

CHAPTER 2016-208

Committee Substitute for Senate Bill No. 1470

An act relating to crustaceans; amending s. 379.365, F.S.; revising the administrative penalties for violations related to stone crab traps; amending s. 379.3671, F.S.; revising the administrative penalties for violations related to spiny lobster traps; amending s. 379.407, F.S.; prohibiting the possession of undersized spiny lobsters by certain persons; specifying that each undersized spiny lobster may be charged as a separate offense of certain violations; specifying maximum penalties for such violations; specifying the criminal and administrative penalties for violations related to undersized spiny lobsters; amending s. 921.0022, F.S.; revising the offense severity ranking chart to include certain violations related to stone crabs and spiny lobsters; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 379.365, Florida Statutes, is amended to read:

379.365 Stone crab; regulation.—

(2) PENALTIES.—For purposes of this subsection, conviction is any disposition other than acquittal or dismissal, regardless of whether the violation was adjudicated under any state or federal law.

(a) It is unlawful to violate commission rules regulating stone crab trap certificates and trap tags. ~~A No~~ person may not use an expired tag or a stone crab trap tag not issued by the commission or possess or use a stone crab trap in or on state waters or adjacent federal waters without having a trap tag required by the commission firmly attached thereto.

1. In addition to any other penalties provided in s. 379.407, for ~~a~~ any commercial harvester who violates this paragraph, the following administrative penalties apply:

a. For a first violation, the commission shall assess an additional administrative penalty of up to \$1,000.

b. For a second violation that occurs within 24 months after ~~of~~ any previous such violation, the commission shall assess an additional administrative penalty of up to \$2,000, and the stone crab endorsement under which the violation was committed may be suspended for 12 ~~calendar~~ months.

c. For a third violation that occurs within 36 months after ~~of~~ any two ~~two~~ previous such violations, the commission shall assess an additional administrative penalty of up to \$5,000, and the stone crab endorsement

under which the violation was committed may be suspended for 24 calendar months.

d. A fourth violation that occurs within 48 months after of any three previous such violations, shall result in permanent revocation of all of the violator's saltwater fishing privileges, including having the commission proceed against the endorsement holder's saltwater products license in accordance with s. 379.407.

2. Any other person who violates ~~the provisions of~~ this paragraph commits a Level Two violation under s. 379.401.

~~A~~ Any commercial harvester assessed an administrative penalty under this paragraph shall, within 30 calendar days after notification, pay the administrative penalty to the commission, or request an administrative hearing under ss. 120.569 and 120.57. The proceeds of all administrative penalties collected under this paragraph shall be deposited in the Marine Resources Conservation Trust Fund.

Section 2. Paragraph (c) of subsection (2) of section 379.3671, Florida Statutes, is amended to read:

379.3671 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:

(c) *Prohibitions; penalties.*—

1. ~~It is unlawful for~~ A person may not 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 may not 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 by commission rule.

2. ~~It is unlawful for~~ A person may not to possess or use spiny lobster trap tags without having the necessary number of certificates on record as required by this section.

3. ~~A~~ ~~It is unlawful for any~~ person may not to willfully molest, take possession of, or remove the contents of another harvester's spiny lobster trap without the express written consent of the trap owner available for immediate inspection. Unauthorized possession of another harvester's ~~another's~~ trap gear or removal of another harvester's trap contents constitutes theft.

a. A commercial harvester who violates this subparagraph shall be punished under ss. 379.367 and 379.407. A ~~Any~~ commercial harvester receiving a judicial disposition other than dismissal or acquittal on a charge of theft of or from a trap pursuant to this subparagraph or s. 379.402 shall, in addition to the penalties specified in ss. 379.367 and 379.407 and ~~the provisions of this section~~, permanently lose all ~~of his or her~~ saltwater fishing privileges, including his or her saltwater products license, spiny lobster endorsement, and all trap certificates allotted to him or her through this program. In such cases, trap certificates and endorsements are nontransferable.

b. A ~~Any~~ commercial harvester receiving a judicial disposition other than dismissal or acquittal on a charge of willful molestation of a trap, in addition to the penalties specified in ss. 379.367 and 379.407, shall lose all of his or her saltwater fishing privileges for a period of 24 calendar months.

c. ~~In addition to any other penalties specified in this subparagraph~~, a ~~any~~ commercial harvester charged with violating this subparagraph and receiving a judicial disposition other than dismissal or acquittal for violating this subparagraph or s. 379.402 shall also be assessed an administrative penalty of up to \$5,000.

Immediately upon receiving a citation for a violation involving theft of or from a trap, or molestation of a trap, and until adjudicated for such a violation or, upon receipt of a judicial disposition other than dismissal or acquittal of such a violation, the commercial harvester committing the violation is prohibited from transferring any of his or her spiny lobster trap certificates and endorsements.

4. In addition to any other penalties provided in s. 379.407, a commercial harvester who violates ~~the provisions of this section or commission rules~~ relating to spiny lobster traps shall be punished as follows:

a. If the first violation is for a violation of subparagraph 1. or subparagraph 2., the commission shall assess an additional administrative penalty of up to \$1,000. For all other first violations, the commission shall assess an additional administrative penalty of up to \$500.

b. For a second violation of subparagraph 1. or subparagraph 2. that ~~which~~ occurs within 24 months after ~~of~~ any previous such violation, the commission shall assess an additional administrative penalty of up to \$2,000, and the spiny lobster endorsement issued under s. 379.367(2) or (6) may be suspended for 12 months ~~the remainder of the current license year~~.

c. For a third ~~or subsequent~~ violation of subparagraph 1. or, subparagraph 2. that, ~~or~~ subparagraph 3. which occurs within 36 months after ~~of~~ any two previous ~~two~~ such violations, the commission shall assess an additional administrative penalty of up to \$5,000, and may suspend ~~may suspend~~ the spiny lobster endorsement issued under s. 379.367(2) or (6) for a period of up to 24 months ~~or may revoke the spiny lobster endorsement and, if~~

~~revoking the spiny lobster endorsement, may also proceed against the licenseholder's saltwater products license in accordance with the provisions of s. 379.407(2)(h).~~

d. A fourth violation that occurs within 48 months after any three previous such violations shall result in permanent revocation of all of the violator's saltwater fishing privileges, including having the commission proceed against the endorsement holder's saltwater products license in accordance with s. 379.407.

~~e.d. Within 30 days after notification, a~~ Any person assessed an additional administrative penalty pursuant to this section shall ~~within 30 calendar days after notification:~~

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

(II) Request an administrative hearing pursuant to ~~the provisions of ss.~~ 120.569 and 120.57.

f.e. The commission shall suspend the spiny lobster endorsement issued under s. 379.367(2) or (6) if a for any person fails failing to comply with the provisions of sub-subparagraph e. d.

5.a. ~~A It is unlawful for any person may not to~~ make, alter, forge, counterfeit, or reproduce a spiny lobster trap tag or certificate.

b. ~~A It is unlawful for any person may not to~~ knowingly have in his or her possession a forged, counterfeit, or imitation spiny lobster trap tag or certificate.

c. ~~A It is unlawful for any person may not 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. ~~A Any commercial harvester who violates the provisions of sub-paragraph 5., or a any commercial harvester who engages in the commercial harvest, trapping, or possession of spiny lobster without a spiny lobster endorsement as required by s. 379.367(2) or (6) or during any period while such spiny lobster endorsement 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 assess 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 a any commercial harvester who violates ~~the provisions of sub-subparagraph 5.c.~~

c. In addition to any penalty imposed pursuant to sub-subparagraph a., ~~a~~ any commercial harvester receiving any judicial disposition other than acquittal or dismissal for a violation of subparagraph 5. shall be assessed an administrative penalty of up to \$5,000, and the spiny lobster endorsement under which the violation was committed may be suspended for up to 24 calendar months. Immediately upon issuance of a citation involving a violation of subparagraph 5. and until adjudication of such a violation, and after receipt of any judicial disposition other than acquittal or dismissal for such a violation, the commercial harvester holding the spiny lobster endorsement listed on the citation is prohibited from transferring any spiny lobster trap certificates.

d. ~~A Any other~~ person who violates the provisions of subparagraph 5. commits a Level Four violation under s. 379.401.

7. ~~Before~~ Prior to the 2010-2011 license year, 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. Beginning with the 2010-2011 license year, any certificate for which the annual certificate fee is not paid for a period of 2 consecutive 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 administrative 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.

10. Except as otherwise provided, ~~a~~ any person who violates this paragraph commits a Level Two violation under s. 379.401.

Section 3. Subsection (5) of section 379.407, Florida Statutes, is amended to read:

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

(5) PENALTIES FOR POSSESSION OF SPINY LOBSTER; CLOSED SEASON AND WRUNG TAILS.—

(a) It is a major violation under this section for any person, firm, or corporation to be in possession of spiny lobster during the closed season or, while on the water, to be in possession of spiny lobster tails that have been wrung or separated from the body, unless such possession is allowed by

commission rule. A Any person, firm, or corporation that violates this paragraph subsection is subject to the following penalties as follows:

1.(a) A first violation is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. If the violation involves 25 or more lobster, the violation is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2.(b) A second violation is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and such person is subject to a suspension of his or her all license privileges under this chapter for a period not to exceed 90 days.

3.(e) A third violation is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, with a mandatory minimum term of imprisonment of 6 months, and such person may be assessed a civil penalty of up to \$2,500 and is subject to a suspension of all license privileges under this chapter for a period not to exceed 6 months.

4.(d) A third violation within 1 year after a second violation is a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083, with a mandatory minimum term of imprisonment of 1 year, and such person shall be assessed a civil penalty of \$5,000 and all license privileges under this chapter shall be permanently revoked.

5.(e) A fourth or subsequent violation is a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083, with a mandatory minimum term of imprisonment of 1 year, and such person shall be assessed a civil penalty of \$5,000 and all license privileges under this chapter shall be permanently revoked.

(b) It is a major violation under this section for a recreational or commercial harvester to possess an undersized spiny lobster, unless authorized by commission rule. For violations of this paragraph involving fewer than 100 undersized spiny lobsters, each undersized spiny lobster may be charged as a separate offense under subparagraphs 1. and 2. However, the total penalties assessed under subparagraphs 1. and 2. for any one scheme or course of conduct may not exceed 4 years' imprisonment and a fine of \$4,000 under such subparagraphs. A person who violates this paragraph is subject to the following penalties:

1. A first violation is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

2. A second or subsequent violation is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

3. If a violation involves 100 or more undersized spiny lobsters, the violation is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 and a mandatory civil fine of at least \$500. In addition, the commission shall assess the violator with an administrative

penalty of up to \$2,000 and may suspend the violator’s license privileges under this chapter for a period of up to 12 months.

Section 4. Paragraph (e) of subsection (3) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(e) LEVEL 5

Florida Statute	Felony Degree	Description
316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
<u>379.365(2)(c)1.</u>	<u>3rd</u>	<u>Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.</u>
379.367(4)	3rd	Willful molestation of a commercial harvester’s spiny lobster trap, line, or buoy.
379.3671(2)(c)3.	3rd	Willful molestation, possession, or removal of a commereial harvester’s trap contents or trap gear by another harvester.
<u>379.407(5)(b)3.</u>	<u>3rd</u>	<u>Possession of 100 or more undersized spiny lobsters.</u>

Florida Statute	Felony Degree	Description
381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
790.01(2)	3rd	Carrying a concealed firearm.
790.162	2nd	Threat to throw or discharge destructive device.
790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.

Florida Statute	Felony Degree	Description
812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
812.019(1)	2nd	Stolen property; dealing in or trafficking in.
812.131(2)(b)	3rd	Robbery by sudden snatching.
812.16(2)	3rd	Owning, operating, or conducting a chop shop.
817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more persons.
817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.

Florida Statute	Felony Degree	Description
839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
843.01	3rd	Resist officer with violence to person; resist arrest with violence.
847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
847.0137(2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
847.0138(2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.
893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.

Florida Statute	Felony Degree	Description
893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.
893.13(4)(b)	2nd	Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

Section 5. This act shall take effect October 1, 2016.

Approved by the Governor April 8, 2016.

Filed in Office Secretary of State April 8, 2016.