

COMMITTEE ON CONSERVATION & STATE LANDS

**WEDNESDAY, FEBRUARY 6, 2008
9 AM – 12PM
216 THE CAPITOL**

**Marco Rubio
Speaker**

**Rep. Will Kendrick
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

Committee on Conservation & State Lands

Start Date and Time: Wednesday, February 06, 2008 09:00 am

End Date and Time: Wednesday, February 06, 2008 12:00 pm

Location: 216 Capitol

Duration: 3.00 hrs

Workshop on the following:

Fish & Wildlife Conservation Commission 2008 legislative proposals.

NOTICE FINALIZED on 01/30/2008 16:16 by SIMS-DAVIS.LINDA

FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION

2008 SESSION LEGISLATIVE PROPOSAL

- A. CONFISCATION AND DISPOSITION OF ILLEGALLY TAKEN WILDLIFE, FRESHWATER FISH AND SALTWATER FISH.
- B. ESTABLISHING PENALTIES FOR SEAGRASS DAMAGE
- C. BOATING SAFETY EDUCATION
- D. PERSONAL FLOTATION DEVICES
- E. REPEAL SHORELINE EXEMPTION



Florida Fish and Wildlife Conservation Commission

Legislative Affairs

620 South Meridian Street, Room 138 • Tallahassee, FL 32399-1600

(850) 487-3795 • Suncom 277-3795 • FAX (850) 410-5265

2008 Session Legislative Proposal

Title: Confiscation and disposition of illegally taken wildlife, freshwater fish and saltwater fish.

Submitted by Division of Law Enforcement

1. Issue

This proposal would clarify and provide consistency for confiscation and disposition of perishable fish and wildlife products that are illegally taken by violators.

2. Background

A process for handling the forfeiture of confiscated commercially harvested saltwater products is outlined in section 370.061, Florida Statutes, but no such provision exists for recreationally harvested saltwater fish that are deemed to be in violation of statute or rule. Additionally, section 372.73, Florida Statutes, allows game and freshwater fish to "be forfeited and given to some hospital or charitable institution" but Florida law does not have such a provision for recreationally-caught saltwater fish.

Section 370.061, Florida Statutes, regulates the forfeiture process for commercially harvested saltwater products and requires conviction as a condition precedent to the disposal of any perishable seafood product (actually, to the proceeds of the sale thereof). Section 372.73, Florida Statutes, provides for disposal of game and freshwater fish "upon conviction of the offender or sooner if the court so orders." In most counties statewide there is a standing administrative order with the courts authorizing the pre-conviction disposal of freshwater fish and game. This provision is not available for saltwater fish.

In the majority of cases, illegally harvested fish and wildlife that are seized are seldom presented as evidence at trial and become severely freezer burned and unwholesome after being stored in the evidence freezers for an extensive amount of time. After the case is closed, the items retained as evidence are no longer useful to the court, charity, or the defendant and are disposed at a landfill. The proposal would allow a law enforcement agency the option to retain the illegal product and donate it to charitable organizations, DNA labs, and research facilities or use the evidence for such things as covert buy / sell operations and K9 training.

Currently, fish and wildlife are being seized and stored at a faster rate than they are being removed from evidence by court order. A large number of local police and sheriff departments that seize fish and wildlife do not have freezers to accommodate such evidence and use FWC freezers for storage. This adds to the volume and places an additional administrative burden on FWC staff to process additional evidence. These situations have required FWC to purchase and create space for more freezers. All evidence facilities must be in compliance with accreditation standards and expanding evidence facilities often requires the installation of fencing and other security measures, further increasing the cost to store evidence.

To complete the evidence process, an officer may be required to spend several hours away from patrol. Currently, the process begins from the initial seizure and ends when the officer returns from the evidence storage facility. Officers are usually patrolling in remote areas and may drive an excess of fifty miles one way to a storage facility. If the Legislature approved the proposal, the officer would be able to photograph the evidence and keep the seized fish or wildlife on ice and dispose of it when convenient to his/her patrol activities. The officer would have the option to offer the evidence to a nearby charitable institution, DNA lab or research facility or retain the illegal product and use it for such things as covert buy / sell operations and K9 training. This would allow officers to work more efficiently in the field and focus their efforts on patrolling the woods and water, rather than processing evidence.

3. Effect of Proposed Changes

The proposal would allow a law enforcement agency the option to retain confiscated fish and wildlife that are illegally harvested and donate it to charitable organizations DNA labs, and research facilities or use evidence for covert buy/sell operations and K9 training. Additionally, the law enforcement agency would have the option to sell the evidence, if appropriate, or destroy the evidence if it were deemed unwholesome.

FWC would identify the local hospitals and charitable institutions that are interested in receiving fish and wildlife donations and develop a rotation process so that donations are divided equally.

4. Who is affected by this issue?

FWC Division of Law Enforcement, other law enforcement entities that enforce fish and wildlife laws, charities and non-profit organizations.

5. What is the fiscal impact on FWC, the private sector, and other agencies?

On FWC

This proposal would save time and costs associated with officer's transporting, securing, and managing evidence. For example, in a three month period, from August 1, 2006 to October 31, 2006, there were 98 evidence numbers issued for the seizure of saltwater products. Three fourths of those numbers (73) were for recreational cases. The transportation costs average \$44.00 per case involving seizure. The average officer's time involved in transporting and checking in the evidence is approximately two and one-half hours at an average hourly officer rate of \$33.93 per hour. The total positive fiscal impact for FWC could exceed \$40,000 annually.

On Private Sector

Currently, there is a standing administrative court order that allows for the donation of freshwater fish and game; however, this is not available for saltwater fish. If the proposal were approved, charities and non-profit organizations would be able to receive donated saltwater fish to further their cause and mission and may help defer food costs.

On Other Governmental Agencies

Local police and sheriff departments would be able to reduce the amount of evidence that is held in FWC evidence freezers as evidence in cases they have made and avoid additional administrative and transportation costs. Unknown fiscal impact but expected to be positive.

6. Is there a tax/fee issue?

None anticipated.

Amend section 372.73, Florida Statutes, to read:

372.73 Confiscation and disposition of illegally taken ~~game~~
wildlife, freshwater fish and saltwater fish.—

(1) All game wildlife, and freshwater fish, and saltwater fish seized under the authority of this chapter, any other chapter, or rules of the commission shall, upon conviction of the offender or sooner in accordance with a court order ~~if the court so orders,~~ be forfeited to the investigating law enforcement agency. The law enforcement agency may elect to: retain the wildlife, freshwater fish or saltwater fish for the agency's official use; transfer it to another unit of state or local government for official use; donate it to a charitable organization; sell it at public sale, pursuant to the provisions of s. 705.103; or destroy the wildlife, freshwater fish or saltwater fish if none of the other options are practicable or if the wildlife, freshwater fish, or saltwater fish is unwholesome or otherwise not of appreciable value. All live wildlife, freshwater fish, and saltwater fish, the possession of which is unlawful, shall be properly documented as evidence as provided in s. 372.731, and returned to the habitat unharmed, except that non-native species may be released only as allowed by rules of the commission. Any unclaimed wildlife, freshwater fish or saltwater fish shall be retained by the investigating law enforcement agency and disposed of in accordance with the above provisions. ~~and given to some hospital or charitable institution and receipt therefore sent to the Fish and Wildlife Conservation Commission.~~

(2) All furs or hides or fur-bearing animals seized under the authority of this chapter shall, upon conviction of the offender, be forfeited and sent to the commission, which shall sell the same and ~~deposit the proceeds of such sale to the credit of the State Game Trust Fund or into the commission's Federal Law Enforcement Trust Fund as provided in s. 372.107, as applicable.~~
If any such hides or furs are seized and the offender is unknown,

the court shall order such hides or furs sent to the Fish and Wildlife Conservation Commission, which shall sell such hides and furs.

(3) The ~~and deposit the~~ proceeds of any such sale pursuant to this section shall be remitted to the Department of Revenue to be deposited to the credit of the State Game Trust Fund or the Marine Resources Conservation Trust Fund, or into the commission's Federal Law Enforcement Trust Fund as provided in s. 372.107, as applicable.

372.731 Photographs of illegally taken wildlife, freshwater fish, and saltwater fish -

In any prosecution for a violation of Chapter 370, Chapter 372 or rules of the commission, a photograph of the illegally taken wildlife, freshwater fish or saltwater fish may be deemed competent evidence of such property and may be admissible in the prosecution to the same extent as if such wildlife, freshwater or saltwater fish were introduced as evidence. Such photograph shall bear a written description of the wildlife, freshwater fish or saltwater fish alleged to have been illegally taken, the name of the violator, the location where the alleged wrongful taking occurred, the name of the investigating law enforcement officer, the date the photograph was taken, and the name of the photographer. Such writing shall be made under oath by the investigating law enforcement officer, and the photograph shall be identified by the signature of the photographer.



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2008 Session Legislative Proposal

Title: Establishing Penalties for Seagrass Damage
Submitted by Division of Law Enforcement

1. Issue

This proposal would create a penalty system for damaging seagrasses due to propeller scarring and vessel grounding.

2. Background

The reduction of seagrasses has detrimental impacts to important fisheries and aquatic ecological processes. Propeller scarring in seagrass is recognized as a problem in areas of high boating use around the State. There is no disincentive or penalty for boaters who operate their vessels in a manner that causes propeller scarring in seagrasses.

Seagrass systems are highly productive communities which form the basis for important fisheries and aquatic ecological processes. In 1996, the St. Johns Water Management District reported that the seagrass economic benefit based on commercial and recreational finfish landings alone was estimated at \$12,500 per acre in the Indian River Lagoon. Adjusted for inflation, the 2007 estimated per-acre economic value for seagrass is \$16,594. This does not account for the economic benefits provided by the marine industries (both service and production of goods) that support both recreational and commercial fisheries. Staff believes the true economic value for seagrasses is substantially greater than that reported in this study. It is important to note that over 80% of economically important fish species depend upon seagrass communities at some point in their life history.

Propeller scarring in seagrass is recognized as a problem in areas of high boating use around the State, which currently has over 1 million registered boats. In 1995, the Fish and Wildlife Research Institute (formerly Florida Marine Research Institute) reported that 22,000 acres of seagrass in shallow near shore waters were moderately to severely scarred. Subsequent analysis of seagrass systems, such as those found in Charlotte Harbor in 2003, have shown increases in both the number of propeller scars and the severity of scarring since the 1995 report findings. The Charlotte Harbor assessment found a 71% increase in severely scarred seagrass habitat, when aerial images taken in 2003 were compared with those in the same

area used in the assessments for the 1995 statewide report. During this same period, vessel registrations grew from 16,896 to 22,252 boats in Charlotte County, an increase of 32%. Such findings are consistent with high-density growth and development of coastal areas, which will continue to bring increased vessel traffic in State waters.

Shallow water operated vessels, commonly referred to as “flats boats”, are one of the fastest growing segments of the watercraft industry. Sales of such vessels reflect the desire on the part of the boating public to operate vessels in shallow waters where seagrasses are vulnerable to propeller damage. This problem will continue into the foreseeable future without further management action. Outreach (brochures, boater’s guides, public service announcements, boat ramp information kiosks, etc.) and non-regulatory management (signs marking shallow seagrass beds) efforts, many in partnership with stakeholders, have been and are being employed throughout the State in an active campaign to instill stewardship of these marine resources in the boating community.

An interagency Seagrass Working Group consisting of Fish and Wildlife Conservation Commission (FWC) and Department of Environmental Protection (DEP) staff was assembled in 2004 to address the issue. In February 2005, an initial stakeholder meeting, consisting of representatives from the boating, commercial fishing, recreational fishing, and environmental communities met with the Seagrass Working Group to determine the extent of the problem and to develop management options to address the problem. The stakeholder and Seagrass Working Group discussed the following issues:

- Stakeholders generally agreed that the determination of “careless operation” and “reasonable and prudent operation” need to be clarified and located in one section of statute.
- Propeller scarring was discussed in the context of being pertinent only to boats with propellers. All attending stakeholders felt the need to change the definition to “seagrass scarring” to address all motorized watercraft, and to simplify the definition.
- Potential penalties for causing seagrass scarring was discussed: a non-criminal infraction for less severe cases and a first degree misdemeanor for “willful and wanton” behavior that results in seagrass scarring. There was some concern from the boating side, that tying “willful and wonton” damage to a first degree misdemeanor criminal offense is too harsh a punishment for damage to seagrass. Discussions ensued regarding the nature of seagrasses as public property likened to vehicles or other private property in which “willful and wonton” damage carries the same penalty. The majority of the group agreed to keep this language, but there was minority dissent.
- Consideration of reporting to the Legislature about the effectiveness of the law was discussed as well as increasing the focus on boater education. FWC

and DEP agreed to develop and implement an education campaign before issuing citations to violators. It was advised that this would include handing brochures to violators and public announcements through the media.

- The stakeholder group discussed adding waterway signage for seagrasses in the list of projects funded by penalty fines.

The stakeholders reached a consensus supporting the development of draft legislation by agency staff to implement a penalty for vessel operators who damage seagrasses. This resulted from the stakeholder understanding that the proposed operational guidance was far too complex and costly for the regulated boating public to be a deterrent. The agencies presented draft legislation to the stakeholder group at a facilitated meeting held November 2006. Another stakeholder meeting was held in January 2007 to review language modified from the November draft.

A penalty system similar to the draft proposal currently exists at some State Parks and in Pinellas County. A much more comprehensive penalty system exists in the Florida Keys National Marine Sanctuary.

The Boating Advisory Council met December 5, 2006 and voted to support the ongoing initiative underway to protect seagrass from propeller scarring.

Three bills were introduced during the 2007 Legislative Session that pertains to seagrass protection. Bill numbers and sponsors include the following:

- SB 548/HB 1069, Senator Mike Bennett/Representative Will Kendrick, which created penalties for seagrass scarring within aquatic preserves.
- SB 2178, Senator Mike Bennett, which created a pilot program for the reconstruction of seagrass beds.

There were concerns from the stakeholders during the 2007 Session that the legislation did not address seagrass areas outside of aquatic preserves. SB 548, HB 1069 and SB 2178 did not pass the 2007 Session.

3. Effect of Proposed Changes

Those damaging seagrasses could be charged with a non-criminal infraction or a first degree misdemeanor. The public would be notified by FWC education campaigns including, but not limited to personal contact by law enforcement officers, press releases, and boater education courses.

4. Who is affected by this issue?

Boating, fishing and other water dependent interests who damage seagrasses would be affected by this legislation. FWC would educate State and local law enforcement officers and develop various media that informs the public of these new regulations.

5. What is the fiscal impact on FWC, the private sector, and other agencies?

A. On FWC

No additional staff or funding streams will be required.

B. On Private Sector

Boaters who operate their vessels in a manner so as to cause propeller scars in seagrass may be assessed fines and may be charged with a misdemeanor that allows for a fine to be assessed. The actual fiscal impact is unknown.

C. On Other Governmental Agencies

None anticipated.

6. Is there a tax/fee issue? No.

DRAFT LANGUAGE

2008 SESSION

Amend section 253.04, Florida Statutes, to read:

253.04 Duty of board to protect, etc., state lands; state may join in any action brought.—

(4) (a) Any person operating a vessel outside a lawfully marked channel in a manner so as to cause seagrass scarring within an aquatic preserve established in ss.258.39 (except for the Lake Jackson, Wekiva River and Rainbow Springs aquatic preserves), 258.391, 258.392, 258.3925, 258.393, 258.394, 258.395, 258.396 and 258.397 commits a civil infraction, punishable as provided in s. 327.73, except as provided in paragraph (b). Damage resulting from the reasonable and prudent operation of a vessel shall, absent negligence, not constitute seagrass scarring. Each violation shall be a separate offense. For purposes of this subsection:

1. "Seagrass scarring" means destruction of seagrass roots, shoots or stems that results in tracks on the substrate, caused by the operation of a motorized vessel in waters supporting seagrasses, commonly referred to as prop-scars or propeller scars;

2. "Seagrasses" means Cuban shoal grass (*Halodule wrightii*), turtle grass (*Thalassia testudinum*), manatee grass (*Syringodium filiforme*), star grass (*Halophila engelmannii*), paddle grass (*Halophila decipiens*), Johnsons seagrass (*Halophila johnsonii*) or widgeon grass (*Ruppia maritima*).

(b) Any person who willfully or wantonly operates a vessel outside a lawfully marked channel in a manner so as to cause seagrass scarring within an aquatic preserve specified in paragraph (a) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Any violation of this subsection is a violation of the boating laws of this state and shall be charged on a uniform

boating citation as provided in s. 327.74. Any person who refuses to post a bond or accept and sign a uniform boating citation shall, as provided in s. 327.73(3), be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(d) All civil penalties imposed and collected pursuant to this subsection shall be deposited into the Internal Improvement Trust Fund and used solely: to implement, administer, and enforce this subsection; to provide for seagrass restoration; to conduct a program to educate vessel operators about the need to protect seagrasses from damage caused by the operation of vessels; or to fund marking of seagrass.

Paragraph (x) is created within subsection (1) of section 327.73, Florida Statutes, and subsection (8) of section 327.73 is amended to read:

327.73 Noncriminal infractions.—

(1) Violations of the following provisions of the vessel laws of this state are noncriminal infractions:

(x) Section 253.04(4) (a), relating to carelessly causing seagrass scarring, for which the civil penalty is:

1. \$50 upon conviction for a first offense;
2. \$250 upon conviction for a second offense occurring within 12 months of a prior conviction;
3. \$500 upon conviction for a third offense occurring within 36 months of a prior conviction;
4. \$1,000 upon conviction for a fourth or subsequent offense.

(8) Except as otherwise provided, all ~~All~~ fees and civil penalties assessed and collected pursuant to this section shall be remitted by the clerk of the court to the Department of Revenue to be deposited into the Marine Resources Conservation Trust Fund for boating safety education purposes.

This act shall take effect October 1, 2008.



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2008 Session Legislative Proposal

Title: Boating Safety Education

Submitted by Division of Law Enforcement

1. Issue

This proposal would modify Florida's mandatory boating safety education law for anyone operating a motorboat powered by 10 horsepower or more in Florida. It would establish an eleven-year phase-in period for every vessel operator to pass a boating safety course.

2. Background

Currently, section 327.395, Florida Statutes, requires persons 21 years of age and younger to carry proof of completion of a boating safety course when operating boats with 10 horsepower or more. Exemptions are authorized for anyone who is: 1) Licensed by the U.S. Coast Guard as a master of a vessel; 2) operating a vessel on a private lake or pond; 3) accompanied by a person who is exempt or who holds an identification card, who is 18 years of age or older, is attendant to the operation of the vessel, and is responsible for any violation that occurs during the operation of the vessel; 4) a non-resident who has proof of completing a boater education in another state whose course meets Florida's requirements; or 5) exempted by Commission rule. Since its enactment in 1996, the number of operators within the affected age group involved in reportable boating accidents has declined from greater than 21% in 1995 to 14% in both 2004 and 2005. While this decrease provides some evidence of the effectiveness of boating safety education, 86% of Florida's boating accidents reported in 2005 involved operators who were 22 and older. Almost two-thirds (59%) were 36 and older which makes them a critical target audience for education. The 21 year age cap of Florida's current law is unlikely to extend basic boating safety education to a broad segment of the target audience. Examples include those who begin operating a boat after the age of 21 and those exempt from this requirement, such as a child operating a boat with a parent or guardian. Both the U. S. Coast Guard and other states have released information or reports that show a correlation between increased boating safety education, especially among older operator age groups, and lower accident and fatality rates.

The Florida Boating Advisory Council (Council) has recommended that the Fish and Wildlife Conservation Commission (FWC) pursue legislation requiring boat operators of all ages to take an education course through a 3 to 5-year phase-in process. The Council is composed of 18 individuals representing a wide variety of boating interests who are tasked with providing advice to the Commission on issues relating to boating in Florida. The appointees represent the boating public, marine industry, water-related

environmental groups, the dive industry, canoe/kayak interests, manatee protection, marine manufacturers, commercial vessel owners/operators, commercial fishing/shellfishing industry, with additional members from the Florida House of Representatives, the Florida Senate, the Department of Environmental Protection, the U.S. Coast Guard Auxiliary, the U.S. Power Squadrons, and the Florida Inland Navigation Districts.

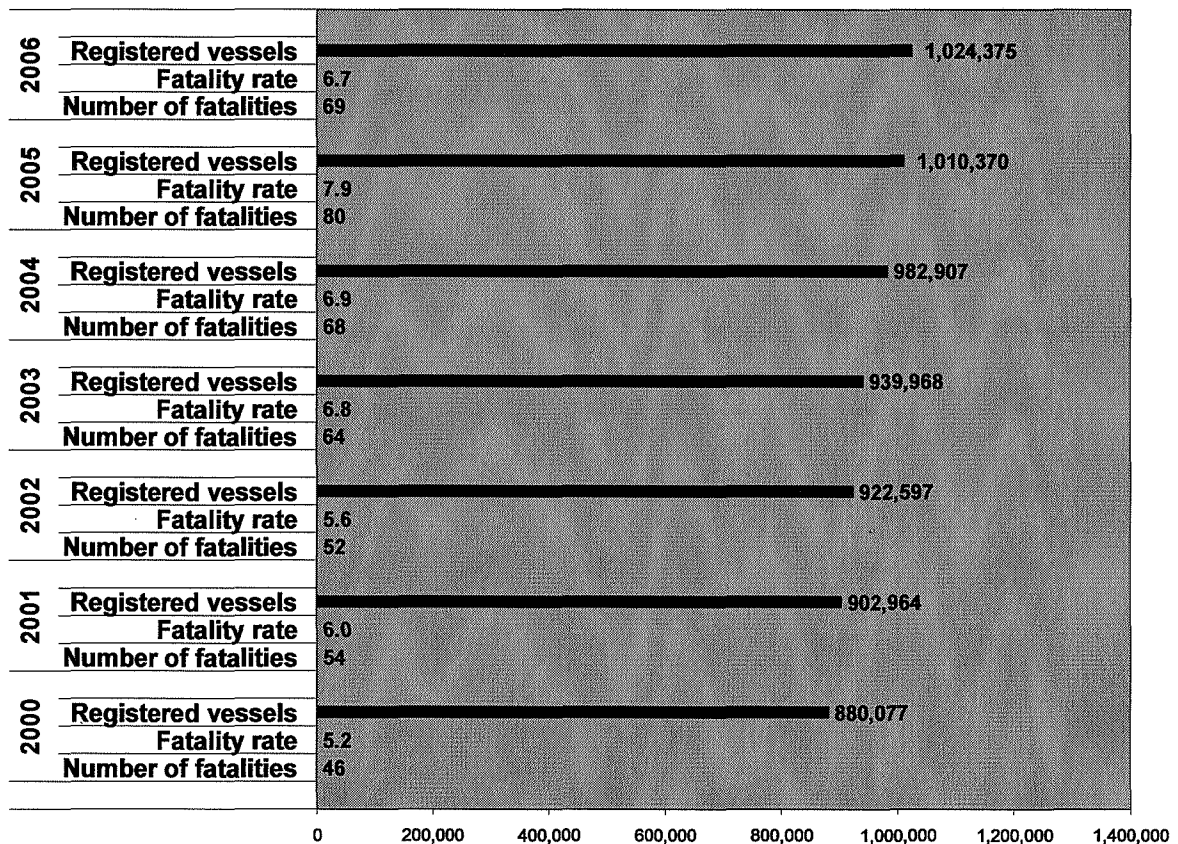
The Council members offered their support for this proposal during their April 2006 meeting and again at their April 2007 meeting.

Statistics

One benchmark upon which boating safety efforts are measured, both at the national and state levels, is the annual number of recreational boating fatalities. Boating fatalities reported in Florida during 2005 were at the highest number in the previous ten-year period (81 fatalities). While 2006 saw a modest decrease in fatalities, year to date figures through July 2007 show boating fatalities higher than at this time during the previous two years.

Although most other states have been experiencing declining fatality numbers for the past several years, Florida's fatality trend contradicts the national trend. Florida's boating fatalities for the past several years are depicted in the following graph:

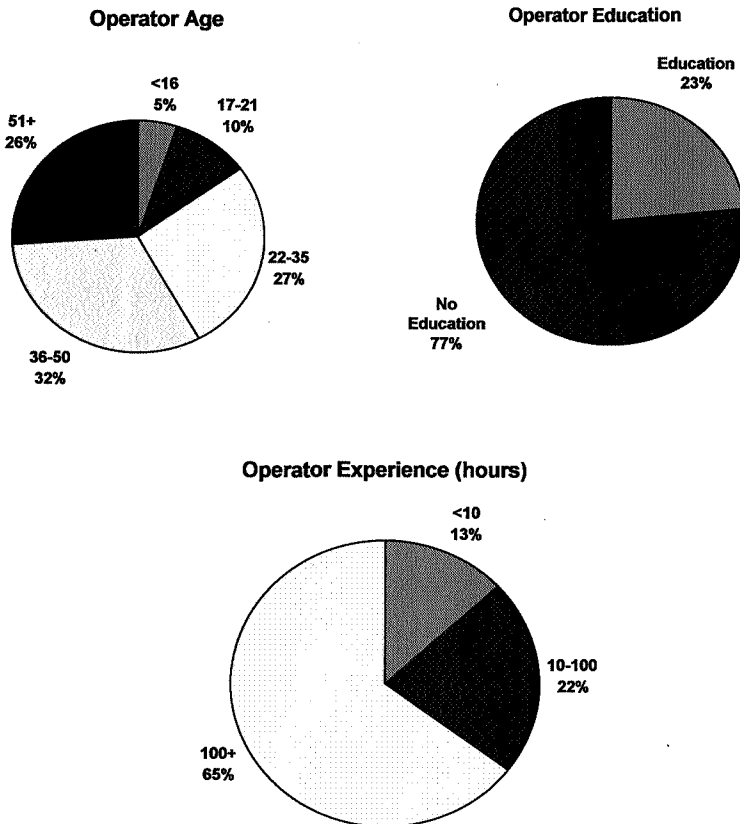
2000 TO 2006 FLORIDA BOATING FATALITIES



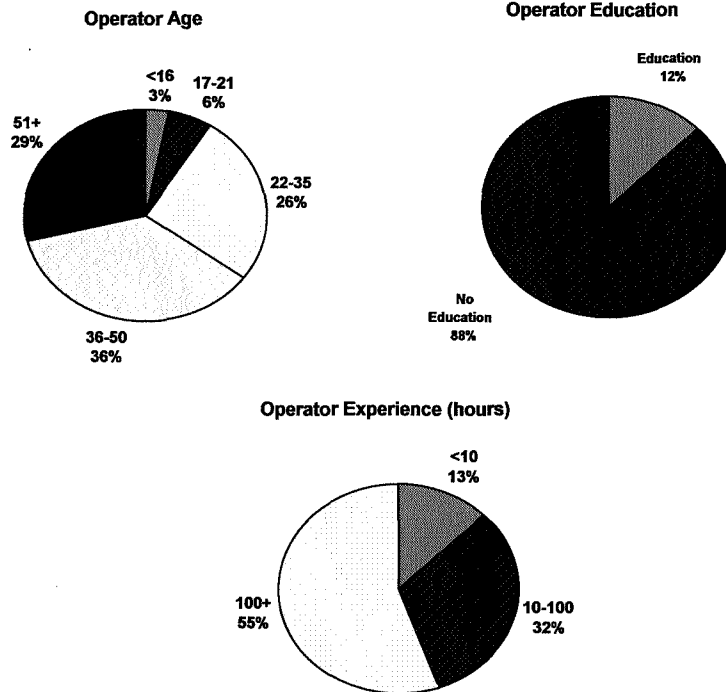
Boating fatalities in Florida have risen at a rate much greater than the rate of growth in registered boats. Between 2000 and 2005, fatalities rose 76.1% while the boat registration increase during this time period was 14.8%. Contrary to popular belief, the people involved in boating accidents and fatalities are not primarily young, inexperienced boat operators. Boating accidents usually involve operators who are older adults (males 36 years of age and older), have more than 100 hours of boat operation experience, and have no formal boating safety education. This fact is even more evident in Florida's boating accidents involving at least one fatality. The statistics show that simply having more hours of boating "experience" does not equate to reduced risk of having an accident.

The following graphs depict ages, experience levels, and formal boating safety education for operators involved in both boating accidents in general and those resulting in at least one fatality during the period from 2001 through 2005.

**Operator Information
Reportable Boating Accidents
2001-2005**



Operator Information Fatal Boating Accidents 2001-2005



These graphs show that from 2001 through 2005 a disproportionately larger number of boat operators who did not complete a boating education course were involved in fatal accidents. This trend remains consistent from one year to the next.

Boating accidents are most often caused by operator-controllable factors, such as carelessness, inattention, navigation rule violations, poor choices during bad weather, inexperience, and alcohol consumption. Boating safety education courses meeting state and national educational standards cover each of these topics in detail and require participants to pass a test to demonstrate their knowledge of safe boating practices, boating laws and the navigation rules. Unless there is a requirement for some form of boating safety education, boat operators are unlikely to be exposed to the critical information necessary to properly identify areas of greatest risk and learn how to avoid potential problems on the water.

Research

Several surveys of recreational boaters have indicated consistent support for requiring all boat operators to be educated. Supporting survey data is as follows:

1998 Florida Boater Safety and Education Review. This survey was conducted by the Survey Research Laboratory of Florida State University under contract for the Florida Department of Environmental Protection – Division of Law Enforcement. There were 1,057 eligible respondents representing a cross-section of Florida’s registered boat owner population who participated in the survey (41 percent response rate). When

asked to identify how important boating safety education was to them, 95.4% of the respondents indicated that it was important to them.

2002 National Recreational Boating Survey. This survey was conducted by the Strategic Research Group under contract with the U.S. Coast Guard's Office of Boating Safety. This national survey sampled boat owners around the nation, including over 500 individuals from Florida. Of the responding boat owners, 73.8% said that people who operate boats should be required to pass a test to demonstrate their knowledge of boating laws.

2005-06 Florida Boating Safety Awareness Campaign Surveys. Surveys were conducted to solicit registered boat owners in Broward, Lee, Miami-Dade, and Monroe counties to respond via the Internet to a series of questions as part of ongoing boating safety awareness campaigns. Over 680 responses were received. Although these surveys were not intended to address public opinion on boating safety education issues, one open-ended question offered respondents a forum through which they could identify any changes they would most like to see regarding boating regulations in their area. This was not a multiple choice question, but respondents were required to generate an answer and type it in. In the Lee County survey, 203 responses were received to this question. The leading desired change dealt with speed zones (52%). The second leading desired change was a requirement for boating safety education for boat operators (21%). In the Broward, Miami-Dade and Monroe survey, boating safety education and increased law enforcement tied for the most desired changes (24% each). In another question, respondents to both surveys identified inadequate boating safety education as one of the leading safety issues that concern them while boating (from 30.5% to 37%).

2006 Florida Recreational Boating Survey. The FWC's Boating and Waterways Section initiated a survey through VAI/Marketing Research Online to receive feedback from registered recreational boat owners about their opinions on boating-related topics. The survey was sent to 10,000 registered boat owners with county-by-county sample sizes proportional to each county's percentage of registered boats. The final response rate was just under 10 percent.

When asked what would most improve their enjoyment of recreational boating, almost three quarters of the respondents (72%) indicated that they want all boat operators to pass a test demonstrating their knowledge of safe boating practices, boating laws and the navigation rules.

2007 Poll of Florida Voters. FWC initiated a poll of Florida voters through Mason-Dixon Polling and Research, Inc. to gauge their level of support for this issue. The poll showed that 89 percent of those polled supported this effort to require all boaters who operate boats with motors of 10 horsepower or more, regardless of age, to complete a basic boating course and demonstrate their knowledge of safe boating practices. Of the boat owners who responded to this poll, 68 percent supported the proposal.

Education Effectiveness

Boating safety education requirements vary considerably around the nation. The following provides an overview of boating safety education requirements for the states and territories:

- Phase-in to include all ages by a certain date -- 7 States/Territories (AL, CT, OR, WA, DC, VA and NJ)
- All ages personal watercraft only -- 2 States (ID and NY)
- An uncapped born after date (all different dates) -- 18 States/Territories (AR, DE, KS, LA, MD, MS, MO, NV, NH, NM, PA, OH, TN, VT, WV, WI, USVI, PR)
- Educate children for personal watercraft only (all different ages) – 6 States (IA, MN, NC, RI, UT, MA)
- Children/young adults (all different ages) --13 States (CO, FL, GA, IL, IN, KY, MI, MT, NE, ND, OK, SC, TX)
- No education requirement-- 10 States/Territories (NMI, GU, AS, SD, WY, ME, HI, AK, AZ, CA)

Based on recent research published in a draft report titled, "*A Comparative Analysis of Recreational Boating Policies: Quick Phase-In Education vs. Other Educational Policies*," individual states with requirements for all boat operators, regardless of age, to be properly educated over a short period of time have experienced significant and sustained reductions in boating fatalities. Two states with a quick phase-in of education for all boaters (Alabama and Connecticut) were contrasted with their bordering states and the rest of the nation. The research established that states which have elected to implement a quick phase-in education requirement have shown a greater improvement in their fatal accident rate (number of fatal accidents per 100,000 registered vessels) when compared to the rest of the United States. The research further predicts that states that implement quick phase-in requirements could first expect normal fluctuations in the fatal accident rate. After the quick phase-in period, the fatal accident rate would decline for a few years before leveling off at a value that is approximately 25-percent lower.

3. Effect of Proposed Changes

- Anyone operating a boat with 10 horsepower or more (except those specifically exempted) would have to take an approved boating safety course and obtain a Florida Boating Safety Education Identification Card on a phased-in basis as follows:
 - Until Jan. 1, 2009 – all persons 21 years old or younger
 - On and after Jan. 1, 2009 – all persons 25 years old or younger
 - On and after Jan. 1, 2010 – all persons 30 years old or younger
 - On and after Jan. 1, 2011 – all persons 35 years old or younger
 - On and after Jan. 1, 2012 – all persons 40 years old or younger
 - On and after Jan. 1, 2013 – all persons 45 years old or younger
 - On and after Jan. 1, 2014 – all persons 50 years old or younger
 - On and after Jan. 1, 2015 – all persons 55 years old or younger

- On and after Jan. 1, 2016 – all persons 60 years old or younger
 - On and after Jan. 1, 2017 – all persons 65 years old or younger
 - On and after Jan. 1, 2018 – all persons 70 years old or younger
 - On and after Jan. 1, 2019 – all persons regardless of age
- Exemptions to the boater safety education card requirement would be expanded to include anyone who is operating a vessel purchased within the last 30 days and can show the bill of sale.

4. Who is affected by this issue?

- Boating education course providers such as the U.S. Coast Guard Auxiliary, U.S. Power Squadrons, and many others would experience increased demand for courses.
- Law enforcement agencies would be enforcing this requirement.
- FWC would be responsible for administration as part of the State's recreational boating safety program.

4. What is the fiscal impact on FWC, the private sector, and other agencies?

On FWC

The annual number of Florida Boater Education Identification Cards issued is anticipated to rise dramatically with the passage of this issue. It costs FWC approximately \$1.20 to purchase and process each ID card (including equipment, cards, supplies, and OPS salaries) at the current rate of approximately 20,000 cards issued each year.

Florida currently has over 1,000,000 registered boats, the vast majority of which are owned by a person over 21 years of age. Previous surveys of boat owners indicate that the average recreational boat in Florida is operated by approximately 2.5 people, which leads one to conclude that there may be up to 2,500,000 individual boat operators for the registered boat fleet. It is estimated that up to 10% of vessel operators have already taken a qualifying boating safety course, which leaves an estimated 2,250,000 boat operators who would be required to take a course or equivalency exam and obtain a Florida Boating Safety Education Identification Card should this legislation become law.

If phase-in were to occur over the proposed eleven-year period, an estimated 205,000 additional ID cards would be issued annually. After that point, the number of cards issued is anticipated to drop dramatically. This would result in an estimated minimum additional expense to FWC of \$246,000 per year for the eleven-year phase-in period for the processing and distribution of Boating Safety Education Identification Cards.

In addition to the processing and distribution of the identification cards, there would be additional costs associated with an anticipated large demand for the home study boating safety course books that are offered by FWC. As an estimate, if 75% of those taking an approved course each year choose to take the home study course, FWC would incur an estimated additional cost of \$92,000 for the course books. The 75% figure is purely an estimate, and the actual number may vary greatly due to other course options via the Internet and classroom instruction by the private sector.

Total expenditures, therefore, are estimated to increase an average of at least \$338,000 annually until 2020, when all boaters would be required to have taken the course, should the legislation become law.

There is a provision in the current law for FWC to charge up to \$2 for each card, but staff believes the agency currently has sufficient funding from boating safety violation fines to defer additional costs related to this effort.

Section 327.73, Florida Statutes, provides funding for recreational boating safety education through revenues derived from noncriminal boating violations. Current spending authority for these funds is approximately \$550,000. FWC may be able to shift citation revenue from other law enforcement programs to pay for anticipated expenses related to this proposal.

On Private Sector

The private sector would be affected as follows:

The boating public has several options for obtaining a qualifying course under the proposal. FWC currently offers a home-study course with no attached fee and plans to expand the Internet course availability. There are several Internet course providers, and associated fees range from free to \$20. Finally, there are several private sector providers offering approved courses in a classroom setting. These instructor-led course options cost an average of approximately \$35 per attendee.

One additional anticipated benefit to the boating public is a reduction in boat insurance premiums. Many insurance companies offer a 10% discount on boat insurance for those who have taken a safe boating course, and most (if not all) of Florida's approved courses qualify.

Private sector course providers would experience an increase in revenue from those boaters choosing to take their course.

When renting to a person within the affected age group, boat rental businesses will need to ensure that renters meet the new education requirement. The FWC already has a program whereby boat rental businesses can enter into contract with the FWC to issue Florida's Boater Education Temporary Certificates. A certificate is issued when an applicant successfully passes a written exam, which allows him/her to meet the boating safety education requirement in Florida on a 12-month temporary basis. There are approximately 150 boat rental businesses around the state currently

participating in this program. Certificates cost the contractor \$2 each, and the contractor may recover their costs by charging their customers up to \$3 for each exam.

On Other Governmental Agencies

Governmental agencies employing persons who operate boats with 10 horsepower or more would be required to have their employees take an approved course. There is an expense to the agency of up to eight hours of the employee's work time to complete an approved course. An additional possible expense would depend on which course type the employee elects to use. FWC offers course materials at no charge and allows for an individual to complete the course independently. If FWC should apply the \$2 charge for each card issued, staff recommends government agency employees who are requesting the card as a requirement of their employment be exempt from the \$2 fee.

5. **Is there a tax/fee issue?** None anticipated. The \$2 fee associated with boating safety education identification cards is already authorized in section 327.395(10), Florida Statutes. No additional fees are requested.

Amend section 327.395, Florida Statutes, to read:

327.395 Boating safety identification cards.-

(1) This section applies:

(a) Until January 1, 2009, to all persons 21 years of age or younger;

(b) On and after January 1, 2009, to all persons 25 years of age or younger;

(c) On and after January 1, 2010, to all persons 30 years of age or younger;

(d) On and after January 1, 2011, to all persons 35 years of age or younger;

(e) On and after January 1, 2012, to all persons 40 years of age or younger;

(f) On and after January 1, 2013, to all persons 45 years of age or younger;

(g) On and after January 1, 2014, to all persons 50 years of age or younger;

(h) On and after January 1, 2015, to all persons 55 years of age or younger;

(i) On and after January 1, 2016, to all persons 60 years of age or younger;

(j) On and after January 1, 2017, to all persons 65 years of age or younger;

(k) On and after January 1, 2018, to all persons 70 years of age or younger;

(l) On and after January 1, 2019, to all persons regardless of age.

(2) A person of the age provided in (1) ~~21 years of age or younger~~ may not operate a vessel powered by a motor of 10 horsepower or greater unless such person has in his or her possession aboard the vessel photographic identification and a boater safety identification card issued by the commission which shows that he or she has:

(a) Completed a commission-approved boater education course that meets the minimum 8-hour instruction requirement established

by the National Association of State Boating Law Administrators;

(b) Passed a course equivalency examination approved by the commission; or

(c) Passed a temporary certificate examination developed or approved by the commission.

(3)~~(2)~~ Any person may obtain a boater safety identification card by complying with the requirements of this section.

(4)~~(3)~~ Any commission-approved boater education or boater safety course, course-equivalency examination developed or approved by the commission, or temporary certificate examination developed or approved by the commission must include a component regarding diving vessels, awareness of divers in the water, divers-down flags, and the requirements of s. 327.331.

(5)~~(4)~~ The commission may appoint liveries, marinas, or other persons as its agents to administer the course, course equivalency examination, or temporary certificate examination and issue identification cards under guidelines established by the commission. An agent must charge the \$2 examination fee, which must be forwarded to the commission with proof of passage of the examination and may charge and keep a \$1 service fee.

(6)~~(5)~~ An identification card issued to a person who has completed a boating education course or a course equivalency examination is valid for life. A card issued to a person who has passed a temporary certification examination is valid for 12 months from the date of issuance.

(7)~~(6)~~ A person is exempt from subsection (2) ~~(1)~~ if he or she:

(a) Is licensed by the United States Coast Guard to serve as master of a vessel.

(b) Operates a vessel only on a private lake or pond.

(c) Is accompanied in the vessel by a person who is exempt from this section or who holds an identification card in compliance with this section, is 18 years of age or older, and is attendant to the operation of the vessel and responsible for the safe operation of the vessel and for any violation that occurs

during the operation.

(d) Is a nonresident who has in his or her possession proof that he or she has completed a boater education course or equivalency examination in another state which meets or exceeds the requirements of subsection (2) ~~(1)~~.

(e) Is operating a vessel within the 30 days first following the purchase of that vessel and has available for inspection aboard that vessel a bill of sale meeting the requirements of s. 328.46(1).

(f) Is exempted by rule of the commission.

(8) ~~(7)~~ A person who operates a vessel in violation of subsection (2) ~~violates this section~~ is guilty of a noncriminal infraction, punishable as provided in s. 327.73.

(9) ~~(8)~~ The commission shall design forms and adopt rules to administer this section. Such rules shall include provision for educational and other public and private entities to offer the course and administer examinations.

(10) ~~(9)~~ The commission shall institute and coordinate a statewide program of boating safety instruction and certification to ensure that boating courses and examinations are available in each county of the state.

(11) ~~(10)~~ The commission is authorized to establish and to collect a \$2 examination fee to cover administrative costs.

(12) ~~(11)~~ The commission is authorized to adopt rules pursuant to chapter 120 to implement the provisions of this section.



Florida Fish and Wildlife Conservation Commission

Legislative Affairs

620 South Meridian Street, Room 138 • Tallahassee, FL 32399-1600

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2008 Session Legislative Proposal

Title: Personal Flotation Devices

Submitted by Division of Law Enforcement

1. Issue

This proposal would change the age of persons required to wear a life jacket/personal flotation device (PFD) on a vessel less than 26 feet from under 6 years of age to those under 13 years of age. The proposal would parallel the recreational federal regulations and create a safer boating experience for children.

2. Background

Currently, federal law and state statutes have different ages for persons required to wear a personal flotation device. Florida law provides a requirement for children under 6 years of age to wear an approved life jacket while on vessels less than 26 feet in length. The text of section 327.50(1)(b), Florida Statutes is as follows:

(b) No person shall operate a vessel less than 26 feet in length on the waters of this state unless every person under 6 years of age on board the vessel is wearing a type I, type II, or type III Coast Guard approved personal flotation device while such vessel is underway. For the purpose of this section, "underway" shall mean at all times except when a vessel is anchored, moored, made fast to the shore, or aground.

Current Federal law addressing this issue is found in Section 175.15 of Title 33, CFR, and reads as follows:

c) No person may operate a recreational vessel underway with any child under 13 years old aboard unless each such child is either—
(1) Wearing an appropriate PFD approved by the Coast Guard; or
(2) Below decks or in an enclosed cabin.

The National Transportation Safety Board (NTSB) solicited a professional recommendation from the American Association of Pediatrics, the National Association of State Boating Law Administrators, and the U.S. Coast Guard on

the appropriate age for mandatory wear of life jackets by children. Research showed that children under 13 have an inability to put a life jacket on while in the water. Since 1993, the NTSB has been recommending that the states adopt a regulation for mandatory life jacket wear for children under 13 years of age to improve their safety while boating.

There also appears to be substantial support for this legislation from the boating public, based on results from surveys. Survey data follows:

2002 National Recreational Boating Survey. This survey was conducted by the Strategic Research Group under contract with the U.S. Coast Guard's Office of Boating Safety. This national survey sampled boat owners around the nation, including over 500 individuals from Florida. Of the responding boat owners, 86.58% said that children under the age of 13 should be required to wear a life jacket while on a boat.

2006 Florida Recreational Boating Survey. The Florida Fish and Wildlife Conservation Commission's (FWC) Boating and Waterways Section initiated a survey through VAI/Marketing Research Online to receive feedback from registered recreational boat owners about their opinions on boating-related topics. The survey was sent to 10,000 registered boat owners with county-by-county sample sizes proportional to each county's percentage of registered boats. The final response rate was just under 10 percent. A majority of the respondents (66%) indicated that children under the age of 13 should be required to wear a life jacket.

2007 Poll of Florida Voters. FWC also initiated a survey of Florida voters through Mason-Dixon Polling and Research, Inc. to gauge their level of support for this issue. The poll showed that 85 percent of those polled supported this effort to improve the safety of children on Florida waters and to work toward uniformity between federal and state boating regulations by requiring life jackets be worn by children under 13 years of age. Of the boat owners that responded to this poll, 77 percent supported this proposal.

The Florida Boating Advisory Council (Council) has discussed this issue at two of their public meetings. The Council is composed of 18 individuals representing a wide variety of boating interests who are tasked with providing advice to the Commission on issues relating to boating in Florida. The appointees represent the boating public, marine industry, water-related environmental groups, the dive industry, canoe/kayak interests, manatee protection, marine manufacturers, commercial vessel owners/operators, commercial fishing/shellfishing industry, with additional members from the Florida House of Representatives, the Florida Senate, the Department of Environmental Protection, the U.S. Coast Guard Auxiliary, the U.S. Power Squadrons, and Florida's Inland Navigation Districts.

During their April 2006 meeting in Tallahassee, the Council formally

recommended that FWC pursue legislation to change Florida's child life jacket law to be similar to the federal law for those less than 13 years of age. The greatest issue of concern was about the effects of Florida's heat on children who would be required to wear a life jacket. The Council, although not unanimous in their deliberations on this topic, agreed that the improvement in the safety of children while boating and the elimination of confusion between current state and federal laws were otherwise worthy goals. During their meeting in April of 2007, the Boating Advisory Council re-affirmed their support for moving forward with this legislation.

3. Effect of Proposed Changes

Any person operating a vessel less than 26 feet with children under 13 years of age would be required to have said children in a PFD while the boat is underway.

4. Who is affected by the issue?

- Any person operating a vessel less than 26 feet with children under 13 years of age
- Law enforcement agencies enforcing boating laws.

5. What is the fiscal impact on FWC, the private sector, and other agencies?

On FWC

No fiscal impact anticipated.

On Private Sector

No fiscal impact anticipated since boaters with children, which would be impacted by this legislation, are already required by state and federal law to carry and maintain appropriately sized life jackets for each person onboard their boat.

On other Governmental Agencies

No fiscal impact anticipated.

6. Is there a tax/fee issue?

None anticipated.

Amend section 327.50, Florida Statutes, to read:

327.50, Vessel safety regulations; equipment and lighting requirements.-

(1) (a) The owner and operator of every vessel on the waters of this state shall carry, store, maintain, and use safety equipment in accordance with current United States Coast Guard safety equipment requirements as specified in the Code of Federal Regulations, unless expressly exempted by the department.

(b) No person shall operate a vessel less than 26 feet in length on the waters of this state unless every person under 6 13 years of age on board the vessel is wearing a ~~type I, type II, or type III~~ an appropriate personal flotation device approved by the Coast Guard approved personal flotation device , is below decks, or is in an enclosed cabin while such vessel is underway. For the purpose of this section, "underway" shall mean at all times except when a vessel is anchored, moored, made fast to the shore, or aground.



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2008 Session Legislative Proposal

Title: Repeal Shoreline Exemption

1. Issue

This issue repeals the shoreline exemption authorized for residents to saltwater fish from Florida's shoreline.

2. Background

Florida resident shoreline fishermen have been exempt from purchasing a saltwater license since its inception in 1989. Approximately 295,000 saltwater anglers fish from shore in Florida. Of these anglers, FWC estimates 208,000 would be required to buy a license if the shoreline exemption were removed. Research shows that 76 percent of Floridians support removing this exemption. The repeal would create parity among saltwater anglers and would distribute the cost of marine fishing conservation to all anglers.

The 2006 Congressional reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act created a registry program for recreational fishermen fishing in federal waters and also those fishing for anadromous species (spawn in freshwater, live in saltwater). This program is mandated to assist in data collection with statistical surveys and evaluating the effects of proposed conservation and management measures. Congress directed the Department of Commerce to complete the registry program and implement an improved statistical survey not later than January 1, 2009 and authorized a fee to be charged not before January 1, 2011. The legislation allows for an exemption to federal licensing in a state with an approved licensing system. Although implementation of the federal registration is still under development officials of the National Marine Fisheries Service indicate that Florida's shoreline exemption may prohibit its license system from being approved, thus requiring the federal registration for Florida anglers.

Three states have a shoreline exemption (South Carolina) or a variation (Virginia and Maryland).

3. Who is affected by this issue?

Florida residents recreationally saltwater fishing from the shoreline or a structure fixed to the land. Since such a structure would include piers, indirectly this could affect owners of fishing piers if resident anglers stopped fishing there as a result

of removing the shoreline exemption.. If Florida does eliminate the shoreline exemption and our anglers are consequently exempted from the impending federal registration, Florida anglers fishing in federal waters off of Florida, and those anglers fishing in Florida for striped bass (an anadromous species) would not be required to obtain the federal registration.

4. What is the fiscal impact on FWC, the private sector, and other agencies?

On FWC

Approximately 295,000 saltwater anglers fish from the shore in Florida and most (residents only) are not required to purchase a license. If the shoreline exemption were removed, it is estimated that 208,884 - 302,484 would be required to buy a license. The 208,884 is the low end of the range of shore anglers that would need a license; 302,484 is the high end. The numbers are whittled down below after factoring in the 25 percent protest loss and 27 percent noncompliance. Multiplying that number by the \$15.50 price of the license gives a range of \$1.7million - \$2.5 million. This doesn't include projection of increased compliance and decreased protest loss in subsequent years. Also, the initial estimate of the number of anglers is calculated using 2001 numbers through 2004, so we expect that number to actual increase with increasing numbers of saltwater anglers in FL. So, \$1.7 million is conservative, and is likely to be higher.

Shoreline Anglers Needing a license	208,884	302,484
# of new shoreline Anglers who would Purchase a license (at \$15.50)	114,364	165,610
Estimated revenue	\$1,772,641.85	\$2,566,954.85

On Private Sector

Florida residents recreationally saltwater fishing from the shoreline will be required to purchase a saltwater fishing license.

On Other Governmental Agencies

None

Amend section 372.562, Florida Statutes, to read:

372.562 Recreational licenses and permits; exemptions from fees and requirements.--

(1) Hunting, freshwater fishing, and saltwater fishing licenses and permits shall be issued without fee to any resident who is certified or determined:

(a) To be totally and permanently disabled for purposes of workers' compensation under chapter 440 as verified by an order of a judge of compensation claims or written confirmation by the carrier providing workers' compensation benefits, or to be totally and permanently disabled by the Railroad Retirement Board, by the United States Department of Veterans Affairs or its predecessor, or by any branch of the United States Armed Forces, or who holds a valid identification card issued under the provisions of s. 295.17, upon proof of same. Any license issued under this paragraph after January 1, 1997, expires after 5 years and must be reissued, upon request, every 5 years thereafter.

(b) To be disabled by the United States Social Security Administration, upon proof of same. Any license issued under this paragraph after October 1, 1999, expires after 2 years and must be reissued, upon proof of certification of disability, every 2 years thereafter.

A disability license issued after July 1, 1997, and before July 1, 2000, retains the rights vested thereunder until the license has expired.

(2) A hunting, freshwater fishing, or saltwater fishing license or permit is not required for:

(a) Any child under 16 years of age, except as otherwise provided in this chapter.

(b) Any person hunting or freshwater fishing on her or his homestead property, or on the homestead property of the person's spouse or minor child; or any minor child hunting or freshwater fishing on the homestead property of her or his parent.

(c) Any resident who is a member of the United States Armed Forces and not stationed in this state, when home on leave for 30 days or less, upon submission of orders.

(d) Any resident freshwater fishing for recreational purposes only, within her or his county of residence with live or natural bait, using poles or lines not equipped with a fishing line retrieval mechanism. This exemption does not apply to residents fishing in a legally established fish management area.

(e) Any person freshwater fishing in a fish pond of 20 acres or less that is located entirely within the private property of the fish pond owner.

(f) Any person freshwater fishing in a fish pond that is licensed in accordance with s. 372.5705.

(g) Any person fishing who has been accepted as a client for developmental disabilities services by the Department of Children and Family Services, provided the department furnishes proof thereof.

(h) Any resident saltwater fishing from land or from a structure fixed to the land who has been deemed eligible for Medicaid Services by the Department of Children and Family Services or the Social Security Administration and who has been issued an ID card by the Agency for Health Care Administration, Florida Medicaid Program . The client must have in his or her possession the ID Card and positive proof of identification when fishing.

(i) Any person saltwater fishing from a vessel licensed pursuant to s. 372.57(7).

(j) Any person saltwater fishing from a vessel the operator of which is licensed pursuant to s. 372.57(7).

(k) Any person saltwater fishing who holds a valid saltwater products license issued under s. 370.06(2).

(l) Any person saltwater fishing for recreational purposes from a pier licensed under s. 372.57.

~~(m) Any resident fishing for a saltwater species in fresh water from land or from a structure fixed to land.~~

(n) Any resident fishing for mullet in fresh water who has a valid Florida freshwater fishing license.

(o) Any resident 65 years of age or older who has in her or his possession proof of age and residency. A no-cost license under this paragraph may be obtained from any tax collector's office upon proof of age and residency and must be in the possession of the resident during hunting, freshwater fishing, and saltwater fishing activities.

(p) Any employee of the commission who takes freshwater fish, saltwater fish, or game as part of employment with the commission, or any other person authorized by commission permit to take freshwater fish, saltwater fish, or game for scientific or educational purposes.

(q) Any resident recreationally freshwater fishing who holds a valid commercial fishing license issued under s. 372.65(1)(a).