



# Florida Fish and Wildlife Conservation Commission

## Legislative Affairs

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

(850) 487-3795 • FAX (850) 410-5265

## 2009 Session Legislative Proposal

**Title:** Establishing Penalties for Seagrass Damage

**Submitted by:** Division of Law Enforcement and Division of Habitat and Species Conservation

### 1. Issue

This proposal would create a noncriminal infraction for damaging seagrasses due to careless operation of a boat that results in seagrass scarring and vessel grounding in saltwater aquatic preserves. Increased fines are also established for repeat offenders. This proposal was part of the FWC's legislative package that passed during the 2008 Session; however, the bill, HB 7059, was vetoed for an issue unrelated to this proposal.

### 2. Present Situation

The reduction of seagrasses has detrimental impacts to important fisheries and aquatic ecological processes. Seagrass scarring 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. Staff believes the true economic value for seagrasses is substantially greater than that reported in this study. It is important to note that over 80% of economically important fish species depend upon seagrass communities at some point in their life history.

In 1995, the Fish and Wildlife Research Institute (formerly Florida Marine Research Institute) reported that 22,000 acres of seagrass in shallow near shore waters were moderately to severely scarred. Subsequent analysis of seagrass systems, such as those found in Charlotte Harbor in 2003, have shown increases in both the number of propeller scars and the severity of scarring since the 1995 report findings. The Charlotte Harbor assessment found a 71% increase in severely scarred seagrass habitat, when aerial images taken in 2003 were compared with those in the same

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

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

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

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

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

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

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

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

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

Legislation was introduced during the 2007 Legislative Session creating penalties for seagrass scarring in aquatic preserves. The bills, SB548 and HB 1069, did not pass. In addition, SB 2178, which created a pilot program for the reconstruction of seagrass beds, also did not pass.

During the 2008 Session, HB 7059 and SB 660 were filed that created penalties for seagrass scarring in aquatic preserves. HB 7059 passed the Legislature, but was vetoed for issues not related to this proposal.

### **3. Effect of Proposed Changes**

Those damaging seagrasses in an aquatic preserve, due to the careless operation of a boat, could be charged with a non-criminal infraction. A non-criminal infraction 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.
- \$1000 upon conviction for a fourth or subsequent offense

The public would be notified by FWC education campaigns including, but not limited to, personal contact by law enforcement officers, press releases, and boater education courses.

#### **4. Impact on all Pertinent Statutes/Rules**

Sections 253.04 and 327.73, Florida Statutes

#### **5. Affected Agencies/Groups**

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

#### **6. Fiscal Impact**

FWC

None.

Private Sector

Boaters who operate their vessels in a manner so as to cause propeller scars in seagrass may be assessed fines. The actual fiscal impact is unknown.

Other Governmental Agencies

None anticipated.

Tax/Fee issues

None

#### **7. Proposed Language**

Subsection (4) of section 253.04, Florida Statutes, is amended to read:

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

(4) Whenever any person or the agent of any person knowingly refuses to comply with or willfully violates any of the provisions of this chapter so that such person causes damage to the lands of the state or products thereof, including removal of those products, such violator is liable for such damage. Whenever two or more persons or their agents cause damage, and if such damage is indivisible, each violator is jointly and severally liable for such damage; however, if such damage is divisible and may be attributed to a particular violator or violators, each violator is liable only for that damage and subject to the fine attributable to his or her violation.

(a) The duty to conserve and improve state-owned lands and the products thereof shall include the preservation and regeneration of seagrass, which is deemed essential to the oceans, gulfs, estuaries, and shorelines of the state. Any person operating a vessel outside a lawfully marked channel in a careless manner that

causes seagrass scarring within an aquatic preserve established in ss. 258.39-258.399 with the exception of the Lake Jackson, Oklawaha River, Wekiva River, and Rainbow Springs aquatic preserves, commits a civil infraction, punishable as provided in s. 327.73. Each violation is a separate offense. As used in this subsection, the term:

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

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

(b) Any violation of this subsection is a violation of the boating laws of this state and shall be charged on a uniform boating citation as provided in s. 327.74. Any person who refuses to post a bond or accept and sign a uniform boating citation commits a misdemeanor of the second degree, as provided in s. 327.73(3), punishable as provided in s. 775.082 or s. 775.083.

Paragraph (x) of subsection (1) of section 327.73, Florida Statutes, is created to read:  
327.73 Noncriminal infractions.--

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

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

1. Fifty dollars upon conviction for a first offense.

2. Two hundred and fifty dollars upon conviction for a second offense occurring within 12 months after a prior conviction.

3. Five hundred dollars upon conviction for a third offense occurring within 36 months after a prior conviction.

4. One thousand dollars upon conviction for a fourth or subsequent offense.

Any person cited for a violation of any such provision shall be deemed to be charged with a noncriminal infraction, shall be cited for such an infraction, and shall be cited to appear before the county court. The civil penalty for any such infraction is \$50, except as otherwise provided in this section. Any person who fails to appear or otherwise properly respond to a uniform boating citation shall, in addition to the charge relating to the violation of the boating laws of this state, be charged with the offense of failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect shall be provided at the time such uniform boating citation is issued.