

By the Committee on Environmental Preservation and Conservation;  
and Senator Constantine

592-03356-09

20091004c1

1                                   A bill to be entitled  
2       An act relating to coral reefs; amending s. 380.0558,  
3       F.S.; revising definitions; providing that moneys in  
4       the Ecosystem Management and Restoration Trust Fund  
5       within the Department of Environmental Protection  
6       received from damages recovered for injury to coral  
7       reefs are expended to pay for alternative projects  
8       selected by the department as staff to the Board of  
9       Trustees of the Internal Improvement Trust Fund;  
10      creating s. 380.29, F.S.; providing a short title;  
11      providing definitions; providing legislative intent;  
12      requiring responsible parties to notify the department  
13      if their vessel runs aground or damages a coral reef;  
14      requiring the responsible party to remove the vessel;  
15      requiring the responsible party to cooperate with the  
16      department to assess the damage and restore the coral  
17      reef; authorizing the department to recover damages  
18      from the responsible party; authorizing the department  
19      to use a certain method to calculate compensation for  
20      damage of coral reefs; authorizing the department to  
21      assess civil penalties; authorizing the department to  
22      enter into delegation agreements; authorizing the  
23      department to adopt rules; amending s. 403.1651, F.S.;  
24      authorizing the department to enter into settlement  
25      agreements that require responsible parties to pay  
26      another government entity or nonprofit organization to  
27      fund projects consistent with the conservation or  
28      protection of coral reefs; repealing s. 253.04, F.S.,  
29      relating to the duty of Board of Trustees of the

592-03356-09

20091004c1

30 Internal Improvement Trust Fund to protect state  
31 lands; providing an effective date.

32  
33 Be It Enacted by the Legislature of the State of Florida:

34  
35 Section 1. Paragraphs (a) and (d) of subsection (1) and  
36 paragraph (c) of subsection (5) of section 380.0558, Florida  
37 Statutes, are amended to read:

38 380.0558 Coral reef restoration.—

39 (1) DEFINITIONS.—As used in this section, the term:

40 (a) "Coral reefs" means:

41 1. Limestone structures composed in whole or in part of  
42 living stony corals, their skeletal remains, or both, and  
43 hosting other coral, associated benthic invertebrates, and  
44 plants; or

45 2. Hard-bottom communities, also known as live bottom  
46 habitat or colonized pavement, characterized by the presence of  
47 stony coral and associated reef organisms or worm reefs created  
48 by the *Phragmatopoma* species ~~the assemblage of corals and other~~  
49 ~~organisms that are actively building three-dimensional reef~~  
50 ~~structures off the southern coast of Florida.~~

51 (d) "Natural resources" means land, air, water,  
52 groundwater, drinking water supplies, fish and their habitats,  
53 wildlife and their habitats, biota, and other such resources  
54 belonging to, managed by, held in trust by, appertaining to, or  
55 otherwise controlled by the state ~~State of Florida and situated~~  
56 ~~in an area of critical state concern or offshore from an area of~~  
57 ~~critical state concern.~~

58 (5) TRUST FUND EXPENDITURES.—Moneys in the fund received

592-03356-09

20091004c1

59 from damages recovered for injury to, or destruction of, coral  
60 reefs or natural resources shall be expended only for the  
61 following purposes:

62 (c) To pay for alternative projects selected by the  
63 Department of Environmental Protection as staff to the Board of  
64 Trustees of the Internal Improvement Trust Fund. Any such  
65 project shall be selected on the basis of its anticipated  
66 benefits to the residents of this state who used the injured or  
67 destroyed coral reefs or other natural resources or will benefit  
68 from the alternative project.

69 Section 2. Section 380.29, Florida Statutes, is created to  
70 read:

71 380.29 Coral reef protection.—

72 (1) This section may be cited as the "Florida Coral Reef  
73 Protection Act."

74 (2) As used in this section, the term:

75 (a) "Aggravating circumstances" means operating, anchoring,  
76 or mooring a vessel in a reckless or wanton manner; under the  
77 influence of drugs or alcohol; or otherwise with disregard for  
78 boating regulations concerning speed, navigation, or safe  
79 operation.

80 (b) "Coral" means species of the phylum *Cnidaria* found in  
81 state waters including:

82 1. Class *Anthozoa*, including the subclass *Octocorallia*,  
83 commonly known as gorgonians, soft corals, and telestaceans; and

84 2. Orders *Scleractinia*, commonly known as stony corals;  
85 *Stolonifera*, including, among others, the organisms commonly  
86 known as organ-pipe corals; *Antipatharia*, commonly known as  
87 black corals; and *Hydrozoa*, including the family *Millaporidae*

592-03356-09

20091004c1

88 and family *Stylasteridae*, commonly known as hydrocoral.

89 (c) "Coral reefs" mean:

90 1. Limestone structures composed wholly or partially of  
91 living stony corals, their skeletal remains, or both, and  
92 hosting other coral, associated benthic invertebrates, and  
93 plants; or

94 2. Hard-bottom communities, also known as live bottom  
95 habitat or colonized pavement, characterized by the presence of  
96 stony coral and associated reef organisms or worm reefs created  
97 by the *Phragmatopoma* species.

98 (d) "Damages" means moneys paid by any person or entity,  
99 whether voluntarily or as a result of administrative or judicial  
100 action, to the state as compensation, restitution, penalty, or  
101 mitigation for causing injury to or destruction of coral reefs.

102 (e) "Department" means the Department of Environmental  
103 Protection.

104 (f) "Responsible party" means the owner, operator, manager,  
105 or insurer of any vessel.

106 (3) The Legislature finds that coral reefs are valuable  
107 natural resources that contribute ecologically, aesthetically,  
108 and economically to the state. Therefore, the Legislature  
109 declares it is in the best interest of the state to clarify the  
110 department's powers and authority to protect coral reefs through  
111 timely and efficient recovery of monetary damages resulting from  
112 vessel groundings and anchoring-related injuries. It is the  
113 intent of the Legislature that the department, as staff to the  
114 Board of Trustees of the Internal Improvement Trust Fund and by  
115 virtue of its own regulatory powers, be recognized as the  
116 state's lead trustee for coral reef resources associated with

592-03356-09

20091004c1

117 sovereignty submerged lands unless preempted by federal law.  
118 This section does not divest other state agencies and political  
119 subdivisions of the state of their interests in protecting coral  
120 reefs.

121 (4) The responsible party who knows or should know that  
122 their vessel has run aground, struck, or otherwise damaged coral  
123 reefs must notify the department of such an event within 24  
124 hours after its occurrence. Unless otherwise prohibited or  
125 restricted by the United States Coast Guard, the responsible  
126 party shall remove or cause the removal of the grounded or  
127 anchored vessel within 72 hours after the initial grounding or  
128 anchoring absent extenuating circumstances, such as weather, sea  
129 state, or hazards that would prevent safe removal of the vessel.  
130 The responsible party shall remove or cause the removal of the  
131 vessel or its anchor in a manner that avoids further damage to  
132 coral reefs and shall consult with the department to accomplish  
133 this task. The responsible party shall cooperate with the  
134 department to undertake damage assessment and primary  
135 restoration of the coral reef in a timely fashion.

136 (5) In any action or suit initiated pursuant to chapter 253  
137 or chapter 403 for damage to coral reefs, the department, acting  
138 on its own behalf or on the behalf of the Board of Trustees of  
139 the Internal Improvement Trust Fund, as appropriate, may recover  
140 all damages from the responsible party, including, but not  
141 limited to:

142 (a) Compensation for the cost of replacing, restoring, or  
143 acquiring the equivalent of the coral reef injured and the value  
144 of the lost use and services of the coral reef pending its  
145 restoration, replacement or acquisition of the equivalent coral

592-03356-09

20091004c1

146 reef, or the value of the coral reef if the coral reef cannot be  
147 restored or replaced or if the equivalent cannot be acquired.

148 (b) The cost of damage assessments, including staff time.

149 (c) The cost of activities undertaken by or at the request  
150 of the department to minimize or prevent further injury to coral  
151 or coral reefs pending restoration, replacement, or acquisition  
152 of an equivalent.

153 (d) The reasonable cost of monitoring the injured,  
154 restored, or replaced coral reef for at least 10 years.

155 (e) The cost of enforcement actions undertaken in response  
156 to the destruction or loss of or injury to a coral reef,  
157 including court costs, attorney's fees, and expert witness fees.

158 (6) The department may use habitat equivalency analysis as  
159 the method by which the compensation described in subsection (5)  
160 is calculated. The parameters for calculation by this method may  
161 be prescribed by rule adopted by the department.

162 (7) In addition to the compensation described in subsection  
163 (5), the department may assess, per occurrence, civil penalties  
164 according the following schedule:

165 (a) For failure to notify the department in accordance with  
166 subsection (4), \$500.

167 (b) For any anchoring of a vessel on a coral reef on  
168 sovereignty submerged lands or for any other damage to a coral  
169 reef totaling less than or equal to an area of 1 square meter,  
170 \$150; with aggravating circumstances, an additional \$150;  
171 occurring within a state park or aquatic preserve, an additional  
172 \$150.

173 (c) For damage totaling more than an area of 1 square meter  
174 but less than or equal to an area of 10 square meters, \$300 per

592-03356-09

20091004c1

175 square meter; with aggravating circumstances, an additional \$300  
176 per square meter; occurring within a state park or aquatic  
177 preserve, an additional \$300 per square meter.

178 (d) For damage exceeding an area of 10 square meters,  
179 \$1,000 per square meter; with aggravating circumstances, an  
180 additional \$1,000 per square meter; occurring within a state  
181 park or aquatic preserve, an additional \$1,000 per square meter.

182 (e) For a second violation, the total penalty may be  
183 doubled.

184 (f) For a third violation, the total penalty may be  
185 tripled.

186 (g) For any violation after a third violation, the total  
187 penalty may be quadrupled.

188 (h) The total of penalties levied may not exceed \$250,000  
189 per occurrence.

190 (8) To carry out the intent of this section, the department  
191 may enter into delegation agreements with another state agency  
192 or any coastal county with coral reefs within its jurisdiction.  
193 In deciding to execute such agreements, the department must  
194 consider the ability of the potential delegee to adequately and  
195 competently perform the duties required to fulfill the intent of  
196 this section. When such agreements are executed by the parties  
197 and incorporated in department rule, the delegee shall have all  
198 rights accorded the department by this section. Nothing herein  
199 shall be construed to require the department, another state  
200 agency, or a coastal county to enter into such an agreement.

201 (9) Nothing in this section shall be construed to prevent  
202 the department or other state agencies from entering into  
203 agreements with federal authorities related to the

592-03356-09

20091004c1

204 administration of the Florida Keys National Marine Sanctuary.

205 (10) The department may adopt rules pursuant to ss. 120.536  
206 and 120.54 to administer this section.

207 Section 3. Paragraph (b) of subsection (2) of section  
208 403.1651, Florida Statutes, is amended to read:

209 403.1651 Ecosystem Management and Restoration Trust Fund.—

210 (2) The trust fund shall be used for the deposit of all  
211 moneys recovered by the state:

212 (b) For injury to or destruction of coral reefs, which  
213 moneys would otherwise be deposited into the General Revenue  
214 Fund or the Internal Improvement Trust Fund. The department may  
215 enter into settlement agreements that require responsible  
216 parties to pay a third party to fund projects related to the  
217 restoration of a coral reef, to accomplish mitigation for injury  
218 to a coral reef, or to support the activities of law enforcement  
219 agencies related to coral reef injury response, investigation  
220 and assessment. Participation of a law enforcement agency in the  
221 receipt of funds through this mechanism shall be at the law  
222 enforcement agency's discretion

223 Section 4. Subsection (3) of section 253.04, Florida  
224 Statutes, is repealed.

225 Section 5. This act shall take effect July 1, 2009.