

## **GUIDELINES FOR PURSUING CORAL REEF PROTECTION ACT CASES**

### **X.0 Introduction**

This document provides detailed discussion of the program specific process for pursuing recovery for injuries to coral reef resources pursuant to the Florida Coral Reef Protection Act, §403.93345, Fla. Stat. This document should be read in conjunction with the general procedures outlined in the Office of General Counsel's Enforcement Manual.

### **X.1 Background of the Florida Coral Reef Protection Act**

Between 1994 and 2006, there were seventeen incidents of groundings or dragged anchors at Port Everglades, and this history prompted the development of the CRPA. The CRPA was enacted to memorialize the state's existing approach to coral reef damages and to address specific arguments mounted by RPs during settlement negotiations. Research and drafting was undertaken by Coral Reef Conservation Program (CRCP) and OGC staff and began with an examination of coral conservation statutes and more general coastal protection measures from other jurisdictions with significant coral resources, including Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands. The CRPA passed the 2009 legislative session as an amendment to House Bill 1423, a Florida Fish & Wildlife Conservation Commission (FWC) bill largely concerned with law enforcement and vessel issues.

### **X.2 Provisions of the CRPA**

The CRPA applies to the five-county region of the Florida coral reef tract (Martin, Palm Beach, Broward, Miami-Dade, and Monroe Counties). The CRPA provides a statutory definition for coral as well as a broad definition of coral reef, recognizing worm reef as an important

associated resource. While recognizing DEP as the state's lead trustee for coral reef resources, this recognition does not preclude other state agencies and political subdivisions of the state (such as FWC and county governments) from participating in the protection of coral reefs. Under the CRPA, responsible parties for coral reef damages include the owner, operator, manager, or insurer of the vessel, and responsible parties are required to report grounding events within 24 hours of occurrence and, absent extenuating circumstances, remove the vessel within 72 hours.

The issue of what compensation the state was entitled to for coral injuries was a major impetus for proposing the CRPA. Largely modeled on National Marine Sanctuary provisions, the statute explicitly authorizes the state to seek compensation for costs equal to responding to the grounding event, restoring or replacing the injured reef, the value of lost services while the reef recovers, and post-restoration monitoring. The CRPA specifically authorizes the use of Habitat Equivalency Analysis (HEA) for calculating losses. HEA is a method of calculating compensation due for the interim loss of services occurring prior to full recovery, otherwise known as "compensatory restoration." The injury area is characterized in terms of areal extent, species composition and density, and extent of damage to estimate the interim loss of ecosystem services. The expected recovery time is accounted for, a discount rate applied, and the amount of restoration needed to compensate for the loss is determined. HEA's result is actually measured in area—for instance, it indicates how many acres of reef would need to be built to compensate for the injury—but Florida's pattern has been to convert this area into a dollar figure.

A civil penalty schedule is provided within the CRPA and should be applied after reviews and approval in accordance with DEP Directive 923. Due to the structuring of the CRPA penalty schedule, it may be common for a single violation to exceed \$25,000 in civil penalties. In these cases, it is important for staff to complete the appropriate Civil Penalty Authorization Memo for

review by General Counsel and approval by either the Deputy Secretary or Secretary prior to formal settlement discussions. A sample of a Civil Penalty Authorization Memo for coral reef cases can be found in the Appendix to the Enforcement Manual. Additionally, staff should receive the appropriate approval for damages exceeding \$25,000 using a Damages Authorization Memo. A sample of a Damages Authorization Memo can also be found in the Appendix to the Enforcement Manual.

The CRPA also allows DEP to delegate its powers and responsibilities to other jurisdictions if they are competent to undertake them. To date there has been no interest expressed by another agency to enter into a delegation agreement. Other non-CRPA enforcement regimes remain acceptable, which allows the enforcement regime for the Florida Keys National Marine Sanctuary enforcement procedures, led by the National Oceanic and Atmospheric Administration, to continue.

Departmental rulemaking is authorized for administration of the CRPA.

### **X.3 Staff Roles in CRPA Cases**

Within the Department's Florida Coastal Office (FCO), CRCP operates a Reef Injury and Prevention Response (RIPR) Program. CRCP was established in 2006 and charged with, among other responsibilities, coordinating response to vessel groundings and anchor damage incidents in southeast Florida, and developing strategies to prevent coral reef injuries. CRCP hired a full-time RIPR Coordinator in 2008 and a RIPR Technician in 2012 to lead this effort in coordination with the Office of General Counsel. Since 2009, DEP South and Southeast District Compliance and Enforcement staffs have been engaged in the enforcement of these unauthorized resource injuries.

#### **X.3.1 Initial Actions**

When the RIPR Coordinator receives a reef injury report, CRCP will first determine if the injury has been visually confirmed. If the reef injury has not been visually confirmed, and it is unknown whether or not an injury event has actually occurred, CRCP will determine what, if any, further action is necessary to confirm the report. If necessary, the RIPR Coordinator will lead the coordination of a pre-assessment injury site investigation with CRCP staff and other Resource Trustee partners (local and state agency representatives). If damage is confirmed, the RIPR Coordinator will also coordinate and conduct an impact assessment and write a report documenting the initial findings (e.g., general injury area, site conditions, number of organisms damaged, etc.). If severe damage is found, the RIPR Coordinator will coordinate and conduct a rapid ecological assessment to document what biological resources and ecological functions were lost.

For confirmed reef injury events, the RIPR Coordinator will identify the Responsible Party (RP), and forward the injury event information and subsequent assessment reports to the applicable District Office Assistant Director and Assistant General Counsel (AGC) in order to proceed with enforcement action. Once a case has been forwarded for enforcement action, the RIPR Coordinator will set up a preliminary briefing call with the FCO SE Regional Administrator, applicable District Office staff, and the AGC to determine and proceed with a course of action.

### **X.3.2 Individual Staff Responsibilities: Florida Coastal Office**

The following explains the roles of FCO personnel in CRPA cases.

FCO Director

- Reviews and approves recommendations from Administrator for terms of settling CRPA enforcement cases and offers FCO recommendation to the applicable District Office for acceptance. Coordinates with applicable District office with any other final decisions

related to management of the Coral Reef Protection Act. Authority may be delegated to Coastal Program Administrator.

- Supervises Southeast Regional Administrator.

#### Southeast Regional Administrator

- Oversees all aspects of CRCP's Reef Injury Prevention and Response Program including supervision of CRCP Manager and RIPR Coordinator.
- Approves final method and staff/Resource Trustees used to confirm any unconfirmed reef injury events or conduct site assessments.
- Assists the RIPR Coordinator in completing site assessment dives.
- Approves resource injury cases to be forwarded to applicable District Office for enforcement.
- Approves assessment reports and case-related correspondence to the applicable District Office Assistant Director written by the RIPR Coordinator.
- Recommends restoration activities proposed and implemented at injury sites.
- Reviews all case-related legal letters drafted by the AGC and applicable District Office staff for coral impact technical accuracy.
- Reviews all draft assessment, restoration, and technical reports from the RP's consultants.
- Attends and participates in meetings with the RP.
- Updates FCO Director and Coastal Program Administrator on all case-related decisions.
- Reviews and recommends terms of settlement to FCO Director and applicable District Assistant Director.
- May be delegated authority, on behalf of FCO Director, for recommending terms of settlement directly to applicable District Office Assistant Director; and any other decisions related to management of the Coral Reef Protection Act.

#### Coral Reef Conservation Program Manager (CRCPM)

- Assists the RIPR Coordinator in completing site assessment dives.
- Reviews assessment reports and case-related correspondence to the RPs written by the RIPR Coordinator.
- Reviews legal letters drafted by the AGC and applicable District Office for coral impact technical accuracy.
- Reviews all draft assessment, restoration, and technical reports from the RP's consultants.
- Attends and participates in meetings with the RP for SE Regional Administrator, if necessary.
- Recommends enforcement and restoration options to the Regional Administrator.

#### Reef Injury Prevention and Response Coordinator

- Completes a Coral Reef Injury Response Form and case file (as needed) for all reported reef injury events.
- Maintains the Damage Incident Summary Tracker and Grounding History Tracker database.
- Monitors the 24-hour reef injury event cell phone.
- Determines if further action is necessary to confirm an unconfirmed reef injury event.

- Plans, organizes, and leads site assessments for all confirmed and unconfirmed reef injury events.
- Coordinates and leads communication/meetings with the Resource Trustees to recommend compensatory mitigation calculations using the Habitat Equivalency Analysis (HEA) and prepare for meditation/trial.
- Maintains communication with the applicable District Office and RP's consultants regarding technical issues (e.g., assessment protocols and reports; restoration plans; compensatory mitigation).
- Leads review of all draft assessment, restoration, and technical reports from the RP's consultants.
- Leads review of restoration activities proposed and implemented at injury sites.
- Coordinates with the applicable District Office Assistant Director to plan fact finding and settlement meetings with the RP.
- Recommends enforcement and restoration options to the CRCPM.
- Reviews enforcement letters drafted by the applicable District Office Assistant Director for coral impact technical accuracy.
- Reviews legal letters drafted by the Department's AGC for coral impact technical accuracy.
- Maintains all equipment used in RIPR Program (e.g., underwater cameras, scooters)
- Supervises RIPR Technician.

#### Reef Injury Prevention and Response Technician

- Assists the RIPR Coordinator in completing site assessment dives.
- Assists in maintaining all equipment used in RIPR Program (e.g., underwater cameras, scooters)
- Assists RIPR Coordinator in preparing for, and completing reef injury site assessments.
- Assists RIPR Coordinator in drafting and reviewing assessment reports.
- Reviews all draft assessment, restoration, and technical reports from the RP's consultants.
- Reviews restoration activities proposed and implemented at injury sites.
- Reviews enforcement letters drafted by the applicable District Office for coral impact technical accuracy.
- Reviews legal letters drafted by the Department's AGC for coral impact technical accuracy.
- Monitors the 24 hr. reef injury event cell phone when the RIPR Coordinator is unavailable.

#### CRCP Assistant Manager / Maritime Industry and Coastal Construction Impacts (MICCI) Coordinator

- Assists the RIPR Coordinator in completing site assessment dives.
- Monitors the 24 hr. reef injury event cell phone when the RIPR Coordinator and RIPR Technician are unavailable.

### **X.3.3 Individual Staff Responsibilities: Applicable District Office**

The following explains the roles of District Office personnel in CRPA cases.

#### District Director

- Makes final decision on whether to pursue enforcement of confirmed reef injury events. If enforcement is pursued, makes final decision regarding terms of settlement.
- Makes final decision on any other actions related to compliance assistance or enforcement of the Coral Reef Protection Act.

#### Assistant Director

- Reviews documents drafted by the FCO.
- Reviews legal documents drafted by the AGC.
- Attends and participates in all meetings with the RP.
- May be delegated final decision-making authority, on behalf of Director, for accepting terms of settlement; and any other actions related to compliance assistance or enforcement of the Coral Reef Protection Act.
- Approves initiation of communication with the RP representatives after a confirmed reef injury event.
- Attends and participates in meetings with FCO Staff and RP.
- Signs education letters within 15 days of receiving the case information from FCO.
- Immediately informs FCO Staff of all reef injury events and reports received.
- Initiates communication with the RP representatives after a confirmed reef injury event.
- Approves compliance assistance or enforcement related documents to violators of the CRPA including educational letters for commercial and recreational vessels observed anchored on a coral reef, compliance assistance offers, warning letters, consent orders, NOVs, or case reports.
- Reviews assessment reports written by the FCO Staff.
- Reviews any subsequent documents submitted by the RP or their consultants.
- Coordinates with the AGC to maintain enforcement-related communication with the RP.
- Serves as the point of contact in regards to the enforcement process and documents.
- Works with the FCO Staff to plan fact finding and settlement meetings with the RP.

#### **X.3.4 Individual Staff Responsibilities: Office of General Counsel**

The following explains the roles of OGC personnel in CRPA cases.

#### Assistant General Counsel

- Provides legal counsel on confirmed reef injury events.
- Assists in legal research and discovery of contact and financial information related to the RP.
- Drafts, signs, and sends legal documents pertaining to violations of the CRPA to the opposing counsel.
- Attends and participates in meetings with the RP.
- Maintains regular communication with the opposing counsel and coordinates with the applicable District Office to maintain enforcement-related communication with the RP.

- Reviews enforcement related documents drafted by the applicable District Office.

#### **X.4 Investigation**

Site investigation is pursued by qualified staff in the following order:

- Shoreline Investigation (optional);
- Pre-Assessment;
- Impact Assessment;
- Rapid Ecological Assessment.

##### **X.4.1 Pre-Assessment**

The purpose of Pre-Assessment is to search and find the injury area; mark the injury boundary coordinates by setting the Impact Event and Impact Scene Perimeters (the area immediately around an existing incident source that includes all elements of impact including a small buffer and the area impacted directly by the existing incident that may expand beyond the Impact Event Perimeter, including injury caused by the removal of the incident source, respectively); create a draft injury map; and take photographs of the injury area. During the pre-assessment the dive team should determine if any immediate actions can be taken to decrease additional resource damage from the impact event. If damage is found, the dive team should be prepared to perform the Impact Assessment on the same day.

##### **X.4.2 Impact Assessment**

The goal of the Impact Assessment is to produce an Impact Scene Diagram that includes measurements, references to photos taken, locations of manmade debris/evidence, and injured organisms within the injury area. The dive team should complete the assessment as a unit with the Coral Reef On-Scene Coordinator (CROC) leading the dive. When organisms are being photographed with a scale bar; take the first photo without the scale bar, the second with it, and the third without it before moving on to the next subject.

Depending on the size of the injury area, the dive team may decide to photograph and collect manmade debris or evidence on a subsequent dive after the Impact Assessment Map and associated tasks have been completed. For photo documentation of evidence collection, the first photo will be taken without an evidence marker, the second and any subsequent photos with the marker, and the last photo showing that the evidence and marker have been collected and removed.

#### **X.4.3 Rapid Ecological Assessment**

The Rapid Ecological Assessment determines what biological resources and ecological functions were lost from an impact event and establishes the rate of recovery for the habitat. This information is captured through a series of belt transects conducted in the injury area compared to belt transects completed at nearby control sites.

Depending on the size of the injury area, three to five 30m x .75m belt transects will be completed within the injury area. If the injury area encompasses multiple types of habitat, three to five transects should be completed in each habitat type. If the transects are laid parallel to each other, they must be at least 2m apart to ensure there is no overlap of data recorded. If the injury area is not large enough to include 30m long transects, they can be reduced to 20m, 15m, or 10m. The determination on how many belt transects to complete and what length is most appropriate will be determined by the Coral Reef On-Scene Coordinator (CROC). In all situations, the maximum amount and length of belt transects that will fit inside the injury area should be completed. Sampling methods should be duplicated at control sites and the habitat type must match that of the injury area.

On each transect line, point intercept data will be captured by recording what substrate lies beneath the line at every .2cm mark and recorded on the Point Intercept and Rugosity data

sheet. This will assist in quantifying the amount of rubble in the injury area. Additionally, a .75m x 1m quadrat will be placed at every meter mark on both sides of the transect line. Stony coral, octocoral, and *Xestospongia muta* (*X.muta*) data will be recorded.

The Rugosity Index (RI) will be measured by laying a 10m small-link chain directly alongside each transect line for all transects completed at the injury area and control sites. If the transects are longer than 10m, the chain will be laid next to each 10m subsection of the transect line. Due to uneven bottom surface, the chain will end short of the 10m mark on the transect line. The resulting fraction (relative length (m)/actual length (10m)) is a representation of the rugosity of the habitat. As the fraction approaches “1”, the habitat is primarily flat and featureless; as the fraction approaches “0”, the habitat is highly three-dimensional.

#### **X.5 Legal Action**

Information related to compliance assistance as well as enforcement options and procedures are outlined in the Office of General Counsel’s Enforcement Manual located at <https://softlive.dep.state.fl.us/ogc/ogc/content/enforcement-manual>.

#### **X.6 Restoration**

Monies recovered are directed to be deposited in the Ecosystem Management and Restoration Trust Fund for the Department and shall remain there until expended by the Department for three purposes:

- To provide funds to the department for reasonable costs incurred in obtaining payment of the damages for injury to, or destruction of, coral reefs, including administrative costs and costs of experts and consultants. Such funds may be provided in advance of recovery of damages;

- To pay for restoration or rehabilitation of the injured or destroyed coral reefs or other natural resources by a state agency or through a contract to any qualified person; or,
- To pay for alternative projects selected by the department. Any such project shall be selected on the basis of its anticipated benefits to the residents of this state who used the injured or destroyed coral reefs or other natural resources or will benefit from the alternative project.

FCO proposes legislative budget requests and, via the CRCP, administers contracts to conduct restoration projects.

**X.X.X.        Other Resources**

Coral Reef Conservation Program:

<http://www.dep.state.fl.us/coastal/programs/coral/>

Reef Injury Prevention and Response Program:

<http://www.dep.state.fl.us/coastal/programs/coral/ripr.htm>

Coral Reef Protection Act of 2009 Fact Sheet:

[http://www.dep.state.fl.us/coastal/programs/coral/pub/CRPA\\_Fact\\_Sheet.pdf](http://www.dep.state.fl.us/coastal/programs/coral/pub/CRPA_Fact_Sheet.pdf)

Rapid Response and Restoration for Coral Reef Injuries in Southeast Florida: Guidelines and Recommendations (pre-dates the CRPA, but is still has useful information on conducting assessment and restoration):

[http://www.dep.state.fl.us/coastal/programs/coral/reports/MICCI/MICCI\\_Project2\\_Guidelines.pdf](http://www.dep.state.fl.us/coastal/programs/coral/reports/MICCI/MICCI_Project2_Guidelines.pdf)