

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1423 Fish and Wildlife Conservation Commission  
**SPONSOR(S):** Finance & Tax Council; General Government Policy Council; Troutman  
**TIED BILLS:** **IDEN./SIM. BILLS:**

	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	<u>Agriculture &amp; Natural Resources Policy Committee</u>	<u>16 Y, 2 N</u>	<u>Deslatte</u>	<u>Reese</u>
2)	<u>General Government Policy Council</u>	<u>13 Y, 0 N, As CS</u>	<u>Deslatte</u>	<u>Hamby</u>
3)	<u>Finance &amp; Tax Council</u>	<u>14 Y, 0 N, As CS</u>	<u>Shaw</u>	<u>Langston</u>
4)	<u></u>	<u></u>	<u></u>	<u></u>
5)	<u></u>	<u></u>	<u></u>	<u></u>

### SUMMARY ANALYSIS

The bill amends numerous statutes relating to various programs under the Florida Fish and Wildlife Conservation Commission's (FWC/Commission) authority. The bill:

- Creates a noncriminal infraction for damaging seagrasses and increases fines for repeat offenders;
- Provides a Type II transfer of the Bureau of Invasive Plant Management from the Department of Environmental Protection (DEP) to the FWC, transfers the Invasive Plant Trust Fund from the DEP to the FWC;
- Increases vehicle license fees for vehicles previously registered outside of Florida;
- Increases fees for the Conserve Wildlife and Save the Manatee specialty license plates;
- Lowers blood alcohol level thresholds for enhanced penalties for boating under the influence;
- Requires all boat operators to take a boater education course if born after January 1, 1988;
- Makes numerous changes to statutes governing uniform waterway markers;
- Revises statutes governing FWC and local government designation of boating restricted areas;
- Changes from under 6 to under 10 years of age the current requirement to wear a personal flotation device;
- Revises statutes governing local regulations and limitations relating to boating activities;
- Establishes requirements for the carriage of gasoline on vessels and establishes penalties for violations;
- Clarifies current statutes relating to certificates of boat titles;
- Revises statutes governing the confiscation and disposition of evidence in saltwater fish, freshwater fish, and wildlife cases;
- Repeals Florida's shoreline saltwater fishing license exemption and creates a resident shoreline license;
- Increases fees for waterfowl, wild turkey, snook, spiny lobster, special use, and management area permits.
- Creates a permit requirement for deer and management area use for non-hunting and non-fishing recreational activities.
- Revises the time period for when spiny lobster trap certificates are considered abandoned;
- Updates regulations governing alligator trapping and farming agents to reflect current conditions;
- Directs FWC to implement at least three pilot projects for regulating the anchoring or mooring of non-live-aboard vessels outside the marked boundaries of public mooring fields.

The bill has an overall positive recurring fiscal impact on state funds of \$3.2 million in FY 2009-10 and \$7.4 million recurring. See fiscal analysis section for details.

Except as otherwise provided, the bill is effective July 1, 2009.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Aquatic and Invasive Plant Management Program**

###### Current Situation

FWC's aquatic plant management program designs, funds, coordinates, and contracts aquatic plant control efforts in Florida's 1.25 million acres of public waters. Florida Statutes and rules (s. 369.20, s. 369.22, F.S., and Commission rules<sup>1</sup>) govern this activity. Public water bodies are sovereignty waters accessible by public boat ramps. Invasive aquatic plants, mostly hydrilla (*Hydrilla verticillata*), water hyacinth (*Eichhornia crassipes*), and water lettuce (*Pistia stratiotes*) are managed or controlled in several hundred water bodies each year.

During the 2008 Legislative Session, s. 206.606, F.S., was amended to change all references from DEP to FWC. This proposal corrects one reference that was missed. During the 2008 Legislative Session, SB 1294 was filed which, among other issues, transferred the statutory authority of the State's invasive plant management program from DEP to FWC. Inadvertently, SB 1294 did not include a Type Two transfer of the Bureau of Invasive Plant Management, which provides a mechanism for transferring an agency program/subunit in its entirety from one agency to another, including all powers, duties, functions, records, personnel, property, appropriations, trust funds, or other funds associated with the program.

The Legislature added the Type Two transfer language to HB 7059, FWC's "seagrass" bill. The Governor vetoed HB 7059 for an issue unrelated to the transfer of the invasive plant management program. Following the 2008 Session, the personnel, property, records, and funding were transferred by the Legislative Budget Commission; however, it has been determined that the Invasive Plant Control Trust Fund, the program's trust fund, cannot be legally moved from DEP to FWC without specific legislation.

Prior to the Invasive Plant Management program being transferred from DEP to the FWC during the 2008 Florida legislative session, violations of the statutes and rules related to aquatic plant management were resolved by DEP using the judicial or administrative remedies in sections 403.121, 403.131, 403.141 and 403.161, F.S. Amendments were not made to existing law during the 2008 legislative session that would allow FWC to pursue resolution to violations of the aquatic plant management statutes and rules by judicial or administrative means. Currently, the only means FWC

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<sup>1</sup> [http://www.myfwc.com/WILDLIFEHABITATS/Nonnative\\_index.htm](http://www.myfwc.com/WILDLIFEHABITATS/Nonnative_index.htm)

has to resolve these violations is to use the Commission's overall criminal penalty provisions. FWC does not feel that criminal penalties are appropriate for violations of the aquatic plant management statutes and rules.

Many of the aquatic plant management activities occur on sovereign submerged lands and require approval from the Board of Trustees of the Internal Improvement Trust Fund (BOT) or their representative prior to activities being implemented. When the Invasive Plant Management program resided in DEP it was administered by the Bureau within the Division of State Lands. The Division of State Lands is the BOT representative. Therefore, when the Bureau authorized activities on sovereign submerged lands, no further action was required by the BOT. During the 2008 Florida legislative session, SB 1294 authorized the BOT to delegate to FWC the authority to allow activities pursuant to s. 369.20, F.S., but inadvertently left out the authorization to delegate the authority for activities pursuant to s. 369.22, F.S. The Legislature tried to correct this oversight and added the full authorization to HB 7059, but the bill was vetoed by the Governor for an unrelated issue.

Section 403.088, F.S., states that a water pollution operation permit is not required from DEP for the application of approved herbicides to control aquatic weeds or algae provided the application is performed pursuant to a program approved by DEP. When the Bureau was in DEP the requirements of this statute were being met. However, now that the invasive plant control program has been moved to FWC the reference to a program approved by the "department" needs to be changed to a program approved by the "Fish and Wildlife Conservation Commission".

### Effect of Proposed Changes

The bill transfers the statutory powers related to ss. 369.20, 369.22, and 369.252, F.S., of the Bureau of Invasive Plant Management. The bill specifies a Type Two transfer of the Bureau of Invasive Plant Management and the Invasive Plant Control Trust Fund from DEP to FWC.

The bill establishes penalties and conditions related to water pollution. These provisions will allow the FWC to utilize judicial and administrative remedies, instead of criminal penalties, to resolve aquatic plant management permitting violations. It authorizes the BOT to delegate to FWC all necessary authority to take final action on sovereign submerged lands and properly implement the aquatic plant management program.

### Seagrass

#### Current Situation

Seagrass scarring from boat propellers 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 careless 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. The FWC 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 the most important fish species depend upon seagrass communities at some point in their life history.

In 1995, the Fish and Wildlife Research Institute (formerly Florida Marine Research Institute) reported that 22,000 acres of seagrass in shallow shore waters were moderately to severely impacted by scarring. 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.<sup>2</sup>

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. It is an active campaign to instill stewardship of these marine resources in the boating community.<sup>3</sup>

An interagency Seagrass Working Group consisting of the FWC and 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 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<sup>4</sup>.

During the 2008 Session, HB 7059, which created penalties for seagrass scarring in aquatic preserves, was passed by the Legislature, but was vetoed for issues not related to the seagrass scarring issue.

### Effect of Proposed Changes

The bill provides that anyone operating a vessel outside a lawfully marked channel in a careless manner that causes seagrass scarring within an aquatic preserve commits a noncriminal infraction which results in a \$50 fine. Repeat offenders within specified timeframes would be subject to higher fines as follows:

- \$250 upon conviction for a second offense occurring within 12 months after a prior conviction
- \$500 upon conviction for a third offense occurring within 36 months after a prior conviction
- \$1,000 upon conviction for a fourth or subsequent offense occurring within 72 months after a prior conviction.

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.

### Vehicle License Fees

#### Current Situation

Currently, the Department of Highway Safety and Motor Vehicles (DHSMV) charges \$28 for each original title issued for vehicles previously registered outside of Florida. Four dollars of this fee is directed to the FWC’s Non-Game Wildlife Trust Fund (NGWTF).

The NGWTF supports wildlife management, conservation, and research. FWC focuses these funds on species such as birds, reptiles, amphibians, and land mammals and their habitats. The trust fund supports FWC’s efforts to conserve and manage non-game (not hunted or fished) species with an emphasis on imperiled species

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<sup>2</sup> FWC 2009 Legislative Proposal

<sup>3</sup> Ibid

<sup>4</sup> Ibid

Appropriations from the NGWTF currently support 10 studies to acquire information necessary for the management and conservation of non-game wildlife. The studies include work on bears, shore birds, beach mice, and several threatened and declining bird species. However, staff has identified over 375 studies that should be conducted to support conservation and management of Florida's most vulnerable species. Current funding falls far short of the amount needed to address these species.

### Effect of Proposed Changes

The bill amends s. 319.32, F.S., increasing the NGWTF portion of the vehicle title fee to \$10, thereby increasing revenues to the NGWTF to stabilize the trust fund and prevent the agency from making permanent, significant reductions in services. The increased fee would allow the agency to continue species conservation activities including bear management, environmental commenting, and development and implementation of non-regulatory incentive-based programs for landowners and developers. The agency would also continue to provide regulatory consistency through a streamlined permitting program, as well as provide technical assistance relating to wildlife to the inquiring public, landowners, non-governmental organizations, and the regulated community. Lastly, the agency would be able to continue conducting research, and awarding research grants.

The fee increase becomes effective September 1, 2009.

### Specialty License Plates

#### Current Situation

Since 2000, proceeds from sales of the *Conserve Wildlife* specialty vehicle tag have benefitted the FWC. The funds are directed to the Wildlife Foundation of Florida, Inc. (Foundation) a citizen support organization for FWC created under s. 379.223 F.S. The Foundation, in turn, makes these funds available as grants to the FWC for projects to benefit non-game wildlife programs. Since 2000, Conserve Wildlife grants have provided approximately \$2.945 million for 83 projects. Projects have benefitted species such as the Florida black bear, burrowing owl, and red-cockaded woodpecker. Nearly all divisions of the FWC have received assistance from Conserve Wildlife Tag (CWT) grants.

In 2008, there were 53,452 *Save the Manatee* specialty license plates renewed and 12,608 new plates issued - 66,060 total plates. In January 2009, the manatee plate was the sixth most popular specialty plate in Florida. Sale of these plates generated \$1,232,564 in FY 07-08. The funds were used by the FWC for manatee research, protection and conservation activities.

Manatee protection in Florida began in 1893 when a state law (Chapter 4208.94) prohibiting the hunting of manatees was established. The federal Endangered Species Preservation Act of 1966 (P.L. 89-669; 80 Stat. 926) first listed manatees as an endangered species. Further federal protection was implemented under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

The Save the Manatee Trust Fund (not affiliated with the Save the Manatee Club) receives funds from a portion of boat registrations and from the sale of manatee specialty license plates and manatee decals, and other voluntary donations. The trust fund has funded much of the manatee research efforts and management activities carried out by the program. The manatee data collected by the Fish and Wildlife Research Institute (FWRI) and others research groups is the foundation of information used to support management actions undertaken by FWC's Division of Habitat and Species Conservation. Initial efforts focused on gathering data about local manatee abundance, distribution, and movement patterns, and on understanding the various risk factors present throughout the state by recovering carcasses and determining causes of death. More recently, managers have requested that researchers assist with analysis of manatee/human interactions, the effectiveness of past management actions, and population dynamics (including analysis of the effects of the various risk factors). Thus, over the years, the program has grown from one that collected basic manatee data to one that analyzes complex interactions between manatees and their environment.

### Effect of Proposed Changes

The bill increases the Conserve Wildlife license plate free from \$15 to \$25 and the Save the Manatee license plate fee from \$20 to \$25. The additional revenue from each plate goes towards funding high priority wildlife conservation and research projects as well as maintaining and implementing manatee programs.

The effective date is September 1, 2009.

### **Boating Under the Influence**

#### Current Situation

Section 327.35, F.S., prohibits the offense of boating under the influence (BUI) and has the same elements (other than the substitution of the word "vessel" for "vehicle") as the offense of driving under the influence. The fine and imprisonment provisions in the BUI statute are identical to those in the DUI statute; however BUI penalties do not include suspension of a driver's license. In the past, as DUI sections of law were changed during a legislative session, BUI provisions were also amended to ensure that the sections of law remained consistent. Changes were made to DUI statutes during the 2008 Legislative Session, some of which create disparity between BUI and DUI statutes. The specific changes include:

- Section 316.193, F.S., lowered the Blood Alcohol Level (BAL) for purposes of triggering DUI enhanced penalties from 0.20 or more to 0.15 or more. According to the Department of Transportation (DOT), this change was needed to facilitate continued receipt of federal safety grant funds (approximately \$5 million received last year) under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). This section was also changed to delete an obsolete provision and allow the court to require the use of an approved ignition interlock device for a period of not less than 6 continuous months for a first DUI offense and for not less than 2 continuous years for a second offense.
- Section 316.656(2)(a), F.S., modified the threshold for enhanced penalties for DUI from 0.20 percent or more to 0.15 percent or more. Specifically, this section provides that a trial judge may not accept a guilty plea to a lesser offense from a person who has been given a breath or blood test to determine levels of alcohol content, the results of which show a blood or breath alcohol content by weight of 0.15 percent or more. According to the DOT, this change was needed to facilitate continued receipt of federal safety grant funds under SAFETEA-LU<sup>5</sup>.

#### Effect of proposed Changes

The bill lowers the threshold for enhanced penalties when charged with a BUI, from a BAL of 0.20 or more to 0.15 or more. This change makes the threshold for BUI the same as for DUI.

### **Boating Safety Identification Cards**

#### Current Situation

Section 327.395, F.S., 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:

- Licensed by the U. S. Coast Guard as a master of a vessel;
- Operating a vessel on a private lake or pond;
- Accompanied by a person who is exempt or who holds an identification card, 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;
- A non-resident who has proof of completing a National Association of State Boating Law Administrators (NASBLA)-approved boating safety education course in another state; or
- Exempted by Commission rule.

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<sup>5</sup> 2009 FWC analysis

Since its enactment in 1996, the number of operators within the affected age group (21 years of age and younger) involved in reportable boating accidents has declined from greater than 21% in 1995 to 14% in 2007. While this decrease provides some evidence of the effectiveness of boating safety education, 83% of Florida's boating accidents reported in 2007 involved operators who were 22 and older. Almost two-thirds (60%) were 36 and older, which makes this age group a critical target audience for basic boating safety 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 and lower accident and fatality rates, especially among older operator age groups.

The Florida Boating Advisory Council (Council) has been an advocate for 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.

#### Effect of Proposed Changes

The bill amends s. 327.395, F.S., to apply the section to any person who was born on or after January 1, 1988. The bill requires anyone operating a boat with 10 horsepower or more (except those specifically exempted) to take an approved boating safety course and obtain a Florida Boating Safety Education Identification Card.

Exemptions to the boater safety education card requirement are expanded to include anyone operating a vessel within 90 days after the purchase of that vessel who has available for inspection aboard that vessel a bill of sale meeting the requirements of s. 328.46(1), F.S. Also exempted from the \$2 fee are governmental employees required to take the course as a condition of employment.

This section of the bill may be cited as the "Osmay "Ozzie" Castellanos Boating Safety Education Act."

#### Uniform Waterway Markers

##### Current Situation

There is much confusion for local government entities when applying for permits to post uniform waterway markers. Local governments do not know what can and cannot be marked as boating restricted areas and for what reasons under current law (s. 327.40, F.S.); what locations can be marked as boating restricted areas; who has the authority to mark restricted areas and from whom do they get a permit; and how boating restricted areas may be marked under the law.

According to FWC, current law inadvertently requires signs that were never considered waterway markers to conform to the U.S. Aids to Navigation System and FWC rules. Examples include "no swimming" signs, public health notices, trash receptacles, "end of boat ramp" signs, emergency notices, and similar signs.

Section 327.41(2), F.S., directs local governments to apply to the Commission for permission to place uniform waterway markers within a boating restricted area.

Section 327.42, F.S., only allows someone to moor or fasten a vessel to a lawfully placed government marker for emergency reasons but not for repairs. Furthermore, no person shall willfully damage, alter, or move a lawfully placed marker.

### Effect of Proposed Changes

The bill clarifies existing language to assist permit applicants (local governments) with the what, where, who, and how regarding uniform waterway markers. The bill also eliminates permitting requirements for non-regulatory signs never intended to be permitted because they are never considered uniform waterway markers.

The bill conforms language to use the term “uniform waterway marker” and expands the prohibition against tying to a marker from governmentally placed markers to all lawfully permitted and placed markers. Tying to markers will remain lawful in emergency situations. The bill also allows a person to tie a vessel to a marker with the written consent of the marker’s owner.

The effective date is October 1, 2009.

### **Boating-restricted Areas**

#### Current Situation

Section 327.46, F.S., grants the commission authority to establish boating-restricted areas by rule. It also requires the commission to develop these areas in consultation with the applicable local government governing body, the U.S. Coast Guard, and the United States Army Corps of Engineers. It does not provide any guidance to local governments on this issue nor does it incorporate recent District Court of Appeal (DCA) direction to the commission that local governments creating boating-restricted area ordinances need to be approved by the commission<sup>6</sup>.

#### Effect of Proposed Changes

The bill amends s. 327.46, F.S., clarifying the criteria needed to create boating-restricted areas for both the commission and local governments. The bill incorporates the recent DCA ruling providing that ordinances created by local governments cannot take effect until approved by the commission. It also requires the commission to establish, by rule, the criteria substantially similar to rule 68D-23.105, F.A.C., for such approval, pursuant to chapter 120, F.S.

The bill authorizes cities and counties to establish boating-restricted areas for specified reasons. FWC will establish certain allowances for municipalities to designate boating-restricted areas, under limited conditions, to protect human life and insure vessel traffic safety. Any specific ordinance will not take effect until the commission has reviewed the ordinance and determined that the ordinance is valid and necessary.

Restrictions in a boating-restricted area, pursuant to this section, shall not apply in the case of an emergency or to a law enforcement, firefighting, or rescue vessel owned or operated by a governmental entity.

The bill provides that noncriminal violations of the following statutes may be enforced by a uniform boating citation mailed to the registered owner of the unattended vessel anchored, aground, or moored on the waters of this state.

- Section 327.33(3)(b), F.S., relating to navigation rules;
- Section 327.44, F.S., relating to interference with navigation;
- Section 327.50(2), F.S., relating to required lights and shapes;
- Section 327.53, F.S., relating to marine sanitation;
- Section 328.48(5), F.S., relating to display of decal;
- Section 328.52(2), F.S., relating to display of number.

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<sup>6</sup> *Collier County Bd. of County Comm'rs v. Fish and Wildlife Conservation Comm'n*, 993 So.2d 69 (Fla. 2d DCA 2008).



Citations issued to livery vessels shall be the responsibility of the lessee of the vessel if the livery has included a warning of this responsibility as a part of the rental agreement and has provided to the agency issuing the citation the name, address, and date of birth of the lessee when requested by that agency. The livery is not responsible for the payment of citations if the livery provides the required warning and lessee information. This provision does not prohibit a law enforcement officer from issuing a citation for a violation of this section in accordance with normal boating enforcement techniques.

The effective date is October 1, 2009.

## **Personal Flotation Devices**

### Current Situation

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, recreational and commercial, less than 26 feet in length. Section 327.50(1)(b), F.S., states:

*(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.

### Effect of Proposed Changes

The bill provides that any person operating a vessel less than 26 feet in length with children who are under the age of 10 is required to have said children in a personal flotation device (approved by the Coast Guard) while the boat is underway and the children are either above decks or outside an enclosed cabin.

## **Local regulations and limitations relating to boating activities**

### Current Situation

Section 327.60, F.S., provides that local governmental authorities shall not be prohibited from the enactment or enforcement of regulations that prohibit or restrict the mooring or anchoring of floating structures or live-aboard vessels within their jurisdictions. However, local governmental authorities are prohibited from regulating the anchoring outside of such mooring fields of non-live-aboard vessels in navigation.

### Effect of Proposed Changes

The bill provides that nothing in chapter 328, F.S., shall be construed to prevent the adoption of any ordinance or local regulation relating to the operation of vessels (but not equipment as in current law),

except that no county or municipality shall enact, continue in effect, or enforce any ordinance or local regulation:

- Imposing manufacturing safety or performance standards or regulating the carrying or use of marine safety articles;
- Regulating the design, manufacture, installation, or use of any marine sanitation device on any vessel
- Regulating any vessel upon the Florida Intracoastal Waterway
- Discriminating against personal watercraft
- Discriminating against airboats, for ordinances adopted after July 1, 2006, unless adopted by a two-thirds vote of the governing body enacting such ordinance.
- Regulating the anchoring of non-live-aboard vessels outside of the marked boundaries of mooring fields permitted as provided in s. 327.40, F.S.
- Regulating engine or exhaust noise, except as provided in s. 327.65, F.S.
- That is in conflict with this chapter or any amendments thereto or rules thereunder.

Furthermore, the bill defines a “live-aboard vessel” as any vessel used solely as a residence and not for navigation; or any vessel for which a declaration of domicile has been filed pursuant to s. 222.17, F.S.

The bill also removes cross-references.

The effective date is October 1, 2009.

### **Carriage of fuel on vessels**

#### Current Situation

Currently, s. 318.80, F.S., provides that it is unlawful for any person to maintain, or possess any conveyance or vehicle that is equipped with fuel tanks, bladders, drums, or other containers that do not conform to federal regulations, 49 C.F.R., or have not been approved by the United States Department of Transportation for the purpose of hauling, transporting, or conveying motor or diesel fuel over any public highway. Any person who violates any provision of this law commits a felony of the third degree. In addition, such persons are subject to the revocation of driver license privileges as provided in s. 322.26, F.S.

Section 330.40, F.S., provides that in the interests of the public welfare, it is unlawful for any person, firm, corporation, or association to install, maintain, or possess any aircraft that has been equipped with, or had installed in its wings or fuselage, fuel tanks, bladders, drums, or other containers that will hold fuel if such fuel tanks, bladders, drums, or other containers do not conform to federal aviation regulations or have not been approved by the Federal Aviation Administration by inspection or special permit. This provision also includes any pipes, hoses, or auxiliary pumps that, when present in the aircraft, could be used to introduce fuel into the primary fuel system of the aircraft from such tanks, bladders, drums, or containers. Any person who violates any provision of this section is guilty of a felony of the third degree.

There is no statute applicable to boats/vessels in state waters.

#### Effect of Proposed Changes

The bill creates s. 327.66, F.S. It prohibits a person from:

- Possessing or operating any vessel that has been equipped with tanks, bladders, drums, or other containers designed or intended to hold gasoline, or installing or maintaining such containers in a vessel, if such containers do not conform to federal regulations or have not been approved by the U.S. Coast Guard by inspection or special permit.
- Transporting any gasoline in an approved portable container when the container is in a compartment that is not ventilated in strict compliance with U.S. Coast Guard regulations pertaining to ventilation of compartments containing gasoline tanks.

A violation of the above will result in a misdemeanor of the second degree, punishable as provided in ss. 775.082 or 775.083, F.S.

Gasoline possessed or transported in violation of this section and all containers holding such gasoline are declared to be a public nuisance. A law enforcement agency discovering gasoline possessed or transported in violation of the new prohibitions shall abate the nuisance by removing the gasoline and containers from the vessel and from the waters of this state. A law enforcement agency that removes gasoline or containers may elect to:

- Retain the property for the agency's own use;
- Transfer the property to another unit of state or local government;
- Donate the property to a charitable organization; or
- Sell the property at public sale pursuant to s. 705.103, F.S.

A law enforcement agency that seizes gasoline or containers pursuant to this law shall remove and reclaim, recycle, or otherwise dispose of the gasoline as soon as practicable in a safe and proper manner.

All conveyances, vessels, vehicles, and other equipment described in violation of the new section or used in the commission of a violation of the new provision, other than gasoline or containers removed as provided above, are declared to be contraband.

Upon conviction of a person arrested for a violation, the judge shall issue an order adjudging and ordering that all conveyances, vessels, vehicles, and other equipment used in the violation to be forfeited to the arresting agency. The bill declares the requirement for a conviction before forfeiture of property establishes to the exclusion of any reasonable doubt that the property was used in connection with the violation resulting in the conviction, and the procedures of chapter 932, F.S., do not apply to any forfeiture of property under this subsection following a conviction. In the absence of an arrest or conviction, any such conveyance, vessel, vehicle, or other equipment shall be subject to seizure and forfeiture as provided by the Florida Contraband Forfeiture Act. The bill defines "conviction" to mean a finding of guilt or the acceptance of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld or whether imposition of sentence is withheld, deferred, or suspended.

The bill provides that costs incurred by the law enforcement agency in the removal of any gasoline, gasoline container, other equipment, or vessel shall be recoverable against the owner thereof. Any person who neglects or refuses to pay such amount shall not be issued a certificate of registration for such vessel or for any other vessel or motor vehicle until the costs have been paid.

The bill exempts foreign flagged vessels entering United States waters and Florida state waters in compliance with 19 USC 1433.

### **Noncriminal infractions**

The bill amends s. 327.73, F.S., providing that any violations relating to boating-restricted areas and speed limits must be established by the commission or by local governmental authorities pursuant to s. 327.46, F.S.

### **Certificate of title**

#### Current Situation

Currently there is no uniformity in statutes relating to certificate of title, registration, numbering and the requirements that apply for vessels. Current statutes refer to vessels that may be "used on the waters of this state", "using the waters of this state", "operating on the waters of the state", "stored in the water", or "on the waters of this state."

Currently, statutes do not address the ability to cite an operator for no registration unless the person is operating the vessel. The registration number is a key tool for enforcement to determine ownership.

### Effect of Proposed Changes

The bill makes applicable statutes consistent using the phrase "operate, use, or store". The bill also provides law enforcement the ability to better track owners of vessels stored on the waters of the state. This does not apply to vessels lawfully stored at a dock or in a marina.

The effective date is October 1, 2009.

### **Confiscation and Disposition of Evidence in Saltwater Fish, Freshwater Fish, and Wildlife Cases**

#### Current Situation

A forfeiture process for handling commercial harvested saltwater products is outlined in s. 379.337, F.S. A conviction is required before the saltwater products are disposed of, or the proceeds of the sale of the saltwater products can be disbursed. No such provision, however, exists for recreationally harvested saltwater fish that are deemed to be in violation of statute or rule.

Section 379.338, F.S., allows game and freshwater fish to "be forfeited and given to some hospital or charitable institution". It also provides for disposal of the 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; but Florida law does not have such a provision for recreationally-caught saltwater fish.

In the majority of cases, illegally harvested saltwater fish that are seized are seldom presented as evidence at trial and become severely freezer burned and unwholesome after being stored in evidence freezers for an extensive amount of time. After the case is closed, the evidence is no longer useful to the court, charity, or the defendant and is disposed at a landfill.

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's 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.

#### Effect of Proposed Changes

The bill allows recreationally harvested saltwater fish to be disposed of in the same manner as freshwater fish and game. It expands the authorizations for confiscation and disposition of game in law enforcement cases to include all wildlife cases, not just game. The disposition in such cases is specified to allow a law enforcement agency the option to donate confiscated evidence to charitable organizations, DNA labs, and research facilities, or use it as evidence for covert buy/sell operations and K9 training. Additionally, the law enforcement agency has the option to sell the evidence, if appropriate, or destroy the evidence if it were deemed unwholesome. Except as otherwise provided by law, the proceeds of any such sale 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.

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

All live fish and wildlife is to be documented and returned to the wild unharmed, or if an exotic, it is to be disposed of according to Commission rule.

The bill clarifies and specifies how evidence is to be photographed in order for the photograph to be introduced as evidence in court, rather than the actual fish or wildlife. The photograph is to have a written description of the fish or wildlife, the name of the violator, the location where the incident occurred, the name of the investigating officer, the date the photograph was taken, and the name of the photographer. This writing must be made under oath by the investigating officer, and the photograph must be identified by the signature of the photographer.

## **Recreational licenses and permits**

### **Current Situation**

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 those fishing for anadromous species (spawn in freshwater, live in saltwater). The program was 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 from federal licensing in states that have a system to provide complete information on their saltwater anglers to the national registry.

The Department of Commerce, through the National Oceanic and Atmospheric Administration (NOAA) released the final rule creating the required national saltwater registry on December 23, 2008. Under the final rule, effective January 1, 2010, saltwater recreational anglers and spearfishers who are not individually exempt from the registry requirement or licensed or registered by a state that has been exempted will be required to register with NOAA to fish in federal waters and in tidal waters for migratory fish such as striped bass and salmon that spawn in rivers and spend their adult lives in estuaries and oceans. At the request of several states, the final rule delayed the registration requirement for a year to allow the states additional time to consider strategies for gathering and sharing the information required by the national registry.

Beginning January 2009, NOAA will exempt from the federal registration rule states that have a system in place to provide complete information on their saltwater anglers to the national registry. To be designated as exempted, a state must:

- Submit state angler and for-hire vessel license holder data to the National Marine Fisheries Service (NMFS) for inclusion in a national or regional registry database; or
- Participate in regional surveys of recreational catch and effort and make the data from those surveys available to NMFS.

Under the final rule, unless a state can demonstrate that a given category of anglers is so small it has no significant probability of biasing estimates of fishing effort if excluded from samples, a state may not be designated as an exempted state through its licensing program if it excludes anglers that meet several conditions, including:

- Fishing from privately owned land;
- Fishing on a public pier;
- Fishing from shore.

Florida resident anglers fishing from the saltwater shoreline or from a structure fixed to the land have been exempt from the requirement to purchase a saltwater fishing license since the inception of the licensure requirement in 1989. In addition, Florida residents fishing for a saltwater species in fresh water from land or from a structure fixed to land are exempt. According to the FWC, survey data indicate that approximately 71% of resident shoreline anglers do not possess a license. The FWC estimates that between 210,000 and 338,000 resident anglers would be required to buy a license if the shoreline exemption were repealed.

According to officials with the NMFS and the Florida FWC, Florida's shoreline exemption would prohibit its license system from being designated as exempted.

Under the final national saltwater angler registry rule, the alternative exemption option of participating in a regional survey of recreational catch and effort and making the data from the survey available to NMFS does not appear to be available to Florida. For a regional survey to qualify under the final rule, it must include all the states within the regions designated in the rule. Florida is included in two regions:

- The Atlantic coast, which includes Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, and the Atlantic coast of Florida; and
- The Gulf of Mexico coast, which includes the Gulf coast of Florida, Alabama, Mississippi, Louisiana, and Texas.

All the other states in the Gulf of Mexico region have licensing programs that will establish their exempt status, as do several states in the Atlantic Coast region. These states will have no incentive to go to the added expense of developing and participating in an alternative regional survey.

### Effect of Proposed Changes

The bill requires all Florida residents to possess a saltwater fishing license if fishing from Florida's saltwater shoreline or from a structure fixed to the land. The bill creates a shoreline fishing license. The cost of the license is \$7.50. An exemption is authorized for residents who have been determined eligible for the food stamp, temporary cash assistance, or Medicaid programs by the Department of Children and Family. A benefit issuance or program identification card issued by the Department of Children and Family Services or the Agency for Health Care Administration shall serve as proof of program eligibility. The individual must have the benefit issuance or program identification card and positive proof of identification in his or her possession when fishing. In addition, resident shoreline anglers are not required to have a license if they are otherwise exempted (65 years or older, younger than 16, etc.).

The sum of \$185,000 is appropriated to the FWC from the State Game Trust Fund on a recurring basis beginning in fiscal year 2009-2010 for license issuance costs.

The effective date is July 15, 2009.

## **Hunting, Fishing, and Other Recreational Activity Permits**

### Current Situation

Part VII of Chapter 379 sets out the requirements and fees for hunting, fishing, and other recreational activity permits.

### Effect of Proposed Changes

Effective July 1, 2010, the bill:

- Provides that the commission shall use up to 10% of the proceeds from hunting and sport fishing permits to promote hunting and sport fishing activities with an emphasis on youth participation.
- Increases from \$3 to \$5 the annual permit to take wild ducks or geese within the state or coastal waters.
- Provides that the proceeds from the sale of waterfowl permits shall be used for conservation, research, or management of waterfowl; for the development, restoration, maintenance, and preservation of wetlands within the state; or for promoting the hunting heritage.
- Increases from \$5 to \$10 the annual turkey permit for residents to take wild turkeys within the state.
- Increases from \$100 to \$125 the annual turkey permit for non-residents to take wild turkeys within the state.

- Provides that the proceeds from the sale of turkey permits shall be used for the conservation, research, or management of wild turkeys or promoting the hunting heritage.
- Provides the commission shall prepare an annual report documenting the use of funds generated from waterfowl and turkey permits to be submitted to the Governor, the Speaker of the House of Representatives, and the President of the Senate on or before September 1 of each year.
- Increases from \$2 to \$10 the annual permit to take or possess a snook.
- Increases from \$2 to \$5 the annual permit to take or possess a spiny lobster.
- Creates an annual \$5 deer permit for a resident or nonresident to take deer within the state during any season authorized by the commission. Revenue generated from the sale of deer permits shall be used for the conservation, research, or management of white-tailed deer or promoting the hunting heritage.
- Increases from \$100 per day and \$250 per week to \$150 per day and \$300 per week the maximum the commission may set by rule for a special use permit for a resident or nonresident to participate in limited entry hunting or fishing activities as authorized by the commission.
- Increases from \$25 per year to \$30 per year the maximum fee for a management area permit for a resident or nonresident to hunt on, fish on, or otherwise use for outdoor recreational purposes land owned, leased, or managed by the commission, or by the state for the use and benefit of the commission.
- Creates a permit with a maximum fee of \$5 per day and \$30 per year for a resident or nonresident to hike, camp or otherwise engage in other outdoor recreational activities, excepting hunting or fishing, on management area lands.

### **Spiny Lobster Trap Certificate Program**

#### Current Situation

In 1992, the Legislature created the Lobster Trap Certificate Program in response to concerns about the rapid growth of the lobster trap fishery, which had resulted in increased congestion and conflict on the water, excessive mortality of undersized lobsters, a declining yield per trap, and public concern over petroleum and debris pollution from existing traps. The goal of this program was to solve these and related problems by reducing the number of traps while stabilizing the fishery.

The Lobster Trap Certificate Program controls the number of traps in the lobster fishery using trap certificates that are issued to individual lobster fishers by the FWC. Fishers may fish one lobster trap for each certificate they own. A tag comes with every certificate and is required to be attached to the respective trap. There is an annual \$1 fee per certificate. Fishery-wide, the average number of certificates held by lobster trappers is approximately 700. A recently conducted socio-economic analysis of the spiny lobster trap fishery revealed that most full-time lobster trappers typically own approximately 1,000 certificates or more.

In 2005, the Division of Marine Fisheries Management staff assembled an *ad hoc* Spiny Lobster Advisory Board (Board). This Board was composed of stakeholders in the spiny lobster fishery, including recreational and commercial lobster harvesters, a wholesale seafood dealer, an FWC representative, a member of a non-governmental organization, and a staff member from the Florida Keys National Marine Sanctuary. The Board was assembled to assist FWC staff with its comprehensive evaluation of Florida's spiny lobster fishery management strategy. The Board met nine times at publically-noticed meetings in the Florida Keys from July 2005 through May 2007. At the May 2007 meeting, the Board finalized several recommendations to the FWC on ways to improve the management of the spiny lobster fishery. One such recommendation was to reduce the legislatively-defined time that unpaid lobster trap certificates are considered to be abandoned and revert to the FWC. The Board recommended that this time period be reduced from three to two years.

#### Effect of Proposed Changes

The bill provides that prior to the 2010-2011 license year, any certificates for which the annual certificate fee is not paid for a period of 3 years shall be considered abandoned and shall revert to the

commission. Beginning with the 2010-2011 license year, any certificate for which the annual certificate fee is not paid for a period of 2 consecutive years shall be considered abandoned and shall revert to the commission.

## **Alligator Trapping and Farming Agents**

### **Current Situation**

Section 379.3751, F.S., was enacted in 1987 as part of a suite of alligator management statutes to address the then Game and Freshwater Fish Commission's new alligator harvest program. The licensing statute was enacted to ensure there would be no long-term negative impacts on the alligator resource and to prohibit persons who had been illegally exploiting the resource from participating in the industry. The statute provides the framework for the current FWC to charge for and issue alligator farming, alligator farming agent, alligator trapping, alligator trapping agent, and alligator processing licenses. It also details the types of activities authorized for each of these licenses relative to taking alligators and alligator eggs, provides prohibitions on who cannot be issued these licenses, provides the framework for the Commission to charge for alligator egg collection permits, and requires a portion of these fees to be transferred to the Department of Agriculture and Consumer Services for alligator marketing and education activities.

Currently, there are approximately 50 licensed alligator farmers. The alligator farming license costs \$250, regardless of residency. The license is required for raising and propagating alligators in captivity for the sale of the alligators' hides and meat. On average, 25,000 alligators are slaughtered each year for this purpose. Persons assisting alligator farmers must be in possession of an alligator farming agent license, which costs \$50 regardless of residency.

Alligator trappers desiring to engage in the harvesting of alligators must purchase an alligator trapping license at a cost \$250 for residents or \$1,000 for non-residents. This license is a prerequisite for participating in any one of three harvest programs established by the Commission:

- Statewide Alligator Harvests - these harvests are recreational in nature and provide more than 4,800 hunting opportunities to the general public.
- Private Lands Alligator Harvests - these harvests are commercial in nature and are designed to return some of the economic value of the alligator resource back to the landowner as an incentive for the landowner to maintain wetland habitats.
- Nuisance Alligator Harvests - these harvests are for public safety, but provide monetary returns to contracted trappers through the sale of the hides and meat, and a state-funded stipend, to compensate the trappers for expenses incurred.

Persons assisting alligator trappers must be in possession of an alligator trapping agent license, which costs \$50 regardless of residency.

Under the current statute, alligator trapping and farming agents are bound to an individual trapper or farmer; so individuals wishing to be an agent for multiple trappers or farmers must purchase multiple agent licenses. The original intent was to ensure that every agent could be traced back to a permitted trapper or farmer. This trace-ability is no longer necessary. The agent's license provides adequate identification information.

The current statute does not provide for trapping and farming agents to possess, process, and sell hides and meat, which is a normal, common business practice. These privileges are authorized for alligator trappers and farmers, although the statutory language for alligator farmers is confusing. These privileges were originally excluded for agents to ensure that all business transactions were tied only to a permitted trapper or farmer to allow for greater oversight. Given the changes in the alligator industry since 1987, there is no longer a need to restrict these business opportunities to this degree.<sup>7</sup>

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## Effect of Proposed Changes

The bill amends s. 379.3751, F.S., by:

- Eliminating the requirement that all farming and trapping agent licenses be issued under a specific alligator farming or alligator trapping license holder;
- Providing for alligator farming and alligator trapping agents to possess, process, and sell alligator hides and meat;
- Eliminating the prohibition on issuing alligator farming, alligator farming agent, alligator trapping, alligator trapping agent, and alligator processor licenses to persons who have been convicted of any violation of s. 379.3015 or s. 379.409, F.S., or Commission rules related to the illegal taking of crocodilian species;
- Clarifying language that allows alligator farmers to possess and process alligator hides and meat for sale.

## Anchoring of Vessels

### Current Situation

Currently, local governments are prohibited from regulating the anchoring of vessels (other than live-aboard vessels) outside of legally permitted mooring fields. The unregulated anchoring and mooring leads to various problems including:

- The accumulation of anchored vessels in inappropriate locations;
- Unattended vessels;
- Vessels with no anchor watch (dragging anchor, no lights, bilge);
- Vessels that are not properly maintained;
- Vessels ignored by owners that tend to become derelict;
- Confusion with the interpretation of statutes that provide jurisdictional guidance for local governments.

FWC staff met with interested stakeholders over a two-year period to try to find solutions to the unregulated anchoring. FWC Commissioners came up with two recommendations:

- Develop a model anchoring/mooring ordinance that local governments can adopt.
- Clarify State and local authority to regulate vessels. This addresses the issues of unregulated anchoring, waterway management, and local government authority and suggests cleanup language for some of the more confusing boating statutes. Examples of this approach include combining and clarifying s. 327.22, F.S., (regulation of vessels by municipalities or counties); s. 327.40, F.S., (uniform waterway markers for safety and navigation; informational markers); s. 327.41, F.S., (uniform waterway regulatory markers); s. 327.46, F.S., (restricted areas); s. 327.60, F.S., (local regulations; limitations); and rule 68D-22 (Uniform Waterway Markers in Florida Waters), Florida Administrative Code.

## Effect of Proposed Changes

The bill directs the FWC, in consultation with the DEP, to establish a pilot program in at least three locations to explore potential options for regulating the anchoring or mooring of vessels outside the marked boundaries of public mooring fields.

The goals of the pilot program are to encourage the establishment of additional public mooring fields and to develop and test policies and regulatory regimes that:

- Promote the establishment and use of public mooring fields;
- Promote public access to the waters of this state;
- Enhance navigational safety;
- Protect maritime infrastructure;
- Protect the marine environment;
- Deter improperly stored, abandoned, or derelict vessels.

Each location must be associated with a properly permitted mooring field. The FWC, in consultation with the DEP, must select all locations prior to July 1, 2011.

Notwithstanding the provisions of s. 327.60, F.S., a county or municipality selected for participation in the program may regulate by ordinance the anchoring of vessels, other than live-aboard vessels as defined in s. 327.02, F.S., outside of a mooring field. Any ordinance enacted under the pilot program shall take effect and become enforceable only after the Commission's approval. The Commission shall not approve any ordinance not consistent with the goals of the pilot program.

The Commission shall:

- Provide consultation and technical assistance to each municipality or county selected for participation in the pilot program to facilitate accomplishment of the pilot program's goals;
- Coordinate the review of any proposed ordinance with the DEP, the Coast Guard; the Florida Inland Navigation District or the West Coast Inland Navigation District, as appropriate; and associations or other organizations representing vessel owners or operators;
- Monitor and evaluate at least annually each location selected for participation in the pilot program and make such modifications as may be necessary to accomplish the pilot program's goals.

The Commission must submit a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2014. The pilot program will expire on July 1, 2014, unless reenacted by the Legislature. All ordinances enacted under this section shall expire concurrently with the expiration of the pilot program and shall be inoperative and unenforceable thereafter.

### **Repealed statutes**

The bill repeals s. 327.22, F.S., relating to regulation of vessels by municipalities and counties. Furthermore, effective July 1, 2009, subsection (7) of s. 379.366, F.S., which sunsets several provisions in statute relating to blue crab regulation, is repealed.

### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 206.606, F.S., transferring authority from the Department of Revenue to the Fish and Wildlife Conservation Commission to allocate funds from the Invasive Plant Control Trust Fund for specified purposes.

**Section 2.** Amends s. 253.002, F.S., authorizing the Board of Trustees of the Internal Improvement Trust Fund to delegate certain authority relating to aquatic and noninvasive plants to the Department of Agriculture and Consumer Services and the Fish and Wildlife Conservation Commission.

**Section 3.** Effective October 1, 2009, amends s. 253.04, F.S., providing for the preservation and regeneration of seagrasses; providing definitions; providing penalties.

**Section 4.** Effective September 1, 2009, amends s. 319.32, F.S., increasing the certificate of title fee for certain vehicles.

**Section 5.** Effective September 1, 2009, amends s. 320.08056, F.S., increasing the annual use fee for certain specialty license plates.

**Section 6.** Amends s. 327.02, F.S., revising the definition of the term "live-aboard vessel".

**Section 7.** Amends s. 327.35, F.S., revising penalties for boating under the influence of alcohol; revising the blood-alcohol level or breath-alcohol level at which certain penalties apply.

**Section 8.** Amends s. 327.36, F.S., revising a prohibition against accepting a plea to a lesser included offense from a person who is charged with certain offenses involving the operation of a vessel; revising the blood-alcohol level or breath-alcohol level at which the prohibition applies.

**Section 9.** Effective January 1, 2010, amends s. 327.395, F.S., revising the age limitation for the operation of specified vessels; revising provisions relating to boating safety identification cards; providing exemptions and penalties.

**Section 10.** Effective October 1, 2009, amends s. 327.40, F.S., revising provisions for placement of navigation, safety, and informational markers of waterways; providing for uniform waterway markers; removing an exemption from permit requirements for certain markers placed by county, municipal, or other governmental entities.

**Section 11.** Effective October 1, 2010 amends s. 327.41, F.S., relating to placement of markers by a county, municipality, or other governmental entity; revising terminology; providing for a county, municipality, or other governmental entity that has been granted or has adopted or established a boating-restricted area to apply for permission to place regulatory markers.

**Section 12.** Effective October 1, 2009, amends s. 327.42, F.S., revising provisions prohibiting mooring to or damaging markers or buoys.

**Section 13.** Effective October 1, 2009, amends s. 327.46, F.S., revising provisions for establishment by the Fish and Wildlife Conservation Commission of boating-restricted areas; providing for counties and municipalities to establish boating-restricted areas with approval of the commission; directing the commission to adopt rules for the approval; revising a prohibition against operating a vessel in a prohibited manner in a boating-restricted area.

**Section 14.** Effective October 1, 2009, amends s. 327.60, F.S., revising provisions limiting local regulations relating to vessels operated upon the waters of this state; prohibiting specified county or municipality ordinances or regulations.

**Section 15.** Amends s. 327.65, F.S., conforming a cross-reference.

**Section 16.** Creates s. 327.66, F.S., prohibiting possession or operating a vessel equipped with certain fuel containers or related equipment; prohibiting transporting fuel in a vessel except in compliance with certain federal regulations; providing penalties; declaring fuel transported in violation of such prohibitions to be a public nuisance and directing the enforcing agency to abate the nuisance; providing for disposal of the containers and fuel; declaring conveyances, vessels, vehicles, and equipment used in such violation to be contraband; providing for seizure of the contraband; defining the term "conviction" for specified purposes; providing for the costs to remove fuel, containers, vessels, and equipment to be paid by the owner; providing that a person who fails to pay such cost shall not be issued a certificate of registration for a vessel or motor vehicle, providing an exemption.

**Section 17.** Effective October 1, 2009, amends s. 327.70, F.S., authorizing municipal police officers and specified law enforcement officers to enforce the provisions of chs. 327 and 328; providing for enforcement of noncriminal violations by citation mailed to the owner of a vessel; specifying responsibility for citations issued to livery vessels.

**Section 18.** Effective October 1, 2009, amends s. 327.73, F.S., revising provisions for citation of a noncriminal infraction to provide for violations relating to boating-restricted areas and speed limits; revising provisions relating to establishment of such limits by counties and municipalities; providing civil penalties for seagrass scarring.

**Section 19.** Amends s. 327.731, F.S., conforming a cross-reference.

**Section 20.** Effective October 1, 2009, amends s. 328.03, F.S., requiring vessels used or stored on the waters of this state to be titled by this state pursuant to specified provisions; providing exceptions.

**Section 21.** Effective October 1, 2009, amends s. 328.07, F.S., requiring certain vessels used or stored on the waters of this state to have affixed a hull identification number.

**Section 22.** Effective October 1, 2009, amends s. 328.46, F.S., requiring vessels operated, used, or stored on the waters of this state to be registered and display the registration number; providing exceptions.

**Section 23.** Effective October 1, 2009, amends s. 328.48, F.S., requiring vessels operated, used, or stored on the waters of this state to be registered and display the registration number; providing exceptions.

**Section 24.** Effective October 1, 2009, amends s. 328.56, F.S., requiring vessels operated, used, or stored on the waters of this state to be registered and display the registration number; providing exceptions.

**Section 25.** Amends s. 328.58, F.S., relating to reciprocity of nonresident or alien vessels; requiring the owner of a vessel with a valid registration from another state, a vessel with a valid registration from the United States Coast Guard in another state, or a federally documented vessel from another state to record the registration number with the Department of Highway Safety and Motor Vehicles when using or storing the vessel on the waters of this state in excess of the 90-day reciprocity period.

**Section 26.** Amends s. 328.60, F.S., providing an exception to registration requirements for military personnel using or storing on the waters of this state a vessel with a valid registration from another state, a vessel with a valid registration from the United States Coast Guard in another state, or a federally documented vessel from another state.

**Section 27.** Effective October 1, 2009, amends s. 328.65, F.S., revising legislative intent with respect to registration and number of vessels.

**Section 28.** Effective October 1, 2009, amends s. 328.66, F.S., authorizing a county to impose an annual registration fee on vessels used on the waters of this state within its jurisdiction.

**Section 29.** Effective October 1, 2009, amends s. 328.72, F.S., providing noncriminal penalties for use or storage of a previously registered vessel after the expiration of the registration period.

**Section 30.** Amends s. 369.20, F.S., authorizing the commission to enforce specified provisions relating to aquatic weeds and plants; granting certain activities a mixing zone for turbidity.

**Section 31.** Amends s. 369.22, F.S., authorizing the commission to enforce specified provisions relating to aquatic weeds and plants; granting certain activities a mixing zone for turbidity.

**Section 32.** Amends s. 369.25, F.S., authorizing the commission to enforce specified provisions relating to aquatic weeds and plants; granting certain activities a mixing zone for turbidity.

**Section 33.** Amends s. 379.304, F.S., revising cross-references for permitting and violation provisions relating to the exhibition or sale of wildlife.

**Section 34.** Amends s. 379.338, F.S., providing for confiscation and disposition of illegally taken wildlife, freshwater fish, or saltwater fish; providing for disposition of the proceeds from sales; providing for an agency that assists in the enforcement action to receive a portion or all of any forfeited property.

**Section 35.** Creates s. 379.3381, F.S., providing for photographs of wildlife, freshwater fish, and saltwater fish to be used as evidence in a prosecution in lieu of the wildlife, freshwater fish, or saltwater fish.

**Section 36.** Effective September 1, 2009, amends s. 379.353, F.S., revising eligibility criteria for exemption from certain recreational license and permit requirements.

**Section 37.** Effective July 15, 2009, amends s. 379.354, F.S., providing for an annual resident shoreline fishing license and its fee and also amends effective July 1, 2010, providing for increases in certain recreational hunting and fishing permits; providing for certain new recreational permits.

**Section 38.** Amends s. 379.3671, F.S., revising provisions for abandonment and reversion of lobster trap certificates under specified conditions.

**Section 39.** Amends s. 379.3751, F.S., specifying activities relating to the taking and possession of alligators that require a license and payment of the applicable fee; deleting provisions relating to the issuance, form, and content of such licenses.

**Section 40.** Amends s. 379.3761, F.S., providing penalties for violations relating to the exhibition or sale of wildlife.

**Section 41.** Amends s. 379.3762, F.S., revising a cross-reference with respect to the penalties imposed for violations relating to the personal possession of wildlife.

**Section 42.** Amends s. 379.401, F.S., revising applicability of violation provisions relating to alligators and crocodiles; conforming references to wildlife.

**Section 43.** Amends s. 379.4015, F.S., specifying applicability of captive wildlife penalty provisions relating to the exhibition or sale of wildlife.

**Section 44.** Creates s. 379.501, F.S., providing penalties for violations relating to aquatic weeds and plants; providing legislative intent for civil penalties and criminal fines imposed by a court.

**Section 45.** Creates s. 379, 502, F.S., providing judicial and administrative procedures and remedies to enforce penalty provisions for violations relating to aquatic weeds and plants; providing for mediation; providing for recovery of costs and attorney's fees; requiring proceeds from related penalties to be credited to the Invasive Plant Control Trust Fund.

**Section 46.** Creates s. 379.503, F.S., authorizing the commission to seek injunctive relief; providing that judicial and administrative remedies are alternative and mutually exclusive.

**Section 47.** Creates s. 379.504, F.S., providing civil penalties for violations relating to aquatic weeds and plants; authorizing a court to impose a civil penalty for each offense not to exceed a specified amount; providing for joint and several liability; providing for a methodology for assessing certain damages.

**Section 48.** Amends s. 403.088, F.S., requiring the commission to approve an aquatic weeds and algae control program.

**Section 49.** Directs the commission, in consultation with the Department of Environmental Protection, to establish a pilot program to explore options for regulating the anchoring or mooring of non-live-aboard vessels outside the marked boundaries of public mooring fields; providing goals and procedures; providing duties of the commission; requiring a report to the Governor and the Legislature; providing for expiration of the pilot program and any ordinance enacted thereunder.

**Section 50.** Provides for a type two transfer of the Bureau of Invasive Plant Management within the Department of Environmental Protection to the Fish and Wildlife Conservation Commission; ratifying actions taken pursuant to ch. 2008-150, Laws of Florida, and an interagency agreement executed pursuant thereto.

**Section 51.** Transfers the Invasive Plant Control Trust Fund within the Department of Environmental Protection to the Fish and Wildlife Conservation Commission.

**Section 52.** Provides a continuing appropriation to the commission for the costs associated with the shoreline fishing license exemption.

**Section 53.** Reenacts s. 379.209(2), F.S., relating to funds credited to the Nongame Wildlife Trust Fund, to incorporate an amendment made to s. 319.32, F.S., in a reference thereto.

**Section 54.** Reenacting s. 379.2213, F.S, relating to hunting safety, to incorporate the amendment made to s. 379.353, F.S., in a reference thereto.

**Section 55.** Reenacting s. 379.3581(7), F.S., relating to management area permit revenue, to incorporate the amendment made to s. 379.354, F.S., in a reference thereto.

**Section 56.** Reenacting s. 379.3501, F.S., relating to expiration of licenses and permits , to incorporate the amendment made to s. 379.354, F.S., in a reference thereto.

**Section 57.** Reenacting s. 379.3712 F.S., relating to private hunting preserve license fees, to incorporate the amendment made to s. 379.354, F.S., in a reference thereto.

**Section 58.** Repealing s. 327.22, F.S., relating to regulation of vessels by municipalities or counties.

**Section 59.** Effective July 1, 2010 repealing s. 379.2211, F.S., regarding the expenditure of Florida waterfowl permit revenues and s. 379.2212 , F.S, regarding the expenditure of Florida wild turkey permit revenues.

**Section 60.** Repealing s. 379.366(7), F.S., to abrogate the expiration of provisions imposing blue crab effort management program fees and penalties.

**Section 61.** Except as otherwise provides, provides an effective date of July 1, 2009.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

2009-2010 (mil \$)	Cash	Recurring
Alligator Trapping License Sales	(*)	(*)
Conserve Wildlife License Plate Fee Increase	0.2	0.2
Lobster Trap Certificate Reversion	(*)	(*)
Manatee License Plate Fee Increase	0.2	0.3
\$7.50 Saltwater Shoreline License	0.9	1.4
Vehicle Title Increase to State Trust Fund	1.8	2.4
Vehicle Title Increase to General Revenue	0.1	0.2
Waterfowl Permit	0	*
Wild Turkey Permit	0	0.2
Snook Permit	0	0.5
Spiny Lobster Permit	0	0.4
Deer Permit	0	0.5
Special Use Permit	0	0
Management Area Permit	0	0.2
Recreational Activity Permit	0	1.1
Total	3.2	7.4

\* Insignificant

2. Expenditures:

License for Sale or Display of Wildlife

The bill provides a recurring appropriation of \$185,000 from the State Game Trust Fund to the Fish and Wildlife Conservation Commission for the purpose of issuing licenses resulting from the changes to the saltwater fishing shoreline exemption.

Disposition of Evidence

According to the 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.

Boating Safety Identification Cards

FWC anticipates total expenditures to be at least \$370,000 annually until 2019, when all boaters will be required to have taken the course. There is a provision in current law for FWC to charge up to \$2 for each card, but FWC believes it currently has sufficient funding from boating safety violation fines to absorb additional costs.

Specialty License Plates

The Department of Highway Safety and Motor Vehicles will experience an unknown administrative cost to implement the fee increase. The fee structure for the license plates will need to be changed.

Anchoring of Vessels

Section 35 of the bill directs the FWC, in consultation with the DEP, to establish a pilot program in at least one, but not more than five, locations to explore potential options for regulating the anchoring or mooring of non-live-aboard vessels outside the marked boundaries of public mooring fields. The cost of establishing such a program is unknown.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Alligator Trapping and Farming Agents

Approximately 110 fewer agent licenses are expected to be sold, which would negatively impact some county tax collector's offices. The fiscal impact is expected to be insignificant.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Seagrass

Boaters who operate their vessels in a manner so as to cause propeller scars in seagrass may be assessed fines.

Boating Safety Identification Cards

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 \$29. There are also several private sector providers offering approved courses in a classroom setting, which averages about \$35 per student. There is also a grace period for those who show a bill of sale for the boat, and visiting boat operators are already exempted from Florida's boating safety education requirement provided they have proof of completing an approved course from another state. Those that have not completed a course in their state can pass a test and receive a certificate.

### Specialty License Plates

Purchasing a specialty plate remains a voluntary choice made by a vehicle owner.

### Confiscation and disposition of evidence in saltwater fish, freshwater fish, and wildlife cases

There is a standing administrative court order that allows for the donation of freshwater fish and game in most counties; however, this is not available for saltwater fish. The bill allows charities and non-profit organizations to receive donated saltwater fish to help defer costs.

### Recreational licenses and permits

Florida residents who recreationally saltwater fishing from the shoreline or from a fixed structure will be required to purchase a saltwater fishing license, unless they qualify for another exemption. The new exemption for persons eligible for Medicaid, food stamps, and temporary cash assistance eliminates the impact for these low-income individuals.

### Spiny Lobster Trap Certificate Program

According to the FWC analysis, the bill increases the number of lobster trap certificate owners who will have their certificates considered abandoned and revert back to FWC. Since 2002, on average 1,100 certificates annually (0.2% of total available certificates) were forfeited due to non-payment.

A large majority of the certificate owners affected by the proposal are likely not actively participating in the spiny lobster trap fishery, and are certainly not full-time commercial spiny lobster fishers.

### Alligator Trapping and Farming Agents

Approximately 110 fewer agent licenses are anticipated to be sold, which would negatively impact online and walk-up license merchants. The fiscal impact is negligible.

## D. FISCAL COMMENTS:

### Confiscation and disposition of evidence in saltwater fish, freshwater fish, and wildlife cases

According to the FWC analysis, currently the transportation costs average \$44/case involving seizure. The average officer's time involved in transporting and checking in the evidence is approximately 2.5 hours at an average hourly officer rate of \$33.93/hour. The positive fiscal impact for FWC could exceed \$40,000 annually.

### Spiny Lobster Trap Certificate Program

FWC anticipates that the bill will result in, at most, only a insignificant decrease in revenue collected by the lobster trap certificate program, as those affected by the proposal would be lobster trap certificate holders not paying their annual certificate fees and may or may not eventually pay those fees.

### Anchoring of Vessels

Section 328.56, F.S., only requires motorized vessels "used" on the waters of the state to be registered. Vessels are considered to be "used" if the vessel is being operated; it does not include vessels that are left anchored, moored or docked on the waters of the state. Therefore, those vessels are not required to be registered. The bill requires owners to maintain a current registration while the vessel is in state waters. It is common for owners to anchor or moor their boats in state waters year-round. The bill does not allow for a lapse in vessel registration status and requires the boat owner to register his/her boat annually if anchored or moored in state waters.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.



2. Other:

None

**B. RULE-MAKING AUTHORITY:**

The bill gives the Commission rule-making authority to establish boating-restricted areas.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 27, 2009, the General Government Policy Council amended and passed HB 1423 as a Committee Substitute. The strike-all amendment:

- Creates a noncriminal infraction for damaging seagrasses and increases fines for repeat offenders;
- Provides a Type II transfer of the Bureau of Invasive Plant Management to the FWC from the DEP; transfers the Invasive Plant Trust Fund from DEP to FWC; clarifies that the BOT may delegate to FWC the authority to take final agency action on sovereign submerged lands for aquatic plant management activities; and establishes judicial and administrative remedies for violations of the aquatic plant management permitting program;
- Increases the price for the Save the Manatee and Conserve Wildlife specialty plate to \$25;
- Requires vessel operators born after Jan. 1, 1988, to pass a basic boating safety course;
- Changes the term "fuel" to "gasoline" for transportation of gasoline on a boat;
- Creates a \$7.50 shoreline saltwater fishing license;
- Defines "live-aboard vessel" as any vessel used solely as a residence and not for navigation; or any vessel for which a declaration of domicile has been filed pursuant to s. 222.17, F.S.;
- Establishes certain allowances for municipalities to designate boating-restricted areas, under limited conditions, to protect human life and insure vessel traffic safety. Any specific ordinance will not take effect until the commission has reviewed the ordinance and determined that the ordinance is valid and necessary; provides that noncriminal violations of certain statutes may be enforced by a uniform boating citation mailed to the registered owner of the unattended vessel anchored, aground, or moored on the waters of this state; provides that foreign flagged vessels entering United States waters and Florida state waters in compliance with 19 USC 1433 are exempt;
- Provides for proceeds of any confiscated evidence that is sold 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;

On April 21, 2009, the Finance & Tax Council adopted 11 amendments. The amendments:

- Revised the provisions of the bill regarding guidelines for municipalities for adopting boating restricted area ordinances.
- Revised the effective date to October 1, 2009 when notice of certain violations of noncriminal boating violations may be mailed to boat owners.
- Provided the penalty for a fourth or subsequent violation regarding sea grass scaring will be \$1,000 if the violation occurs within 72 months of a prior offense.
- Provided that the proceeds from the sale or disposition of illegally taken fish or wildlife will be deposited into the State Game Trust Fund or the Marine Resources conservation Trust Fund (removed an unnecessary reference to the Department of Revenue).
- Provided that shoreline exemption repeal takes effect August 1, 2009.
- Increased certain hunting fees.
- Modified the pilot program to explore potential options for regulating the anchoring or mooring of vessels outside the marked boundaries of public mooring fields.
- Clarified the use of the \$185,000 recurring appropriation from the Sate Game Trust Fund to the FWCC.

- Effective July 1, 2010, repeals s. 379.2211 regarding the expenditure of Florida waterfowl permit revenues and s. 379.2212 regarding the expenditure of Florida wild turkey permit revenues.
- Changed from Oct. 1 to Sept. 1 the effective date of the increased new vehicle fee and increased specialty tags.
- Provided the section of the bill regarding boating safety ID cards may be cited as the "Osmy Ozzie" Castellanos Boating Safety Education Act."

The analysis reflects the amendments.