

**Constitution Revision Commission
Declaration Of Rights Committee
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: CS/P 91

Relating to: GENERAL PROVISIONS, Natural resources and scenic beauty

Introducer(s): General Provisions Committee and Commissioners Thurlow-Lippisch and Martinez

Article/Section affected: Article II, Section 7.

Date: January 29, 2018

	REFERENCE	ACTION
1.	<u>GP</u>	<u>Fav/CS</u>
2.	<u>DR</u>	<u>Pre-meeting</u>

I. SUMMARY:

Article II, Section 7 of the Florida Constitution establishes the policy of the state to conserve and protect its natural resources and scenic beauty. Consistent with this overall policy, the Florida Department of Environmental Protection regulates oil and gas drilling in Florida territorial waters through the Oil and Gas Program. Primary responsibilities of the Oil and Gas Program also include conservation of oil and gas resources, correlative rights protection, maintenance of health and human safety, and environmental protection.

Currently, the permitting or construction of structures intended for the drilling or production of oil and gas is prohibited in the following locations:

- Florida's east or west coast within Florida's territorial sea;
- Any submerged land within any bay or estuary;
- Within 1 mile seaward of the coastline of the state;
- Within 1 mile of the seaward boundary of any state, local, or federal park or aquatic or wildlife preserve or on the surface of a freshwater lake, river, or stream; or
- Within 1 mile inland from the shoreline of the Gulf of Mexico, the Atlantic Ocean, or any bay or estuary or within 1 mile of any freshwater lake, river, or stream (unless there is adequate protection in the event of accident or blowout.)

The proposal prohibits oil and gas drilling for exploration or extraction in and beneath all state waters which have not been alienated and that lie between the mean high water line and the outermost boundaries of the state's territorial seas. This prohibition does not apply to the transportation of oil and gas products produced outside those waters. The proposal is self-executing.

If approved by the Constitution Revision Commission, the proposal will be placed on the ballot at the November 6, 2018, General Election. Sixty percent voter approval is required for adoption. If approved by the voters, the proposal will take effect on January 8, 2019.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Florida Coastal Boundaries

A state's "territorial waters" generally refers to the waters under its jurisdiction, including both the inland waters and any surrounding sea. The Florida Constitution provides the first significant source of authority for defining Florida's territorial waters. In addition to Florida's constitutional provisions, there are various federal and state statutes that speak to territorial waters and the state's power within them.

Florida Constitution – Article II, Section 1

Article II, Section 1 of the Florida Constitution describes the state coastal boundaries. It provides that the southern and western boundaries extend three leagues (nine nautical miles¹) and to the edge of the Gulf Stream or three geographic miles, whichever is greater, for the eastern coastal boundary. Article II, Section 1 also authorizes the Legislature to extend the coastal boundaries to the limits permitted by the United States or international law. These boundary provisions are a combination of Florida's fourth, fifth, and sixth constitutions.

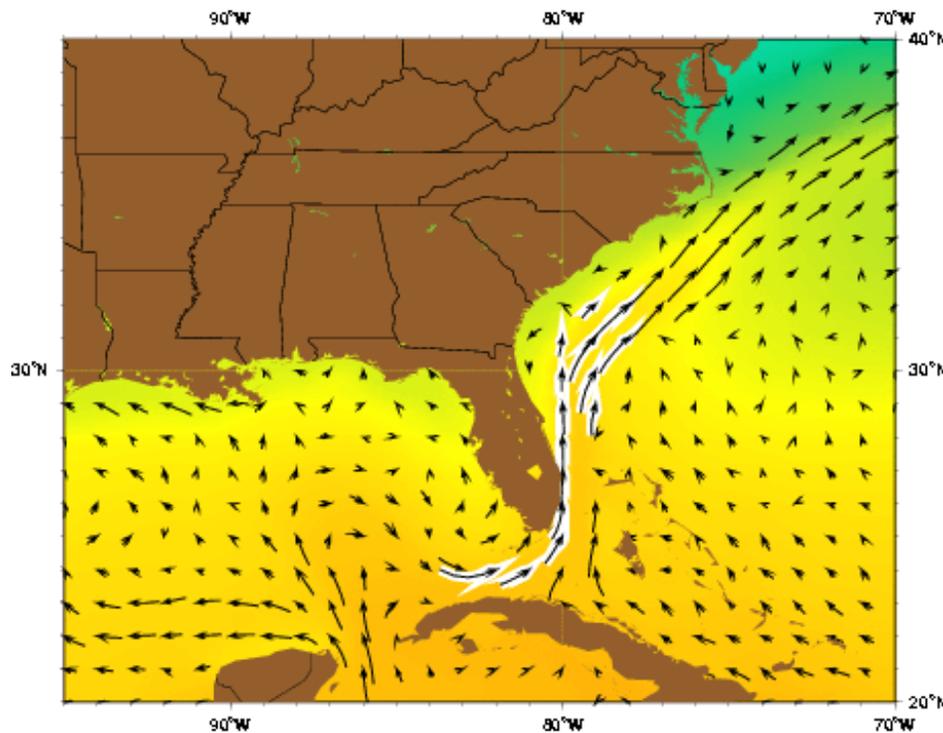
Gulf Stream

The Gulf Stream is a powerful, western boundary current in the Atlantic Ocean. It starts in the Gulf of Mexico and flows into the Atlantic at the tip of Florida, accelerating along the eastern coastlines of the United States and Newfoundland. It is part of the North Atlantic Subtropical Gyre, one of the five major oceanic gyres, which are large systems of circular currents and powerful winds. The National Oceanographic Data Center (NODC) reports that the exact position of the Gulf Stream is *variable*. The current meanders, loops, and bends, flowing from Florida to North Carolina and veering east into the North Atlantic near Cape Hatteras, North Carolina. The position of the Gulf Stream as it leaves the coast changes throughout the year. In the fall, it shifts north, while in the winter and early spring it shifts south.² The Florida current is a well-defined component of the Gulf Stream system. On the average, the inner edge is within 10 miles of Miami and Ft. Lauderdale, FL, and at times there is a 2 m/s flow within a few miles of the coast.³

¹ A nautical mile is approximately 1.15 geographic miles.

² Joanna Gyory, Arthur J. Mariano, and Edward H. Ryan, *The Gulf Stream*, University of Miami Rosentiel School of Marine & Atmospheric Science, <http://oceancurrents.rsmas.miami.edu/atlantic/gulf-stream.html> (last visited Jan. 29, 2018).

³ Joanna Gyory, Elizabeth Rowe, Arthur J. Mariano, Edward H. Ryan, *The Florida Current*, University of Miami Rosentiel School of Marine & Atmospheric Science, <http://oceancurrents.rsmas.miami.edu/atlantic/florida.html> (last visited Jan. 29, 2018).

Fig 1. The Florida Gulfstream Current

Thus, Florida's eastern coastal boundary, measured to the edge of the Gulf Stream, may shift from time to time.

Florida Constitution – Article X, Section 16

Article X, Section 16 of the Florida Constitution also establishes definitions of Florida's coastal boundaries for purposes of prohibiting gill nets or other entangling nets. Article X, Section 16 defines:

- "A. 'Coastline' is the low water line that meets the shore along the coast of Florida which is in direct contact with the open sea. A coastline can never begin in open water; a coastline, in plain terms, is where the water meets the land.
- B. 'Florida waters' are those waters in the Atlantic Ocean out to three (3) geographic miles from the coastline and in the Gulf of Mexico out to three (3) marine leagues, or 9 geographic miles, or approximately 10.376 statute miles, from the coastline.
- C. 'Nearshore and inshore waters' are those State waters within one (1) geographic mile of the coastline in the Atlantic Ocean and three (3) geographic miles of the coastline in the Gulf of Mexico."

Federal Law – Submerged Lands Act

Prior to the 1930s, there was little need to establish states' boundaries in the open sea. It was taken as a routine matter that a state owned title to the submerged lands beneath the open sea and waters of the Great Lakes to the boundary of the state, and held these lands in trust for the people of the state with the authority to regulate such matters as fishing .⁴

The discovery of oil beneath submerged lands intensified interest in establishing states' boundaries and in determining ownership of submerged lands, and, thus, the oil within those boundaries. The question was a significant one because the United States claimed all the minerals beneath the submerged lands.⁵ In 1947 the United States Supreme Court ruled that, as against California, the United States possessed paramount rights in the submerged lands of the Pacific Ocean seaward of the low-water mark on the coast of California.⁶ Subsequent to this decision, the Court found similarly against Louisiana and Texas.⁷

Congress reacted to these decisions by enacting the Submerged Lands Act of 1953.⁸ Congress defined "coast line" to mean "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters[.]"⁹ Congress then definitively confirmed title to the submerged lands and the natural resources beneath such submerged lands to the states¹⁰ and relinquished all right, title and interest the United States had in these submerged lands.¹¹ Finally, Congress defined the seaward boundary of the coastal states as "a line three geographic miles¹² distant from its coast line . . ."¹³ Congress allowed any state to extend its seaward boundary beyond the three geographic miles if it had proof of such a boundary.

The Submerged Lands Act as interpreted by the U.S. Supreme Court gives Florida three leagues (approximately nine miles) off its western coastal boundary¹⁴ and three geographic miles off its eastern coastal boundary.¹⁵

⁴ *Illinois Central Railroad Company v. State of Illinois*, 146 U.S. 387 (1892).

⁵ *United States v. State of California*, 332 U.S. 19, 22-25 (1947).

⁶ *Id.*

⁷ *United States v. State of Louisiana*, 339 U.S. 699 (1950); *United States v. State of Texas*, 339 U.S. 707 (1950).

⁸ 43 U.S.C. s. 1301, *et seq*

⁹ *Id.* s. 1301 (c)

¹⁰ *Id.* s. 1301 (a)

¹¹ *Id.* s. 1301 (b)

¹² The term "geographic" mile is often used interchangeably with "nautical" mile. However, a "geographic" mile is slightly longer. A "geographic" mile is the length of one minute of the arc of the equator, or 6,087.08 feet. *American Practical Navigator*, Nathaniel Broditch LL.D. (1981), p. 812. A "nautical" mile is 6,076.11549 feet. *Id.* at 116. A "statute" or "English" mile (used on land) is 5,280 feet. Thus, a "geographic" or "nautical" mile is 1.15 "statute" or "English" miles.

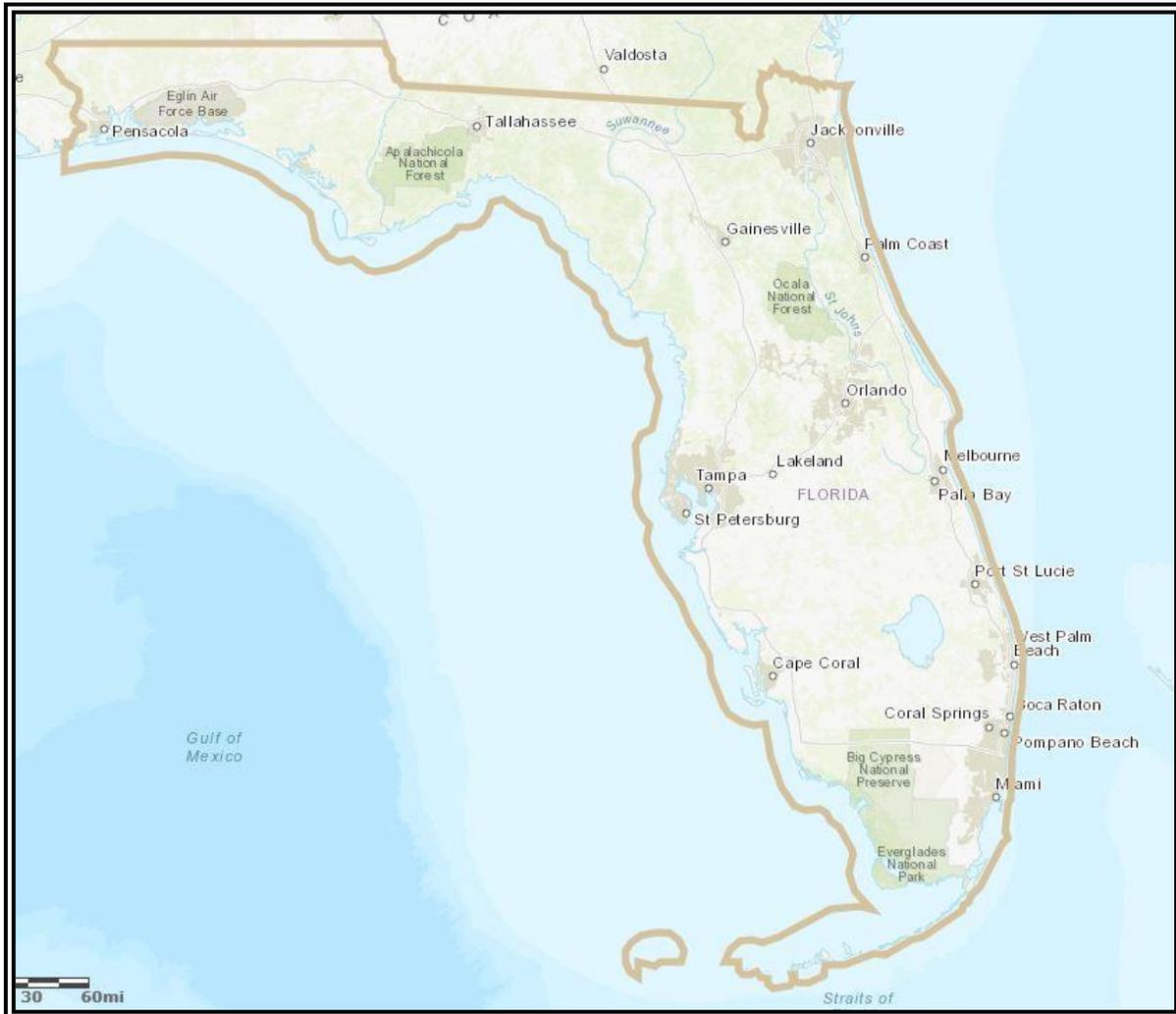
¹³ Three geographic miles had long been the recognized seaward boundary of the United States. *See, e.g., Cunard Steamship Company v. Mellon*, 262 U.S. 100, 122-123 (1923). Codification of 43 U.S.C. s. 1312 was the first congressional recognition of this accepted legal fact.

¹⁴ *United States v. States of Louisiana, Texas, Mississippi, Alabama and Florida*, 363 U.S. 1 (1960).

¹⁵ *United States v. Florida*, 425 U.S. 791 (1976).

Fig 2: Florida State Waters and Land Boundary

Source: Official State of Florida Geographic Data Portal¹⁶



Oil and Gas Drilling

Florida Regulation of Oil and Gas Drilling

Article II, Section 7 of the Florida Constitution establishes the policy of the state to conserve and protect its natural resources and scenic beauty. The provision also requires that adequate provision must be made by law for the abatement of air and water pollution and of excessive and unnecessary noise, and the conservation and protection of natural resources.¹⁷

Consistent with this overall policy, the Florida Department of Environmental Protection (DEP) regulates oil and gas drilling in Florida territorial waters through the Oil and Gas Program. Primary responsibilities of the Oil and Gas Program also include conservation of oil and gas resources,

¹⁶ <http://geodata.myflorida.com/datasets?page=5&t=boundaries>

¹⁷ Art. II, § 7(a), Fla. Const.

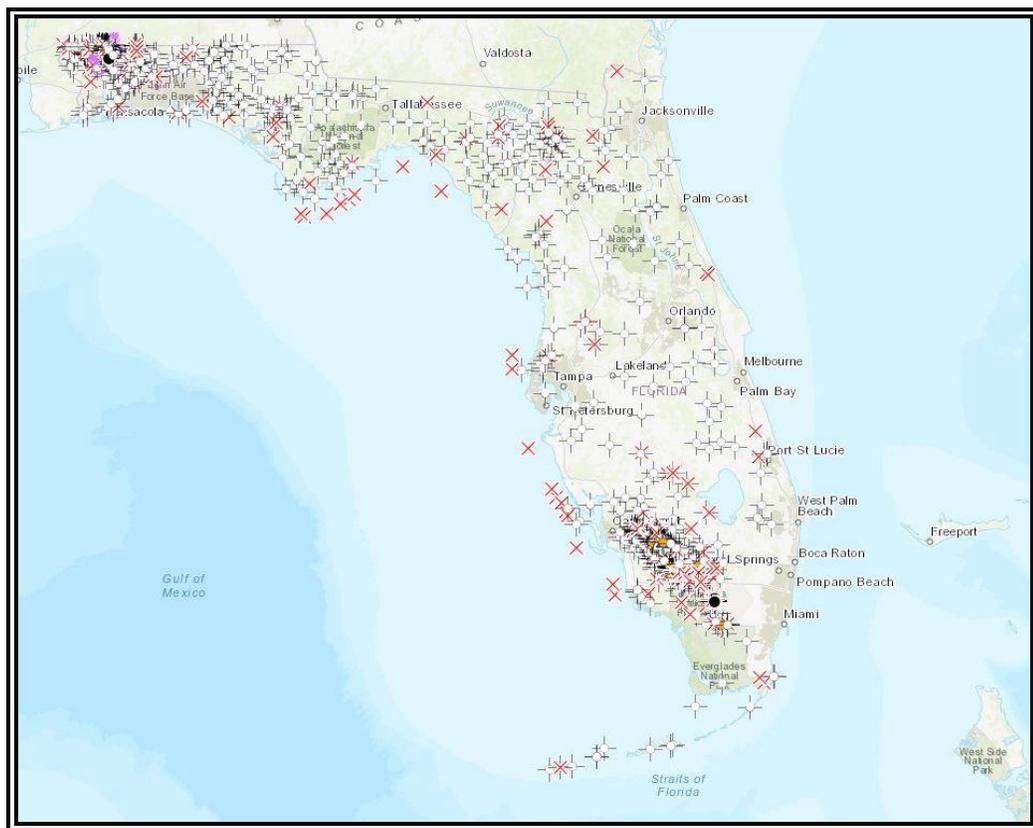
correlative rights protection, maintenance of health and human safety, and environmental protection.

Section 377.242, F.S., authorizes DEP, through the Oil and Gas Program, to issue permits for the drilling for, or production of oil, gas, or other petroleum products which are to be extracted from below the surface of the land, including submerged land. However, s. 377.242, F.S., provides that no structure intended for the drilling for, or production of oil, gas, or other petroleum products may be permitted or constructed in the following locations:

- Florida’s east or west coast within Florida’s territorial sea (uses boundaries from Submerged Land Act);
- Any submerged land within any bay or estuary;
- Within 1 mile seaward of the coastline of the state;
- Within 1 mile of the seaward boundary of any state, local, or federal park or aquatic or wildlife preserve or on the surface of a freshwater lake, river, or stream; or
- Within 1 mile inland from the shoreline of the Gulf of Mexico, the Atlantic Ocean, or any bay or estuary or within 1 mile of any freshwater lake, river, or stream (unless there is adequate protection in the event of accident or blowout.)

Fig 3: Current Florida Permitted Oil and Gas Wells

Source: DEP, Oil and Gas Program¹⁸



¹⁸ <https://ca.dep.state.fl.us/mapdirect/?focus=oilandgas>

Federal Regulation of Oil and Gas Drilling

The Outer Continental Shelf Lands Act governs federal jurisdiction over the submerged lands on the Outer Continental Shelf seaward of the state boundaries. The U.S. Secretary of Interior has authority to lease this land to the oil and gas industry for exploration, development, and production of oil and gas. In 2006, Congress approved a federal moratorium that bans drilling along almost all of the eastern Gulf of Mexico, an area which extends 125 miles off Florida's west coast.¹⁹ This moratorium also contains a well-control rule that was adopted in the aftermath of the Deepwater Horizon disaster.²⁰

An executive order signed by the President of the United States in April calls for these regulations to be reconsidered.²¹ Proponents of the moratorium cite concerns ranging from national security to environmental problems to economic development,²² noting that the Eastern Gulf is the largest training ground for the United States military in the world.²³

B. EFFECT OF PROPOSED CHANGES:

The proposal prohibits oil and gas drilling for exploration or extraction in and beneath all state waters which have not been alienated and that lie between the mean high water line and the outermost boundaries of the state's territorial seas. This prohibition does not apply to the transportation of oil and gas products produced outside those waters.

If approved by the voters, the proposal will take effect on January 8, 2019.²⁴

C. FISCAL IMPACT:

Per the Department of Environmental Protection, no impact anticipated.

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

¹⁹ <http://www.heraldtribune.com/opinion/20170815/editorial-oppose-oil-drilling-off-florida-coast>

²⁰ *Id.*

²¹ <https://www.whitehouse.gov/the-press-office/2017/04/28/presidential-executive-order-implementing-america-first-offshore-energy>

²² <http://www.pnj.com/story/news/2017/12/01/offshore-drilling-not-fit-florida-guestview/905826001/>

²³ *Id.*

²⁴ *See* Article XI, Sec. 5(e) of the Florida Constitution ("Unless otherwise specifically provided for elsewhere in this constitution, if the proposed amendment or revision is approved by vote of at least sixty percent of the electors voting on the measure, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.")

C. Technical Deficiencies:

None.

D. Related Issues:

None.