

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB ENRC 08-11 Florida Fish & Wildlife Conservation Commission
SPONSOR(S): Environment & Natural Resources Council
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Environment & Natural Resources Council		Palmer / Bellflower	Dixon / Hamby
Committee on Conservation & State Lands	9 Y, 0 N	Palmer	Zeiler
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill specifies certain actions that result in seagrass scarring within aquatic preserves to be violations of the boating laws of Florida and specifies those actions as civil infractions. The bill establishes a penalty schedule for seagrass scarring and provides for the disposition of collected fines. The bill creates definitions for the terms "seagrass scarring" and "seagrasses".

The bill provides for confiscation and disposition of illegally taken wildlife, freshwater fish and saltwater fish and provides, upon conviction of the offender or sooner in accordance with a court order, for forfeiture of those wildlife, freshwater fish or saltwater fish to the investigating law enforcement agency. The bill specifies how the investigating law enforcement agency may dispose of the forfeited wildlife, freshwater fish or saltwater fish. However, all live, unlawfully possessed wildlife, freshwater fish or saltwater fish seized by a law enforcement agency are to be documented as evidence and then returned to their habitat unharmed, except that non-native species may be released only as allowed by rules of the Fish and Wildlife Conservation Commission (FWC).

The bill provides that photographs of illegally taken wildlife, freshwater fish, and saltwater fish shall be deemed competent evidence admissible in judicial proceedings to the same extent as if the physical items themselves were introduced as evidence. The photographs are to be attached to a written description, made under oath, and the photographs are to be signed by the photographer.

The bill repeals s. 372.107, F.S., which creates the Federal Law Enforcement Trust Fund. This trust fund was terminated in 2005.

Fines are established for seagrass scarring and monies collected are to be deposited into the Internal Improvement Trust Fund for specified uses. The bill allows the sale of forfeited wildlife, freshwater fish or saltwater fish, with proceeds being deposited to certain trust funds. Investigating law enforcement agencies would avoid current administrative and transportation costs associated with transporting, securing, and managing evidence; FWC estimates that the commission would save as much as \$40,000 annually.

The bill would become effective on October 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill limits the burden on government to maintain physical evidence and the associated costs of maintaining such evidence.

Promote Personal Responsibility: The bill adds boating regulations relating to seagrass to further protect the state's resources from careless vessel operation and provides penalties for those violations.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Seagrass Scarring

Sections 258.35-258.46, F.S., establish aquatic preserves within the state's waters. An aquatic preserve is an exceptional area of submerged lands and its associated waters set aside for being maintained essentially in its natural or existing condition. This designation includes seagrasses and seagrass meadows. It is the intent of the Legislature that aquatic preserves be set aside for the benefit of future generations.

Seagrasses are flowering plants that grow in the marine saline environment. They are called grasses only because most species superficially resemble terrestrial grasses. Because these plants must photosynthesize, they are limited to growing submerged in the photic zone and most occur in shallow and sheltered coastal waters anchored in sand or mud bottoms and can form extensive beds or meadows. In temperate areas these meadows are usually composed of few differing species whereas tropical beds are usually much more diverse with many species intermixing. Seagrass beds are highly productive ecosystems and can harbor species from all phyla, for example juvenile and adult fish, epiphytic and free-living macroalgae and microalgae, shellfish, worms, and nematodes. It was once thought that few associated species fed directly on seagrass leaves but recent scientific studies with improved measurement techniques have revealed that seagrasses are a highly important link in the food chain with many species feeding on seagrasses, including manatees, fish, birds, sea urchins and crabs. Seagrasses, in part, create their own habitat – the leaves slow down water currents increasing sedimentation and the seagrass roots and rhizomes stabilize the seabed. Their importance for associated species is due to provision of shelter and for their extraordinarily high rate of primary production. They also provide coastal zones with a number of benefits such as spawning areas, fishing grounds, wave protection, oxygen production, and protection against coastal erosion.¹

Seagrasses and seagrass meadows are particularly susceptible to damage by scouring and chopping caused by boat props or propellers. This type of damage leaves linear, disturbed bottom areas that require a long period of time for seagrasses to recolonize. The statutes do not currently authorize enforcement action against persons who operate boats in a careless manner that results in seagrass scarring.

¹ Hemminga, M.A. and Duarte, C. 2000. *Seagrass Ecology*. Cambridge University Press, Cambridge. 298 pp.
Short, F.T. and Coles, R.G.(eds). 2001. *Global Seagrass Research Methods*. Elsevier Science, Amsterdam. 473 pp.

Confiscation and Disposition of illegally taken Fish and Wildlife

- Saltwater Fish

Section 370.061, F.S., provides for the seizure and forfeiture of saltwater fish obtained by unlawful commercial harvesting. However, no provision exists in the statutes for the seizure or forfeiture of unlawfully obtained, recreationally harvested, perishable saltwater fish – except for trout, snook or redfish when the harvest exceeds three times the legal bag limit.

When an arrest is made and illegal, perishable saltwater fish taken or landed by a commercial harvester are confiscated, the defendant may post bond or a cash deposit in an amount determined by the judge to be the fair value of the confiscated products. The defendant then has twenty-four hours to transport the fish outside the limits of Florida for sale or other disposition. Should no bond or cash deposit be given within the time fixed by the judge, the judge may order the sale of the confiscated saltwater fish at the highest price obtainable.

Proceeds from the sale of confiscated saltwater fish, or cash deposit or bond posted by the defendant are received by the judge and remitted to the FWC to be deposited into a special escrow account to be held in trust pending the outcome of the trial of the defendant. In the event of acquittal, the proceeds of a sale or the bond or cash deposit are returned to the defendant. In the event of a conviction, the proceeds are deposited into the Marine Resources Conservation Trust Fund to be used for law enforcement purposes.

Any municipal or county law enforcement agency that enforces or assists the FWC in enforcing the provisions of s. 370, F.S., when enforcement results in a forfeiture of commercially harvested saltwater products, is entitled to receive all or a share of that property based upon its participation in the enforcement, pursuant to s. 370.061(6)(a), F.S.

- Game and Freshwater Fish

Section 372.73, F.S., provides for the seizure and forfeiture of any unlawfully obtained game or freshwater fish. When an arrest is made and game or freshwater fish are confiscated, those game or freshwater fish are to be held as evidence until the trial of the defendant, unless the court orders an earlier disposal. Upon conviction of the offender, or sooner if the court so orders, confiscated game or freshwater fish are forfeited and are to be given to some hospital or charitable institution. However, all forfeited furs, hides or fur-bearing animals are sent to the FWC, which shall sell them and deposit the proceeds of the sale to the State Game Trust Fund.

Evidence

According to FWC, in the majority of cases, game and freshwater fish 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 a 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.²

Currently, game and freshwater fish are being seized and stored at a faster rate than they are being removed from evidence by court order. All evidence facilities must be in compliance with accreditation standards and expanding evidence facilities often requires the installation of fencing and other security measures. Often, local police and sheriff departments that seize game and freshwater fish do not have adequate freezers to accommodate this evidence and use FWC's freezers for storage. This puts an

² FWC, Division of Law Enforcement, 2008. Confiscation and disposition of illegally taken wildlife. freshwater fish and saltwater fish.

additional administrative burden on the FWC staff for processing this additional evidence. The FWC has also had to purchase and maintain additional freezers.³

Effect of Proposed Change

The bill amends s. 253.04, F.S. It defines seagrass scarring as damage caused by the operation of a vessel in waters supporting seagrasses, resulting in the destruction of roots, shoots, or stems of seagrass plants, which causes denuding of vegetation in tracks of sediment commonly referred to as prop-scars or propeller scars. Seagrasses are defined to be Cuban shoal grass (*Halodule wrightii*), turtle grass (*Thalassia testudinum*), manatee grass (*Syringodium filiforme*), star grass (*Halophila engelmannii*), paddle grass (*Halophila decipiens*), Johnson's seagrass (*Halophila johnsonii*), or widgeon grass (*Ruppia maritima*).

The bill specifies that the operation of a vessel outside lawfully marked channels that causes seagrass scarring within an aquatic preserve – except for the Lake Jackson, Wekiva River and Rainbow Springs Aquatic Preserves which are freshwater – is a civil infraction. However, seagrass scarring that occurs whenever a vessel is being operated in a reasonable, prudent and non-negligent manner is not considered a violation. A seagrass scarring violation is determined to be a violation of the boating laws of this state and shall be charged on a uniform boating citation. Refusal to post bond or sign a boating citation is specified to be a misdemeanor of the second degree.

The bill amends section 327.73, F.S., providing a civil infraction penalty schedule for seagrass scarring in certain aquatic preserves. The schedule is:

- \$50 upon conviction for a first offense;
- \$250 upon conviction for a second offense occurring within twelve months of a prior conviction;
- \$500 upon conviction for a third offense occurring within thirty-six months of a prior conviction;
- \$1,000 upon conviction for a fourth or subsequent offense.

All civil penalties collected pursuant to this bill are to be deposited into the Internal Improvement Trust Fund and used solely to implement, administer, and enforce the provisions of this bill, provide for seagrass restoration, conduct a program to educate vessel operators about the need to protect seagrasses from damage caused by the operation of vessels, and to fund marking of seagrasses.

The bill amends s. 372.73, F.S., to provide for forfeiture, upon conviction of the offender or sooner in accordance with a court order, of unlawfully obtained wildlife, freshwater fish or saltwater fish seized by a law enforcement agency to that law enforcement agency. The investigating law enforcement agency may dispose of the forfeited wildlife, freshwater fish or saltwater fish by:

- retaining it for the agency's official use;
- transferring it to another unit of state or local government for official use;
- donating it to a charitable organization;
- selling it at public sale, pursuant to the provisions of s. 705.103, F.S.; or
- destroying it if none of the other options are practicable, or if it is unwholesome or otherwise not of appreciable value.

However, all live, unlawfully possessed wildlife, freshwater fish or saltwater fish seized by a law enforcement agency are to be documented as evidence and then returned to its habitat unharmed, except that non-native species may be released only as allowed by rules of the Fish and Wildlife Conservation Commission (FWC).

The proceeds of any sale of seized wildlife, freshwater fish or saltwater fish is to be remitted to the Department of Revenue which is to credit the State Game Trust Fund or the Marine Resources Conservation Trust Fund, as applicable.

³ FWC, Division of Law Enforcement, 2008. Confiscation and disposition of illegally taken wildlife, freshwater fish and saltwater fish.

The bill creates s. 372.731, F.S., providing that a photograph of illegally taken wildlife, freshwater fish or saltwater fish may be deemed competent evidence of such property and may be admissible in judicial proceedings to the same extent as if the property itself were introduced as evidence. The photographs

are to be attached to a written description, to be made under oath. The photographs are to be signed by the photographer.

Game and freshwater fish law enforcement officers and marine resource officers are often patrolling in remote areas and may need to travel a significant distance to an evidence storage facility. Providing for photographic evidence would allow officers to work more efficiently in the field and focus their efforts on patrolling the woods and waters of the state.

The bill repeals s. 372.107, F.S. This section creates the Federal Law Enforcement Trust Fund within the FWC. This trust fund was terminated in 2005.⁴

C. SECTION DIRECTORY:

Section 1: Amends s. 253.04, F.S.; providing certain actions in aquatic preserves to be either civil infractions or misdemeanors of the second degree; providing for the disposition of collected fines; providing definitions.

Section 2: Amends s. 327.73, F.S.; providing a civil infraction penalty schedule for seagrass scarring in designated aquatic preserves.

Section 3: Amends s. 372.73, F.S.; providing for confiscation and disposition of illegally taken wildlife, freshwater fish and saltwater fish.

Section 4: Creates s. 372.731, F.S.; providing photographs of illegally taken wildlife, freshwater fish, and saltwater fish shall be deemed competent evidence admissible in judicial proceedings.

Section 5: Repeals s. 372.107, F.S.; which creates the Federal Law Enforcement Trust Fund.

Section 6: Creates an effective date of October 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments

2. Expenditures:

See Fiscal Comments

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments

2. Expenditures:

See Fiscal Comments

⁴ Chapter 2005-17, L.O.F.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The private sector would be required to pay escalating fines for the careless operation of a vessel outside lawfully marked channels that causes seagrass scarring within an aquatic preserve.

FWC and other law enforcement agencies would be able to donate to non-profit organizations forfeited wildlife, freshwater fish and saltwater fish, upon the conviction of the offender or sooner in accordance with a court order.

D. FISCAL COMMENTS:

All civil penalties for seagrass scarring collected pursuant to this bill are to be deposited into the Internal Improvement Trust Fund. These funds to be used solely to: implement, administer, and enforce the provisions of this bill; provide for seagrass restoration; and conduct a program to educate vessel operators about the need to protect seagrasses from damage caused by the operation of vessels.

Upon conviction of a violator, the proceeds from the sale of confiscated wildlife, freshwater fish or saltwater fish, or a cash deposit or bond posted are deposited into the Marine Resources Conservation Trust Fund to be used for law enforcement purposes. Any municipal or county law enforcement agency that enforces or assists the FWC in enforcing the provisions of the bill is entitled to receive all or a share of that property based upon its participation in the enforcement.

Allowing photographic evidence would save time and costs associated with officer's transporting, securing, and managing evidence. FWC reports that in the three month period, from August 1, 2006 to October 31, 2006, there were ninety-eight evidence numbers issued for the seizure of saltwater products. Seventy-three of those 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 per officer rate of \$33.93 per hour. The total positive fiscal impact for FWC could exceed \$40,000 annually. Local police and sheriff departments would be able to reduce the amount of evidence that is held in FWC evidence freezers and avoid current administrative and transportation costs associated with transporting, securing, and managing evidence. Also, confiscated products would not have to remain in evidence freezers so long that their usefulness is lost.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require cities or counties to spend funds or take actions requiring the expenditure of funds, nor does it appear to reduce the authority that cities or counties have to raise revenues in the aggregate, nor does it appear to reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

While no new rulemaking authority is granted, additional rulemaking may be necessary to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 372.107, F.S., is repealed but there are references to this section in ss. 370.021(2)(m), 370.061(4), 370.061(5)(c), 372.9901(5), 372.9904(3), 932.7055(6)(e), F.S.

D. STATEMENT OF THE SPONSOR

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 5, 2008, the Committee on Conservation and State Lands voted to recommend to the council PCB ENRC 08-11. The original bill was amended to provide that any state, municipal or county law enforcement agency that enforces or assists the commission in enforcing the provisions of ch. 372, F.S., is entitled to receive, based upon its participation in such enforcement, all or a share of the proceeds from the disposal of forfeited property.