



# Florida Fish and Wildlife Conservation Commission

## Legislative Affairs

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

(850) 487-3795 • Suncom 277-3795 • FAX (850) 410-5265

## 2009 Session Legislative Proposal

**Title: Vessel Management**

**Submitted by Division of Law Enforcement**

### 1. Issue

This issue will review best management practices for state and local government to regulate vessel operation. Examples of vessel operation include mooring/anchoring, speed regulations, and vessels exclusion areas.

### 2. Background

#### Commission Direction:

In response to stakeholder concerns, the Commissioners requested staff to report on issues related to vessel anchoring and mooring. At the 2007 December Commission meeting, staff presented that unregulated anchoring of vessels presents the following problems:

- the accumulation of anchored vessels in inappropriate locations
- unattended vessels
- vessels with no anchor watch (dragging anchor, no lights, bilge)
- vessels which are not properly maintained
- vessels ignored by owners that tend to become derelict and
- confusion with the interpretation of statutes that provide jurisdictional guidance for local governments which has caused inconsistent regulation of anchoring/mooring fields on state waters and confusion among the boating community.

The cost of boat access has exceeded supply and is the cause for much of this problem.

The Commission asked staff to explore the issues further for possible solutions. Staff presented its recommendations during the 2007 June Commission Meeting and requested Commission direction on two options.

Option one would be a narrow approach to the issue by developing a model anchoring/mooring ordinance that local governments could adopt. If the Legislature approved certain parameters and allowed local government more authority to regulate anchoring, this effort would provide needed assistance to ensure uniformity and consistency in anchoring and mooring statewide regulations. Although this

approach would resolve some immediate concerns, it could be the beginning of a step by step process.

Option two would expand the scope to clarify State and local authority to regulate vessels. The premise here would be to address the whole issue of vessel anchoring and mooring, rather than one piece at a time. Examples of this approach include combining and clarifying sections 327.22 (Regulation of Vessels by municipalities or counties), 327.40 (Uniform waterway markers for safety and navigation; informational markers), 327.41 (Uniform waterway regulatory markers), 327.46 (Restricted areas), 327.60 (local regulations; limitations), Florida Statutes and rule 68D-22 (Uniform Waterway Markers in Florida Waters), Florida Administrative Code.

The Commission instructed staff to move forward with option two and pursue legislative approval for any statutory changes for the 2009 Legislative Session.

During the public comment period, Mr. Mark Leslie, who represents Brevard County's Titusville Public Marina requested the Commission to seek legislative support to change Florida Statutes to include anchored and moored vessels into the registration requirements. This action, if accomplished, would allow law enforcement, local governments, public marinas and other marine facility operators to better identify owners and vessels before they become abandoned or derelict. To accomplish this, the following sections of statute would have to be amended: sections 328.56 (Vessel Registration Number), 328.03 (Certificate of title required), 327.56 (Safety and marine sanitation equipment inspections; qualified), 327.58 (Jurisdiction), 253.035 (Coastal anchorage areas), 253.04 (3) (Duty of the Board of Trustees to protect state lands), Florida Statutes.

#### Staff Update:

FWC held six public workshops around the State in an attempt to better define the issues/concerns and to identify potential solutions relating to anchoring and mooring. The issue was also presented to the Florida Boating Advisory Council (Council) during its April 2007 meeting. Approximately 273 individuals attended the public meetings and the Council meeting. Attendees included: marina operators, boaters, private property owners, and representatives from local governments, affected state agencies, and law enforcement agencies.

The Council recommended that FWC clarify local and State authority to regulate vessels.

Throughout the meetings, numerous concerns were raised and the most common are listed below.

- Boat Access – there is a fear that boating storage and access to State waters is diminishing, resulting in availability to a select few who can afford it.
- Over Regulation – Boaters feel there is too much regulation by some local

governments causing inconsistencies from one jurisdiction to another.

- Inconsistent/confusing statutes and rules – Local government officials and state agencies tasked with establishing boating regulatory areas have difficulty and are inconsistent in their interpretation of current statutes and rules.
- Pollution from anchored/moored vessels - to include: waste, aesthetics, noise.
- Derelict vessels – unregulated anchoring leads to some vessels becoming derelict.
- Resource protection – certain entities request more statutory authority to protect corals, sea grasses, and other marine natural resources.

Non-regulatory solutions proposed:

- Leave things alone. There is a belief that current laws are enough and just need to be enforced.
- Establish more public anchoring/mooring opportunities with amenities that encourage boaters to anchor/moor. The belief is if moorings are built and the necessary amenities such as pump-outs, showers, parking, and trash collection are available, then boaters would be more apt to seek them out and use them. The thought is that boaters that use a managed mooring create less pollution and damage to benthic communities.
- Better guidance. There was consistent request for easy to find anchoring/mooring information. Suggestions were received to develop better web sites and boater guides that include universal information.

Legislative solutions proposed:

- Specify a model anchoring ordinance. A draft model ordinance can be provided to assist local governments with establishing their ordinances in a manner that is uniform and consistent. This track would help ensure consistent regulations statewide while providing opportunities for local governments to deal with problem anchorages.
- Lift restrictions on local governments to allow more authority to deal with anchored vessels. Staff recommends building into the ordinance a standard time line on how long a vessel can anchor within a local jurisdiction before that local government can regulate them. Another recommendation was to remove restrictions on local authority. This would involve modifying s. 327.60 F.S. to give local governments the ability to regulate anchoring outside the established mooring field.

- Clarify and consolidate vague language in chapter 327 F.S. that speak to anchoring, jurisdiction, and boat operations. This popular recommendation was received in almost each public meeting. Staff agrees that there are numerous interpretations of these laws and may be the cause of inconsistent regulations. Local government and other state agency representatives commented that there are differences in how each interprets rules and statutes that provide guidance on authority to regulate boats.
- Require vessels anchored and moored to display a current valid registration decal. Current law only requires motorized vessels “used” on the waters of the state to be registered. It was suggested that vessels left anchored, moored, or docked on the waters of the state display a valid registration decal. Keeping a boat currently registered seems to be an indication of the owner’s intent to maintain their vessel thus preventing it from becoming derelict. This proposed change would provide law enforcement the ability to notify the owner that the vessel is approaching derelict status. Although a stakeholder requested FWC consider this issue for submission during the 2008 Legislative Session, staff recommends that this issue be included in the 2009 legislative package.
- Require non-powered boats to be registered. Although the comments were not specific to one class of boat or another, staff has observed that the vast majority of derelict vessels in our database do not have registration numbers and are not powered. This would make it easier to identify owners of abandoned vessels and prevent them from becoming derelict. If this issue were to be brought to the Legislature for consideration, staff recommends it only affect non-powered vessels over 16 feet and specifically exclude canoes and kayaks as those vessels are not part of the derelict vessel problem.
- Anchoring on corals, seagrass and other critical benthic resources. The comments mainly regarded concerns that anchored vessels can damage corals, seagrasses, and other benthic resources. However, many comments have been made from meetings out side of our public workshops and focused on enforceability to prevent damaging these resources. The seagrass issue will be presented as a separate issue. The anchoring on corals and other critical benthic resources has been also discussed congressionally. For more than a year, FWC and DEP have conducted internal and external meetings to address the problem of vessels anchoring on coral reefs.
  - The Southeast Florida Coral Reef Initiative (SEFCRI) which is led by DEP’s Coral Program, is producing a document to provide guidelines and recommendations for rapid response and restoration of coral reef injuries in southeast Florida. One of the issues that this document addresses is penalty assessment for coral reef injuries (including anchoring).
  - FWC staff (General Counsel’s Office, Division of Law Enforcement, and

Division of Marine Fisheries Management) have reviewed existing FWC rules and determined that there is nothing in FWC rule that would enable FWC officers to write a citation for anchoring on coral.

- FWC rule 68B-42, F.A.C. entitled “Marine Life”, has prohibitions on the take, sale, or possession of coral. This rule does not prohibit anchoring on coral. The FWC Division of Marine Fisheries Management are reviewing possible changes to the Marine Life rule and could incorporate the issue of prohibiting anchoring on coral during the rule making process.
- Currently, the only enforcement tool available to FWC officers is in s. 253.05 F.S. which states that officers and deputies shall report any damage, trespass, depredation or unlawful use of state lands to the Board of Trustees of the Internal Improvement Trust Fund. The Board of Trustees is the Governor and Cabinet which delegates authority to DEP State Lands, so any state lands violations (damage to coral) should be reported to DEP.
- Section 253.04 F.S. gives rule authority to DEP to develop a penalty assessment schedule for damage to coral reefs in state waters. Currently, there is no penalty schedule for these violations. Therefore, FWC law enforcement officers cannot write citations that would utilize a civil penalty assessment schedule without statutory changes being made. To be able to address this issue, the statute would need to be modified to include a fully developed penalty assessment schedule (including penalties for repeat offenders). The modified statute language should include explicit authority for any law enforcement officer to enforce the assessment schedule. If desired, statute language could additionally be modified to make damage to coral reefs a criminal offense instead of civil.

#### Plan of Action:

We have requested the assistance of the University of Florida College of Law Center for Governmental Responsibility and Conservation Clinic in reviewing the statutory and regulatory basis for boating and waterway administration in Florida and in providing recommendations for reform, as appropriate. Chapter 327, Florida Statutes, provides the primary source of authority to regulate the operation of vessels in Florida, and charges FWC with the primary responsibility for implementing the statute. Additionally, Florida law charges other state, regional and local authorities with significant related responsibilities. Federal law plays a significant role in how we carry out this charge. In order to accomplish this policy review and analysis, the following tasks will be performed:

- Collect and review all relevant State statutes, rules and case law, including Attorney General’s opinions, General Counsel opinions and secondary literature relating to the legal basis for boating and waterway administration

by FWC and other agencies with statutory authority over the navigable waters of the State.

- Collect and review all federal law that affects the state of Florida's regulatory authority over the administration of boating and waterways.
- Review boating and waterway management laws in selected boating states that may offer policy guidance relevant to Florida.
- Conduct a legislative history of Chapter 327, Florida Statutes, and its implementing regulations. To the extent feasible, determine and describe the policy rationale underlying amendments to Chapter 327 and implementing regulations as these have been added from time to time.
- Communicate with DEP/FWC staff, Florida Legislature, and other affected agencies to determine the policy direction.
- Based on the research describe above, and as appropriate, provide options for policy reform to: 1) clarify existing policy, and/or 2) further new policy direction.
- Bring these findings back to the Commission for further direction.

Deliverables:

- A policy analysis report with conclusions and recommendations that includes:
  - 1) A description of the current statutory and regulatory basis for boating and waterway administration in Florida.
  - 2) A legal history of Florida law governing boating and waterway administration in Florida.
  - 3) A general review of the law of boating and waterway administration in other states, with more detailed review in those key states identified for policy relevance.
  - 4) Conclusions and recommendations based on policy direction sought by the FWC.
  - 5) Model statutory and rule based language to implement policy direction sought by the FWC.
  - 6) Host and facilitate various public and stake holder workshops to obtain public opinion and consensus.

**3. Who is affected by this issue?**

Local governments and their law enforcement personnel, Department of Environmental Protection (DEP), Board of Trustees of the Internal Improvement, Fish and Wildlife Conservation Commission, Department of Highway Safety Motor Vehicles, Inland Navigation Districts, United States Coast Guard, U.S Corps of Engineers, National Oceanic and Atmospheric Administration, U.S. Fish and Wildlife Service, Florida and non-resident boaters, Marine Industry, Save the Manatee Club and other environmental groups, and Commercial and residential waterside property owners.

**4. What is the fiscal impact on FWC, the private sector, and other agencies?**

**On FWC**

Unknown until the issue is developed further.

**On Private Sector**

Unknown fiscal impact.

**On Other Governmental Agencies**

Unknown fiscal impact.

**5. Is there a tax/fee issue?**

Vessel Anchoring:

It is unknown if there is a tax/fee issue for vessel anchoring at this time.

Registration:

Section 328.56, F.S. only requires motorized vessels “used” on the waters of the state to be registered. Vessels are only considered to be “used” if the vessel is being operated and do not include vessels that are left anchored, moored or docked on the waters of the state. Therefore, these vessels are not required to display a valid registration decal. A proposed solution to register these vessels would require owners to maintain a current registration while the vessel is in State waters. It is common for owners to anchor or moor their boats in State waters year round; therefore, the proposal would not allow for a lapse in its registration status and may cause the boat owner to increase the frequency that they register their boat.

**6. Draft statutory language:**

Statutory language is being developed for this issue to be presented in the 2009 Legislative Session. Pending an extensive review and policy analysis of all relevant statutes listed above, model statutory and rule based language will be drafted. Included in this would be an enactment in statute of a model anchoring ordinance that could be adopted by local governments desiring to regulate anchoring beyond what the statute presently allows. This proposal is intended 1) to prevent over-regulation by local governments; and, 2) to provide uniformity in vessel anchoring regulations. Local governments that decide to regulate non-live-aboard anchoring could choose to adopt the statutorily provided model ordinance, but only that model ordinance.

## **7. What are the affected statutes and rules?**

- 327.22 Regulation of vessels by municipalities or counties.
- 327.40 Uniform waterway markers for safety and navigation; informational markers.
- 327.41 Uniform waterway regulatory markers.
- 327.46 Restricted areas
- 327.60 Local regulations; limitations
- 328.56 Vessel Registration Number
- 328.03 Certificate of title required
- 327.56 Safety and marine sanitation equipment inspections; qualified),
- 327.58 Jurisdiction
- 253.04 (3) Duty of board to protect, etc., state lands; state may join in action brought
- 253.035 Coastal anchorage areas
- 68D-23 Florida Administrative Code; Uniform Waterway Markers in Florida Waters