

**SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 2, 1998 Revised: \_\_\_\_\_

Subject: Rulemaking With Respect to Marine Resources

<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1. <u>Green</u>	<u>Voigt</u>	<u>NR</u>	<u>Favorable/CS</u>
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____

**I. Summary:**

The bill provides the Department of Environmental Protection with authority to issue broodstock special-activities licenses. Provides authority to adopt rules relating to the issuance of special activities licenses. Provides authority to adopt rules defining food fish. Authorizes rulemaking for the issuance of special permits for possession of marine turtles.

The bill amends sections 370.06, 370.08, and 370.12, Florida Statutes.

**II. Present Situation:**

The 1996 amendments to the Administrative Procedure Act (APA) were designed to require executive branch agencies to more closely adhere to statutory authority when agencies adopt rules. The 1996 amendments contained a new section, s. 120.536(1), F.S., requiring existing and proposed rules to implement, interpret or make specific the particular powers and duties granted by the enabling statute. This “map-tack” provision ensures that agency rules closely relate to the enabling statute and, thus, imposes a more stringent standard.

The Legislature recognized that imposing a new statutory standard to determine the validity of rules might suddenly invalidate many rules which had previously been adopted by the agency in good faith under the older, more lenient standard. Rather than immediately invalidate existing rules, the 1996 reform legislation required each agency to examine all of its rules that had been adopted prior to the effective date of the 1996 amendments in light of the new “map-tack” provision. Agencies were required to report to the Joint Administrative Procedures Committee the list of rules which exceeded the new “map-tack” standard.

Rules placed on the list are temporarily “shielded” from legal challenges that they are invalid under the new “map-tack” provision. This “shield” leaves the rules in place during the 1998 legislative session, allowing the Legislature to examine the policy established by rule to determine if it is good public policy. If legislation is enacted during the 1998 session which provides statutory support for the rule, it will remain in effect. On the other hand, the statute directs the agency to initiate repeal of any rule for which there is no authorizing legislation by January 1, 1999. Notably, an existing agency rule successfully challenged under the new APA for lack of statutory authority requires that the agency discontinue its reliance on the rule and the agency may have to pay attorney’s fees and costs.

The Department of Environmental Protection identified a number of program areas that have inadequate rulemaking authority and the department is proposing several bills to provide adequate rulemaking authority.

One program area involves chapter 370, F.S., which preceded rules of the Florida Marine Fisheries Commission (MFC) in regulating the taking of saltwater species. The department administers several chapter 370 statutes and MFC rules through the issuance of special-activities licenses (SALs). Because of the new APA requirements, the department lacks specific grants of rulemaking authority for issuing SALs. The department is seeking rulemaking authority for existing SALs as authorized in chapter 62R-3, F.A.C., or provided in Marine Fisheries Commission rules.

The department has existing rules in chapter 62R-20, F.A.C., defining “food fish” which lack statutory authority under the new APA. Also, Rule 62R-1.0061, F.A.C., pertaining to the issuance of special permits for the taking of sea turtles, their nests, eggs, or hatchlings is also affected by the new APA requirements. Adoption of the proposed legislation will allow continued streamlining of the sea turtle permitting program.

### **III. Effect of Proposed Changes:**

**Section 1.** Amends s. 370.06, F.S., to provide statutory authority for existing department rules relating to the issuance of broodstock SALs. Provides specific statutory authority to adopt rules governing the issuance of SALs as required by the new APA.

**Section 2.** Amends s. 370.08, F.S., to provide statutory authority for existing department rules relating to the adoption of rules defining food fish.

**Section 3.** Amends s. 370.12, F.S., to provide statutory authority for existing department rules in Rule 62 R-1.0061, F.A.C., that permit the possession of marine turtles.

**Section 4.** This act shall take effect upon becoming a law.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Because these rules have been in effect for some time, no fiscal impact will result from passage of this bill.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.