



MIAMI BEACH

OFFICE OF THE CITY MANAGER
NO. LTC # 217-2008

LETTER TO COMMISSION

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: August 28, 2008

SUBJECT: **ANCHORING AND MOORING PUBLIC MEETING**

The purpose of this LTC is to provide the Mayor and City Commission with the attached legislative proposal regarding anchoring and mooring, as well as the notice of a public meeting regarding this proposal. The meeting has been scheduled by the Florida Fish and Wildlife Conservation Commission, to present and receive public input on proposed legislation regarding Anchoring, Mooring and Vessel Management. A copy of the Commission's 2009 Session Legislative Proposal is attached.

The meeting will take place at 6:30 p.m. on September 9, 2008, at the Hilton Clearwater Beach Resort. The Administration has discussed this meeting with the City's state lobbyists, who will attend the meeting on behalf of the City.

If you have any comments or need additional information, please do not hesitate to contact me.

c: Executive Staff
Fred Beckmann, Public Works Director
Kevin Crowder, Economic Development Division Director

Attachments:
2009 Session Legislative Proposal
Florida Administrative Weekly Meeting Notice
Agenda for September 9, 2008 Meeting
Directions to the Meeting Location

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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 seek legislative solutions to issues relating to vessel management and statutory cleanup of certain parts of Chapter 327 F. S. 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 2006 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 Commission asked staff to explore the issues further for possible solutions. Staff presented its recommendations during the 2007 June Commission Meeting and identified that the issue was somewhat broader than unregulated anchoring and mooring. Confusion also exists in several areas within the subject of waterway management, interpretation of current Florida boating laws, and local government authority.

Some of the causes for issues presented include: the cost of boat access has exceeded supply, the effect of 2004-2005 hurricanes and storms, an increase in the

number of vessel registrations, limited funding to remove derelict vessels, difficulty interpreting jurisdictional authority, and a lack of growth management planning on the waters of the state.

The Commission was 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 anchoring and mooring 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. It would allow us to suggest cleanup language for some of the more confusing boating statutes. 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 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) during its April 2007 meeting and held six public workshops around the State. This provided us the opportunity to vet the issue to stakeholders and the public, better define the issues/concerns, and identify potential solutions relating to anchoring and mooring. 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 BAC recommended that FWC clarify local and State authority to regulate vessels.

At each meeting, stakeholders and interested persons provided several 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 of the boating statutes specifically when trying to discern authority to regulate vessel restrictions. The most prevalent example would include who has the authority to post regulatory signage and for what purpose.
- Pollution from anchored/moored vessels, including: waste, aesthetics, 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.

During the meetings, there were both non-regulatory and regulatory solutions proposed. Public recommendations were considered and used to develop a scope of work to review the statutory basis for vessel management on Florida waters. The purpose was to consult with an outside entity with subject matter expertise that would provide staff with policy recommendations based on the outcome of the legal review. Staff enlisted the assistance of the University of Florida, College of Law to assist with this project.

Sub-Teams:

Because many of the identified issues are either, in part, shared, or solely within the statutory purview of the Department of Environmental Protection, Department of Community Affairs, and the Florida Fish and Wildlife Conservation Commission, a working group 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 the above policy recommendations.

Another team was formed consisting of DEP and FWC legal staff to draft legislative language that will be brought to stakeholders and interested parties.

This work developed sixteen recommendations. The review incorporated issues related to, regulating anchoring and mooring in state waters, local authority for vessel management and the establishment of boating restricted areas and signage, and cleanup of certain boating statutes within Chapter 327 F. S. To assist with this analysis, a detailed legislative history was conducted, along with a review of boating law administration in other states.

Based on the outcome of the review, the following policy recommendations were made:

- (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 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 should be removed or clarified. 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.

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. Meetings were held on April 5, 2008 in Orlando and at the Florida Boating Advisory Council Meeting held on April 11, 2008 in Tallahassee. Approximately 58 individuals attended these publicly advertised meetings. Although attendees did not represent potential affected groups, most present provided comments. Representatives from

the sub-team were also in attendance to answer questions specific to their statutory responsibilities. Staff continues to work with stakeholders and affected parties.

Annotated recommendations were received at each meeting and recorded.

Current Staff Action:

Because of this issue's broad scope, FWC staff is concentrating on all or part of recommendations 1, 3, 4, 8, 11, 12, 15, and 16 primarily. Currently DCA and DEP are considering what recommendations they will be willing to take up. Agencies will then begin working on associated draft language in an attempt to vet through stakeholders in June and July.

Below denotes staff rational for taking up specific recommendations:

Rational:

- Recommendation (1): Our goal is to promote uniformity and consistency when regulating vessels and navigation. This is based on stakeholder input and the fact there are myriad, illegally posted regulatory areas throughout the state. Currently Chapter 327 does not explicitly provide for this. The thought is if this was put into statute, it would define legislative intent. This is also something that could be inserted within F.A.C 68D-23. During public meetings, stakeholders and the interested public seem to agree with this principle.
- Recommendation (3, 4, and 8): During the 2008 Legislative Session there was an attempt to further provide local government the ability to: regulate vessels within their jurisdiction outside of legally established mooring fields and establish regulatory areas for the protection of seagrass. Specifically, the action was to incorporate a "time of stay" provision which allowed 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 F. S. (2) 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 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. Several boating groups were concerned that the legislative action was premature until staff completed its research and consensus reached through properly vetting the issue.

Currently there is no provision allowing agencies to post regulatory signage to keep vessels off seagrass other than DEP (Board of Trustees), which is allowed to post signage within aquatic preserves and state parks. The goal would be to add a provision in statute under certain circumstances that allows local governments to post regulatory signage. 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 who commented opposed the consideration of upland riparian property as a good cause basis for boating restricted areas. Several stakeholders who commented 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." We would seek to draft language that narrowed the scope to allow for "seagrass regulatory signage."

Our 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 the court. A uniform boundary description provided in 68D-23 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. 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. As a result, 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 understand their authority to regulate. There

appeared to be support for this recommendation among stakeholders. The sub-team agreed that careful attention would be needed to ensure stakeholders and legislative members that legislative intent was not altered.

- Recommendation (15): During the 2004 Legislative Session an exemption was provided in s. 377.40 F. S. that allows for creation of regulatory areas within inland lakes and associated canals, which could create inconsistencies between coastal water bodies and those inland. It creates additional uncertainty about local regulatory authority. Our goal would be to repeal this provision so all waters of the state are under the same umbrella. Most stakeholders supported this recommendation.
- Recommendation (16): This recommendation would assist law enforcement in tracking vessels stored on state waters. Currently the registration statutes cause 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, causing 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 and for the DEP and DCA to decide what recommendations they will take up. Pending that decision, a team of agency representatives will draft language to bring forward to stakeholders.

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 Trust Fund, Department of Community Affairs (DCA), Florida Fish and Wildlife Conservation Commission, Inland Navigation Districts, United States Coast Guard, U.S. Corps of Engineers, Florida and non-resident boaters, Marine Industry, Boater groups, 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 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 their boat annually if anchored or moored in state waters.

6. Draft statutory language:

Statutory language is being developed for this issue to be presented in the 2009 Legislative Session

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

The Fish and Wildlife Conservation Commission, Division of Law Enforcement, announces a public meeting to which all interested parties are invited.

DATE AND TIME: Tuesday, September 9, 2008, 6:30 p.m. – 8:30 p.m.

LOCATION: Hilton Clearwater Beach Resort, 400 Mandalay Avenue, Waters Edge Ballroom, Clearwater Beach, Florida 33767

GENERAL SUBJECT MATTER TO BE CONSIDERED: To discuss issues and solicit public comment concerning draft statutory language pertaining to anchoring, mooring, and vessel management.

A copy of the agenda may be obtained by contacting: Major Paul Ouellette, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Room 235, Tallahassee, Florida 32399-1600, phone (850) 488-5600.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop is asked to advise the agency at least five calendar days before the meeting by contacting: ADA Coordinator, (850)488-6411. If you are hearing or speech impaired, please contact the agency by calling (850)488-9542.

THE PERSON TO BE CONTACTED REGARDING THE WORKSHOP: Major Paul Ouellette, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Room 235, Tallahassee, Florida 32399-1600, phone (850)488-5600.

A G E N D A

Fish and Wildlife Conservation Commission
Anchoring, Mooring, and Vessel Management Proposed Legislation
Meeting



September 9, 2008 – Clearwater Beach

I. WELCOME

II. INTRODUCTIONS AND ANNOUNCEMENTS

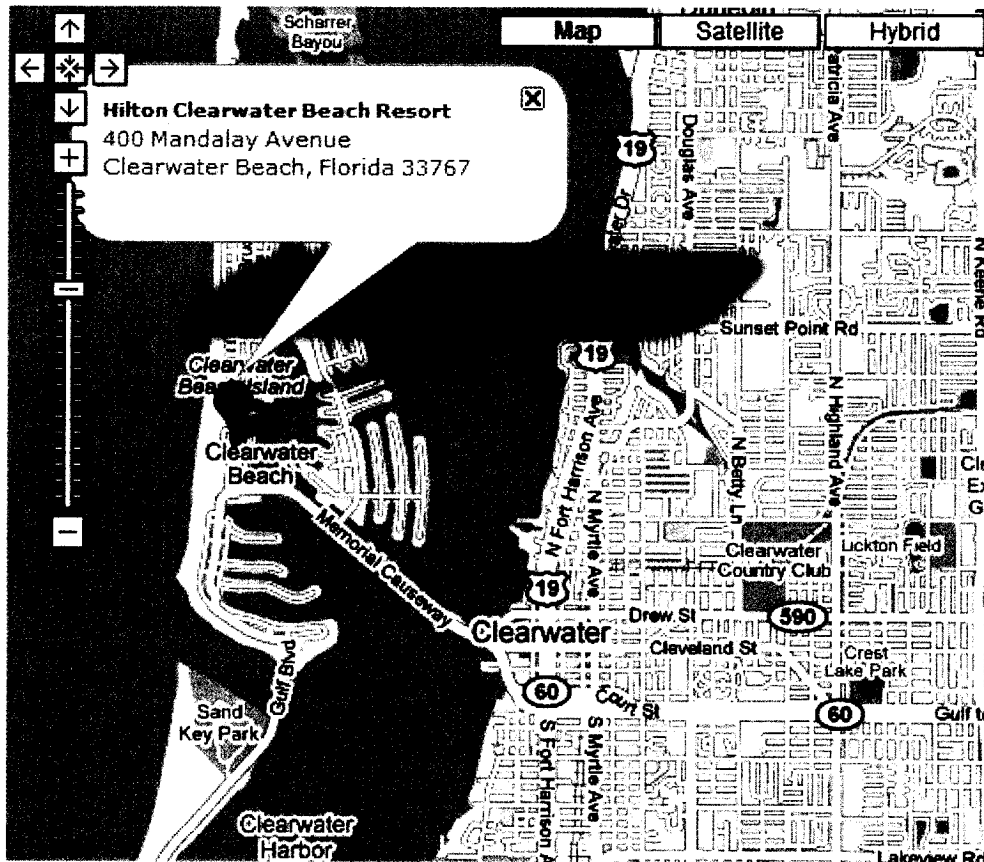
- a) Introductions - FWC Staff
- b) Introductions - Participants
- c) Announcements

III. MEETING

- a) Purpose of this meeting – review draft language and receive public input
- b) Input from participants
- c) Discussion

ADJOURN

P L E A S E S I G N I N .



Directions to the Clearwater Beach FL Hotel

From The North: Take I-75 South to 275 South. Exit onto Highway 60 West toward Clearwater Beach. At the roundabout, exit right on to Mandalay Avenue. The hotel is on the left.

From The South: Take I-275 North to Roosevelt Blvd West to Bayside Bridge turning right (going North). Turn left on Highway 60 / Gulf to Bay. At the roundabout, exit right on to Mandalay Avenue. The hotel is on the left.

From The East: Take I-4 West to I-275 South to Highway 60 West toward Clearwater Beach. At the roundabout exit, turn right onto Mandalay Avenue. The hotel is on the left.

From Tampa International Airport: From terminal, follow signs to Clearwater Highway 60. Take left exit onto Highway 60 West toward Clearwater Beach. At the roundabout exit, turn right onto Mandalay Avenue. The hotel is on the left.

From St. Petersburg / Clearwater Airport: Start out going West on Roosevelt Boulevard to the Bayside Bridge and turn right (going North) to Hwy 60 West towards Clearwater Beach. At the roundabout, exit right on to Mandalay Avenue. The hotel is on the left.