

(c) *Class III*—All other wildlife not included in Class I or Class II, for which a no-cost permit must be obtained from the commission.

(3) Any person, firm, corporation, or association exhibiting or selling wildlife and being duly permitted as provided by s. 379.304 shall be exempt from the fee requirement to receive a permit under this section.

(4) This section shall not apply to the possession, control, care, and maintenance of ostriches, emus, rheas, and bison domesticated and confined for commercial farming purposes, except those kept and maintained on hunting preserves or game farms or primarily for exhibition purposes in zoos, carnivals, circuses, and other such establishments where such species are kept primarily for display to the public.

(5) A person who violates this section is punishable as provided in s. 379.4015.

History.—s. 1, ch. 74-309; s. 9, ch. 91-134; s. 3, ch. 93-223; s. 591, ch. 95-148; s. 174, ch. 99-245; s. 34, ch. 2002-46; s. 10, ch. 2003-151; s. 3, ch. 2005-210; s. 165, ch. 2008-247; s. 40, ch. 2009-86; s. 14, ch. 2010-185.

Note.—Former s. 372.922(1), (2), (5)-(7).

379.377 Tag fees for sale of Lake Okeechobee game fish.—The commission is authorized to assess a fee of not more than 5 cents per tag, payable at the time of delivery of the tag, for the purpose of allowing the sale of game fish taken commercially from Lake Okeechobee, as may be allowed by the commission.

History.—s. 1, ch. 76-216; s. 140, ch. 99-245; s. 166, ch. 2008-247.

Note.—Former s. 372.653.

PART VIII PENALTIES

379.401 Penalties and violations; civil penalties for noncriminal infractions; criminal penalties; suspension and forfeiture of licenses and permits.

379.4015 Nonnative and captive wildlife penalties.

379.402 Definition; possession of certain licensed traps prohibited; penalties; exceptions; consent.

379.404 Illegal taking and possession of deer and wild turkey; evidence; penalty.

379.405 Illegal molestation of or theft from freshwater fishing gear.

379.406 Illegal possession or transportation of freshwater game fish in commercial quantities; penalty.

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

379.408 Forfeiture or denial of licenses and permits.

379.409 Illegal killing, possessing, or capturing of alligators or other crocodilia or eggs; confiscation of equipment.

379.411 Intentional killing or wounding of any species designated as endangered, threatened, or of special concern; penalties.

379.4115 Florida or wild panther; killing prohibited; penalty.

379.412 Penalties for feeding wildlife and freshwater fish.

379.413 Bonefish; penalties.

379.414 Additional penalties for saltwater products dealers violating records requirements.

379.501 Aquatic weeds and plants; prohibitions; violations; penalties; intent.

379.502 Enforcement; procedure; remedies.

379.503 Civil action.

379.504 Civil liability; joint and several liability.

379.401 Penalties and violations; civil penalties for noncriminal infractions; criminal penalties; suspension and forfeiture of licenses and permits.—

(1) LEVEL ONE VIOLATIONS.—

(a) A person commits a Level One violation if he or she violates any of the following provisions:

1. Rules or orders of the commission relating to the filing of reports or other documents required to be filed by persons who hold any recreational licenses and permits or any alligator licenses and permits issued by the commission.

2. Rules or orders of the commission relating to quota hunt permits, daily use permits, hunting zone assignments, camping, alcoholic beverages, vehicles, and check stations within wildlife management areas or other areas managed by the commission.

3. Rules or orders of the commission relating to daily use permits, alcoholic beverages, swimming, possession of firearms, operation of vehicles, and watercraft speed within fish management areas managed by the commission.

4. Rules or orders of the commission relating to vessel size or specifying motor restrictions on specified water bodies.

5. Rules or orders of the commission requiring the return of unused CITES tags issued under the Statewide Alligator Harvest Program or the Statewide Nuisance Alligator Program.

6. Section 379.3003, prohibiting deer hunting unless required clothing is worn.

7. Section 379.354(1)-(15), providing for recreational licenses to hunt, fish, and trap.

8. Section 379.3581, providing hunter safety course requirements.

(b) A person who commits a Level One violation commits a noncriminal infraction and shall be cited to appear before the county court.

(c)1. The civil penalty for committing a Level One violation involving the license and permit requirements of s. 379.354 is \$50 plus the cost of the license or permit, unless subparagraph 2. applies. Alternatively, except for a person who violates s. 379.354(6), (7), or (8)(f) or (h), a person who violates the license and permit requirements of s. 379.354 and is subject to the penalties of this subparagraph may purchase the license or permit, provide proof of such license or permit, and pay a civil penalty of \$50.

2. The civil penalty for committing a Level One violation involving the license and permit requirements of s. 379.354 is \$250 plus the cost of the license or permit if the person cited has previously committed the same Level One violation within the preceding 36 months. Alternatively, except for a person who violates s. 379.354(6), (7), or (8)(f) or (h), a person who violates the license and permit requirements of s. 379.354 and is subject to the penalties of this subparagraph may purchase the license or permit, provide proof of such license or permit, and pay a civil penalty of \$250.

(d)1. The civil penalty for any other Level One violation is \$50 unless subparagraph 2. applies.

2. The civil penalty for any other Level One violation is \$250 if the person cited has previously committed the same Level One violation within the preceding 36 months.

(e) A person cited for a Level One violation shall sign and accept a citation to appear before the county court. The issuing officer may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.

(f) A person cited for a Level One violation may pay the civil penalty, and, if applicable, provide proof of the license or permit required under s. 379.354 by mail or in person within 30 days after receipt of the citation. If the civil penalty is paid, the person shall be deemed to have admitted committing the Level One violation and to have waived his or her right to a hearing before the county court. Such admission may not be used as evidence in any other proceedings except to determine the appropriate fine for any subsequent violations.

(g) A person who refuses to accept a citation, who fails to pay the civil penalty for a Level One violation, or who fails to appear before a county court as required commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(h) A person who elects to appear before the county court or who is required to appear before the county court shall be deemed to have waived the limitations on civil penalties provided under paragraphs (c) and (d). After a hearing, the county court shall determine if a Level One violation has been committed, and if so, may impose a civil penalty of not less than \$50 for a first-time violation, and not more than \$500 for subsequent violations. A person found guilty of committing a Level One violation may appeal that finding to the circuit court. The commission of a violation must be proved beyond a reasonable doubt.

(i) A person cited for violating the requirements of s. 379.354 relating to personal possession of a license or permit may not be convicted if, before or at the time of a county court hearing, the person produces the required license or permit for verification by the hearing officer or the court clerk. The license or permit must have been valid at the time the person was cited. The clerk or hearing officer may assess a \$10 fee for costs under this paragraph.

(2) LEVEL TWO VIOLATIONS.—

(a) A person commits a Level Two violation if he or she violates any of the following provisions:

1. Rules or orders of the commission relating to seasons or time periods for the taking of wildlife, freshwater fish, or saltwater fish.
2. Rules or orders of the commission establishing bag, possession, or size limits or restricting methods of taking wildlife, freshwater fish, or saltwater fish.
3. Rules or orders of the commission prohibiting access or otherwise relating to access to wildlife management areas or other areas managed by the commission.
4. Rules or orders of the commission relating to the feeding of saltwater fish.
5. Rules or orders of the commission relating to landing requirements for freshwater fish or saltwater fish.
6. Rules or orders of the commission relating to restricted hunting areas, critical wildlife areas, or bird sanctuaries.
7. Rules or orders of the commission relating to tagging requirements for wildlife and fur-bearing animals.
8. Rules or orders of the commission relating to the use of dogs for the taking of wildlife.
9. Rules or orders of the commission which are not otherwise classified.
10. Rules or orders of the commission prohibiting the unlawful use of traps, unless otherwise provided by law.
11. Rules or orders of the commission requiring the maintenance of records relating to alligators.
12. Rules or orders of the commission requiring the return of unused CITES tags issued under an alligator program other than the Statewide Alligator Harvest Program or the Statewide Nuisance Alligator Program.
13. All requirements or prohibitions under this chapter which are not otherwise classified.
14. Section 379.105, prohibiting the intentional harassment of hunters, fishers, or trappers.
15. Section 379.2421, relating to fishers and equipment.
16. Section 379.2425, relating to spearfishing.
17. Section 379.29, prohibiting the contamination of fresh waters.
18. Section 379.295, prohibiting the use of explosives and other substances or force in fresh waters.
19. Section 379.3502, prohibiting the loan or transfer of a license or permit and the use of a borrowed or transferred license or permit.
20. Section 379.3503, prohibiting false statements in an application for a license or permit.
21. Section 379.3504, prohibiting entering false information on licenses or permits.
22. Section 379.3511, relating to the sale of hunting, fishing, and trapping licenses and permits by subagents.
23. Section 379.357(3), prohibiting the taking, killing, or possession of tarpon without purchasing a tarpon tag.
24. Section 379.363, relating to freshwater fish dealer licenses.
25. Section 379.364, relating to fur and hide dealer licenses.
26. Section 379.365(2)(b), prohibiting the theft of stone crab trap contents or trap gear.
27. Section 379.366(4)(b), prohibiting the theft of blue crab trap contents or trap gear.
28. Section 379.3671(2)(c), except s. 379.3671(2)(c)5., prohibiting the theft of spiny lobster trap contents or trap gear.
29. Section 379.3751, relating to licenses for the taking and possession of alligators.
30. Section 379.3752, relating to tagging requirements for alligators and hides.
31. Section 379.413, prohibiting the unlawful taking of bonefish.

(b)1. A person who commits a Level Two violation but who has not been convicted of a Level Two or higher violation within the past 3 years commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

2. Unless the stricter penalties in subparagraph 3. or subparagraph 4. apply, a person who commits a Level Two violation within 3 years after a previous conviction for a Level Two or higher violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, with a minimum mandatory fine of \$250.

3. Unless the stricter penalties in subparagraph 4. apply, a person who commits a Level Two violation within 5 years after two previous convictions for a Level Two or higher violation, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, with a minimum mandatory fine of \$500 and a suspension of any recreational license or permit issued under s. 379.354 for 1 year. Such suspension shall include the suspension of the

privilege to obtain such license or permit and the suspension of the ability to exercise any privilege granted under any exemption in s. 379.353.

4. A person who commits a Level Two violation within 10 years after three previous convictions for a Level Two or higher violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, with a minimum mandatory fine of \$750 and a suspension of any recreational license or permit issued under s. 379.354 for 3 years. Such suspension shall include the suspension of the privilege to obtain such license or permit and the suspension of the ability to exercise any privilege granted under s. 379.353. If the recreational license or permit being suspended was an annual license or permit, any privileges under ss. 379.353 and 379.354 may not be acquired for a 3-year period following the date of the violation.

(3) LEVEL THREE VIOLATIONS.—

(a) A person commits a Level Three violation if he or she violates any of the following provisions:

1. Rules or orders of the commission prohibiting the sale of saltwater fish.
2. Rules or orders of the commission prohibiting the illegal importation or possession of exotic marine plants or animals.
3. Section 379.28, prohibiting the importation of freshwater fish.
4. Section 379.3014, prohibiting the illegal sale or possession of alligators.
5. Section 379.354(17), prohibiting the taking of game, freshwater fish, or saltwater fish while a required license is suspended or revoked.
6. Section 379.357(4), prohibiting the sale, transfer, or purchase of tarpon.
7. Section 379.404(1), (3), and (6), prohibiting the illegal taking and possession of deer and wild turkey.
8. Section 379.406, prohibiting the possession and transportation of commercial quantities of freshwater game fish.
9. Section 379.407(2), establishing major violations.
10. Section 379.407(4), prohibiting the possession of certain finfish in excess of recreational daily bag limits.

(b)1. A person who commits a Level Three violation but who has not been convicted of a Level Three or higher violation within the past 10 years commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. A person who commits a Level Three violation within 10 years after a previous conviction for a Level Three or higher violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, with a minimum mandatory fine of \$750 and a suspension of any recreational license or permit issued under s. 379.354 for the remainder of the period for which the license or permit was issued up to 3 years. Such suspension shall include the suspension of the privilege to obtain such license or permit and the ability to exercise any privilege granted under s. 379.353. If the recreational license or permit being suspended was an annual license or permit, any privileges under ss. 379.353 and 379.354 may not be acquired for a 3-year period following the date of the violation.

3. A person who commits a violation of s. 379.354(17) shall receive a mandatory fine of \$1,000. Any privileges under ss. 379.353 and 379.354 may not be acquired for a 5-year period following the date of the violation.

(4) LEVEL FOUR VIOLATIONS.—

(a) A person commits a Level Four violation if he or she violates any of the following provisions:

1. Section 379.354(16), prohibiting the making, forging, counterfeiting, or reproduction of a recreational license or the possession of same without authorization from the commission.
2. Section 379.365(2)(c), prohibiting criminal activities relating to the taking of stone crabs.
3. Section 379.366(4)(c), prohibiting criminal activities relating to the taking and harvesting of blue crabs.
4. Section 379.367(4), prohibiting the willful molestation of spiny lobster gear.
5. Section 379.3671(2)(c)5., prohibiting the unlawful reproduction, possession, sale, trade, or barter of spiny lobster trap tags or certificates.
6. Section 379.404(5), prohibiting the sale of illegally-taken deer or wild turkey.
7. Section 379.405, prohibiting the molestation or theft of freshwater fishing gear.
8. Section 379.409, prohibiting the unlawful killing, injuring, possessing, or capturing of alligators or other crocodilia or their eggs.

9. Section 379.411, prohibiting the intentional killing or wounding of any species designated as endangered, threatened, or of special concern.

10. Section 379.4115, prohibiting the killing of any Florida or wild panther.

(b) A person who commits a Level Four violation commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) **ILLEGAL ACTIVITIES WHILE COMMITTING TRESPASS.**—In addition to any other penalty provided by law, a person who violates the criminal provisions of this chapter or rules or orders of the commission by illegally killing, taking, possessing, or selling fish and wildlife in or out of season while violating chapter 810 shall pay a fine of \$500 for each such violation, plus court costs and any restitution ordered by the court. All fines collected under this subsection shall be remitted by the clerk of the court to the Department of Revenue to be deposited into the State Game Trust Fund.

(6) **SUSPENSION OR FORFEITURE OF LICENSE.**—The court may order the suspension or forfeiture of any license or permit issued under this chapter to a person who is found guilty of committing a violation of this chapter.

(7) **CONVICTION DEFINED.**—As used in this section, the term “conviction” means any judicial disposition other than acquittal or dismissal.

History.—s. 6, ch. 21945, 1943; s. 1, ch. 23750, 1947; s. 11, ch. 25035, 1949; s. 9, ch. 26766, 1951; s. 7, ch. 69-216; s. 316, ch. 71-136; s. 3, ch. 91-134; s. 586, ch. 95-148; s. 40, ch. 2000-362; s. 32, ch. 2002-46; s. 20, ch. 2006-304; s. 22, ch. 2007-223; s. 37, ch. 2008-111; s. 168, ch. 2008-247; s. 41, ch. 2009-86; s. 5, ch. 2010-185; s. 2, ch. 2014-107; s. 14, ch. 2014-136; s. 11, ch. 2015-161; s. 20, ch. 2016-107.

Note.—Former s. 372.83.

379.4015 Nonnative and captive wildlife penalties.—

(1) **LEVEL ONE.**—Unless otherwise provided by law, the following classifications and penalties apply:

(a) A person commits a Level One violation if he or she violates any of the following provisions:

1. Rules or orders of the commission requiring free permits or other authorizations to possess captive wildlife.
2. Rules or orders of the commission relating to the filing of reports or other documents required of persons who are licensed to possess captive wildlife.
3. Rules or orders of the commission requiring permits to possess captive wildlife for which a fee is charged, when the person being charged was issued the permit and the permit has expired less than 1 year prior to the violation.

(b) Any person cited for committing any offense classified as a Level One violation commits a noncriminal infraction, punishable as provided in this section.

(c) Any person cited for committing a noncriminal infraction specified in paragraph (a) shall be cited to appear before the county court. The civil penalty for any noncriminal infraction is \$50 if the person cited has not previously been found guilty of a Level One violation and \$250 if the person cited has previously been found guilty of a Level One violation, except as otherwise provided in this subsection. Any person cited for failing to have a required permit or license shall pay an additional civil penalty in the amount of the license fee required.

(d) Any person cited for an infraction under this subsection may:

1. Post a bond, which shall be equal in amount to the applicable civil penalty; or
2. Sign and accept a citation indicating a promise to appear before the county court. The officer may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.

(e) Any person charged with a noncriminal infraction under this subsection may:

1. Pay the civil penalty, either by mail or in person, within 30 days after the date of receiving the citation; or
2. If the person has posted bond, forfeit bond by not appearing at the designated time and location.

(f) If the person cited follows either of the procedures in subparagraph (e)1. or subparagraph (e)2., he or she shall be deemed to have admitted the infraction and to have waived his or her right to a hearing on the issue of commission of the infraction. Such admission shall not be used as evidence in any other proceedings except to determine the appropriate fine for any subsequent violations.

(g) Any person who willfully refuses to post bond or accept and sign a summons commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Any person who fails to pay the civil penalty specified in this subsection within 30 days after being cited for a noncriminal infraction or to appear before the court

pursuant to this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(h) Any person electing to appear before the county court or who is required to appear shall be deemed to have waived the limitations on the civil penalty specified in paragraph (c). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven, the court may impose a civil penalty not less than those amounts in paragraph (c) and not to exceed \$500.

(i) At a hearing under this chapter, the commission of a charged infraction must be proved beyond a reasonable doubt.

(j) If a person is found by the hearing official to have committed an infraction, she or he may appeal that finding to the circuit court.

(2) LEVEL TWO.—Unless otherwise provided by law, the following classifications and penalties apply:

(a) A person commits a Level Two violation if he or she violates any of the following provisions:

1. Unless otherwise stated in subsection (1), rules or orders of the commission that require a person to pay a fee to obtain a permit to possess captive wildlife or that require the maintenance of records relating to captive wildlife.

2. Rules or orders of the commission relating to captive wildlife not specified in subsection (1) or subsection (3).

3. Rules or orders of the commission that require housing of wildlife in a safe manner when a violation results in an escape of wildlife other than Class I wildlife.

4. Rules or orders of the commission relating to wild animal life identified by commission rule as either conditional species or prohibited species.

5. Section 379.372, relating to capturing, keeping, possessing, transporting, or exhibiting venomous reptiles, reptiles of concern, conditional reptiles, or prohibited reptiles.

6. Section 379.373, relating to requiring a license or permit for the capturing, keeping, possessing, or exhibiting of venomous reptiles or reptiles of concern.

7. Section 379.374, relating to bonding requirements for public exhibits of venomous reptiles.

8. Section 379.305, relating to commission rules and regulations to prevent the escape of venomous reptiles or reptiles of concern.

9. Section 379.304, relating to exhibition or sale of wildlife.

10. Section 379.3761, relating to exhibition or sale of wildlife.

11. Section 379.3762, relating to personal possession of wildlife.

(b) A person who commits any offense classified as a Level Two violation and who has not been convicted of a Level Two or higher violation within the past 3 years commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Unless otherwise stated in this subsection, a person who commits any offense classified as a Level Two violation within a 3-year period of any previous conviction of a Level Two or higher violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083 with a minimum mandatory fine of \$250.

(d) Unless otherwise stated in this subsection, a person who commits any offense classified as a Level Two violation within a 5-year period of any two previous convictions of Level Two or higher violations commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, with a minimum mandatory fine of \$500 and a suspension of all licenses issued under this chapter related to captive wildlife for 1 year.

(e) A person who commits any offense classified as a Level Two violation within a 10-year period of any three previous convictions of Level Two or higher violations commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, with a minimum mandatory fine of \$750 and a suspension of all licenses issued under this chapter related to captive wildlife for 3 years.

(f) In addition to being subject to the penalties under paragraphs (b)-(e), a person who commits a Level Two violation that is a violation of s. 379.372 or rules or orders relating to wild animal life identified as conditional or prohibited shall receive a minimum mandatory fine of \$100 and immediately surrender the wildlife for which the violation was issued unless such person lawfully obtains a permit for possession.

(3) LEVEL THREE.—Unless otherwise provided by law, the following classifications and penalties apply:

(a) A person commits a Level Three violation if he or she violates any of the following provisions:

1. Rules or orders of the commission that require housing of wildlife in a safe manner when a violation results in an escape of Class I wildlife.

2. Rules or orders of the commission related to captive wildlife when the violation results in serious bodily injury to another person by captive wildlife that consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

3. Rules or orders of the commission relating to the use of gasoline or other chemical or gaseous substances on wildlife.

4. Rules or orders of the commission prohibiting the release of wildlife for which only conditional possession is allowed.

5. Rules or orders of the commission prohibiting knowingly entering false information on an application for a license or permit when the license or permit is to possess wildlife in captivity.

6. Rules or orders of the commission relating to the illegal importation and possession of nonnative marine plants and animals.

7. Rules or orders of the commission relating to the importation, possession, or release of fish and wildlife for which possession is prohibited.

8. Section 379.231, relating to illegal importation or release of nonnative wildlife.

9. Section 379.305, relating to release or escape of nonnative venomous reptiles or reptiles of concern.

(b)1. A person who commits any offense classified as a Level Three violation and who has not been convicted of a Level Three or higher violation within the past 10 years commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. A person who commits any offense classified as a Level Three violation within a 10-year period of any previous conviction of a Level Three or higher violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, with a minimum mandatory fine of \$750 and permanent revocation of all licenses or permits to possess captive wildlife issued under this chapter.

(4) LEVEL FOUR.—Unless otherwise provided by law, the following classifications and penalties apply:

(a) A person commits a Level Four violation if he or she violates any Level Three provision after the permanent revocation of a license or permit.

(b) A person who commits any offense classified as a Level Four violation commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(5) SUSPENSION OR REVOCATION OF LICENSE.—The court may order the suspension or revocation of any license or permit issued to a person to possess captive wildlife pursuant to this chapter if that person commits a criminal offense or a noncriminal infraction as specified under this section.

(6) CIVIL PENALTY.—

(a) In addition to other applicable penalties, the commission may impose against any person, party, firm, association, or corporation convicted of a criminal violation of any provision of s. 379.231, s. 379.372, s. 379.3761, or s. 379.3762 a civil penalty of not more than \$5,000 for each animal, unless otherwise authorized pursuant to subparagraphs 1.-5. For all related violations attributable to a specific violator, the total civil penalty may not exceed \$10,000 for each assessment for each animal.

1. The history of noncompliance of the violator for any previous violation of this chapter or rules or orders of the commission shall be considered in determining the amount of the civil penalty.

2. The direct economic benefit gained by the violator from the violation may be added to the scheduled civil penalty.

3. The costs incurred by the commission related to the escape, recovery, and care of the wildlife for which the violation was issued shall be added to the civil penalty.

4. The civil penalty assessed for a violation may not exceed \$5,000 for each animal unless:

a. The violator has a history of noncompliance;

b. The economic benefit of the violation exceeds \$5,000; or

c. The costs incurred by the commission related to the escape, recovery, and care of the wildlife for which the violation was issued exceeds \$5,000.

5. The civil penalty assessed pursuant to this subsection may be reduced by the commission for mitigating circumstances, including good faith efforts to comply before or after discovery of the violations by the commission.

(b) The proceeds of all civil penalties collected pursuant to this subsection shall be deposited into the State Game Trust Fund and shall be used for management, administration, auditing, and research purposes.

(7) **CONVICTION DEFINED.**—For purposes of this section, the term “conviction” means any judicial disposition other than acquittal or dismissal.

(8) **COMMISSION LIMITATIONS.**—Nothing in this section shall limit the commission from suspending or revoking any license to possess wildlife in captivity by administrative action in accordance with chapter 120. For purposes of administrative action, a conviction of a criminal offense shall mean any judicial disposition other than acquittal or dismissal.

(9) **ANNUAL REPORT.**—By January 1 of each year, the commission shall submit to the President of the Senate and the Speaker of the House of Representatives a report listing each species identified by the commission as a conditional or prohibited species or a reptile of concern.

History.—s. 21, ch. 2006-304; s. 7, ch. 2007-239; s. 169, ch. 2008-247; s. 42, ch. 2009-86; s. 6, ch. 2010-185.

Note.—Former s. 372.935.

379.402 Definition; possession of certain licensed traps prohibited; penalties; exceptions; consent.—

(1) As used in this section, the term “licensed saltwater fisheries trap” means any trap required to be licensed by the Fish and Wildlife Conservation Commission and authorized by the commission for the taking of saltwater products.

(2) It is unlawful for any person, firm, corporation, or association to be in actual or constructive possession of a licensed saltwater fisheries trap registered with the Fish and Wildlife Conservation Commission in another person’s, firm’s, corporation’s, or association’s name.

(a) Unlawful possession of less than three licensed saltwater fisheries traps is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Unlawful possession of three or more licensed saltwater fisheries traps is a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Upon receipt of any judicial disposition other than dismissal or acquittal on a charge of violating this section or any provision of law or rule making unlawful the possession of another’s saltwater fishing trap, a person shall permanently lose all saltwater fishing privileges, including licenses, trap certificates, and the ability to transfer trap certificates.

(3) It is unlawful for any person, firm, corporation, or association to possess, attempt to possess, interfere with, attempt to interfere with, or remove live bait from a live bait trap or cage of another person, firm, corporation, or association. Unlawful possession of one or more live bait traps or cages is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(4) This section shall not apply to the agents or employees of the registered owner of the licensed saltwater fisheries trap or to a person, firm, corporation, or association who has the written consent from the owner of the licensed saltwater fisheries trap, to possess such licensed saltwater fisheries trap, or to agents or employees of the Fish and Wildlife Conservation Commission who are engaged in the removal of traps during the closed season.

(5) The registered owner of the licensed saltwater fisheries trap shall provide the Fish and Wildlife Conservation Commission with the names of any agents, employees, or any other person, firm, company, or association to whom the registered owner has given consent to possess said licensed saltwater fisheries trap.

History.—s. 5, ch. 87-120; s. 225, ch. 94-356; s. 990, ch. 95-148; s. 104, ch. 99-245; s. 4, ch. 99-390; s. 15, ch. 2000-197; s. 9, ch. 2003-143; s. 170, ch. 2008-247.

Note.—Former s. 370.1107.

379.404 Illegal taking and possession of deer and wild turkey; evidence; penalty.—

(1) Whoever takes or kills any deer or wild turkey, or possesses a freshly killed deer or wild turkey, during the closed season prescribed by law or by the rules and regulations of the Fish and Wildlife Conservation Commission, or

whoever takes or attempts to take any deer or wild turkey by the use of gun and light in or out of closed season, commits a Level Three violation under s. 379.401 and shall forfeit any license or permit issued to her or him under the provisions of this chapter. No license shall be issued to such person for a period of 3 years following any such violation on the first offense. Any person guilty of a second or subsequent violation shall be permanently ineligible for issuance of a license or permit thereafter.

(2) The display or use of a light in a place where deer might be found and in a manner capable of disclosing the presence of deer, together with the possession of firearms or other weapons customarily used for the taking of deer, between 1 hour after sunset and 1 hour before sunrise, shall be prima facie evidence of an intent to violate the provisions of subsection (1). This subsection does not apply to an owner or her or his employee when patrolling or inspecting the land of the owner, provided the employee has satisfactory proof of employment on her or his person.

(3) Whoever takes or kills any doe deer; fawn or baby deer; or deer, whether male or female, which does not have one or more antlers at least 5 inches in length, except as provided by law or the rules of the Fish and Wildlife Conservation Commission, during the open season prescribed by the rules of the commission, commits a Level Three violation under s. 379.401 and may be required to forfeit any license or permit issued to such person for a period of 3 years following any such violation on the first offense. Any person guilty of a second or subsequent violation shall be permanently ineligible for issuance of a license or permit thereafter.

(4) Any person who cultivates agricultural crops may apply to the Fish and Wildlife Conservation Commission for a permit to take or kill deer on land which that person is currently cultivating. When said person can show, to the satisfaction of the Fish and Wildlife Conservation Commission, that such taking or killing of deer is justified because of damage to the person's crops caused by deer, the Fish and Wildlife Conservation Commission may issue a limited permit to the applicant to take or kill deer without being in violation of subsection (1) or subsection (3).

(5) Whoever possesses for sale or sells deer or wild turkey taken in violation of this chapter or the rules and regulations of the commission commits a Level Four violation under s. 379.401.

(6) Any person who enters upon private property and shines lights upon such property, without the express permission of the owner of the property and with the intent to take deer by utilizing such shining lights, commits a Level Three violation under s. 379.401.

History.—s. 1, ch. 65-340; s. 320, ch. 71-136; s. 1, ch. 77-1; ss. 1, 2, ch. 77-311; s. 2, ch. 78-173; s. 144, ch. 79-400; s. 48, ch. 88-381; s. 56, ch. 91-224; s. 593, ch. 95-148; s. 179, ch. 99-245; s. 30, ch. 2006-304; s. 172, ch. 2008-247.

Note.—Former s. 372.99.

379.405 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 Level Four violation under s. 379.401. 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 Level Four violation under s. 379.401. 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.

History.—s. 11, ch. 2002-264; s. 29, ch. 2006-304; s. 173, ch. 2008-247.

Note.— Former s. 372.99022.

379.406 Illegal possession or transportation of freshwater game fish in commercial quantities; penalty.—

(1) Whoever possesses, moves, or transports any black bass, bream, speckled perch, or other freshwater game fish in commercial quantities in violation of law or the rules of the Fish and Wildlife Conservation Commission commits a Level Three violation under s. 379.401.

(2) For the purposes of this section “commercial quantities” shall be deemed to be a quantity of freshwater game fish of 150 or more pounds, and the possession, movement, or transportation of freshwater game fish in excess of such weight shall constitute prima facie evidence of possession or transportation for commercial purposes.

History.— s. 1, ch. 70-380; s. 321, ch. 71-136; s. 181, ch. 99-245; s. 31, ch. 2006-304; s. 174, ch. 2008-247.

Note.— Former s. 372.9903.

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

(1) **BASE PENALTIES.**—Unless otherwise provided by law, any person, firm, or corporation who violates 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 commercial harvester convicted of major violations as follows:

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

(b)1. 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.

2. For violations involving the taking of food shrimp in certain closed areas:

a. Any person with a saltwater products license issued by the commission who is convicted of taking food shrimp in Santa Rosa Sound in violation of commission rule designating a closed area shall have that license and the saltwater products license of the boat involved in the violation revoked and shall be ineligible to make application for such a license for a period of 2 years from the date of such conviction. If a person who does not have a saltwater products license is convicted hereunder, that person and the boat involved in the violation shall not be eligible for such a license for 5 years.

b. A third or subsequent violation by any person of the designated closure to food shrimping in Santa Rosa Sound within a 3-year period is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

c. A second or any subsequent violation by any person for taking food shrimp in a food shrimp production closed area in a portion of Monroe County designated by the commission is a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

d. A third or any subsequent violation by the owner or master of any vessel engaged in food shrimp production in the Tortugas Shrimp Beds closed area designated by the commission within a 3-year period is a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

e. This subparagraph does not apply to persons shrimping for live bait shrimp in the designated closed area when such persons are shrimping with a live bait shrimping license issued by the commission.

3. The owner or master of any vessel not equipped with live shrimp bait tanks dragging shrimp nets in the Tortugas Shrimp Beds without a live bait shrimping license for this area is subject to the base penalties in subsection

(1) for a first or second violation. A third or subsequent violation by any person under this subparagraph within a 3-year period is a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

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

(d) 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) Permits issued to any commercial harvester by the commission to take or harvest saltwater products, or any license issued pursuant to s. 379.361 or s. 379.362 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 up to 30 calendar days.
2. Upon a second conviction which occurs within 12 months after a prior violation, for up to 90 calendar days.
3. Upon a third conviction which occurs within 24 months after a prior conviction, for up to 180 calendar days.
4. Upon a fourth conviction which occurs within 36 months after a prior conviction, for a period of 6 months to 3 years.

(i) 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) Upon the arrest and conviction for a major violation involving spiny lobster, 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 spiny lobster; any single violation involving possession of more than 25 spiny lobster during the closed season or possession of more than 25 wrung spiny lobster tails or more than 25 egg-bearing or stripped spiny lobster; 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 spiny lobster in the aggregate are involved.

(k) 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) 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.

(m) 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).

The penalty provisions of this subsection apply to commercial harvesters and wholesale and retail dealers as defined in s. 379.362. Any other person who commits a major violation under this subsection commits a Level Three violation under s. 379.401. 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.

(3) PENALTIES FOR USE OF ILLEGAL NETS.—

(a) It is a major violation pursuant to this section, punishable as provided in paragraph (b) 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)1. A flagrant violation of any rule or statute which implements s. 16(b), Art. X of the State Constitution shall be considered a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. For purposes of this paragraph, a flagrant violation shall be the illegal possession or use of a monofilament net or a net with a mesh area larger than 2,000 square feet. A violation means any judicial disposition other than acquittal or dismissal.

2. 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 statute or rule of the commission which implements 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:

a. 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.

b. For a second major violation under this subparagraph 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.

c. For a third or subsequent major violation under this subparagraph, 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.

d. For a first flagrant violation under this subparagraph, a civil penalty of \$5,000 and a suspension of all saltwater license privileges for 12 months shall be imposed. For a second or subsequent flagrant violation under this subparagraph, a civil penalty of \$5,000, a lifetime revocation of the saltwater products license, and the 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 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 any other activity requiring a license, permit, or certificate issued pursuant to this chapter. Any person who is convicted of violating this paragraph:

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.

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, a licensee owning or operating a vessel containing or otherwise transporting in or on Florida waters any gill net or other entangling net, or containing or otherwise transporting in nearshore and inshore Florida waters any net containing more than 500 square feet of mesh area shall remain restricted for a period of 12 months following reinstatement, to operating 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).

(4) **ADDITIONAL PENALTIES FOR MAJOR VIOLATIONS INVOLVING CERTAIN FINFISH.—**

(a) It is a major violation under this section 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.

(b) A commercial harvester who violates this subsection shall be punished as provided under paragraph (3)(b). Any other person who violates this subsection commits a Level Three violation under s. 379.401.

(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 person, firm, or corporation that 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. 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. 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 license privileges under this chapter for a period not to exceed 90 days.

3. 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. 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. 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.

(6) SALTWATER PRODUCTS; UNLICENSED SELLERS; ILLEGALLY HARVESTED PRODUCTS.—In addition to other penalties authorized in this chapter, any violation of s. 379.361 or s. 379.362, or rules of the commission implementing s. 379.361 or s. 379.362, 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 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 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.

(7) PENALTIES FOR UNLICENSED SALE, PURCHASE, OR HARVEST.—It is a major violation and punishable as provided in this subsection for any unlicensed person, firm, or corporation who is required to be licensed under this chapter as a commercial harvester or a wholesale or retail dealer to sell or purchase any saltwater product or to harvest or attempt to harvest any saltwater product with intent to sell the saltwater product.

(a) Any person, firm, or corporation who sells or purchases any saltwater product without having purchased the licenses required by this chapter for such sale is subject to penalties as follows:

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 violation is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and such person may also 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 exceeding 90 days.
 3. 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 also be assessed a civil penalty of up to \$5,000 and is subject to a suspension of all license privileges under this chapter for a period not exceeding 6 months.
 4. 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. 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) Any person whose license privileges under this chapter have been permanently revoked and who thereafter sells or purchases or who attempts to sell or purchase any saltwater product commits 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 also be assessed a civil penalty of \$5,000. All property involved in such offense shall be forfeited pursuant to s. 379.337.
- (c) Any commercial harvester or wholesale or retail dealer whose license privileges under this chapter are under suspension and who during such period of suspension sells or purchases or attempts to sell or purchase any saltwater product shall be assessed the following penalties:
1. A first violation, or a second violation occurring more than 12 months after a first violation, is a first degree misdemeanor, punishable as provided in ss. 775.082 and 775.083, and such commercial harvester or wholesale or retail dealer may be assessed a civil penalty of up to \$2,500 and an additional suspension of all license privileges under this chapter for a period not exceeding 90 days.
 2. A second violation occurring within 12 months of a first violation is a third degree felony, punishable as provided in ss. 775.082 and 775.083, with a mandatory minimum term of imprisonment of 1 year, and such commercial harvester or wholesale or retail dealer may be assessed a civil penalty of up to \$5,000 and an additional suspension of all license privileges under this chapter for a period not exceeding 180 days. All property involved in such offense shall be forfeited pursuant to s. 379.337.
 3. A third violation within 24 months of the second violation or subsequent violation is a third degree felony, punishable as provided in ss. 775.082 and 775.083, with a mandatory minimum term of imprisonment of 1 year, and such commercial harvester or wholesale or retail dealer shall be assessed a mandatory civil penalty of up to \$5,000 and an additional suspension of all license privileges under this chapter for a period not exceeding 24 months. All property involved in such offense shall be forfeited pursuant to s. 379.337.
- (d) Any commercial harvester who harvests or attempts to harvest any saltwater product with intent to sell the saltwater product without having purchased a saltwater products license with the requisite endorsements is subject to penalties as follows:
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 violation is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and such commercial harvester may also 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 exceeding 90 days.
 3. 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 commercial harvester may also be assessed a civil penalty of up to \$5,000 and is subject to a suspension of all license privileges under this chapter for a period not exceeding 6 months.
 4. 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 commercial harvester

shall also be assessed a civil penalty of \$5,000 and all license privileges under this chapter shall be permanently revoked.

5. 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 commercial harvester shall also be assessed a mandatory civil penalty of \$5,000 and all license privileges under this chapter shall be permanently revoked.

For purposes of this subsection, a violation means any judicial disposition other than acquittal or dismissal.

(8) **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 commission pursuant to the provisions and procedures of s. 120.60.

(9) **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 commercial harvester 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 licensee or permitholder of record is not the commercial harvester receiving the citation and judicial disposition, the license or permit may be suspended or revoked only after the licensee or permitholder 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.

History.—s. 2, ch. 61-231; s. 277, ch. 71-136; s. 2, ch. 85-234; s. 5, ch. 87-116; s. 5, ch. 88-412; s. 481, ch. 94-356; s. 980, ch. 95-148; s. 9, ch. 95-414; s. 10, ch. 96-247; s. 22, ch. 96-321; s. 57, ch. 97-100; s. 11, ch. 98-203; s. 2, ch. 98-227; s. 2, ch. 98-390; s. 95, ch. 99-245; s. 10, ch. 2000-197; s. 36, ch. 2000-364; s. 1, ch. 2001-62; s. 1, ch. 2002-264; s. 1, ch. 2003-143; s. 1, ch. 2004-61; s. 2, ch. 2006-304; s. 175, ch. 2008-247; s. 42, ch. 2009-21; s. 1, ch. 2014-107; s. 3, ch. 2016-208.

Note.—Former s. 370.021(1)-(6), (11), (12).

379.408 Forfeiture or denial of licenses and permits.— Any person convicted as aforesaid shall forfeit to the state any license or permit that may have been issued to her or him under the provisions of this law, or other law of this state relating to game shall forthwith surrender the same to the court. If such violation occurs in the open season, relating to game, no license or permit shall be issued under the provisions of this law to such person at any time during the remainder of such open season, or if such violation occurs during the closed season no license shall be issued to such person for the open season on game next following.

History.—s. 7, ch. 21945, 1943; s. 587, ch. 95-148; s. 176, ch. 2008-247.

Note.—Former s. 372.84.

379.409 Illegal killing, possessing, or capturing of alligators or other crocodilia or eggs; confiscation of equipment.—

(1) A person may not intentionally kill, injure, possess, or capture, or attempt to kill, injure, possess, or capture, an alligator or other crocodilian, or the eggs of an alligator or other crocodilian, unless authorized by rules of the commission. Any equipment, including, but not limited to, weapons, vehicles, boats, and lines, used by a person in a violation of any law, rule, regulation, or order relating to alligators or other crocodilia or the eggs of alligators or other crocodilia shall, upon conviction of such person, be confiscated by the commission and disposed of according to rules and regulations of the commission. The arresting officer shall promptly make a return of the seizure, describing in detail the property seized and the facts and circumstances under which it was seized, including the names of all persons known to the officer who have an interest in the property.

(2) The commission shall promptly fix the value of the property and make return to the clerk of the circuit court of the county wherein same was seized. Upon proper showing that any such property is owned by, or titled in the name of, any innocent party, such property shall be promptly returned to such owner.

(3) The provisions of this section shall not vitiate any valid lien, retain title contract, or chattel mortgage on such property in effect as of the time of such seizure.

(4) A person who violates this section commits a Level Four violation under s. 379.401, in addition to such other punishment as provided by law.

History.—s. 1, ch. 70-1; s. 1, ch. 70-439; s. 312, ch. 71-136; s. 1, ch. 91-134; s. 144, ch. 99-245; s. 177, ch. 2008-247; s. 22, ch. 2016-107.

Note.—Former s. 372.663.

379.411 Intentional killing or wounding of any species designated as endangered, threatened, or of special concern; penalties.— A person may not intentionally kill or wound any fish or wildlife species designated by the commission as endangered, threatened, or of special concern, or intentionally destroy the eggs or nest of any such fish or wildlife, unless authorized by rules of the commission. A person who violates this section commits a Level Four violation under s. 379.401.

History.—s. 4, ch. 91-134; s. 244, ch. 94-356; s. 48, ch. 99-245; s. 178, ch. 2008-247; s. 23, ch. 2016-107.

Note.—Former s. 372.0725.

379.4115 Florida or wild panther; killing prohibited; penalty.—

(1) It is unlawful for a person to kill a member of the Florida “endangered species,” as defined in s. 379.2291(3), known as the Florida panther (*Felis concolor coryi*).

(2) It is unlawful for a person to kill any member of the species of panther (*Felis concolor*) occurring in the wild.

(3) A person who violates this section commits a Level Four violation under s. 379.401.

History.—s. 1, ch. 78-173; s. 1, ch. 84-99; s. 179, ch. 2008-247; s. 24, ch. 2016-107.

Note.—Former s. 372.671.

379.412 Penalties for feeding wildlife and freshwater fish.—

(1)(a) The penalties in this section apply to a violation of any rule or order of the commission that prohibits or restricts:

1. Feeding wildlife or freshwater fish with food or garbage;
2. Attracting or enticing wildlife or freshwater fish with food or garbage; or
3. Allowing the placement of food or garbage in a manner that attracts or entices wildlife or freshwater fish.

(b) This section does not apply to rules or orders of the commission relating to:

1. Animals held in captivity;
2. Restricting the taking or hunting of species over bait or intentionally placed or deposited food; or
3. Restricting the taking or hunting of species in proximity to feeding stations.

(2) A person who violates a prohibition or restriction identified in subsection (1):

(a) For a first violation, commits a noncriminal infraction, punishable by a civil penalty of \$100.

1. A person cited for a violation under this paragraph shall sign and accept a citation to appear before the county court. The issuing officer may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.

2. A person cited for a violation may pay the civil penalty by mail or in person within 30 days after receipt of the citation. If the civil penalty is paid, the person is deemed to have admitted committing the violation and to have waived his or her right to a hearing before the county court. Such admission may not be used as evidence in any other proceedings except to determine the appropriate fine for any subsequent violations.

3. A person who refuses to accept a citation, who fails to pay the civil penalty for a violation, or who fails to appear before a county court as required commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

4. A person who elects to appear before the county court or who is required to appear before the county court is deemed to have waived the limitations on civil penalties provided under this paragraph. After a hearing, the county court shall determine if a violation has been committed, and if so, may impose a civil penalty of not less than \$100. A person found guilty of committing a violation may appeal that finding to the circuit court. The commission of a violation must be proved beyond a reasonable doubt.

(b) For second and subsequent violations, when all violations are related to freshwater fish or wildlife other than bears or alligators or other crocodilians, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(c) For a second violation, when all violations are related to bears or alligators or other crocodilians, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(d) For a third violation, when all violations are related to bears or alligators or other crocodilians, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(e) For a fourth or subsequent violation, when all violations are related to bears or alligators or other crocodilians, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) As used in this section, the term “violation” means any judicial disposition other than acquittal or dismissal.

History.—s. 12, ch. 2015-161.

§379.413 Bonefish; penalties.— A commercial harvester or wholesale or retail saltwater products dealer who violates commission rules pertaining to bonefish shall be punished under s. 379.407. Any other person who violates commission rules pertaining to bonefish commits a Level Two violation under s. 379.401.

History.—ss. 1, 2, 3, 4, 5, ch. 72-312; s. 7, ch. 83-134; s. 2, ch. 84-121; s. 1, ch. 85-163; ss. 16, 17, ch. 85-234; ss. 3, 12, ch. 89-98; s. 9, ch. 2006-304; s. 180, ch. 2008-247.

¹**Note.**— Section 7, ch. 83-134, as amended by s. 2, ch. 84-121, and by s. 1, ch. 85-163, repealed the then-existing section effective July 1, 1985, and further provided that if the Governor and Cabinet had not adopted appropriate rules by July 1, 1985, the section would remain in force until such rules were effective. Section 9, ch. 83-134, provided that, prior to the adoption of rules amending, readopting, or repealing those provisions set forth in s. 7, the Marine Fisheries Commission would hold a public hearing thereon, and no such amendment, readoption, or repeal would be acted upon until it had been determined, based upon appropriate findings of fact, that such action would not adversely affect the resource. The Marine Fisheries Commission was transferred to the Fish and Wildlife Conservation Commission by s. 3, ch. 99-245.

Note.— Former s. 370.1121.

379.414 Additional penalties for saltwater products dealers violating records requirements.—

(1) The commission may revoke, suspend, or deny the renewal of the license of any saltwater products dealer for failure to make and keep records as required by s. 379.362, for failure to make required reports, for failure or refusal to permit the examination of required records, or for falsifying any such record. In addition to other applicable penalties, or in lieu of, the commission may impose against any person, firm, or corporation who is determined to have violated any provision of s. 379.362 or any provisions of any commission rules adopted pursuant to s. 379.407, the following additional penalties:

(a) For the first violation, a civil penalty of up to \$1,000;

(b) For a second violation committed within 24 months of any previous violation, a civil penalty of up to \$2,500; and

(c) For a third or subsequent violation committed within 36 months of any previous two violations, a civil penalty of up to \$5,000.

(2) The proceeds of all civil penalties collected pursuant to this section shall be deposited into the Marine Resources Conservation Trust Fund and shall be used for administration, auditing, and law enforcement purposes.

History.—s. 181, ch. 2008-247.

379.501 Aquatic weeds and plants; prohibitions; violations; penalties; intent.—

(1) A person may not:

(a) Violate this section or any provision of s. 369.20 or s. 369.22 related to aquatic weeds and plants;

(b) Fail to obtain any permit required by s. 369.20 or s. 369.22 or by commission rule implementing s. 369.20 or s. 369.22, or violate or fail to comply with any rule, regulation, order, permit, or certification adopted or issued by the commission pursuant to s. 369.20 or s. 369.22; or

(c) Knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under s. 369.20 or s. 369.22, or falsify, tamper with, or knowingly

render inaccurate any monitoring device or method required to be maintained under s. 369.20 or s. 369.22 or by any permit, rule, regulation, or order issued under s. 369.20 or s. 369.22.

(2) Any person who violates any provision of subsection (1) is liable to the state for any damage caused to the aquatic weeds or plants and for civil penalties as provided in s. 379.502.

(3) Any person who willfully commits a violation of paragraph (1)(a) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each day during any portion of which such violation occurs constitutes a separate offense.

(4) Any person who commits a violation specified in paragraph (1)(a) due to reckless indifference or gross careless disregard commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) Any person who willfully commits a violation specified in paragraph (1)(b) or paragraph (1)(c) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(6) It is the intent of the Legislature that the civil penalties and criminal fines imposed by a court be of such an amount as to ensure immediate and continued compliance with this section.

(7) Penalties assessed pursuant to ss. 379.501-379.504 are in addition to any penalties assessed by the Board of Trustees of the Internal Improvement Trust Fund, the Department of Environmental Protection, or a water management district pursuant to chapter 253, chapter 373, or chapter 403.

History.—s. 43, ch. 2009-86.

379.502 Enforcement; procedure; remedies.— The commission has the following judicial and administrative remedies available to it for violations of s. 379.501:

(1)(a) The commission may institute a civil action in a court of competent jurisdiction to establish liability and to recover damages for any injury to the waters or property of the state, including animal, plant, and aquatic life, caused by any violation of s. 379.501.

(b) The commission may institute a civil action in a court of competent jurisdiction to impose and to recover a civil penalty for each violation in an amount of not more than \$10,000 per offense. However, the court may receive evidence in mitigation. Each day during any portion of which such violation occurs constitutes a separate offense.

(c) Except as provided in paragraph (2)(c), the fact that the commission has failed to exhaust its administrative remedies, has failed to serve a notice of violation, or has failed to hold an administrative hearing before initiating a civil action is not a defense to, or grounds for dismissal of, the judicial remedies for damages and civil penalties.

(2)(a) The commission may institute an administrative proceeding to establish liability and to recover damages for any injury to the waters or property of the state, including animal, plant, or aquatic life, caused by any violation of s. 379.501. The commission may order that the violator pay a specified sum as damages to the state. Judgment for the amount of damages determined by the commission may be entered in any court having jurisdiction thereof and may be enforced as any other judgment.

(b) If the commission has reason to believe that a violation has occurred, it may institute an administrative proceeding to order the prevention, abatement, or control of the conditions creating the violation or other appropriate corrective action. The commission shall proceed administratively in all cases in which the commission seeks administrative penalties that do not exceed \$10,000 per assessment as calculated in accordance with subsections (3), (4), (5), and (6). The commission may not impose administrative penalties in excess of \$10,000 in a notice of violation. The commission may not have more than one notice of violation seeking administrative penalties pending against the same party at the same time unless the violations occurred at a different site or the violations were discovered by the commission subsequent to the filing of a previous notice of violation.

(c) An administrative proceeding shall be instituted by the commission's serving of a written notice of violation upon the alleged violator by certified mail. If the commission is unable to effect service by certified mail, the notice of violation may be hand delivered or personally served in accordance with chapter 48. The notice shall specify the provision of the law, rule, regulation, permit, certification, or order of the commission alleged to have been violated and the facts alleged to constitute a violation thereof. An order for corrective action, penalty assessment, or damages may be included along with the notice. If the commission is seeking to impose an administrative penalty for any violation of s. 379.501 by issuing a notice of violation, any corrective action needed to correct the violation or damages

caused by the violation must be pursued in the notice of violation or they are waived. However, an order does not become effective until after service and an administrative hearing, if requested within 20 days after service. Failure to request an administrative hearing within this period constitutes a waiver, unless the respondent files a written notice with the commission within this period opting out of the administrative process initiated by the commission. Any respondent choosing to opt out of the administrative process initiated by the commission must file a written notice with the commission, within 20 days after service of the notice of violation, opting out of the administrative process. A respondent's decision to opt out of the administrative process does not preclude the commission from initiating a state court action seeking injunctive relief, damages, and the judicial imposition of civil penalties.

(d) If a person timely files a petition challenging a notice of violation, that person will thereafter be referred to as the respondent. The hearing requested by the respondent shall be held within 180 days after the commission has referred the initial petition to the Division of Administrative Hearings unless the parties agree to a later date. The commission has the burden of proving by the preponderance of the evidence that the respondent is responsible for the violation. An administrative penalty may not be imposed unless the commission satisfies that burden. Following the close of the hearing, the administrative law judge shall issue a final order on all matters, including the imposition of an administrative penalty. If the commission seeks to enforce that portion of a final order imposing administrative penalties pursuant to s. 120.69, the respondent may not assert as a defense the inappropriateness of the administrative remedy. The commission retains its final-order authority in all administrative actions that do not request the imposition of administrative penalties.

(e) After filing a petition requesting a formal hearing in response to a notice of violation, a respondent may request that a private mediator be appointed to mediate the dispute by contacting the Florida Conflict Resolution Consortium within 10 days after receipt of the initial order from the administrative law judge. The Florida Conflict Resolution Consortium shall pay all of the costs of the mediator and for up to 8 hours of the mediator's time per case at \$150 per hour. Upon notice from the respondent, the Florida Conflict Resolution Consortium shall provide the respondent with a panel of possible mediators from the area in which the hearing on the petition would be heard. The respondent shall select the mediator and notify the Florida Conflict Resolution Consortium of the selection within 15 days after receipt of the proposed panel of mediators. The Florida Conflict Resolution Consortium shall provide all of the administrative support for the mediation process. The mediation must be completed at least 15 days before the final hearing date set by the administrative law judge.

(f) In any administrative proceeding brought by the commission, the prevailing party shall recover all costs as provided in ss. 57.041 and 57.071. The costs must be included in the final order. The respondent is the prevailing party when an order is entered awarding no penalties to the commission and the order has not been reversed on appeal or the time for seeking judicial review has expired. The respondent is entitled to an award of attorney's fees if the administrative law judge determines that the notice of violation issued by the commission was not substantially justified as defined in s. 57.111(3)(e). An award of attorney's fees as provided by this subsection may not exceed \$15,000.

(g) This section does not prevent any other legal or administrative action in accordance with law. This subsection does not limit the commission's authority set forth in this section and ss. 379.503 and 379.504 to judicially pursue injunctive relief. If the commission exercises its authority to judicially pursue injunctive relief, penalties in any amount up to the statutory maximum sought by the commission must be pursued as part of the state court action and not by initiating a separate administrative proceeding. The commission retains the authority to judicially pursue penalties in excess of \$10,000 for violations not specifically included in the administrative penalty schedule, or for multiple or multiday violations alleged to exceed a total of \$10,000. The commission also retains the authority provided in this section and ss. 379.503 and 379.504 to judicially pursue injunctive relief and damages, if a notice of violation seeking the imposition of administrative penalties has not been issued. The commission may enter into a settlement before or after initiating a notice of violation, and the settlement may include a penalty amount that is different from the administrative penalty schedule. Any case filed in state court because it is alleged to exceed a total of \$10,000 in penalties may be settled in the court action for less than \$10,000.

(h) The provisions of chapter 120 shall apply to any administrative action taken by the commission under this section or any delegated program pursuing administrative penalties in accordance with this section.

- (3) Administrative penalties must be calculated according to the following schedule:
- (a) For violations of s. 379.501(1)(a) or (b), \$3,000.
 - (b) For failure to conduct required monitoring or testing in compliance with a permit, \$2,000.
 - (c) For failure to prepare, submit, maintain, or use required reports or other required documentation, \$500.
 - (d) For failure to comply with any other regulatory statute or rule requirement relating to the administration of the commission's powers under s. 369.20 or s. 369.22 not otherwise identified in this section, \$500.
- (4) For each additional day during which a violation occurs, the administrative penalties in subsection (3) may be assessed per day, per violation.
- (5) The history of noncompliance of the violator for any previous violation resulting in an executed consent order, but not including a consent order entered into without a finding of violation, or resulting in a final order or judgment on or after July 1, 2009, involving the imposition of \$2,000 or more in penalties, shall be taken into consideration in the following manner:
- (a) One previous such violation within 5 years prior to the filing of the notice of violation shall result in a 25-percent per day increase in the scheduled administrative penalty.
 - (b) Two previous such violations within 5 years prior to the filing of the notice of violation shall result in a 50-percent per day increase in the scheduled administrative penalty.
 - (c) Three or more previous such violations within 5 years before the filing of the notice of violation shall result in a 100-percent per day increase in the scheduled administrative penalty.
- (6) The direct economic benefit gained by the violator from the violation shall be added to the scheduled administrative penalty. The total administrative penalty, including any economic benefit added to the scheduled administrative penalty, may not exceed \$10,000.
- (7) The administrative penalties assessed for any particular violation may not exceed \$3,000 against any one violator unless the violator has a history of noncompliance, the economic benefit of the violation as described in subsection (6) exceeds \$3,000, or there are multiday violations. The total administrative penalties may not exceed \$10,000 per assessment for all violations attributable to a specific person in the notice of violation.
- (8) The administrative law judge may receive evidence in mitigation. The penalties identified in subsection (3) may be reduced up to 50 percent by the administrative law judge for mitigating circumstances, including good faith efforts to comply prior to or after discovery of the violations by the commission. Upon an affirmative finding that the violation was caused by circumstances beyond the reasonable control of the respondent and could not have been prevented by the respondent's due diligence, the administrative law judge may further reduce the penalty.
- (9) Penalties collected under this section shall be deposited into the Invasive Plant Control Trust Fund to carry out the purposes set forth in ss. 369.20, 369.22, and 369.252. The Florida Conflict Resolution Consortium may use a portion of the fund to administer the mediation process provided in paragraph (2)(e) and to contract with private mediators for administrative penalty cases related to s. 369.20 or s. 369.22.
- (10) The purpose of the administrative penalty schedule and process is to provide a more predictable and efficient manner for individuals and businesses to resolve relatively minor environmental disputes. Subsections (3) through (7) do not limit a state court in the assessment of damages. The administrative penalty schedule does not apply to the judicial imposition of civil penalties in state court as provided in this section.

History.—s. 44, ch. 2009-86.

379.503 Civil action.—

- (1) The commission may institute a civil action in a court of competent jurisdiction to seek injunctive relief to enforce compliance with ss. 379.501, 379.502, and 379.504 or any rule, regulation, permit, certification, or order adopted or issued by the commission pursuant to s. 369.20 or s. 369.22; to enjoin any violation specified in s. 379.501(1); and to seek injunctive relief to prevent irreparable injury to the waters and property, including animal, plant, and aquatic life, of the state and to protect human health, safety, and welfare caused or threatened by any violation of s. 379.501.
- (2) All the judicial and administrative remedies to recover damages and penalties in this section and s. 379.502 are alternative and mutually exclusive.

History.—s. 45, ch. 2009-86.

379.504 Civil liability; joint and several liability.—

(1) A person who commits a violation specified in s. 379.501(1) is liable to the state for any damage caused to the waters or property of the state, including animal, plant, or aquatic life, and for reasonable costs and expenses of the state in restoring its waters and property, including animal, plant, and aquatic life, to their former condition, and furthermore is subject to the judicial imposition of a civil penalty for each offense in an amount of not more than \$10,000 per offense. However, the court may receive evidence in mitigation. Each day during any portion of which such violation occurs constitutes a separate offense. This section does not give the commission the right to bring an action on behalf of any private person.

(2) If two or more persons violate s. 379.501(1) so that the damage is indivisible, each violator shall be jointly and severally liable for the damage and for the reasonable cost and expenses of the state incurred in restoring the waters and property of the state, including the animal, plant, and aquatic life, to their former condition. However, if the damage is divisible and may be attributed to a particular violator or violators, each violator is liable only for that damage attributable to his or her violation.

(3) In assessing damages for fish killed, the value of the fish shall be determined in accordance with a table of values for individual categories of fish, which shall be adopted by the Department of Environmental Protection pursuant to s. 403.141(3). The total number of fish killed may be estimated by standard practices used in estimating fish population.

History.—s. 46, ch. 2009-86.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes.

Copyright © 2000- 2018 State of Florida.