

MARINE INDUSTRIES
ASSOCIATION OF
FLORIDA



LEGISLATIVE
REPORT



2009

PREPARED BY: TIMMINS CONSULTING, LLC, 2009

2009 PRIORITY BILLS PASSED BY THE LEGISLATURE

Without a lot of fanfare the 2009 Legislative Session has come to end. After a one week extension to finalize the 2009-2010 Appropriations Act, the Legislature closed the doors on the 2009 Legislative Session on May 8, 2009.

As many of you are aware the budget was the focus and the priority of the Florida Legislature. The Florida Constitution mandates Florida have a balanced budget and with revenue shortfalls this was a difficult and often heartbreaking task. Many meetings, presentations, and revenue estimates were dedicated to the Fiscal Year 2009-2010 Appropriations Act.

The Legislature passed a \$66.5 billion budget which includes \$21.2 billion in general revenue and \$45.3 billion in trust fund dollars. Of that \$3.8 billion was allocated to General Government Appropriations which includes but is not limited to the Florida Fish and Wildlife Commission and Department of Environmental Protection. The breakdown for funding for General Government Appropriations includes \$0.4 billion in General Revenue and \$3.4 billion in trust fund dollars.

The 2009-2010 Appropriations Act included a few budget items of interest to Marine Industries Association of Florida. They are as follows:

- \$1.25 million from the state marina fuel tax for Boating Improvement programs
- \$3.2 million from Federal Grants for boating infrastructure (of the \$3.2 million, about \$2 million will be available for infrastructure projects)
- \$17 million for habitat restoration, research, law enforcement and derelict vessel removal. These dollars came from federal stimulus funding
- \$.9 million from the repeal of the shoreline fishing exemption

Even though the budget was the primary focus this session, that did not stop the legislators from filing proposed legislation. This year 2369 bills and resolutions were filed between the House and the Senate. Only 271 passed both chambers. Of the 271 only 235 were general bills.

With the shortfalls in revenues and the state facing yet another budget deficit, any bill that had a fiscal impact was highly scrutinized. Therefore, any piece of legislation that provided an increase to the state budget and did not provide a funding source did not stand a chance of passage this session.

Marine Industries Association of Florida tracked over 100 bills this session that could potentially impact our industry positively or negatively. Below are some of the highlights of priority bills for the marine industry that passed and failed during the 2009 Legislative Session.



Committee Substitute for Committee Substitute for House Bill 7031 relating to Economic Development-CS for CS for House Bill 7031 was the major economic development package to pass both the House and the Senate during the 2009 Legislative Session. The bill deals with changes the Florida Statutes to require the North American Industry Classification System (NAICS) codes rather than the outdated Standard Industrial Classification (SIC) codes. The bill also standardizes the application and denial process for some of the economic development incentive programs that are overseen by Enterprise Florida, Inc. and the Office of Tourism, Trade and Economic Development. Finally, the bill includes a provision relating to purchases of boats by non-residents. The bill contains language that will enable the purchaser of a qualifying boat to apply to the selling dealer within 60 days of the purchase of the boat to extend up 90 days but can not exceed 180 days before the nonresident boat owner is required to pay taxes. The 90 day extension cost is \$425.

**This bill will take effect on July 1, 2009.
Approved by the Governor on May 21, 2009**

Committee Substitute for Senate Bill 1742 relating to Fish and Wildlife Conservation Commission-CS for Senate Bill 1742 was a budget conforming bill relating to the Florida Fish and Wildlife Conservation Commission. The bill includes language to finalize the transfer of the Invasive Plant Management Program to the Fish and Wildlife Conservation Commission and includes language repealing the shoreline exemption for fishing. The bill contains provision that will allow individuals who fish in federal waters or fish for migratory species to be exempt from the federal saltwater registration requirement. However, the Florida Legislature added language to allow individuals who are currently eligible for food stamps, temporary cash assistance or Medicaid shall be exempt from purchasing a fishing license to fish from the shoreline. Also exempted are individuals who use a cane pole or do not use a mechanical retrieval device. The new license to fish from the shoreline will cost Florida residents \$7.50. This was a very contentious issue through out the Legislative Session.

Marine Industries Association of Florida has worked on this legislative package with the Florida Fish and Wildlife Commission over the last year. We were able to work with the agency to make numerous changes to the bill. Also, Representative Troutman was essential in keeping Marine Industries Association of Florida at the table throughout the entire legislative process.

As for the Coral protection aspect of the bill, which was a high priority of the Florida Department of Environmental Protection, MIAF owes a big thanks to Representative Ron Saunders who worked with us from the very beginning of the bills conception and encouraged DEP to work with the industry.

For more information on how these bills were originally filed and to see the changes in final form, we have prepared a chart to accompany this report for your information.

**The bill will take effect upon becoming law.
Approved by the Governor May 27, 2009**



Committee Substitute for Committee Substitute for House Bill 1423 relating to Fish and Wildlife Conservation Commission-CS for CS for House Bill 1423 was the comprehensive Florida Fish and Wildlife Conservation Commission legislative package. This bill included everything but the kitchen sink. The bill is 89 pages long and incorporates many changes to numerous FWC functions and over-sights and adds a provision for the Department of Environmental Protection creating the Florida Coral Reef Protection Act.

Some of the highlights of CS for CS for House Bill 1423 are as follows:

- Provides individuals who damage seagrass in an aquatic preserve by careless operation of a boat could be charged with a noncriminal infraction. The bill also increases fines for repeat offenders. This language passed the year before, but was included in a bill that was vetoed.
- Increases license tag fees for the Conserve Wildlife license tag and the Save the Manatee license tag.
- The bill changes Boating Under the Influence regulations. The bill lessens the blood alcohol level thresholds for BUI from .20 or more to .15 or more. With these changes BUI and DUI will be the same.
- Requires any person born after July 1, 1988, may not operate a vessel powered by a motor of 10 horsepower or more unless they have a valid boater safety education identification card. This was named the “Osmany “Ozzie” Castellanos Boating Safety Education Act”.
- Creates a pilot project relating to anchoring and mooring of non-live-aboard vessels outside of marked boundaries of public mooring fields. The bill requires two locations must be chosen on the east coast, two on the west coast and one in Monroe County. The bill also specifies the areas must be geographically diverse and take into consideration the users and means of using the waters of the state.
- Amends Florida Statutes 327.66 and 327.73 relating to transporting fuel in unapproved containers. The bill prohibits possession or operation of any vessel that has been equipped with tanks, bladders, drums or other containers designed or install or maintain such containers if they do not meet federal regulations or have not been approved by the Coast Guard. Individuals who violate this section commit a misdemeanor of the second degree.
- Clarifies the definition of a live aboard vessel is not used in navigation and includes any vessel for which a declaration of domicile has been filed.
- Clarifies statutes relating to uniform waterway markers and specifies criteria for boating restricted areas for local governments and the Commission.
- Establishes the “Florida Coral Reef Protection Act”. The Act applies to Martin, Broward, Miami-Dade, Monroe and Palm Beach counties. Provides for self-reporting of a vessel that runs aground within 24 hours to the Department of Environmental Protection. The responsible party must remove the vessel within 72 hours after the initial grounding absent extenuating circumstances. Department of Environmental Protection may recover specified damages.

This bill will take effect July 1, 2009 unless otherwise provided in the bill.

Approved by the Governor May 27, 2009



Committee Substitute for Committee Substitute for House Bill 521 relating to Ad Valorem Assessments-CS/CS/HB 521 passed both the House and the Senate. The bill provides in property tax assessment challenges that the assessment is presumed correct unless the taxpayer can overcome the presumption. This will create a more level playing field between the property owner and the property appraiser. The bill also provides the taxpayer the ability to prove by preponderance of the evidence that the assessment is higher than the just value or that the assessment is based on appraisal practices that vary from other appraisal practices on comparable properties within the same county. Finally, the bill states a taxpayer is not required to overcome the presumption of correctness when challenging a classification or exemption. This bill if approved will apply to assessments in 2009.

**This bill will take effect upon becoming law.
Approved by the Governor June 4, 2009.**

2009 PRIORITY BILLS NOT PASSED BY THE LEGISLATURE

Committee Substitute for Committee Substitute for Senate Bill 1012 relating to State Lands-This bill was strongly opposed by the Marine Industry Association of Florida. The proposed legislation was based on a Senate Interim Project by the Senate Environmental Preservation and Conservation Committee. The bill would have impacted sovereign submerged land leases. Some highlights of the bill are as follows:

- Provided a standard lease term of at least 10 years.
- Extended term leases could not exceed 25 years.
- Defined “first-come, first served” as any water-dependent facility operated on state-owned submerged land, the services of which are open to the general public by at least 90 percent of all slips over the state-owned submerged land, with no qualifying requirements such as club membership, stock ownership, or equity interest, with no longer than 1-year rental terms, and with no automatic renewal rights or conditions. All other leases would be considered private .
- Provided for a nonrefundable application fee of \$250 for a private residential single family dock or pier and a \$500 fee for all other facilities unless specified by general law.
- Provided for a one time premium for new private leases, expansions of private leases and lease conversions from a first-come, first-served basis to private use.
- Specified fees for “first-come, first-served” located outside an aquatic preserve be \$.10 per square foot or a minimum of \$250. All other outside an aquatic preserve would be \$.30 per square foot or a minimum of \$500.
- For leases open on a first-come, first-served basis within an aquatic preserve the cost is \$.30 per square foot or a minimum of \$500. All other leases within the aquatic preserve would be \$.60 cents per square foot or a minimum of \$1000.
- Provided fees be revised every five years.

Again, this bill did not pass both chambers. However, the bill did pass the Senate and was included in the Budget Conference process as it did raise revenues for the state. At the end of the Budget Conference process this bill was not included in the Budget Conference package. The House of Representatives did not have a bill filed similar to this piece of legislation.

Thank you to everyone who took the time to contact their legislator opposing this legislation.



House Bill 1309 and Senate Bill 1994 relating to Motor Vehicle Emission Standards-This bill was a priority for the Governor and the Department of Environmental Protections. Marine Industries Association stood with many other organizations in opposition. Simply, this bill would have adopted the California Emission Standards for Florida. Many hearings were held prior to the start of the Legislative Session and Marine Industries went on the record more than once opposing the adoption of these standards. Our belief was to wait and let the federal government adopt the standards so each state does not have their own rules. Also, the Joint Auditing Procedures Committee found the proposed DEP rule to be a violation of Chapter 120. Most importantly, MIAF did not want to give away Florida's decision making to another state, California.

House Bill 825 and Senate Bill 1468 relating to Ad Valorem Taxation of Working Waterfronts-Unfortunately, the implementing language that is required by Amendment 6 did not pass this session. First, I want to thank our wonderful House and Senate sponsors, Representative Julio Robaina and Senator Charlie Dean. Both of which stood strong with the marine industry as many other interests attempted to thwart the intent of Amendment 6. Representative Robaina and Senator Dean deserve our appreciation and gratitude for holding firm with the industry and voters of the State of Florida who overwhelmingly approve Amendment 6 last November with 70.6% of the vote.

The story of this bill is long and dramatic unfortunately. Every day for the 60 day session we were dealing with aspects of the language from staff, varied interest groups and of course various property appraisers from around the state. I am happy to report however, we were able to pass 3 committees in the Senate and 4 committees in the House. Senate Bill 1468 passed the Senate 38-0 and was sent to the House of Representatives. Unfortunately, Representative Bogdanoff ran an amendment that many in the industry opposed as they felt it gave the property appraisers discretion in the appraisal process and many in the industry preferred specifics on how working waterfronts are to be taxed and that should be outlined in statute so we have a uniform taxation of working waterfronts statewide. The House passed the amended version 118-0 and sent the bill back to the House in messages for the Senate to approve. As the last action on May 1st, Senator Charlie Dean stood up and refused to concur with the Bogdanoff amendment and the bill was dead. Senator Dean and many others agreed with industry advocates that the language needs to be specific as it relates to taxation of working waterfronts. Both Representative Robaina and Senator Dean deserve our appreciation and are dedicated to work with us yet again on this issue next year.

Please know, Amendment 6 is still in Florida's Constitution and it does not impact property assessment until 2010. We live to fight another day and another year.

This



House Bill 7143 relating to regulatory reform - This bill was a committee bill from the House Agriculture & Natural Resources Committee. For several weeks, the committee took both testimony and suggestions from various industries on methodology to improve areas of the state's permitting processes in regards to DEP, Water Management Districts, and other agencies. The bill would have made it easier for local governments and private entities to work with the state with permitting issues. MIAF worked hard to make sure our needs and ideas were included into the bill development process, and made sure our issues were well communicated to committee staff. The bill passed through all of its committees, and was passed in the House, but eventually was withdrawn from further consideration and died on its way to the Senate.

House Bill 469 and Senate Bill 2376 relating to tax on sales, use, and other transactions. As originally filed, the bill provided that the maximum amount of tax collected on each individual sale of an aircraft or boat may not exceed \$25,000. The \$25,000 cap applied only to sales between individuals and did not apply to aircraft or boat purchases from an agent, broker, or dealer. MIAF worked with Rep. Grady's office to try and determine a cap amount that will create more revenue for the state by having tax laws that encourage boat deals to take place in the state of Florida. Presently, many deals are forced to take place outside of the state as a means of saving significant amounts of money in state sales tax. While we are not sure that \$25,000 is necessarily the "perfect number," we are appreciative of Rep. Grady and Sen. Altman's hard work, and will work during the interim to try and develop a plan that creates a revenue-positive situation for the state, and increases the number of boats remaining in and contributing to the state of Florida.



ANALYSIS AND REPORT
HB 1423 BY REP. TROUTMAN
RELATING TO THE FISH & WILDLIFE CONSERVATION
COMMISSION

HB 1423 as Originally Filed by Rep. Troutman

- 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
- Eventually requires all boat operators to take an education course through a phased in process
- 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 statues governing local regulations and limitations relating to boating activities
- Establishes requirements for the carriage of fuel on vessels and establishes penalties for violations
- Clarifies current statutes relating 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
- 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 one to five pilot projects for regulating the anchoring or mooring of non-live-aboard vessels outside the marked boundaries of public mooring fields



HB 1423 was amended by a strike-everything amendment in the General Government Policy Council. The strike-everything amendment made the following substantive changes to 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 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



HB 1423 then went to the Finance & Tax Council. In the Finance & Tax Council, eleven amendments were offered. These amendments made the following substantive changes:

- 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 October 1 to September 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 “Osmay “Ozzie” Castellanos Boating Safety Education Act”



After being voted out of the House Finance & Tax Council, the bill (as a committee substitute) made the following major changes to Florida Statutes (as well as the changes mentioned above in the Finance & Tax amendatory process):

- 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 field



The bill was then sent to the House floor. While on the floor (and during its passage and return in Messages from House to Senate and back), the bill received the following substantive amendments.

- Rep. Patronis offered an amendment: Paragraph (d) of Section 379.353, Florida Statutes, was amended – deleting the word “freshwater” from the language regarding the “cane pole” exemption. This deletion now enables a person fishing with a pole without a line-retrieval mechanism to fish in fresh or saltwater without a license.

The bill went back and forth between the House and Senate several times. HB 1423 was substituted in lieu of SB 2536 by Senator Constantine, and SB 2536 was laid on the table. The following amendments passed/were concurred upon and remained in the final version of the bill that was passed by both chambers of the Legislature and ordered Enrolled:

- In regards to uniform waterway and informational markers, the phrase “information markers” was substituted for “informational markers.”
- Rep. Patronis offered an amendment: Paragraph (d) of Section 379.353, Florida Statutes, was amended – deleting the word “freshwater” from the language regarding the “cane pole” exemption. This deletion now enables a person fishing with a pole without a line-retrieval mechanism to fish in fresh or saltwater without a license.
- Senator Constantine offered an amendment to the bill that deleted the section as follows: “(k) Annual resident shoreline fishing license, \$7.50. The annual resident shoreline fishing license allows any resident to saltwater fish from land or from a structure fixed to the land. This license is not required for any resident issued any other license identified in this section that allows the take of saltwater fish.”
- Senator Constantine offered an amendment that deleted the new language regarding shoreline exemptions, including the above-referenced language regarding cane-pole exemptions, as well as Medicaid/food stamp recipients’ exemptions. This amendment also removed the portion of the bill that repealed the shoreline exemption from Florida Statutes.
- The final amendment from Senator Constantine inserted the “Florida Coral Reef Protection Act” into the bill. Details of this legislation/amendment can be found in the following Coral Reef Protection Act section of this report.

HB 1423 was signed into law by the Governor on May 27, 2009



ANALYSIS AND REPORT

SB 1004 BY SEN. CONSTANTINE / AMENDMENT TO HB 1423

THE FLORIDA CORAL REEF PROTECTION ACT

In the Senate Committee on Environmental Preservation & Conservation, a strike-everything amendment was filed that created the Florida Coral Reef Protection Act. The following major changes were included in this first version:

Coral Reef Restoration Section 1 amends s. 380.0558, F.S., to provide:

- An expanded definition of “coral reefs” to specifically identify limestone structures and hard bottom communities (also known as live bottom habitat, colonized pavement) as coral reefs.
- Clarification that “natural resources” are any resources that are controlled by the state, not just those that are situated in an area of critical state concern or offshore from an area of critical state concern.
- Clarification that moneys collected from damages to coral reef injury or destruction can be used to pay for projects selected by the department acting as staff for the Board of Trustees of the Internal Improvement Trust Fund (board).

Section 2 creates s. 380.29, F.S., the Florida Coral Reef Protection Act (Act) and defines the following terms:

- “Aggravating circumstances” means operating, anchoring, or mooring a vessel in a reckless or wanton manner; under the influence of drugs or alcohol; or otherwise with disregard for boating regulations concerning speed, navigation, or safe operation.
- “Coral” means species of the phylum Cnidaria found in state waters including:
 - Class Anthozoa, including the subclass Octocorallia, commonly known as gorgonians, soft corals, and telestaceans; and
 - Orders Scleractinia, commonly known as stony corals; Stolonifera, including, among others, the organisms commonly known as organ-pipe corals; Antipatharia, commonly known as black corals; and Hydrozoa, including the family Millaporidae and family Stylasteridae, commonly known as hydrocoral.
- “Coral reefs” mean limestone structures composed wholly or partially of living stony corals, their skeletal remains, or both, and hosting other coral, associated benthic invertebrates, and plants; or hard bottom communities, also known as live bottom habitat or colonized pavement, characterized by the presence of stony coral and associated reef organisms or worm reefs created by the *Phragmatopoma* species.
- “Damages” means moneys paid by any person or entity, whether voluntarily or as a result of administrative or judicial action, to the state as compensation, restitution, penalty, or mitigation for causing injury to or destruction of coral reefs.
- “Department” means the Department of Environmental Protection.
- “Responsible party” means the owner, operator, manager, or insurer of any vessel.



Legislative Findings and Intent

The bill includes findings by the Legislature that coral reefs are valuable natural resources that contribute ecologically, aesthetically, and economically to the state and must be protected. The Legislature declares its intent that it is in the best interest of the state to clarify the department's powers and authority to protect coral reefs through the timely and efficient recovery of monetary damages resulting from vessel groundings and anchoring-related injuries.

The bill further expresses the Legislature's intent that the department, as staff to the Board of Trustees of the Internal Improvement Trust Fund and by virtue of its own regulatory powers, must be recognized as the state's lead trustee for coral reef resources associated with sovereignty submerged lands unless preempted by federal law. The bill provides that the Act does not divest other state agencies and political subdivisions of the state of their interests in protecting coral reefs.

Notification and Cooperation with DEP to Reduce Damages

The Act includes several provisions designed to protect coral reefs by minimizing and recouping damages when vessel operators run aground or strike coral reefs by:

- Requiring notification within 24 hours to the department by responsible parties that know or should have known that they ran aground and damaged coral reefs
- Requiring vessels that have run aground be removed within 72 hours of the occurrence, with exceptions for extenuating circumstances or when prohibited by the United States Coast Guard
- Requiring that the responsible party must cooperate with the department to remove the vessel and assess the damage and restoration of the coral reef

Compensation for Damages

Under the Act, the department, on its own, or acting on behalf of the Board, is authorized to recover all damages from the responsible party including actual and consequential damages, assessment costs, mitigation expenses, monitoring costs for at least 10 years, and any enforcement costs, including court costs, attorney's fees, and expert witness fees, in any action or suit initiated pursuant to ch. 403, F.S. or ch. 253, F.S. A person reviewing the remedies available for destruction of coral reefs in ch. 403, F.S., or ch. 253, F.S., in isolation of ch. 380, F.S., where the bill places these compensatory damages, may be unaware that these damages are recoverable by the department.

The Act authorizes the department to adopt rules and parameters to use habitat equivalency analysis as the method to calculate the compensation required from the responsible party. Habitat equivalency analysis (HEA) is a methodology used to determine compensation for injuries to natural resources. "The principal concept underlying the method is that the public can be compensated for past losses of habitat resources through habitat replacement projects providing additional resources of the same type." To develop the restoration plan, "trustees must determine and quantify injury, develop restoration alternatives that consist of primary and compensatory actions, scale restoration alternatives, and select a preferred restoration alternative."



Civil Penalties

The Act provides for an award of civil penalties in addition to compensatory damages according to the following schedule:

- \$500 for failure to notify the department within 24 hours of an occurrence;
- \$150 for damage to coral reefs less than or equal to one square meter, with an additional \$150 for aggravating circumstances or damage occurring within a state park or an aquatic preserve;
- \$300 per meter for damage to coral reefs greater than one square meter but less than or equal to 10 square meters, with an additional \$300 per meter for aggravating circumstances or damage occurring within a state park or an aquatic preserve;
- \$1,000 per meter for damage in excess of 10 square meters, with an additional \$1,000 per meter for aggravating circumstances or damage occurring within a state park or an aquatic preserve;
- Double the penalties for a second infraction;
- Triple the penalties for a third infraction; and
- Quadruple the penalties for a fourth or subsequent infractions.
- Assessed civil penalties are capped at \$250,000 per occurrence. A person reviewing the remedies available for destruction of coral reefs in ch. 403, F.S., or ch. 253, F.S., in isolation of ch. 380, F.S., where the bill places this civil penalty provision, may be unaware that these penalties may be assessed by the department.

Delegation Agreements

The department is authorized to enter into delegation agreements with other state agencies or any coastal county with coral reefs within its jurisdiction. Before executing a delegation agreement, the department must consider the ability of the potential delegee to adequately and competently perform the duties required to fulfill the intent of this section. Upon the execution of the delegation agreement and incorporation of the agreement in department rule, the delegee will have all rights accorded the department under the act. The bill expressly provides that nothing in the Act should be construed to require the department, another state agency, or a coastal county to enter into a delegation agreement.

General Rulemaking Authority

Under the bill, the department is authorized to adopt rules pursuant to ss. 120.536 and 120.54, F.S., to administer this section.



Settlement Agreements

Section 3 amends s. 403.1651, F.S., to authorize the department to enter into settlement agreements that direct responsible parties to pay third parties for restoration or mitigation projects, or to support law enforcement activities related to coral reef damage assessment.

Repeal of Current Civil Penalty Provision

Section 4 repeals subsection (3) of s. 253.04, F.S., which, under current law, authorizes the department to establish by rule a schedule for the assessment of civil penalties for damage to coral reefs in state waters.

While the bill was in the Senate Judiciary Committee, it was substantively amended with the following changes:

- Relocates the Florida Coral Reef Protection Act from ch. 380, F.S., to ch. 403, F.S.
- Provides definitions of the terms “fund” and “person”.
- Expands the recovery of compensatory damages to include actions or suits initiated pursuant to ch. 373, F.S.
- Provides an exception for the assessment of civil penalties for first occurrences of damage to coral reefs totaling less than or equal to one square meter by responsible parties of a recreational vessels.
- Provides that all damages recovered by the state for damage to coral reefs that would otherwise be deposited into the General Revenue Fund or the Internal Improvement Trust
- Fund must be deposited in the Ecosystem Management and Restoration Trust Fund.
- Specifies the purposes for use of funds deposited into the Ecosystem Management and Restoration Trust Fund.
- Repeals s. 380.0558, F.S., the current coral reef protection provisions.

SB 1004 (as shown amended above) was passed by the Senate and sent to the House. In the House, the bill was withdrawn from further consideration. The text of this bill was amended onto HB 1423 by Representative Troutman (relating to the Fish & Wildlife Conservation Commission) with the following major substantive change:

- Section 2 of the new statute was created to read: “(2) This act applies to the sovereign submerged lands that contain coral reefs as defined in this act off the coasts of Broward, Martin, Miami-Dade, Monroe, and Palm Beach counties.”

HB 1423 was signed into law by the Governor on May 27, 2009

Again, thank you for the opportunity to represent the Marine Industries Association of Florida.



**MARINE
INDUSTRIES
ASSOCIATION
OF FLORIDA, INC.**

Portions of the preceding report utilize sections and direct quotations from the relevant bills and staff analyses provided to the public by the Florida Legislature.