major violation, and the commission may assess the following penalties:

(a) For a first violation, the commission 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.

(b) For a second violation occurring within 12 months of a prior violation, the commission 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.

(c) For a third or subsequent violation occurring within a 24-month period, the commission shall assess a civil penalty of \$5,000 and shall suspend the wholesale or retail dealer's license privileges for up to 24 months.

Any proceeds from the civil penalties assessed pursuant to this subsection shall be deposited into the Marine Resources Conservation Trust Fund and shall be used as follows: 40 percent for administration and processing purposes and 60 percent for law enforcement purposes.

(6) PUBLICATIONS BY COMMISSION.—~~The Fish and Wildlife Conservation~~ commission 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 commission 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 commission. 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 commission 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.

(7) POWERS OF OFFICERS.—

(a) Law enforcement officers of the ~~Fish and Wildlife Conservation~~ commission 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 commission under their jurisdiction. The general laws applicable to arrests by peace officers of this state shall also be applicable to law enforcement officers of the commission. 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 commission 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 commission. 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 commission, 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 rule ~~regulation~~ of the commission.

(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 commission 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.

(8) **RETENTION, DESTRUCTION, AND REPRODUCTION OF RECORDS.**—Records and documents of the ~~Fish and Wildlife Conservation~~ commission created in compliance with and in the implementation of this chapter or former chapter 371 shall be retained by the commission as specified in record retention schedules established under the general provisions of chapters 119 and 257. Such records retained by the Department of Environmental Protection on July 1, 1999, shall be transferred to the commission. Further, the commission 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 ~~Fish and Wildlife Conservation~~ commission on a certificate made pursuant to the provisions hereof and signed by the executive director of the ~~Fish and Wildlife Conservation~~ commission 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.

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

(10) **BOND OF EMPLOYEES.**—The ~~commission department~~ may require, as it determines, that bond be given by any employee of the ~~commission 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 ~~commission department~~ conditioned for the faithful performance of the duties of such employee.

(11) **REVOCAION 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 ~~Fish and Wildlife Conservation~~ commission pursuant to the provisions and procedures of s. 120.60.

(12) LICENSES AND ENTITIES SUBJECT TO PENALTIES.—For purposes of imposing license or permit suspensions or revocations authorized by this chapter, the license or permit under which the violation was committed is subject to suspension or revocation by the commission. For purposes of assessing monetary civil or administrative penalties authorized by this chapter, 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 commission. However, if the license or permit holder of record is not the person, firm, or corporation receiving the citation and judicial disposition, the license or permit may be suspended or revoked only after the license or permit holder has been notified by the commission that the license or permit has been cited in a major violation and is now subject to suspension or revocation should the license or permit be cited for subsequent major violations.

Section 2. Subsection (2) of section 370.06, Florida Statutes, is amended to read:

370.06 Licenses.—

(2) **SALTWATER PRODUCTS LICENSE.**—

(a) Every person, firm, or corporation that sells, offers for sale, barter, or exchanges for merchandise any saltwater products, or which harvests saltwater products with certain gear or equipment as specified by law, must have a valid saltwater products license, except that the holder of an aquaculture certificate under s. 597.004 is not required to purchase and possess a saltwater products license in order to possess, transport, or sell marine aquaculture products. Each saltwater products license allows the holder to

engage in any of the activities for which the license is required. The license must be in the possession of the licenseholder or aboard the vessel and ~~is shall be~~ subject to inspection at any time that harvesting activities for which a saltwater products license is required are being conducted.

(b)1. A restricted species endorsement on the saltwater products license is required to sell to a licensed wholesale dealer those species which the state, by law or rule, has designated as “restricted species.” This endorsement may be issued only to a person who is at least 16 years of age, or to a firm certifying that over 25 percent of its income or \$5,000 of its income, whichever is less, is attributable to the sale of saltwater products pursuant to a saltwater products license issued under this paragraph or a similar license from another state. This endorsement may also be issued to a for-profit corporation if it certifies that at least \$5,000 of its income is attributable to the sale of saltwater products pursuant to a saltwater products license issued under this paragraph or a similar license from another state. However, if at least 50 percent of the annual income of a person, firm, or for-profit corporation is derived from charter fishing, the person, firm, or for-profit corporation must certify that at least \$2,500 of the income of the person, firm, or corporation is attributable to the sale of saltwater products pursuant to a saltwater products license issued under this paragraph or a similar license from another state, in order to be issued the endorsement. Such income attribution must apply to at least 1 ~~year~~ out of the last 3 years. For the purpose of this section, “income” means that income that ~~which~~ is attributable to work, employment, entrepreneurship, pensions, retirement benefits, and social security benefits.

2. To renew an existing restricted species endorsement, a marine aquaculture producer possessing a valid saltwater products license with a restricted species endorsement may apply income from the sale of marine aquaculture products to licensed wholesale dealers.

3.1. The commission is authorized to require verification of such income for all restricted species endorsements issued pursuant to this paragraph. Acceptable proof of income earned from the sale of saltwater products shall be:

a. Copies of trip ticket records generated pursuant to this subsection (marine fisheries information system), documenting qualifying sale of saltwater products;

b. Copies of sales records from locales other than Florida documenting qualifying sale of saltwater products;

c. A copy of the applicable federal income tax return, including Form 1099 attachments, verifying income earned from the sale of saltwater products;

d. Crew share statements verifying income earned from the sale of saltwater products; or

e. A certified public accountant’s notarized statement attesting to qualifying source and amount of income.

~~Notwithstanding any other provision of law~~ ~~Any provision of this section or any other section of the Florida Statutes to the contrary notwithstanding,~~ any person who owns a retail seafood market or restaurant at a fixed location for at least 3 years, who has had an occupational license for 3 years prior to January 1, 1990, who harvests saltwater products to supply his or her retail store, and who has had a saltwater products license for 1 of the past 3 license years prior to January 1, 1990, may provide proof of his or her verification of income and sales value at the person's retail seafood market or restaurant and in his or her saltwater products enterprise by affidavit and shall thereupon be issued a restricted species endorsement.

4.2. Exceptions from income requirements shall be as follows:

a. A permanent restricted species endorsement shall be available to those persons age 62 and older who have qualified for such endorsement for at least 3 ~~out~~ of the last 5 years.

b. Active military duty time shall be excluded from consideration of time necessary to qualify and shall not be counted against the applicant for purposes of qualifying.

c. Upon the sale of a used commercial fishing vessel owned by a person, firm, or corporation possessing or eligible for a restricted species endorsement, the purchaser of such vessel shall be exempted from the qualifying income requirement for the purpose of obtaining a restricted species endorsement for a period of 1 year after purchase of the vessel.

d. Upon the death or permanent disablement of a person possessing a restricted species endorsement, an immediate family member wishing to carry on the fishing operation shall be exempted from the qualifying income requirement for the purpose of obtaining a restricted species endorsement for a period of 1 year after the death or disablement.

e. A restricted species endorsement may be issued on an individual saltwater products license to a person age 62 or older who documents that at least \$2,500 of such person's income is attributable to the sale of saltwater products pursuant to the provisions of this paragraph.

f. A permanent restricted species endorsement may also be issued on an individual saltwater products license to a person age 70 or older who has held a saltwater products license for at least 3 of the last 5 license years.

g. 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, upon proof of the same, or any resident certified to be disabled by the United States Social Security Administration or a licensed physician, upon proof of the same, shall be exempted from the income requirements if he or she also has held a saltwater products license for at least 3 of the last 5 license years prior to the date of the disability. A restricted species endorsement issued under this paragraph may be issued only on an individual saltwater products license.

(c) At least one saltwater products license bearing a restricted species endorsement shall be aboard any vessel harvesting restricted species in excess of any bag limit or when fishing under a commercial quota or in commercial quantities, and such vessel shall have a commercial vessel registration. This subsection does not apply to any person, firm, or corporation licensed under s. 370.07(1)(a)1. or (b) for activities pursuant to such licenses.

(d) A saltwater products license may be issued in the name of an individual or a valid boat registration number. Such license is not transferable. A decal shall be issued with each saltwater products license issued to a valid boat registration number. The saltwater products license decal shall be the same color as the vessel registration decal issued each year pursuant to s. 328.48(5) and shall indicate the period of time such license is valid. The saltwater products license decal shall be placed beside the vessel registration decal and, in the case of an undocumented vessel, shall be placed so that the vessel registration decal lies between the vessel registration number and the saltwater products license decal. Any saltwater products license decal for a previous year shall be removed from a vessel operating on the waters of the state.

(e) A resident shall pay an annual license fee of \$50 for a saltwater products license issued in the name of an individual or \$100 for a saltwater products license issued to a valid boat registration number. A nonresident shall pay an annual license fee of \$200 for a saltwater products license issued in the name of an individual or \$400 for a saltwater products license issued to a valid boat registration number. An alien shall pay an annual license fee of \$300 for a saltwater products license issued in the name of an individual or \$600 for a saltwater products license issued to a valid boat registration number.

(f) Any person who sells saltwater products pursuant to a saltwater products ~~this~~ license may sell only to a licensed wholesale dealer. A saltwater products license must be presented to the licensed wholesale dealer each time saltwater products are sold, and an imprint made thereof. The wholesale dealer shall keep records of each transaction in such detail as may be required by rule of the commission not in conflict with s. 370.07(6), and shall provide the holder of the saltwater products license with a copy of the record. It is unlawful for any licensed wholesale dealer to buy saltwater products from any unlicensed person under the provisions of this section, except that a licensed wholesale dealer may buy from another licensed wholesale dealer. It is unlawful for any licensed wholesale dealer to buy saltwater products designated as "restricted species" from any person, firm, or corporation not possessing a restricted species endorsement on his or her saltwater products license under the provisions of this section, except that a licensed wholesale dealer may buy from another licensed wholesale dealer. For purposes of this subsection, any saltwater products received by a wholesale dealer are presumed to have been purchased.

(g) The commission shall be the licensing agency, may contract with private persons or entities to implement aspects of the licensing program, and shall establish by rule a marine fisheries information system in conjunction with the licensing program to gather fisheries data.

~~(h)~~^(b) Any person who sells, offers for sale, barter, or exchanges for merchandise saltwater products must have a method of catch preservation which meets the requirements and standards of the seafood quality control code promulgated by the commission.

~~(i)~~^(e) A saltwater products license is required to harvest commercial quantities of saltwater products. Any vessel from which commercial quantities of saltwater products are harvested must have a commercial vessel registration. Commercial quantities of saltwater products shall be defined as:

1. With respect to those species for which no bag limit has been established, more than 100 pounds per person per day, provided that the harvesting of two fish or less per person per day shall not be considered commercial quantities regardless of aggregate weight; and

2. With respect to those species for which a bag limit has been established, more than the bag limit allowed by law or rule.

~~(j)~~^(d)1. In addition to the saltwater products license, a marine life fishing endorsement is required for the harvest of marine life species as defined by rule of the Fish and Wildlife Conservation Commission. This endorsement may be issued only to a person who is at least 16 years of age or older or to a corporation holding a valid restricted species endorsement.

2.a. Effective July 1, 1998, and until July 1, 2002, a marine life endorsement may not be issued under this paragraph, except that those endorsements that are active during the 1997-1998 fiscal year may be renewed.

b. In 1998 persons or corporations holding a marine life endorsement that was active in the 1997-1998 fiscal year or an immediate family member of that person must request renewal of the marine life endorsement before December 31, 1998.

c. In subsequent years and until July 1, 2002, a marine life endorsement holder or member of his or her immediate family must request renewal of the marine life endorsement before September 30 of each year.

d. If a person or corporation holding an active marine life fishing endorsement or a member of that person's immediate family does not request renewal of the endorsement before the applicable dates specified in this paragraph, the commission shall deactivate that marine life fishing endorsement.

e. In the event of the death or disability of a person holding an active marine life fishing endorsement, the endorsement may be transferred by the person to a member of his or her immediate family or may be renewed by any person so designated by the executor of the person's estate.

f. Persons or corporations who hold saltwater product licenses with marine life fishing endorsements issued to their vessel registration numbers and who subsequently replace their existing vessels with new vessels may transfer the existing marine life fishing endorsement to the new boat registration numbers.

g. Persons or corporations who hold saltwater product licenses with marine life fishing endorsements issued to their name and who subsequently incorporate or unincorporate may transfer the existing marine life fishing endorsement to the new corporation or person.

3. The fee for a marine life fishery endorsement on a saltwater products license shall be \$75. These license fees shall be collected and deposited in the Marine Resources Conservation Trust Fund and used for the purchase and installation of vessel mooring buoys at coral reef sites and for research related to marine fisheries.

Section 3. Section 370.061, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 370.061, F.S., for present text.)

370.061 Confiscation, seizure, and forfeiture of property and products.—

(1) SEIZURE, FORFEITURE; PROCEDURE.—Nothing in this subsection affects the commission's authority to confiscate in any case illegal saltwater products, illegally taken saltwater products, or illegal fishing gear in accordance with this section.

(a) Property used in connection with a violation resulting in a conviction for the illegal taking, or attempted taking, sale, possession, or transportation of saltwater products is subject to seizure and forfeiture as part of the commission's efforts to protect the state's marine life. Saltwater products and seines, nets, boats, motors, other fishing devices or equipment, and vehicles or other means of transportation used or attempted to be used in connection with, as an instrumentality of, or in aiding and abetting such illegal taking or attempted taking are hereby declared to be nuisances.

(b) Upon a conviction of a 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 saltwater products violation and may order such property forfeited to the commission.

(c) For purposes of this section, a conviction, except with respect to a first time offender under this chapter for whom adjudication is withheld, is any disposition other than acquittal or dismissal.

(2) SEIZURE, FORFEITURE; NOTICE.—The requirement for a conviction before forfeiture of property establishes to the exclusion of any reasonable doubt that the property was used in connection with the violation resulting in conviction. Prior to the issuance of a forfeiture order for any vessel, vehicle, or other property under subsection (1), the commission shall seize the property and notify the registered owner, if any, that the property has been seized by the commission. Except as provided in subsection (6), the procedures of chapter 932 do not apply to any seizure or forfeiture of property under this section.

(a) Notification of property seized under this section must be sent by certified mail to a registered owner within 14 days after seizure. If the

commission, after diligent inquiry, cannot ascertain the registered owner, the notice requirement is satisfied.

(b) Upon a first conviction for a violation under this chapter, the property seized under this section shall be returned to the registered owner if the commission fails to prove by a preponderance of the evidence before the court having jurisdiction over the criminal offense that the registered owner aided in, abetted in, participated in, gave consent to, knew of, or had reason to know of the violation.

(c) Upon a second or subsequent conviction for a violation under this chapter, the burden shall be on the registered owner to prove by a preponderance of the evidence before the court having jurisdiction over the criminal offense that the registered owner in no way aided in, abetted in, participated in, knew of, or had reason to know of the second or subsequent violation which resulted in seizure of the lawful property.

(d) Any request for a hearing from a registered owner asserting innocence to recover property seized under these provisions must be sent to the commission's Division of Law Enforcement within 21 days after the registered owner's receipt of the notice of seizure. If a request for a hearing is not timely received, the court shall forfeit to the commission the right to, title to, and interest in the property seized, subject only to the rights and interests of bona fide lienholders.

(e) If a motor vehicle is seized under this section and is subject to any existing liens recorded under s. 319.27, all further proceedings shall be governed by the expressed intent of the Legislature not to divest any innocent person, firm, or corporation holding such a recorded lien of any of its reversionary rights in such motor vehicle or of any of its rights as prescribed in s. 319.27, and upon any default by the violator purchaser, the lienholder may foreclose its lien and take possession of the motor vehicle involved.

(3) COURT ORDER OF FORFEITURE.—When any illegal or illegally used seine, net, trap, or other fishing device or equipment, or illegally taken, possessed, or transported saltwater products, are found and taken into custody, and the owner thereof is not known to the officer finding the item or items, such officer shall immediately procure from the county court judge of the county wherein the item or items were found an order forfeiting the illegally used or illegally taken saltwater products, seines, nets, traps, boats, motors, or other fishing devices to the commission.

(4) DESTRUCTION OR DISPOSITION OF PROPERTY.—All property forfeited under this section may be destroyed, used by the commission, disposed of by gift to charitable or state institutions, or sold, with the proceeds derived from the sale deposited into the Marine Resources Conservation Trust Fund to be used for law enforcement purposes, or into the commission's Federal Law Enforcement Trust Fund as provided in s. 372.107, as applicable.

(5) CONFISCATION AND SALE OF PERISHABLE SALTWATER PRODUCTS; PROCEDURE.—

(a) When an arrest is made pursuant to the provisions of this chapter and illegal, perishable saltwater products or saltwater products illegally taken or landed are confiscated, the defendant may post bond or cash deposit in an amount determined by the judge to be the fair value of such confiscated products. The defendant shall have 24 hours to transport the products outside the limits of Florida for sale or other disposition. Should no bond or cash deposit be given within the time fixed by the judge, the judge shall order the sale of the confiscated saltwater products at the highest price obtainable. When feasible, at least three bids shall be requested.

(b) Moneys received from the sale of confiscated saltwater products, either by the defendant or by order of the court, shall be received by the judge and shall be remitted to the commission to be deposited into a special escrow account in the State Treasury to be held in trust pending the outcome of the trial of the defendant. If bond is posted by the defendant, it shall also be remitted to the commission to be held in escrow pending the outcome of the trial of the defendant.

(c) In the event of acquittal, the proceeds of a sale or the bond or cash deposit required by this subsection shall be returned to the defendant. In the event of a conviction, the proceeds of a sale or the bond or cash deposit required by this subsection shall be deposited into the Marine Resources Conservation Trust Fund to be used for law enforcement purposes or into the commission's Federal Law Enforcement Trust Fund as provided in s. 372.107, as applicable. Such deposit into the Marine Resources Conservation Trust Fund or the Federal Law Enforcement Trust Fund shall constitute confiscation.

(d) For purposes of confiscation under this subsection, the term "saltwater products" has the meaning set out in s. 370.01(25), 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.

(6) MUNICIPAL OR COUNTY ENFORCEMENT; SUPPLEMENTAL FUNDING.—

(a) Any municipal or county law enforcement agency that enforces or assists the commission in enforcing the provisions of this chapter, which results in a forfeiture of property as provided in this section, shall be entitled to receive all or a share of any property based upon its participation in such enforcement.

(b) If a municipal or county law enforcement agency has a marine enforcement unit, any property delivered to any municipal or county law enforcement agency as provided in paragraph (a) may be retained or sold by the municipal or county law enforcement agency, and the property or proceeds shall be used to enforce the provisions of this chapter and chapters 327 and 328. If a municipal or county law enforcement agency does not have a marine enforcement unit, such property or proceeds shall be disposed of under the provisions of chapter 932.

(c) Any funds received by a municipal or county law enforcement agency pursuant to this subsection shall be supplemental funds and may not be used as replacement funds by the municipality or county.

Section 4. Subsections (4), (7), and (8) of section 370.07, Florida Statutes, are amended, and, for the purpose of incorporating the amendment to section 370.021, Florida Statutes, in a reference thereto, paragraph (c) of subsection (5) of section 370.07, Florida Statutes, is reenacted, to read:

370.07 Wholesale and retail saltwater products dealers; regulation.—

(4) TRANSPORTATION OF SALTWATER PRODUCTS.—

(a) A person transporting in this state saltwater products that were produced in this state, regardless of destination, shall have in his or her possession invoices, bills of lading, or other similar instruments showing the number of packages, boxes, or containers and the number of pounds of each species and the name, physical address, and the Florida wholesale dealer number of the dealer of origin.

(b) A person transporting in this state saltwater products that were produced outside this state to be delivered to a destination in this state shall have in his or her possession invoices, bills of lading, or other similar instruments showing the number of packages, boxes, or containers and the number of pounds of each species, the name and physical address of the dealer of origin, and the name, physical address, and Florida wholesale dealer number of the Florida dealer to whom the shipment is to be delivered.

(c) A person transporting in this state saltwater products that were produced outside this state which are to be delivered to a destination outside this state shall have in his or her possession invoices, bills of lading, or other similar instruments showing the number of packages, boxes, or containers and the number of pounds of each species, the name and physical address of the dealer of origin, and the name and physical address of the dealer to whom the shipment is to be delivered.

(d) If the saltwater products in transit ~~come~~ came from more than one dealer, distributor, or producer, each lot from each dealer shall be covered by invoices, bills of lading, and other similar instruments showing the number of boxes or containers and the number of pounds of each species. Each invoice, bill of lading, and other similar instrument shall display the wholesale dealer license number and the name and physical address of the dealer, distributor, or producer of the lot covered by the instrument.

(e) It is unlawful to sell, deliver, ship, or transport, or to possess for the purpose of selling, delivering, shipping, or transporting, any saltwater products without all invoices ~~concerning the of such~~ concerning the products having thereon the wholesale dealer license number in ~~the such form as may be~~ the such form as prescribed under the provisions of this subsection and the rules and regulations of the ~~Fish and Wildlife Conservation~~ Fish and Wildlife Conservation commission. Any saltwater products found in the possession of any person who is in violation of this ~~paragraph~~ provision may be seized by the commission and disposed of in the manner provided by law.

(f) Nothing contained in this subsection may be construed to apply to the sale and delivery to a consumer of saltwater products in an ordinary retail transaction by a licensed retail dealer who has purchased such products from a licensed wholesale dealer, or to the sale and delivery of the catch or products of a saltwater products licensee to a Florida-licensed wholesale dealer.

(g) Wholesale dealers' licenses shall be issued only to applicants who furnish to the commission satisfactory evidence of law-abiding reputation and who pledge themselves to faithfully observe all of the laws, rules, and regulations of this state relating to the conservation of, dealing in, or taking, selling, transporting, or possession of saltwater products, and to cooperate in the enforcement of all such laws to every reasonable extent. This pledge may be included in the application for license.

(h) A wholesale dealer, retail dealer, or restaurant facility shall not purchase or sell for public consumption any saltwater products known to be taken illegally, or known to be taken in violation of s. 16, Art. X of the State Constitution, or any rule or statute implementing its provisions.

~~(i)(h)~~ Any person who violates the provisions of this subsection commits ~~is guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) LICENSE DENIAL, SUSPENSION, OR REVOCATION.—

(c) In addition to, or in lieu of, the penalty imposed pursuant to this subsection, the commission may impose penalties pursuant to s. 370.021.

(7) PURCHASE OF SALTWATER PRODUCTS AT TEMPORARY LOCATION.—Wholesale dealers purchasing saltwater products pursuant to s. 370.06(2)(a) at any site other than a site located in a county where the dealer has a permanent address must notify the Fish and Wildlife Conservation Commission of the location of the temporary site of business for each day business is to be conducted at such site.

(8) UNLAWFUL PURCHASE OF SALTWATER PRODUCTS.—It is unlawful for any licensed retail dealer or any restaurant licensed by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to buy saltwater products from any person other than a licensed wholesale or retail dealer. For purposes of this subsection, any saltwater products received by a retail dealer or a restaurant are presumed to have been purchased.

Section 5. For purposes of incorporating the amendment to section 370.021, Florida Statutes, in references thereto, subsections (3) and (4) of section 370.092, Florida Statutes, are reenacted to read:

370.092 Carriage of proscribed nets across Florida waters.—

(3) Notwithstanding subsections (1) and (2), unless authorized by rule of the Fish and Wildlife Conservation Commission, it is a major violation under this section, punishable as provided in s. 370.021(3), for any person,

firm, or corporation to possess any gill or entangling net, or any seine net larger than 500 square feet in mesh area, on any airboat or on any other vessel less than 22 feet in length and on any vessel less than 25 feet if primary power of the vessel is mounted forward of the vessel center point. Gill or entangling nets shall be as defined in s. 16, Art. X of the State Constitution, s. 370.093(2)(b), or in a rule of the Fish and Wildlife Conservation Commission implementing s. 16, Art. X of the State Constitution. Vessel length shall be determined in accordance with current United States Coast Guard regulations specified in the Code of Federal Regulations or as titled by the State of Florida. The Marine Fisheries Commission is directed to initiate by July 1, 1998, rulemaking to adjust by rule the use of gear on vessels longer than 22 feet where the primary power of the vessel is mounted forward of the vessel center point in order to prevent the illegal use of gill and entangling nets in state waters and to provide reasonable opportunities for the use of legal net gear in adjacent federal waters.

(4) The Fish and Wildlife Conservation Commission shall adopt rules to prohibit the possession and sale of mullet taken in illegal gill or entangling nets. Violations of such rules shall be punishable as provided in s. 370.021(3).

Section 6. For purposes of incorporating the amendment to section 370.021, Florida Statutes, in a reference thereto, subsection (5) of section 370.093, Florida Statutes, is reenacted to read:

370.093 Illegal use of nets.—

(5) Any person who violates this section shall be punished as provided in s. 370.021(3).

Section 7. Paragraphs (a) and (c) of subsection (2) of section 370.142, Florida Statutes, are amended to read:

370.142 Spiny lobster trap certificate program.—

(2) TRANSFERABLE TRAP CERTIFICATES; TRAP TAGS; FEES; PENALTIES.—The Fish and Wildlife Conservation Commission shall establish a trap certificate program for the spiny lobster fishery of this state and shall be responsible for its administration and enforcement as follows:

(a) Transferable trap certificates.—Each holder of a saltwater products license who uses traps for taking or attempting to take spiny lobsters shall be required to have a certificate on record for each trap possessed or used therefor, except as otherwise provided in this section.

1. The Department of Environmental Protection shall initially allot such certificates to each licenseholder with a current crawfish trap number who uses traps. The number of such certificates allotted to each such licenseholder shall be based on the trap/catch coefficient established pursuant to trip ticket records generated under the provisions of s. 370.06(2)(a) over a 3-year base period ending June 30, 1991. The trap/catch coefficient shall be calculated by dividing the sum of the highest reported single license-year landings up to a maximum of 30,000 pounds for each such licenseholder

during the base period by 700,000. Each such licenseholder shall then be allotted the number of certificates derived by dividing his or her highest reported single license-year landings up to a maximum of 30,000 pounds during the base period by the trap/catch coefficient. Nevertheless, no licenseholder with a current crawfish trap number shall be allotted fewer than 10 certificates. However, certificates may only be issued to individuals; therefore, all licenseholders other than individual licenseholders shall designate the individual or individuals to whom their certificates will be allotted and the number thereof to each, if more than one. After initial issuance, trap certificates are transferable on a market basis and may be transferred from one licenseholder to another for a fair market value agreed upon between the transferor and transferee. Each such transfer shall, within 72 hours thereof, be recorded on a notarized form provided for that purpose by the Fish and Wildlife Conservation Commission and hand delivered or sent by certified mail, return receipt requested, to the commission for recordkeeping purposes. In addition, in order to cover the added administrative costs of the program and to recover an equitable natural resource rent for the people of the state, a transfer fee of \$2 per certificate transferred shall be assessed against the purchasing licenseholder and sent by money order or cashier's check with the certificate transfer form. Also, in addition to the transfer fee, a surcharge of \$5 per certificate transferred or 25 percent of the actual market value, whichever is greater, given to the transferor shall be assessed the first time a certificate is transferred outside the original transferor's immediate family. No transfer of a certificate shall be effective until the commission receives the notarized transfer form and the transfer fee, including any surcharge, is paid. The commission may establish by rule an amount of equitable rent per trap certificate that shall be recovered as partial compensation to the state for the enhanced access to its natural resources. Final approval of such a rule shall be by the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund. In determining whether to establish such a rent and, if so, the amount thereof, the commission shall consider the amount of revenues annually generated by certificate fees, transfer fees, surcharges, trap license fees, and sales taxes, the demonstrated fair market value of transferred certificates, and the continued economic viability of the commercial lobster industry. The proceeds of equitable rent recovered shall be deposited in the Marine Resources Conservation Trust Fund and used by the commission for research, management, and protection of the spiny lobster fishery and habitat. A transfer fee may not be assessed or required when the transfer is within a family as a result of the death or disability of the certificate owner. A surcharge will not be assessed for any transfer within an individual's immediate family.

2. No person, firm, corporation, or other business entity may control, directly or indirectly, more than 1.5 percent of the total available certificates in any license year.

3. The commission shall maintain records of all certificates and their transfers and shall annually provide each licenseholder with a statement of certificates held.

4. The number of trap tags issued annually to each licenseholder shall not exceed the number of certificates held by the licenseholder at the time

of issuance, and such tags and a statement of certificates held shall be issued simultaneously.

5. Beginning July 1, 2003, and applicable to the 2003-2004 lobster season and thereafter, it is unlawful for any person to lease lobster trap tags or certificates.

(c) Prohibitions; penalties.—

1. It is unlawful for a person to possess or use a spiny lobster trap in or on state waters or adjacent federal waters without having affixed thereto the trap tag required by this section. It is unlawful for a person to possess or use any other gear or device designed to attract and enclose or otherwise aid in the taking of spiny lobster by trapping that is not a trap as defined in rule 68B-24.006(2), Florida Administrative Code.

2. It is unlawful for a person to possess or use spiny lobster trap tags without having the necessary number of certificates on record as required by this section.

3. 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 the penalties specified in ss. 370.021 and 370.14 and the provisions of this section, permanently lose all his or her saltwater fishing privileges, including his or her saltwater products license, crawfish endorsement, and all trap certificates allotted to him or her through this program. In such cases, trap certificates and endorsements are nontransferable. In addition, any person, firm, or corporation convicted of violating this paragraph shall also be assessed an administrative penalty of up to \$5,000. Immediately upon receiving a citation for a violation involving theft from a trap 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 crawfish trap certificates and endorsements.

4. In addition to any other penalties provided in s. 370.021, a commercial harvester, as defined by rule 68B-24.002(1), Florida Administrative Code, who violates the provisions of this section, or the provisions relating to traps of chapter 68B-24, Florida Administrative Code, shall be punished as follows:

a. If the first violation is for violation of subparagraph 1. or subparagraph 2., the commission shall assess an additional civil penalty of up to \$1,000 and the crawfish trap number issued pursuant to s. 370.14(2) or (6) may be suspended for the remainder of the current license year. For all other first violations, the commission shall assess an additional civil penalty of up to \$500.

b. For a second violation of subparagraph 1. or subparagraph 2. which occurs within 24 months of any previous such violation, the commission shall assess an additional civil penalty of up to \$2,000 and the crawfish trap

number issued pursuant to s. 370.14(2) or (6) may be suspended for the remainder of the current license year.

c. For a third or subsequent violation of subparagraph 1., subparagraph 2., or subparagraph 3. which occurs within 36 months of any previous two such violations, the commission shall assess an additional civil penalty of up to \$5,000 and may suspend the crawfish trap number issued pursuant to s. 370.14(2) or (6) for a period of up to 24 months or may revoke the crawfish trap number and, if revoking the crawfish trap number, may also proceed against the licenseholder's saltwater products license in accordance with the provisions of s. 370.021(2)(h)(i).

d. Any person assessed an additional civil penalty pursuant to this section shall within 30 calendar days after notification:

(I) Pay the civil penalty to the commission; or

(II) Request an administrative hearing pursuant to the provisions of s. 120.60.

e. The commission shall suspend the crawfish trap number issued pursuant to s. 370.14(2) or (6) for any person failing to comply with the provisions of sub-subparagraph d.

5.a. It is unlawful for any person to make, alter, forge, counterfeit, or reproduce a spiny lobster trap tag or certificate.

b. It is unlawful for any person to knowingly have in his or her possession a forged, counterfeit, or imitation spiny lobster trap tag or certificate.

c. It is unlawful for any person to barter, trade, sell, supply, agree to supply, aid in supplying, or give away a spiny lobster trap tag or certificate or to conspire to barter, trade, sell, supply, aid in supplying, or give away a spiny lobster trap tag or certificate unless such action is duly authorized by the commission as provided in this chapter or in the rules of the commission.

6.a. Any person who violates the provisions of subparagraph 5., or any person who engages in the commercial harvest, trapping, or possession of spiny lobster without a crawfish trap number as required by s. 370.14(2) or (6) or during any period while such crawfish trap number is under suspension or revocation, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. In addition to any penalty imposed pursuant to sub-subparagraph a., the commission shall levy a fine of up to twice the amount of the appropriate surcharge to be paid on the fair market value of the transferred certificates, as provided in subparagraph (a)1., on any person who violates the provisions of sub-subparagraph 5.c.

7. Any certificates for which the annual certificate fee is not paid for a period of 3 years shall be considered abandoned and shall revert to the commission. During any period of trap reduction, any certificates reverting

to the commission shall become permanently unavailable and be considered in that amount to be reduced during the next license-year period. Otherwise, any certificates that revert to the commission are to be reallocated in such manner as provided by the commission.

8. The proceeds of all civil penalties collected pursuant to subparagraph 4. and all fines collected pursuant to sub-subparagraph 6.b. shall be deposited into the Marine Resources Conservation Trust Fund.

9. All traps shall be removed from the water during any period of suspension or revocation.

Section 8. Section 372.70, Florida Statutes, is amended to read:

372.70 Prosecutions; state attorney to represent state.—

(1) The prosecuting officers of the several courts of criminal jurisdiction of this state shall investigate and prosecute all violations of the laws relating to game, freshwater fish, nongame birds, and fur-bearing animals which may be brought to their attention by the Fish and Wildlife Conservation commission or its conservation officers, or which may otherwise come to their knowledge.

(2) The state attorney shall represent the state in any forfeiture proceeding under this chapter. The Department of Legal Affairs shall represent the state in all appeals from judgments of forfeiture to the Supreme Court. The state may appeal any judgment denying forfeiture in whole or in part that may be otherwise adverse to the state.

Section 9. Section 372.9901, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 372.9901, F.S., for present text.)

372.9901 Seizure of illegal hunting devices; disposition; notice; forfeiture.—In order to protect the state's wildlife resources, any vehicle, vessel, animal, gun, light, or other hunting device used or attempted to be used in connection with, as an instrumentality of, or in aiding and abetting in the commission of an offense prohibited by s. 372.99 is subject to seizure and forfeiture. The provisions of chapter 932 do not apply to any seizure or forfeiture under this section. For purposes of this section, a conviction is any disposition other than acquittal or dismissal.

(1)(a) Upon a first 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. Upon such finding, the court may order the property forfeited to the commission.

(b) Upon a second or subsequent conviction of a person in whose possession the property was found for a violation of s. 372.99, the court shall order the forfeiture to the commission of any property used in connection with that violation.

(2) The requirement for a conviction before forfeiture establishes, to the exclusion of any reasonable doubt, that the property was used in connection with that violation. Prior to the issuance of a forfeiture order for any vessel, vehicle, or other property under subsection (1), the commission shall seize the property and notify the registered owner, if any, that the property has been seized by the commission.

(3) Notification of property seized under this section must be sent by certified mail to a registered owner within 14 days after seizure. If the commission, after diligent inquiry, cannot ascertain the registered owner, the notice requirement is satisfied.

(4)(a) For a first conviction of an offense under s. 372.99, property seized by the commission shall be returned to the registered owner if the commission fails to prove by a preponderance of the evidence before the court having jurisdiction over the criminal offense that the registered owner aided in, abetted in, participated in, gave consent to, knew of, or had reason to know of the offense.

(b) Upon a second or subsequent conviction for an offense under s. 372.99, the burden shall be on the registered owner to prove by a preponderance of the evidence before the court having jurisdiction over the criminal offense that the registered owner in no way aided in, abetted in, participated in, knew of, or had reason to know of the second offense which resulted in seizure of the lawful property.

(c) Any request for a hearing from a registered owner asserting innocence to recover property seized under these provisions must be sent to the commission's Division of Law Enforcement within 21 days after the registered owner's receipt of the notice of seizure. If a request for a hearing is not timely received, the court shall forfeit to the commission the right to, title to, and interest in the property seized, subject only to the rights and interests of bona fide lienholders.

(5) All amounts received from the sale or other disposition of the property shall be paid into the State Game Trust Fund or into the commission's Federal Law Enforcement Trust Fund as provided in s. 372.107, as applicable. If the property is not sold or converted, it shall be delivered to the executive director of the commission.

Section 10. Section 372.31, Florida Statutes, is renumbered as section 372.99021, Florida Statutes, and amended to read:

372.99021 372.31 Disposition of illegal fishing devices; exercise of police power.—

(1) In all cases of arrest and conviction for use of illegal nets or traps or fishing devices, as provided in this chapter, such illegal net, trap, or fishing device is declared to be a nuisance and shall be seized and carried before the court having jurisdiction of such offense and said court shall order such illegal trap, net, or fishing device forfeited to the ~~Fish and Wildlife Conserva-~~ tion commission immediately after trial and conviction of the person in whose possession they were found. When any illegal net, trap, or fishing

device is found in the fresh waters of the state, and the owner of same shall not be known to the officer finding the same, such officer shall immediately procure from the county court judge an order forfeiting said illegal net, trap, or fishing device to the ~~Fish and Wildlife Conservation~~ commission. The ~~Fish and Wildlife Conservation~~ commission may destroy such illegal net, trap, or fishing device, if in its judgment said net, trap, or fishing device is not of value in the work of the department.

(2) When any nets, traps, or fishing devices are found being used illegally as provided in this chapter, the same shall be seized and forfeited to the ~~Fish and Wildlife Conservation~~ commission as provided in this chapter.

(3) This section is necessary for the more efficient and proper enforcement of the statutes and laws of this state prohibiting the illegal use of nets, traps, or fishing devices and is a lawful exercise of the police power of the state for the protection of the public welfare, health, and safety of the people of the state. All the provisions of this section shall be liberally construed for the accomplishment of these purposes.

Section 11. Section 372.99022, Florida Statutes, is created to read:

372.99022 Illegal molestation of or theft from freshwater fishing gear.—

(1)(a) Any person, firm, or corporation that willfully molests any authorized and lawfully permitted freshwater fishing gear belonging to another without the express written consent of the owner commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any written consent must be available for immediate inspection.

(b) Any person, firm, or corporation that willfully removes the contents of any authorized and lawfully permitted freshwater fishing gear belonging to another without the express written consent of the owner commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any written consent must be available for immediate inspection.

A person, firm, or corporation that receives a citation for a violation of this subsection is prohibited, immediately upon receipt of such citation and until adjudicated or convicted of a felony under this subsection, from transferring any endorsements.

(2) Any person, firm, or corporation convicted pursuant to subsection (1) of removing the contents of freshwater fishing gear without the express written consent of the owner shall permanently lose all of his or her freshwater and saltwater fishing privileges, including his or her recreational and commercial licenses and endorsements, and shall be assessed an administrative penalty of not more than \$5,000. The endorsements of such person, firm, or corporation are not transferable.

(3) 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 12. Subsection (3) of section 372.9904, Florida Statutes, is amended to read:

372.9904 Seizure of illegal transportation devices; disposition; appraisal; forfeiture.—

(3) Upon conviction of the violator, the property, if owned by the person convicted, shall be forfeited to the state under the procedure set forth in ss. 370.061 and 370.07 ~~372.312-372.318~~, when not inconsistent with this section. All amounts received from the sale or other disposition of the property shall be paid into the State Game Trust Fund or into the commission's Federal Law Enforcement Trust Fund as provided in s. 372.107, as applicable. If the property is not sold or converted, it shall be delivered to the director of the Fish and Wildlife Conservation Commission.

Section 13. Section 372.9905, Florida Statutes, is amended to read:

372.9905 Applicability of ss. 372.99, 372.9901, 372.9903, and 372.9904.—The provisions of ss. 372.99, 372.9901, 372.9903, and 372.9904 relating to seizure and forfeiture of animals or of vehicles, vessels, or other transportation devices ~~do shall not apply when such vehicles, vessels, or other transportation devices are owned by, or titled in the name of, innocent parties. The provisions of said sections shall not vitiate any valid lien, retain title contract, or chattel mortgage on such~~ animals or vehicles, vessels, or other transportation devices if such lien, retain title contract, or chattel mortgage is properly of public record at the time of the seizure.

Section 14. Paragraph (b) of subsection (4) of section 323.001, Florida Statutes, is amended to read:

323.001 Wrecker operator storage facilities; vehicle holds.—

(4) The requirements for a written hold apply when the following conditions are present:

(b) The officer has probable cause to believe the vehicle should be seized and forfeited under Chapter 370 or Chapter 372 ~~372.312~~;

Section 15. Sections 372.311, 372.312, 372.313, 372.314, 372.315, 372.316, 372.317, 372.318, 372.319, 372.321, and 372.9902, Florida Statutes, are repealed.

Section 16. Subsection (2) of section 370.12, Florida Statutes, is amended to read:

370.12 Marine animals; regulation.—

(2) PROTECTION OF MANATEES OR SEA COWS.—

(a) This subsection shall be known and may be cited as the “Florida Manatee Sanctuary Act.”

(b) The State of Florida is hereby declared to be a refuge and sanctuary for the manatee, the “Florida state marine mammal.” The protections ex-

tended to and authorized on behalf of the manatee by this act are independent of, and therefore are not contingent upon, its status as a state or federal listed species.

(c) Whenever the Fish and Wildlife Conservation Commission is satisfied that the interest of science will be subserved, and that the application for a permit to possess a manatee or sea cow (*Trichechus manatus*) is for a scientific or propagational purpose and should be granted, and after concurrence by the United States Department of the Interior, the commission may grant to any person making such application a special permit to possess a manatee or sea cow, which permit shall specify the exact number which shall be maintained in captivity.

(d) Except as may be authorized by the terms of a valid state permit issued pursuant to paragraph (c) or by the terms of a valid federal permit, it is unlawful for any person at any time, by any means, or in any manner intentionally or negligently to annoy, molest, harass, or disturb or attempt to molest, harass, or disturb any manatee; injure or harm or attempt to injure or harm any manatee; capture or collect or attempt to capture or collect any manatee; pursue, hunt, wound, or kill or attempt to pursue, hunt, wound, or kill any manatee; or possess, literally or constructively, any manatee or any part of any manatee.

(e) Any gun, net, trap, spear, harpoon, boat of any kind, aircraft, automobile of any kind, other motorized vehicle, chemical, explosive, electrical equipment, scuba or other subaquatic gear, or other instrument, device, or apparatus of any kind or description used in violation of any provision of paragraph (d) may be forfeited upon conviction. The foregoing provisions relating to seizure and forfeiture of vehicles, vessels, equipment, or supplies do not apply when such vehicles, vessels, equipment, or supplies are owned by, or titled in the name of, innocent parties; and such provisions shall not vitiate any valid lien, retain title contract, or chattel mortgage on such vehicles, vessels, equipment, or supplies if such lien, retain title contract, or chattel mortgage is property of public record at the time of the seizure.

(f)1. Except for emergency rules adopted under s. 120.54, all proposed rules of the commission for which a notice of intended agency action is filed proposing to govern the speed and operation of motorboats for purposes of manatee protection shall be submitted to the counties in which the proposed rules will take effect for review by local rule review committees.

2. No less than 60 days prior to filing a notice of rule development in the Florida Administrative Weekly, as provided in s. 120.54(3)(a), the commission shall notify the counties for which a rule to regulate the speed and operation of motorboats for the protection of manatees is proposed. A county so notified shall establish a rule review committee or several counties may combine rule review committees.

3. The county commission of each county in which a rule to regulate the speed and operation of motorboats for the protection of manatees is proposed shall designate a rule review committee. The designated voting membership of the rule review committee must be comprised of waterway users, such as fishers, boaters, water skiers, other waterway users, as compared to the

number of manatee and other environmental advocates. A county commission may designate an existing advisory group as the rule review committee. With regard to each committee, fifty percent of the voting members shall be manatee advocates and other environmental advocates, and fifty percent of the voting members shall be waterway users.

4. The county shall invite other state, federal, county, municipal, or local agency representatives to participate as nonvoting members of the local rule review committee.

5. The county shall provide logistical and administrative staff support to the local rule review committee and may request technical assistance from commission staff.

6. Each local rule review committee shall elect a chair and recording secretary from among its voting members.

7. Commission staff shall submit the proposed rule and supporting data used to develop the rule to the local rule review committees.

8. The local rule review committees shall have 60 days from the date of receipt of the proposed rule to submit a written report to commission members and staff. The local rule review committees may use supporting data supplied by the commission, as well as public testimony which may be collected by the committee, to develop the written report. The report may contain recommended changes to proposed manatee protection zones or speed zones, including a recommendation that no rule be adopted, if that is the decision of the committee.

9. Prior to filing a notice of proposed rulemaking in the Florida Administrative Weekly as provided in s. 120.54(3)(a), the commission staff shall provide a written response to the local rule review committee reports to the appropriate counties, to the commission members, and to the public upon request.

10. In conducting a review of the proposed manatee protection rule, the local rule review committees may address such factors as whether the best available scientific information supports the proposed rule, whether seasonal zones are warranted, and such other factors as may be necessary to balance manatee protection and public access to and use of the waters being regulated under the proposed rule.

11. The written reports submitted by the local rule review committees shall contain a majority opinion. If the majority opinion is not unanimous, a minority opinion shall also be included.

12. The members of the commission shall fully consider any timely submitted written report submitted by a local rule review committee prior to authorizing commission staff to move forward with proposed rulemaking and shall fully consider any timely submitted subsequent reports of the committee prior to adoption of a final rule. The written reports of the local rule review committees and the written responses of the commission staff shall be part of the rulemaking record and may be submitted as evidence

regarding the committee's recommendations in any proceeding relating to a rule proposed or adopted pursuant to this subsection.

13. The commission is relieved of any obligations regarding the local rule review committee process created in this paragraph if a timely noticed county commission fails to timely designate the required rule review committee.

(g)(f) In order to protect manatees or sea cows from harmful collisions with motorboats or from harassment, the Fish and Wildlife Conservation Commission is authorized, in addition to all other authority, to provide a permitting agency with comments shall adopt rules under chapter 120 regarding the expansion of existing, or the construction of new, marine facilities and mooring or docking slips, by the addition or construction of five or more powerboat slips. The commission shall adopt rules under chapter 120, and regulating the operation and speed of motorboat traffic, only where manatee sightings are frequent and the best available scientific information, as well as other available, relevant, and reliable information, which may include but is not limited to, manatee surveys, observations, available studies of food sources, and water depths, supports the conclusions that manatees it can be generally assumed, based on available scientific information, that they inhabit these areas on a regular or continuous basis:

1. In Lee County: the entire Orange River, including the Tice Florida Power and Light Corporation discharge canal and adjoining waters of the Caloosahatchee River within 1 mile of the confluence of the Orange and Caloosahatchee Rivers.

2. In Brevard County: those portions of the Indian River within three-fourths of a mile of the Orlando Utilities Commission Delespine power plant effluent and the Florida Power and Light Frontenac power plant effluents.

3. In Indian River County: the discharge canals of the Vero Beach Municipal Power Plant and connecting waters within 1¼ miles thereof.

4. In St. Lucie County: the discharge of the Henry D. King Municipal Electric Station and connecting waters within 1 mile thereof.

5. In Palm Beach County: the discharges of the Florida Power and Light Riviera Beach power plant and connecting waters within 1½ miles thereof.

6. In Broward County: the discharge canal of the Florida Power and Light Port Everglades power plant and connecting waters within 1½ miles thereof and the discharge canal of the Florida Power and Light Fort Lauderdale power plant and connecting waters within 2 miles thereof. For purposes of ensuring the physical safety of boaters in a sometimes turbulent area, the area from the easternmost edge of the authorized navigation project of the intracoastal waterway east through the Port Everglades Inlet is excluded from this regulatory zone.

7. In Citrus County: headwaters of the Crystal River, commonly referred to as King's Bay, and the Homosassa River.

8. In Volusia County: Blue Springs Run and connecting waters of the St. Johns River within 1 mile of the confluence of Blue Springs and the St. Johns River; and Thompson Creek, Strickland Creek, Dodson Creek, and the Tomoka River.

9. In Hillsborough County: that portion of the Alafia River from the main shipping channel in Tampa Bay to U.S. Highway 41.

10. In Sarasota County: the Venice Inlet and connecting waters within 1 mile thereof, including Lyons Bay, Donna Bay, Roberts Bay, and Hatchett Creek, excluding the waters of the intracoastal waterway and the right-of-way bordering the centerline of the intracoastal waterway.

11. In Collier County: within the Port of Islands, within section 9, township 52 south, range 28 east, and certain unsurveyed lands, all east-west canals and the north-south canals to the southerly extent of the intersecting east-west canals which lie southerly of the centerline of U.S. Highway 41.

12. In Manatee County: that portion of the Manatee River east of the west line of section 17, range 19 east, township 34 south; the Braden River south of the north line and east of the west line of section 29, range 18 east, township 34 south; Terra Ceia Bay and River, east of the west line of sections 26 and 35 of range 17 east, township 33 south, and east of the west line of section 2, range 17 east, township 34 south; and Bishop Harbor east of the west line of section 13, range 17 east, township 33 south.

13. In Miami-Dade County: those portions of Black Creek lying south and east of the water control dam, including all boat basins and connecting canals within 1 mile of the dam.

~~(h)(g)~~ The Fish and Wildlife Conservation Commission shall adopt rules pursuant to chapter 120 regulating the operation and speed of motorboat traffic only where manatee sightings are frequent and the best available scientific information, as well as other available, relevant, and reliable information, which may include but is not limited to, manatee surveys, observations, available studies of food sources, and water depths, supports the conclusion that manatees it can be generally assumed that they inhabit these areas on a regular or continuous basis within that portion of the Indian River between the St. Lucie Inlet in Martin County and the Jupiter Inlet in Palm Beach County and. ~~In addition, the commission shall adopt rules pursuant to chapter 120 regulating the operation and speed of motorboat traffic only where manatee sightings are frequent and it can be generally assumed that they inhabit these areas on a regular or continuous basis within the Loxahatchee River in Palm Beach and Martin Counties, including the north and southwest forks thereof. A limited lane or corridor providing for reasonable motorboat speeds may be identified and designated within this area.~~

~~(i)(h)~~ The commission shall adopt rules pursuant to chapter 120 regulating the operation and speed of motorboat traffic only where manatee sightings are frequent and the best available scientific information, as well as other available, relevant, and reliable information, which may include but is not limited to, manatee surveys, observations, available studies of food

~~sources, and water depths, supports the conclusion that manatees it can be generally assumed that they inhabit these areas on a regular or continuous basis within the Withlacoochee River and its tributaries in Citrus and Levy Counties. The specific areas to be regulated include the Withlacoochee River and the U.S. 19 bridge westward to a line between U.S. Coast Guard markers number 33 and number 34 at the mouth of the river, including all side channels and coves along that portion of the river; Bennets' Creek from its beginning to its confluence with the Withlacoochee River; Bird's Creek from its beginning to its confluence with the Withlacoochee River; and the two dredged canal systems on the north side of the Withlacoochee River southwest of Yankeetown. A limited lane or corridor providing for reasonable motorboat speeds may be identified and designated within this area.~~

(j)(i) If any new power plant is constructed or other source of warm water discharge is discovered within the state which attracts a concentration of manatees or sea cows, the Fish and Wildlife Conservation commission is directed to adopt rules pursuant to chapter 120 regulating the operation and speed of motorboat traffic within the area of such discharge. Such rules shall designate a zone which is sufficient in size, and which shall remain in effect for a sufficient period of time, to protect the manatees or sea cows.

~~(k)(j) It is the intent of the Legislature through adoption of this paragraph to allow the Fish and Wildlife Conservation Commission to post and regulate boat speeds only where the best available scientific information, as well as other available, relevant, and reliable information, which may include but is not limited to, manatee surveys, observations, available studies of food sources, and water depth, supports the conclusion that manatees manatee sightings are frequent and it can be generally assumed that they inhabit these areas on a periodic regular or continuous basis. It is not the intent of the Legislature to permit the commission to post and regulate boat speeds generally throughout the waters of the state in the above-described inlets, bays, rivers, creeks, thereby unduly interfering with the rights of fishers, boaters, and water skiers using the areas for recreational and commercial purposes. The Legislature further intends that the commission may identify and designate limited lanes or corridors providing for reasonable motorboat speeds within waters of the state whenever such lanes and corridors are consistent with manatee protection may be identified and designated within these areas.~~

(l)(k) The commission shall adopt rules pursuant to chapter 120 regulating the operation and speed of motorboat traffic all year around within Turkey Creek and its tributaries and within Manatee Cove in Brevard County. The specific areas to be regulated consist of:

1. A body of water which starts at Melbourne-Tillman Drainage District structure MS-1, section 35, township 28 south, range 37 east, running east to include all natural waters and tributaries of Turkey Creek, section 26, township 28 south, range 37 east, to the confluence of Turkey Creek and the Indian River, section 24, township 28 south, range 37 east, including all lagoon waters of the Indian River bordered on the west by Palm Bay Point, the north by Castaway Point, the east by the four immediate spoil islands, and the south by Cape Malabar, thence northward along the shoreline of the Indian River to Palm Bay Point.

2. A triangle-shaped body of water forming a cove (commonly referred to as Manatee Cove) on the east side of the Banana River, with northern boundaries beginning and running parallel to the east-west cement bulkhead located 870 feet south of SR 520 Relief Bridge in Cocoa Beach and with western boundaries running in line with the City of Cocoa Beach channel markers 121 and 127 and all waters east of these boundaries in section 34, township 24 south, range 37 east; the center coordinates of this cove are 28°20'14" north, 80°35'17" west.

~~(m)~~(l) The commission shall promulgate regulations pursuant to chapter 120 relating to the operation and speed of motor boat traffic in port waters with due regard to the safety requirements of such traffic and the navigational hazards related to the movement of commercial vessels.

~~(n)~~(m) The commission may designate by rule adopted pursuant to chapter 120 other portions of state waters where manatees are frequently sighted and the best available scientific information, as well as other available, relevant, and reliable information, which may include but is not limited to, manatee surveys, observations, available studies of food sources, and water depths, supports the conclusion that it can be assumed that manatees inhabit such waters periodically ~~or continuously~~. Upon designation of such waters, the commission shall adopt rules pursuant to chapter 120 to regulate motorboat speed and operation which are necessary to protect manatees from harmful collisions with motorboats and from harassment. The commission may adopt rules pursuant to chapter 120 to protect manatee habitat, such as seagrass beds, within such waters from destruction by boats or other human activity. Such rules shall not protect noxious aquatic plants subject to control under s. 369.20.

~~(o)~~(n) The commission may designate, by rule adopted pursuant to chapter 120, limited areas as a safe haven for manatees to rest, feed, reproduce, give birth, or nurse undisturbed by human activity. Access by motor boat to private residences, boat houses, and boat docks through these areas by residents, and their authorized guests, who must cross one of these areas to have water access to their property is permitted when the motorboat is operated at idle speed, no wake.

~~(p)~~(o) Except in the marked navigation channel of the Florida Intracoastal Waterway as defined in s. 327.02 and the area within 100 feet of such channel, a local government may regulate, by ordinance, motorboat speed and operation on waters within its jurisdiction where the best available scientific information, as well as other available, relevant, and reliable information, which may include but is not limited to, manatee surveys, observations, available studies of food sources, and water depths, supports the conclusion that manatees inhabit these areas on a regular basis where manatees are frequently sighted and can be generally assumed to inhabit periodically ~~or continuously~~. However, such an ordinance may not take effect until it has been reviewed and approved by the commission. If the commission and a local government disagree on the provisions of an ordinance, a local manatee protection committee must be formed to review the technical data of the commission and the United States Fish and Wildlife Service, and to resolve conflicts regarding the ordinance. The manatee protection committee must be comprised of:

1. A representative of the commission;
2. A representative of the county;
3. A representative of the United States Fish and Wildlife Service;
4. A representative of a local marine-related business;
5. A representative of the Save the Manatee Club;
6. A local fisher;
7. An affected property owner; and
8. A representative of the Florida Marine Patrol.

If local and state regulations are established for the same area, the more restrictive regulation shall prevail.

~~(q)(p)~~ The commission shall evaluate the need for use of fenders to prevent crushing of manatees between vessels (100' or larger) and bulkheads or wharves in counties where manatees have been crushed by such vessels. For areas in counties where evidence indicates that manatees have been crushed between vessels and bulkheads or wharves, the commission shall:

1. Adopt rules pursuant to chapter 120 requiring use of fenders for construction of future bulkheads or wharves; and
2. Implement a plan and time schedule to require retrofitting of existing bulkheads or wharves consistent with port bulkhead or wharf repair or replacement schedules.

The fenders shall provide sufficient standoff from the bulkhead or wharf under maximum operational compression to ensure that manatees cannot be crushed between the vessel and the bulkhead or wharf.

~~(r)(q)~~ Any violation of a restricted area established by this subsection, or established by rule pursuant to chapter 120 or ordinance pursuant to this subsection, shall be considered a violation of the boating laws of this state and shall be charged on a uniform boating citation as provided in s. 327.74, except as otherwise provided in paragraph (s). Any person who refuses to post a bond or accept and sign a uniform boating citation shall, as provided in s. 327.73(3), be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

~~(s)(r)~~ Except as otherwise provided in this paragraph, any person violating the provisions of this subsection or any rule or ordinance adopted pursuant to this subsection shall be guilty of a misdemeanor, punishable as provided in s. 370.021(1)(a) or (b).

1. Any person operating a vessel in excess of a posted speed limit shall be guilty of a civil infraction, punishable as provided in s. 327.73, except as provided in subparagraph 2.

2. This paragraph does not apply to persons violating restrictions governing “No Entry” zones or “Motorboat Prohibited” zones, who, if convicted, shall be guilty of a misdemeanor, punishable as provided in s. 370.021(1)(a) or (b), or, if such violation demonstrates blatant or willful action, may be found guilty of harassment as described in paragraph (d).

(t) 1. In order to protect manatees and manatee habitat, the counties identified in the Governor and Cabinet’s October 1989 Policy Directive shall develop manatee protection plans consistent with commission criteria based upon “Schedule K” of the directive, and shall submit such protection plans for review and approval by the commission. Any manatee protection plans not submitted by July 1, 2004 and any plans not subsequently approved by the commission shall be addressed pursuant to subparagraph 2.

2. No later than January 1, 2005, the Fish and Wildlife Conservation Commission shall designate any county it has identified as a substantial risk county for manatee mortality as a county that must complete a manatee protection plan by July 1, 2006. The commission is authorized to adopt rules pursuant to s. 120.54 for identifying substantial risk counties and establishing criteria for approval of manatee protection plans for counties so identified. Manatee protection plans shall include the following elements at a minimum: education about manatees and manatee habitat; boater education; an assessment of the need for new or revised manatee protection speed zones; local law enforcement; and a boat facility siting plan to address expansion of existing and the development of new marinas, boat ramps, and other multislip boating facilities.

3. Counties required to adopt manatee protection plans under this paragraph shall incorporate the boating facility siting element of those protection plans within their respective comprehensive plans.

4. Counties that have already adopted approved manatee protection plans, or that adopt subsequently approved manatee protection plans by the effective date of this act, are in compliance with the provisions of this paragraph so long as they incorporate their approved Boat Facility Siting Plan into the appropriate element of their local Comprehensive Plan no later than July 1, 2003.

Section 17. Subsection (6) is added to section 372.072, Florida Statutes, to read:

372.072 Endangered and Threatened Species Act.—

(6) MEASURABLE BIOLOGICAL GOALS.—No later than February 15, 2003, the commission, working in conjunction with the United States Fish and Wildlife Service, shall develop measurable biological goals that define manatee recovery. These measurable biological goals shall be used by the commission in its development of management plans or work plans. In addition to other criteria, these measurable biological goals shall be used by the commission when evaluating existing and proposed protection rules, and in determining progress in achieving manatee recovery.

Section 18. Subsection (2) of section 327.41, Florida Statutes, is amended to read:

327.41 Uniform waterway regulatory markers.—

(2) Any county or municipality which has been granted a restricted area designation, pursuant to s. 327.46, for a portion of the Florida Intracoastal Waterway within its jurisdiction or which has adopted a restricted area by ordinance pursuant to s. 327.22, s. 327.60, or ~~s. 370.12(2)(p)~~ ~~s. 370.12(2)(e)~~, or any other governmental entity which has legally established a restricted area, may apply to the commission for permission to place regulatory markers within the restricted area.

Section 19. It is the intent of the Legislature that the commission request the necessary funding and staffing through a general revenue budget request to ensure that manatees receive the maximum protection possible. The Legislature recognizes that strong manatee protection depends upon consistently achieving a high degree of compliance with existing and future rules. The commission shall conduct standardized studies to determine levels of public compliance with manatee protection rules, and shall use the results of the studies, together with other relevant information, to develop and implement strategic law enforcement initiatives and boater education plans. Drawing upon information obtained from the compliance studies and the implementation of enforcement initiatives together with boater education plans, the commission shall identify any impediments in consistently achieving high levels of compliance, and adjust their enforcement and boater education efforts accordingly.

Section 20. The Legislature intends that the provisions of this act may not be retroactively applied to manatee protection rules existing or in the process of being adopted on the effective date of this act unless the Fish and Wildlife Conservation Commission proposes to amend or revise such rules after this act takes effect. Proposed rules that are currently subject to an administrative challenge pending as of February 12, 2002, are not subject to the provisions of this act unless a court or administrative hearing officer finds such proposed rule to be invalid and all appeals have been exhausted. Once such rules become final, any revisions or amendments of such rules shall be conducted pursuant to the provisions of this act.

Section 21. This act shall take effect July 1, 2002.

Approved by the Governor May 15, 2002.

Filed in Office Secretary of State May 15, 2002.