



# Florida Fish and Wildlife Conservation Commission

## Legislative Affairs

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## 2009 Session Legislative Proposal

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

**Submitted by: Division of Law Enforcement**

### 1. Issue

This proposal would clarify and provide consistency in the confiscation and disposition of evidence in saltwater fish, freshwater fish, and wildlife cases. It specifies how such evidence should be photographed so that the photograph may be used as evidence in court, rather than the fish or wildlife. This proposal was part of 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

A forfeiture process for handling commercial harvested saltwater products is outlined in section 379.337, Florida Statutes. 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, Florida Statutes, 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 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. If the Legislature approved the proposal, the officer would be able to photograph the evidence and keep the seized fish or wildlife on ice and dispose of it when convenient to his/her patrol activities. The officer would have the option to offer the evidence to a nearby charitable institution, DNA lab or research facility or retain the illegal product and use it for such things as covert buy / sell operations and K9 training. This would allow officers to work more efficiently in the field and focus their efforts on patrolling the woods and water, rather than processing evidence.

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

The proposal would allow recreationally harvested saltwater fish to be disposed of in the same manner as freshwater fish and game. It would expand 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 would be 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 would have the option to sell the evidence, if appropriate, or destroy the evidence if it were deemed unwholesome.

FWC would identify the local hospitals and charitable institutions that are interested in receiving fish and wildlife donations and develop 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 proposal would clarify and specify how evidence is to be photographed in order for the photograph to be introduced as evidence in court, rather than the 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.

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

Section 379.338, F.S. is amended; section 379.3381, F.S. is created

#### 5. Affected Agencies/Groups

FWC Division of Law Enforcement, other law enforcement entities that enforce fish and wildlife laws, charities and non-profit organizations.

#### 6. Fiscal Impact

##### 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.

##### Private Sector

Currently, 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. If the proposal were approved, charities and non-profit organizations would be able to receive donated saltwater fish to further their cause and mission and may help defer food costs.

##### Other Governmental Agencies

Local police and sheriff departments would be able to reduce the amount of evidence that is held in FWC evidence freezers as evidence in cases they have made and avoid additional administrative and transportation costs. Unknown fiscal impact but expected to be positive.

##### Tax/Fee issues

None.

#### 7. Proposed Language

Section 379.338 Confiscation and disposition of illegally taken ~~game~~ wildlife, freshwater fish and saltwater fish.—

(1) All game wildlife, and freshwater fish, and saltwater fish seized under the authority of this chapter, any other chapter, or rules of the commission shall,

upon conviction of the offender or sooner in accordance with a court order if the court so orders, be forfeited to the investigating law enforcement agency. The law enforcement agency may elect to: retain the wildlife, freshwater fish or saltwater fish for the agency's official use; transfer it to another unit of state or local government for official use; donate it to a charitable organization; sell it at public sale, pursuant to the provisions of s. 705.103; or destroy the wildlife, freshwater fish or saltwater fish if none of the other options are practicable or if the wildlife, freshwater fish, or saltwater fish is unwholesome or otherwise not of appreciable value. All live wildlife, freshwater fish, and saltwater fish, the possession of which is unlawful, shall be properly documented as evidence as provided in s. 379.3381, and returned to the habitat unharmed, except that non-native species may be released only as allowed by rules of the commission. Any unclaimed wildlife, freshwater fish or saltwater fish shall be retained by the investigating law enforcement agency and disposed of in accordance with the above provisions. and given to some hospital or charitable institution and receipt therefore sent to the Fish and Wildlife Conservation Commission.

(2) All furs or hides or fur-bearing animals seized under the authority of this chapter shall, upon conviction of the offender, be forfeited and sent to the commission, which shall sell the same and deposit the proceeds of such sale to the credit of the State Game Trust Fund. If any such hides or furs are seized and the offender is unknown, the court shall order such hides or furs sent to the Fish and Wildlife Conservation Commission, which shall sell such hides and furs.

(3) The and deposit the proceeds of any such sale pursuant to this section 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.

Section 379.3381 Photographs of illegally taken wildlife, freshwater fish, and saltwater fish -

In any prosecution for a violation of Chapter 379, a photograph of the illegally taken wildlife, freshwater fish or saltwater fish may be deemed competent evidence of such property and may be admissible in the prosecution

to the same extent as if such wildlife, freshwater or saltwater fish were introduced as evidence. Such photograph shall bear a written description of the wildlife, freshwater fish or saltwater fish alleged to have been illegally taken, the name of the violator, the location where the alleged wrongful taking occurred, the name of the investigating law enforcement officer, the date the photograph was taken, and the name of the photographer. Such writing shall be made under oath by the investigating law enforcement officer, and the photograph shall be identified by the signature of the photographer. Upon the filing of such photograph and writing with the law enforcement authority or court holding such property as evidence, the wildlife, freshwater or saltwater fish may be disposed of in accordance with section 379.338.