



# Florida Fish and Wildlife Conservation Commission

## Legislative Affairs

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### 2009 Session Legislative Proposal

**Title: Vessel Management**  
**Submitted by Division of Law Enforcement**

#### 1. Issue

This proposal seeks to apply legislative solutions to issues relating to vessel management and the statutory cleanup of certain parts of Chapter 327, Florida Statutes. Vessel management issues include: local government authority to further regulate vessels, anchoring/mooring restrictions, and identifying vessel ownership.

#### 2. Background

##### Commission Direction:

In response to stakeholder concerns specific to unregulated anchoring and mooring, Commissioners requested staff to research the issue and report back to them at a subsequent meeting. At the December 2006 Florida Fish and Wildlife Conservation Commission (Commission) meeting, staff presented findings which revealed that the 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 that are not properly maintained
- ✓ vessels ignored by owners that tend to become derelict
- ✓ confusion with the interpretation of statutes that provide jurisdictional guidance for local governments - this has caused inconsistent regulation of anchoring/mooring fields on state waters and confusion among the boating community

The Commission asked staff to further explore the issue for possible solutions. Staff presented its recommendations during the June 2007 meeting and acknowledged that the issue was somewhat broader than unregulated anchoring and mooring. Uncertainty also exists in several areas within the subject of waterway management, interpretation of current Florida boating laws, and local government authority. Causes for this uncertainty include:

- Diminishing boat access combined with an increased number of vessels results in more vessels being stored on the waters of the state. There is a fear that boating storage and access to state waters will not support the ever-increasing number of vessels. Florida presently has more than one million registered vessels. More boats equal more congestion and an ensuing supply and demand problem. There is an expectation that government begin planning better for this growth.
- The public has a fear that boat access will become available only to a select few who can afford it (*this is a common theme*).
- Local governments, stakeholders, and interested parties want more funding to remove derelict vessels. Unregulated anchoring leads to some vessels becoming derelict. Many boaters, however, object to a broad-brush approach and demand that regulations differentiate between responsible, compliant boaters and those who violate existing regulations.
- Boaters and local government officials sometimes have difficulty when trying to determine whether or not local ordinances are legal and enforceable. Boaters feel that local governments are exceeding their authority. Conflicting and inconsistent local ordinances make compliance difficult and encourage scoff-laws.
- Many boaters believe that boating is no longer the last bastion of freedom.

FWC Commissioners provided two recommendations:

- 1) Develop a model anchoring/mooring ordinance that local governments could adopt. If the Legislature approves allowing local government more authority to regulate anchoring, development of a model anchoring/mooring ordinance would help ensure uniformity and consistency in such regulations statewide.
- 2) Clarify State and local authority to regulate vessels. The premise here would be to address the issues of unregulated anchoring, waterway management, and local government authority and suggest cleanup language for some of the more confusing boating statutes. Examples of this approach include combining and clarifying section 327.22, Florida Statutes, (regulation of vessels by municipalities or counties); section 327.40, Florida Statutes, (uniform waterway markers for safety and navigation; informational markers); section 327.41, Florida Statutes, (uniform waterway regulatory markers); section 327.46, Florida Statutes, (restricted areas); section 327.60, Florida Statutes, (local regulations; limitations); and rule 68D-22 (Uniform Waterway Markers in Florida Waters), Florida Administrative Code.

Commissioners instructed staff to move forward with recommendation (2) and pursue legislative approval for statutory changes during the 2009 Legislative Session.

Staff Work:

Prior to the 2007 June Commission Meeting, staff presented this issue to the Florida Boating Advisory Council (BAC) at its April 2007 meeting and at six public workshops held around the State. Locations were selected where unregulated anchoring is a concern. This provided staff the opportunity to ask stakeholders what their specific concerns were – to better understand their position, define issues/concerns, and begin to identify potential solutions. Approximately 273 individuals attended the public and BAC meetings. Attendees included marina operators, boaters, private property owners, local government representatives, affected state agencies and law enforcement agencies.

The BAC recommended that the Commission pursue clarifying local and state authority to regulate vessels.

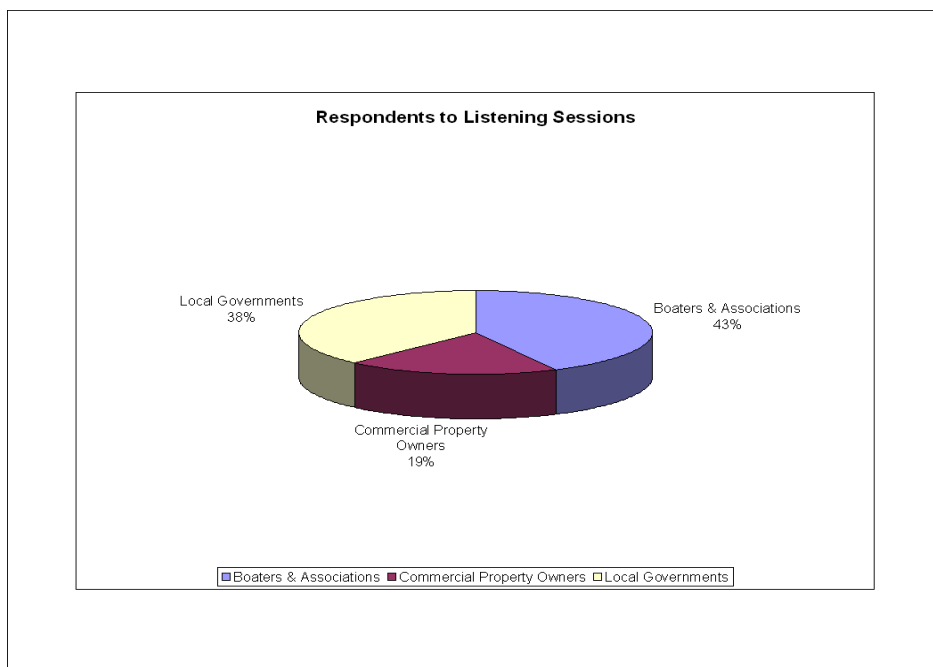
At each public workshop, stakeholders and interested persons provided numerous concerns. The most common are listed below:

- 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. Many of the examples stem from local government anchoring restrictions that are inconsistent with state statutes. An example would be restricting vessels from anchoring outside of established mooring fields within city jurisdictional waters.
- Inconsistent/confusing statutes and rules – Local government officials and state agencies tasked with establishing boating regulatory areas have difficulty interpreting some boating statutes when trying to discern authority to regulate vessel restrictions. A good example is who has the authority to post regulatory signage and for what purpose.
- Pollution from anchored/moored vessels, including waste, aesthetics and noise.
- Derelict Vessels – unregulated anchoring leads to some vessels becoming derelict.

- Resource Protection – certain entities have requested more statutory authority to protect corals, seagrasses, and other marine natural resources.

Stakeholders provided both non-regulatory and regulatory solutions. Public recommendations were considered and used to develop a scope of work to review the statutory basis for vessel management on Florida waters. An outside entity with subject matter expertise was enlisted to develop policy recommendations based on the outcome of legal review. The University of Florida, College of Law, was selected to assist with this project.

The chart below shows a breakdown of stakeholder groups who participated in public workshops:



**Sub-Team:**

Because many of the identified issues are in shared in part or are solely within the statutory purview of the Department of Environmental Protection (DEP), Department of Community Affairs, and the Commission, a sub-team was formed consisting of agency representatives. This team met on several occasions providing guidance and direction to the University of Florida, College of Law, as they finalized policy recommendations.

Another team was formed consisting of DEP and Commission legal staff to draft legislative language.

To assist with the analysis, a detailed legislative history was conducted, along with a review of boating law administration in other states. The sub-team developed sixteen recommendations related to: regulating anchoring and mooring in state waters; local authority for vessel management; establishment of boating restricted areas and signage; and cleanup of certain boating statutes within Chapter 327, Florida Statutes. The recommendations follow:

- (1) The general policy of the State should be the promotion of consistency and uniformity in the regulation of vessels and navigation, while recognizing local circumstances.
- (2) The State should explicitly regulate vessels and navigation and return authority to local governments on a case by case basis based upon statutory guidance that is designed to promote uniformity and consistency.
- (3) The State should impose a statewide limit on the storage of vessels on lands underlying navigable waters of sufficient duration to avoid undue interference with navigation, a protected right under the public trust doctrine.
- (4) Any such statewide storage duration limitation should be based upon data and analysis designed to ensure that mooring and anchoring by cruising vessels is not unduly infringed and should include a “safe harbor” provision.
- (5) The Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) should be charged with the establishment and administration of vessel storage limitations on lands underlying navigable waters.
- (6) Local governments should be permitted to further limit vessel storage, including anchoring, for good cause upon review and approval by the Board of Trustees of the Internal Improvement Trust Fund and in consultation with other resource agencies.
- (7) Local governments and state resource agencies should be permitted to seek the establishment of boating restricted areas for good cause upon review and approval by FWC, in consultation with other resource agencies and other local governments as appropriate.
- (8) In addition to navigation and safety, good cause should include aquatic resource protection and, where warranted by local conditions, upland riparian property and riparian resource protection. Good cause should not include the consideration of compatibility with non-water-dependent riparian land uses.

(9) Good cause for local regulation of vessel storage on the water stricter than state limitations and the establishment of boating restricted areas should be determined based on adequate data analysis and only after adequate public participation.

(10) Local governments seeking authority to further regulate vessel storage and create boating restricted areas should be required to adopt surface water use policies in their comprehensive plan. Boating restricted areas should be consistent with adopted surface water use policies but should not be considered land development regulations for purposes of Chapter 163, Florida Statutes.

(11) All boating restricted areas should be delineated using a spatially explicit, uniform maritime boundary description methodology and made generally available through a geographic information systems database maintained by the State and linked to global positioning systems technology.

12) Obsolete, unnecessary and confusing definitions contained in Chapter 327, Florida Statutes, should be removed or clarified. In circumstances where terms are used only once, or only in the context of a specific section or provision, consideration should be given to defining these terms in their statutory context.

(13) The statutory recitation of the federal safety equipment preemption should be clarified to avoid confusion and ensure consistency.

(14) The statutory authorization to create a general permit process for new mooring fields should be either repealed or amended to increase the current size limitation of 50,000 square feet, which is insufficient to safely accommodate the swing radius of more than a few vessels and has resulted in strained interpretations of the extent to which sovereign submerged lands are preempted.

(15) The current signage exemption provided for inland lakes and canals should be repealed because it lacks an adequate policy justification to distinguish these water bodies from those along the coast and creates additional uncertainty about local regulatory authority.

(16) The current statutory language providing that vessels “operated” on the waters of the state must be titled, those “using” the waters of the state shall be registered within 30 days of purchase, and those that are “used” on the waters of the state must display a registration number should be clarified.

Additional Stakeholder Work:

Publicly advertised stakeholder meetings were scheduled and held for the purpose of vetting the policy recommendations and to seek guidance on which recommendations agencies should consider for the 2009 Legislative Session. Ninety-eight attendees participated in the following public meetings were held:

- Orlando, April 5, 2008, Anchoring/Mooring Public Meeting—49 Attendees
- Tallahassee, April 11, 2008, Florida Boating Advisory Council Meeting—9 Attendees
- Orlando, July 16, 2008, Marine Industries Association of Florida Legislative Summit—40 attendees

Stakeholders attending represented: the marine industry; boater groups; private home owners; transient boaters; federal, state, county and municipal governments Inland Navigation Districts; environmental consultants; legislators; and industry lobbyists. Annotated recommendations were received at each meeting and recorded.

Draft Language:

Based on public input and sub-team suggestions, language was drafted addressing recommendations 1, 3, 4, 8, 11, 12, 15 and 16.

Rationale:

- Recommendation (1): The goal is to promote uniformity and consistency when regulating vessels and navigation. This is based on stakeholder input and the fact there are numerous, illegally posted regulatory areas throughout the State. Currently, Chapter 327, Florida Statutes, does not explicitly provide for this uniformity and consistency. This is also something that could be inserted within 68D-23, Florida Administrative Code. During public meetings, stakeholders and the interested public seem to agree with this principle.
- Recommendation (3, 4, and 8): One area of discussion has been to provide local governments the ability to regulate vessels within their jurisdiction outside of legally established mooring fields and establish regulatory areas for the protection of seagrasses. Specifically, incorporate a “time of stay” provision which allows a vessel to anchor but only for a certain time frame. Currently there is no provision in Florida law to allow this. Chapter 327.60(2), Florida Statutes, stipulates: “Nothing contained in the provisions of this section shall be construed to prohibit local governmental authorities from the enactment or enforcement of regulations which prohibit or restrict the mooring or anchoring of floating structures or live-aboard vessels within their jurisdictions or of any vessels within the marked boundaries of mooring fields permitted as provided in

s. 327.40. However, local governmental authorities are prohibited from regulating the anchoring outside of such mooring fields of non-live-aboard vessels in navigation.”

Some stakeholders commented on the suggested term “storage of vessels.” Should this term be broken down to distinguish between unattended stored vessels, attended stored vessels, occasionally attended stored vessels, cruising vessels or transient vessels (some preference was offered for the term transient instead of cruising), and abandoned and derelict vessels. One option would be a rationale for a “bright line” length of stay limit because of the difficulty in separating these forms of storage and the ability to enforce them if different rules were to apply to each. One stakeholder suggested that if there was a statewide limit, consideration be given to a “sojourner’s permit,” which would allow extended term cruising. Another stakeholder suggested that the statewide length of stay, if any, should be six months, which would effectively encompass the Florida cruising season. The sub-team agreed breaking down different vessels based on their actions while navigating would add confusion and that it would be better to find a standard consensus.

Currently there is no provision allowing agencies to post regulatory signage to keep vessels off seagrasses other than DEP who, on behalf of the Board of Trustees, is allowed to post signage within aquatic preserves and state parks. The goal would be to add a provision in statute that allows local governments to post regulatory signage, under certain circumstances. Several local governments support this issue. Boater groups fear that this authority would cause additional unwarranted regulatory actions on certain boaters by local governments. Many stakeholders opposed the consideration of upland riparian property as a good cause basis for boating restricted areas. Several stakeholders considered the term “resource” to be vague. There was apparent agreement among most stakeholders that good cause should not include incompatibility with non-water dependent riparian land uses, which the presenters described as “aesthetic nuisances.” Draft language would seek to narrow the scope to allow for “seagrass regulatory signage.”

The goal would be to provide uniform standards that did not unduly burden certain vessels’ freedoms to navigate.

- Recommendation (11): This recommendation would standardize the way boating restricted areas are delineated. Currently local governments are submitting this information in numerous ways. A recent research project denoted varying inconsistencies with local government regulatory boundaries. Law enforcement issues arise when having to explain established boundaries of a regulatory area to a court. A uniform boundary description provided in 68D-23, Florida Administrative Code, would assist local government with

establishing legal zones as part of their uniform waterway marker permit process. There appeared to be broad support for this recommendation among stakeholders.

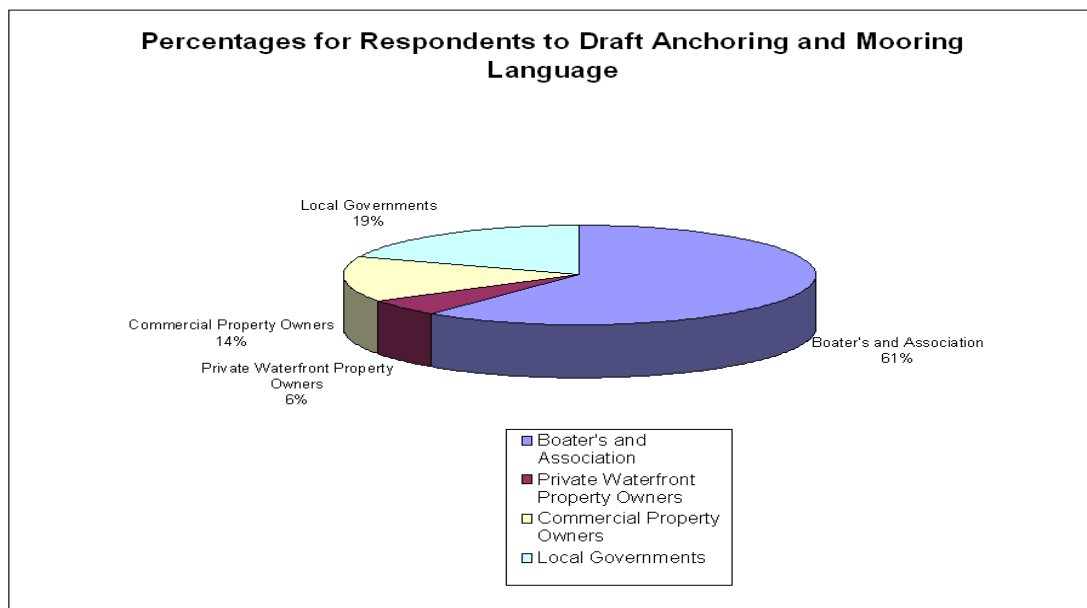
- Recommendation (12): This recommendation pertains to statutory cleanup of Chapter 327, Florida Statutes. The cleanup will consist of clarifying or removing confusing language and defining terms in statutory context. This chapter was enacted in 1959, at a time when vessel congestion and resource and water use conflict was minimal. It has been substantially revised on several occasions and amended on an issue by issue basis. In addition to creating general policy confusion, the statute retains vestiges of repealed provisions and obtuse terminology. This cleanup would assist state agencies, local governments, and other governmental entities to understand their authority to regulate. There appeared to be support for this recommendation among stakeholders. The sub-team agreed that careful attention would be given to ensure that legislative intent was not altered.
- Recommendation (15): During the 2004 Legislative Session an exemption was provided in section 377.40, Florida Statutes that allows for creation of regulatory areas within inland lakes and associated canals. It created inconsistencies between coastal and inland waterbodies and additional uncertainty about local regulatory authority. The goal would be to repeal this provision so that all waters of the State are under the same umbrella. Most stakeholders supported this recommendation.
- Recommendation (16): This recommendation would provide consistency in terminology and assist law enforcement in tracking vessels stored on state waters. Currently, registration statutes provide that vessels “used” on the waters of the State must be registered. In other words, those “stored” and not being “operated” do not need a current registration. This causes difficulties when attempting to identify owners of vessels left unattended. The terms “used” and “using” occur throughout the vessel registration statutes causing confusion. Stakeholders appear to support this recommendation.

On April 16, 2008, the sub-team met to gain consensus on proposed draft language. The following public meetings were held. At the conclusion of each public meeting staff incorporated relative public input. A total of six drafts were developed. Drafts five and six were vetted at the following meetings attended by 149 members of the public:

- September 8, 2008, Clearwater, Anchoring/Mooring/Vessel Management Draft Language Public Meeting—79 Attendees

- October 1, 2008, Miami, Anchoring/Mooring/Vessel Management Draft Language Public Meeting—19 Attendees
- October 28, 2008, Port Canaveral, Anchoring/Mooring/Vessel Management Draft Language Public Meeting –35 Attendees
- November 6, 2008, Tallahassee, Florida Boating Advisory Meeting -- 16 Attendees

Staff also communicated electronically with over 700 interested parties on this issue. Below shows a breakdown of stakeholders groups that participated in draft language public meetings:



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

Florida and non-resident boaters, marine industry, boater groups, environmental groups, and commercial and residential waterside property owners, local governments and their law enforcement personnel, Inland Navigation Districts, Board of Trustees, DEP, Department of Community Affairs, the Commission, United States Coast Guard, and U.S. Army Corps of Engineers.

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

**On FWC**

Unknown.

**On Private Sector**

Unknown.

**On Other Governmental Agencies**

Unknown.

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

Vessel Anchoring:

Unknown.

Registration:

Section 328.56, Florida Statutes, only requires motorized vessels “used” on the waters of the state to be registered. Vessels are considered to be “used” if the vessel is being operated; it does not include vessels that are left anchored, moored or docked on the waters of the State. Therefore, these vessels are not required to be registered. The proposed solution 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 vessel registration status and would require the boat owner to register his/her boat annually if anchored or moored in state waters.

**6. Draft statutory language:**

Attached.

**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