

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Environmental Preservation and Conservation Committee

BILL: CS/SB 1300

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Saunders

SUBJECT: Fish and Wildlife

DATE: March 20, 2008 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bascom	Kiger	EP	Fav/CS
2.			GA	
3.			RC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The committee substitute (CS) creates civil infraction penalties for persons that operate vessels in a careless manner outside of a lawfully marked channel, within an aquatic preserve, that causes seagrass scarring. The CS creates definitions for “seagrasses” and “seagrass scarring” and provides uniform boating citation and misdemeanor penalties for violations pertaining to seagrasses.

The CS provides for the disposition of illegally taken wildlife, freshwater fish and saltwater fish as determined by the investigating law enforcement agency, except that live wildlife, freshwater fish and saltwater fish shall be properly documented and returned to the habitat unharmed. Unless otherwise provided, if the disposition method chosen was sale of the wildlife, freshwater fish or saltwater fish, the proceeds of such a sale be remitted to the Department of Revenue for deposit into the Marine Resources Conservation Trust Fund. Any state, municipal or county law enforcement agency that assisted with the enforcement of such actions, shall be entitled to receive all or a share of the property.

Finally, the CS creates provisions that allows for photographs of illegally taken wildlife, freshwater fish and saltwater fish to be deemed as competent evidence and admissible in the prosecution of such takings, with certain conditions.

The CS amends sections 253.04, 327.73, and 372.73, Florida Statutes.

The CS creates section 372.731, Florida Statutes.

## **II. Present Situation:**

### **Seagrasses**

Seagrass systems are highly productive communities that provide base resources for important fisheries, marine wildlife, and ecological processes. Seagrasses provide submerged habitat that supports many economically important saltwater fish, shellfish, and wildlife species. Seagrass meadows are responsible for generating up to approximately \$20,000 in fishery-related economic benefits per acre each year. Seagrass is an important food source for manatees and sea turtles. Seagrass protection is essential for the maintenance of saltwater fisheries, wildlife, high quality marine environments, and recreational opportunities in the State of Florida.

Propeller scarring in seagrass is a recognized problem in areas of high boating use around the state which currently has over 1 million registered boats. A 1995 report generated by the Fish and Wildlife Research Institute (formerly Florida Marine Research Institute) determined that more than 173,000 acres of seagrass in shallow near-shore waters were scarred by watercraft. Subsequent analysis of seagrass systems have shown increases in both the number of propeller scars and the severity of scarring. A Charlotte Harbor assessment found a 71 percent increase in severely scarred seagrass habitat when aerial images taken in 2003 were compared with the aerial images used in the 1995 report. During this same period, vessel registrations grew from 16,896 to 22,252 boats in Charlotte County, an increase of 32 percent. These findings are consistent with observed high-density growth and development in coastal areas which will continue to bring growing vessel traffic in the shallow vegetated estuary waters of the state. 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 seagrass can be damaged by propellers or other motorized watercraft.

The growing problem with seagrass damaged by boat propellers has compelled further management action. An active outreach campaign to instill marine resource stewardship has produced brochures, boater’s guides, public service announcements, and boat ramp information kiosks. Non-regulatory management efforts include signs that mark shallow seagrass beds. Many of these efforts involve partnerships with stakeholders.

An interagency Seagrass Working Group consisting of Fish and Wildlife Conservation Commission (commission) and Department of Environmental (department) staff was assembled in 2004 to address the seagrass damage issue. At the initial stakeholder meeting in February, 2005, representatives from the boating, commercial and recreational fishing, environmental, and regulatory community assessed the extent of the problem and recommended resource

management options. Many stakeholders agreed to partner with the Seagrass Working Group to provide guidance for implementation of agreed upon actions. One of the priorities was for the agencies to acquire the necessary legislative authority to address seagrass damage caused by vessel operation, and another was to explore the use of existing legislative authority to do so, if it existed. The Seagrass Working Group began to develop a refined operational guidance procedure to more effectively implement seagrass protection regulations available to regulatory agencies. This regulatory ability is based upon the department's statutory authority to pursue civil penalties for natural resource damage on state lands and the commission's statutory responsibility to enforce state marine law.

The working group developed a pilot project protocol associated with implementing the operational guidance procedure and presented it to the stakeholders in August 2006. A consensus was reached to support legislation implementing a non-criminal infraction system where vessel operators causing propeller scarring could be fined for damaging seagrasses in aquatic preserves. A penalty system similar to the one being proposed by legislation exists in some state parks and in Pinellas County. A more comprehensive federal penalty system exists in the Florida Keys National Marine Sanctuary.

### **Disposition of Illegally Taken Wildlife**

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.

The forfeiture process for commercially harvested saltwater products requires conviction as a condition precedent to the disposal of any perishable seafood product or 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.

### **Evidentiary Materials**

At present, 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 commission freezers for storage. This adds to the volume and places an additional administrative burden on commission staff to process additional evidence. These situations have required the commission 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. 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.

### III. Effect of Proposed Changes:

**Section 1:** The CS amends s. 253.04, F.S., to create a non-criminal violation for any person who operates a vessel outside a lawfully marked channel in a careless manner that causes propeller scarring within an aquatic preserve. Each violation is a separate offense and must be charged on a uniform boating citation as provided in s. 327.74, F.S. Persons who refuse to post a bond or accept and sign a uniform boating citation commit a second degree misdemeanor, punishable as provided in s. 775.083 or s. 775.083, F.S.

**Section 2:** The CS amends s. 327.73, F.S., to create civil penalties for violations ranging from \$50 for a first violation, to \$1,000 for a fourth or subsequent offense.

**Section 3:** The CS amends s. 372.73, F.S., to create provisions that allows the investigating law enforcement agency to dispose of illegally taken wildlife, freshwater fish, or saltwater fish in the following manner:

- They may retain it for the agencies official use;
- They may transfer it to another unit of state or local government for official use;
- They may donate it to a charitable organization;
- They may sell it at a public sale, with conditions; or
- They may destroy it if none of the other options are practicable or if it is unwholesome or otherwise of no appreciable value.

All live wildlife, freshwater fish, or saltwater fish shall be properly documented and returned to the habitat unharmed, except that non-native wildlife may only be released as allowed by commission rule. Any unclaimed wildlife, freshwater fish, or saltwater fish shall be retained by the investigating agency and disposed of in accordance with the provisions above.

Unless otherwise provided, the proceeds from the sale of illegally taken wildlife, freshwater fish, and saltwater fish shall be remitted to the Department of Revenue for deposit into the Marine Resources Conservation Trust Fund. Any state, municipal, or county law enforcement agency that assists the commission in enforcement of the above provisions shall be entitled to all or a portion of any property based on participation.

**Section 4:** The CS creates s. 372.731, F.S., providing that photographs of illegally taken wildlife, freshwater fish, or saltwater fish may be deemed competent evidence of such property and admissible to the same extent as if the wildlife, freshwater fish, or saltwater fish were introduced as evidence. Such photographs must possess:

- A written description of the wildlife, freshwater fish, or saltwater fish alleged to have been illegally taken;
- The name of the violator;

- The location of where the alleged wrongful taking occurred;
- The name of the investigating law enforcement officer;
- The date of the photograph; and
- The name of the photographer.

Such writings are to be made under oath by the investigating officer and the photograph shall be identified by the signature of the photographer.

**Section 5:** Provides an effective date of October 1, 2008.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

This CS does not require cities and counties to expend funds or limit their authority to raise revenues or receive state-shared revenues as specified by s. 18, Art. VII, State Constitution.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

Persons who violate the provisions of the CS may be charged with a non-criminal boating infraction that can carry a fine of \$50 to \$1000 based on type or subsequent number of offenses.

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. The CS would provide charities and non-profit organizations the ability to receive donated saltwater fish that may help to defer food costs.

##### **C. Government Sector Impact:**

###### **Seagrasses**

Currently, funds collected from damages to seagrass beds are placed into the General Revenue Fund or the Internal Improvement Trust Fund. An unknown amount of revenue

may be generated based on the number of infractions for boating violations in aquatic preserves and the fines or penalties collected.

### **Illegally taken wildlife and evidentiary materials<sup>1</sup>**

The CS would save time and costs associated with officer's transporting, securing, and managing evidence. 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.

### **Local Governments**

There is an unknown, yet potentially positive, fiscal impact to local police and sheriff departments as they would be able to reduce the amount of evidence that is held in the commissions evidence freezers, in cases they have made, thus avoiding additional administrative and transportation costs.

## **VI. Technical Deficiencies:**

None.

## **VII. Related Issues:**

None.

## **VIII. Additional Information:**

### **A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

#### **CS by Environmental Preservation and Conservation Committee March 19, 2008:**

The CS amends s. 253.04, F.S., creating civil infraction penalties for persons that operate vessels in a careless manner outside of a lawfully marked channel, within an aquatic preserve, that causes seagrass scarring. It also provides definitions for "seagrasses" and "seagrass scarring". Additionally, it creates non-criminal infraction penalties for violations pertaining to seagrasses under s. 327.73, F.S.

The CS amends s. 372.73, F.S., providing for the disposition of illegally taken wildlife, freshwater fish and saltwater fish as determined by the investigating law enforcement agency, except that live wildlife, freshwater fish and saltwater fish shall be properly documented and returned to the habitat unharmed. Unless otherwise provided, if the disposition method chosen was sale of the wildlife, freshwater fish or saltwater fish, the proceeds of such a sale be remitted to the Department of Revenue for deposit into the Marine Resources Conservation Trust Fund. Any state, municipal or county law

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<sup>1</sup> Provided by the Fish and Wildlife Conservation Commission bill analysis.

enforcement agency that assisted with the enforcement of such actions, shall be entitled to receive all or a share of the property.

The CS creates s. 372.731, F.S., providing for provisions that allow for photographs of illegally taken wildlife, freshwater fish and saltwater fish to be deemed as competent evidence and admissible in the prosecution of such takings, with certain conditions.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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