

# Florida Fish and Wildlife Conservation Commission

*FWC staff will recommend some changes to the Commission at their November meeting regarding the proposals for unlicensed commercial fishing, including sale/purchase (see bold italic).*

## **Penalties for Unlicensed Sale/Purchase of Marine Fish**

Agreed upon at October 21, 2002, meeting

### **By Those Who Are Unlicensed**

1<sup>st</sup> violation – 2<sup>nd</sup> degree misdemeanor (up to \$500 fine and 60 days in county jail)

2<sup>nd</sup> violation – 1<sup>st</sup> degree misdemeanor (up to \$1000 fine and 1 year in county jail), \$2500 civil fine, 90-day suspension of all commercial and recreational licenses

3<sup>rd</sup> violation – 1<sup>st</sup> degree misdemeanor (up to \$1000 fine and 1 year in county jail), \$5000 civil fine, 6-month suspension of all commercial and recreational licenses, minimum mandatory 6 months in jail

3<sup>rd</sup> violation, if within 1 year of 2<sup>nd</sup> violation – same penalty as 4<sup>th</sup> violation

4<sup>th</sup> violation – 3<sup>rd</sup> degree felony (up to \$5000 fine or 5 years in correctional facility), \$5000 civil fine, permanent revocation of all commercial and recreational licenses, minimum mandatory 1 year in jail

***After internal conversations with Legal, Law Enforcement, and the Division of Marine Fisheries, FWC staff felt that allowing an “up to” standard for civil fines (2<sup>nd</sup> and 3<sup>rd</sup> violations) and a “may” standard for suspension of licenses would allow for individual circumstances to be taken into consideration.***

***Staff will recommend to the Commission that the civil fine be an “up to” standard and that the suspension of licenses (2<sup>nd</sup> and 3<sup>rd</sup> violations) be a “may” standard.***

### **By Those Whose Commercial and Recreational Licenses Have Been Revoked**

3<sup>rd</sup> degree felony (up to \$5000 fine or 5 years in correctional facility), \$5000 civil fine, forfeiture of property as per s. 370.061, F.S, minimum mandatory 1 year in correctional facility

## **By Those Whose Commercial and Recreational Licenses Have Been Suspended**

1<sup>st</sup> violation – 1<sup>st</sup> degree misdemeanor (up to \$1000 fine and 1 year in county jail); Commission may assess a civil penalty up to \$2500, and may suspend any commercial and recreational license up to 90 days;

2<sup>nd</sup> violation occurring within 12 months of prior violation – 3<sup>rd</sup> degree felony (up to \$5000 fine or 5 years in correctional facility); \$5000 civil fine, forfeiture of property as per s. 370.061, F.S, minimum mandatory 1 year in correctional facility; Commission may assess a civil penalty up to \$5000, and may suspend any commercial and recreational license up to 180 days;

3<sup>rd</sup> or subsequent violation occurring within a 24-month period – 3<sup>rd</sup> degree felony (up to \$5000 fine or 5 years in correctional facility), \$5000 civil fine, forfeiture of property as per s. 370.061, F.S, minimum mandatory 1 year in correctional facility Commission shall assess civil penalty of \$5000, and shall suspend any commercial and recreational license for up to 24 months;

## **Penalties for Unlicensed Commercial Fishing of Marine Fish**

Draft concept as per discussion at October 21, 2002 meeting; drafted by FWC staff –

**It is illegal for a person without the requisite commercial licenses and applicable endorsements to harvest or attempt to harvest marine fish with the intent to sell. There is a presumption of intent to sell if the person is in the simultaneous possession of a commercial quantity of saltwater products, as defined in s. 370.06(2)(i), and any gill or entangling net, seine, trawl, or trap. There is no violation of this section for the harvest of non-indigenous marine species.**

Penalties (same as those for unlicensed sale/purchase):

1<sup>st</sup> violation – 2<sup>nd</sup> degree misdemeanor (up to \$500 fine and 60 days in county jail)

2<sup>nd</sup> violation – 1<sup>st</sup> degree misdemeanor (up to \$1000 fine and 1 year in county jail), \$2500 civil fine, 90-day suspension of all Ch. 370 and Ch. 372 licenses

3<sup>rd</sup> violation – 1<sup>st</sup> degree misdemeanor (up to \$1000 fine and 1 year in county jail), \$5000 civil fine, 6-month suspension of all Ch. 370 and 372 licenses, minimum mandatory 6 months in jail

3<sup>rd</sup> violation, if within 1 year of 2nd violation – same penalty as 4<sup>th</sup> violation

4<sup>th</sup> violation – 3<sup>rd</sup> degree felony (up to \$5000 fine or 5 years in correctional facility), \$5000 civil fine, permanent revocation of all Ch. 370 and 372 licenses, minimum mandatory 1 year in jail.

***After internal conversations with Legal, Law Enforcement, and the Division of Marine Fisheries, FWC staff felt that defining the “presumption of intent to sell” would limit the cases that could be made. Staff, who are former prosecutors, also believe that the courts would be reluctant to convict if there was only one fish over the bag limit.***

***FWC staff will recommend to the Commission that the 2<sup>nd</sup> and 3<sup>rd</sup> sentences from the statement be deleted. These deal with defining a presumption of “intent to sell” as having possession of a commercial quantity of saltwater products and specified gear. Deleting these sentences would give the officer more flexibility to assess the situation to determine if the “intent to sell” standard has been met and would more likely result in a conviction.***

***The comment from Bob Jones regarding adding “rod and reel” to the listed gear becomes moot, if these two sentences are deleted.***