

2016 Session Legislative Proposal



September 2, 2015
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Recreational Penalties

Background

- Recreational penalties last reviewed in 2006
- Current effort – review all recreational penalties pertaining to hunting, freshwater fishing, and saltwater fishing:
 - To ensure consistency in penalties for similar violations
 - Appropriate for violation and for conserving the resource
 - Effective at serving as a deterrent
 - 1 year, 16 meetings, 16 staff
 - 5 years of citations
 - Other states' penalties



The legislative proposal for Commission consideration for the agency to submit to the Legislature during the 2016 Session pertains to modifying some recreational hunting and fishing penalties. The penalties were last reviewed in 2006.

The current effort was to determine whether the penalties were: 1) consistent among similar wildlife, freshwater fish, and saltwater fish violations; 2), appropriate for the offense; and 3) and effective at serving as a deterrent.

The current review included 16 staffers, meeting 16 times over the course of a full year. Staff used the following in the analysis: 1) reviewed the citations issued over five years; and 2) reviewed penalties from other states.

Recreational Penalties

Current Penalty Structure

- **Noncriminal Infractions; increased penalties for repeat offenders**
 - Example violations – hunting/fishing licenses, wildlife management area rules
- **2nd degree misdemeanors; increased penalties for repeat offenders**
 - Example violations – bag limits, methods of take, seasons, tagging requirements, bird sanctuaries, default penalty
- **1st degree misdemeanors; increased penalties for repeat offenders**
 - Example violations – illegal take of deer/turkey during closed season or at night w/gun and light, illegal sale of saltwater fish/alligators, hunting/fishing with suspended license
- **3rd degree felony**
 - Example violations – killing endangered species, sale of illegally taken deer/turkey, counterfeiting licenses



Most of the Commission's current non-boating recreational fish and wildlife violations are included in a four-tier penalty structure, found in s. 379.401, F.S. The penalty levels increase in severity as the violations become more egregious.

Non-criminal infractions - include for example hunting and fishing license violations, and violations pertaining to camping, vehicle use, or use of alcohol on wildlife management areas. The first time offender is fined \$50, except when it is a licensing violation. First time licensing violators receive a fine of \$50 plus the price of the license, but they do not receive a license. There are increased penalties (fines) for repeat offenders.

2nd degree misdemeanors - include for example, bag and slot limits, method of take, seasons, and other violations that impact fish and wildlife resources. This is also the default penalty – for any violation that does not have a specific penalty assigned, the penalty defaults to a 2nd degree misdemeanor. A 2nd degree misdemeanor is punishable by up to 60 days in jail and/or up to \$500 fine, at the judge's discretion. There are increased penalties for repeat offenders.

1st degree misdemeanors - include for example, illegal take of deer, turkey, and alligators; illegal sale or importation of fish and wildlife; and hunting or fishing while a license or permit is suspended. A 1st degree misdemeanor is punishable by up to 1 year in jail and/or up to \$1,000 fine, at the judge's discretion. There are increased penalties for repeat offenders.

3rd degree felonies - include for example, killing endangered species, the sale of illegally taken deer or turkey, and counterfeiting hunting and fishing licenses. A 3rd degree felony is punishable by up to 5 years in prison and/or up to \$5,000 fine, at the discretion of the judge.

Recreational Penalties

Proposed Changes

- Increase the current additional fine for illegally taking game or fur-bearing animals, while trespassing:
 - from \$250 to \$500 per violation
 - add all wildlife and fish to the list of species affected
- Allow violators of licensing provisions a new option to pay the fine and purchase the appropriate license
 - current penalty of paying the \$50 fine plus the price of the license would still be available
- Increase the current fine for repeat offenders for any non-criminal infraction violation within 3 years- from \$100 to \$250



The proposed changes follow:

Currently, the law provides that violators who illegally kill, take, possess, or sell game or fur-bearing animals, while trespassing, shall be fined an additional \$250 per offense. The proposal would increase the penalty from \$250 to \$500 per violation, and include all species of wildlife and freshwater fish. Staff believes that this change may serve as more of a deterrent for fish and wildlife crimes on private and public lands.

The next component deals with violations of licensing provisions. Currently, when an individual does not possess a required license or permit, the fine for a first time offender is \$50 plus the price of the license; however, the offender does not receive a license – just pays the price of the license as part of the fine. This category of offenses is by far the largest for the Commission, with over 21,000 citations issued in a 5-year period. With the ultimate goal of bringing people into compliance, this proposal would allow licensing violators a new option - to pay a \$50 fine, plus purchase the required license. The current law of paying the fine amount of \$50 plus the price of the license would remain – it would be the decision of the violator.

The next proposal increases the fine to \$250 for repeat offenders of any non-criminal infraction if it occurs within 3 years. The current fine is \$100. This amount is expected to serve as more of a deterrent for a repeat offender and is more in line with other states' penalties.

Recreational Penalty Proposal

Proposed Decreases

- Reduce the penalty from 2nd degree misdemeanor to non-criminal infraction for:
 - Not reporting alligator harvest information
 - Not returning unused CITES tags by recreational hunters and contracted nuisance alligator trappers



The next set of proposals deal with decreasing penalties for alligator harvest reporting requirements:

Currently, it is a 2nd degree misdemeanor if an individual does not provide the Commission with information related to their alligator harvest. This penalty was assigned in the 1980s, and is believed to be too strong. The proposal reduces the penalty to a non-criminal infraction.

Also proposed is a reduction in the penalty for failing to return unused CITES tags by the recreational hunter and the contracted nuisance alligator hunter. The current penalty is also a 2nd degree misdemeanor. The proposal is to reduce the penalty for to a non-criminal infraction. Commercial harvesters who fail to return their unused CITES tags would still be cited with a 2nd degree misdemeanor.

Recreational Penalty Proposal

Proposed Changes for Consistency

- Make penalties for Wildlife Management Areas on U.S. forest lands consistent with penalties of all other Wildlife Management Areas
 - Approved by U.S. Forest Service
- Increase the penalty for the sale of tarpon from a 2nd degree misdemeanor to a 1st degree misdemeanor
 - consistent with the penalty for selling other saltwater fish, when sale is prohibited



The next two slides set penalty changes to provide consistency among fish and wildlife violations:

FWC, in cooperation with the U.S. Forest Service, has established Wildlife Management Areas (WMA) on some U.S. forest lands. The current penalty for any violations on these WMAs is a 2nd degree misdemeanor. Yet, the penalties for violations on all other WMAs are either non-criminal infractions or 2nd degree misdemeanors, depending on the severity of the offense. This inconsistency results in stiffer penalties on U.S. Forest lands. The proposal makes the penalties for U.S. Forest WMAs the same as all other WMAs. The U.S. Forest Service supports this change.

Selling tarpon, which is prohibited, results in a 2nd degree misdemeanor penalty. Selling other marine fish species, when sale is prohibited, however, is a 1st degree misdemeanor. For consistency, the proposal increases the penalty for selling tarpon to a 1st degree misdemeanor.

Recreational Penalty Proposal

Proposed Changes for Consistency, cont'd.

- Increase the penalty for “changing” or “altering” a recreational license to a 3rd degree felony from a 2nd degree misdemeanor
 - consistent with the penalty for forging or counterfeiting a recreational license
- Provide consistency among 2nd degree misdemeanor penalties by providing increased penalties for repeat offenders



If an individual counterfeits a hunting or fishing license, it is a 3rd degree felony. “Changing” or “altering” a license, however, is a description in the prohibition for transferring a license, and results in a 2nd degree misdemeanor. Recognizing that “changing” or “altering” is more synonymous with counterfeiting, the proposal moves those two descriptions to the counterfeit prohibition, thus increasing the penalty to a 3rd degree felony.

Statutory violations of the laws pertaining to control/management of state lands, and pertaining to the sale of hunting/fishing licenses by subagents, assign a 2nd degree misdemeanor as the penalty. They do not provide increased penalties for repeat offenders. For consistency, the proposal would provide increased penalties for repeat offenders.

Recreational Penalty Proposal

Proposed Changes for Clarification and to Clean Up Outdated Language

- Repeal commercial saltwater fishing penalties from recreational penalty statute:
 - Illegal sale, purchase, or harvest of saltwater products
 - Use of stone crab, or lobster traps without tags/certificates
- Clarify that when spearfishing is allowed (such as lionfish), there is no violation of law
- Clarify that violations of the unlawful use of any fish or wildlife traps (unless otherwise provided), is a 2nd degree misdemeanor
- Clean up outdated references, outdated language, and provide cross references



The final changes would be for clarification and to clean up outdated language:

The proposal would repeal commercial saltwater fishing violations from the recreational penalty statute. Those violations – the illegal sale, purchase, or harvest of saltwater products, and the use of stone crab and lobster tags – are already in the commercial saltwater penalty statute. The effect is cleaning up statutory language, since citations are issued under the commercial saltwater fishing penalty statute.

The proposal would clarify that when spearfishing is generally not allowed in an area to fish, but is allowed to fish for certain species, such as lionfish, there is no violation of law.

The proposal would clarify in one location that the unlawful use of any traps – whether saltwater, freshwater, or wildlife, is a 2nd degree misdemeanor. Currently, the law specifically references in one location that the unlawful use of finfish traps is a 2nd degree misdemeanor. In another location, illegal use of all other types of traps, is assigned a 2nd degree misdemeanor penalty. This change will make the law clear, in one location, for the public.

Finally, the proposal would clean up outdated references to other laws, outdated language, and provide cross references.

2016 Session Proposals

Boating Advisory Council -

May submit a legislative proposal at the
November Commission meeting



Staff Recommendation

- Approve recreational penalties proposal to be submitted to the Legislature for the 2016 Legislative Session
- Authorize Executive Director in consultation with the Chairman to make adjustments on these proposals and advise on other legislation, as needed, through the 2016 Legislative Session



Staff recommends that the recreational penalties proposal be approved for submission to the Legislature for the 2016 Session.

In addition, staff requests that the Executive Director, in consultation with the Chairman, be allowed to make adjustments on these proposals and advise staff on other legislation, as needed, through the 2016 Session.