

# **Boating Related Provisions in** **Chapter 2009-86, Laws of Florida**

*Council Substitute for Committee Substitute for House Bill No. 1423*

## **Benthic resources:**

- Seagrass – Amends s. 253.04, F.S. (effective 10-1-2009)
  - Prohibits operating a vessel outside a lawfully marked channel in a careless manner that causes seagrass scarring within an aquatic preserve.
  - Violation is a non-criminal infraction with escalating penalties for repeat offenders (\$50 for first offense up to \$1,000 for fourth or subsequent offense within 3 years).
- The “Florida Coral Reef Protection Act”
  - Creates s. 403.9335, F.S. (effective 7-1-2009)
    - Provides definitions and a statement of legislative intent.
    - Requires responsible parties to notify DEP if their vessel runs aground on or otherwise damages a coral reef; requiring the responsible party to remove the vessel and to cooperate with DEP to assess and restore the coral reef.
  - Authorizes DEP to recover damages from and assess civil penalties against the responsible party.
    - Penalties can be as low as \$150 per square meter to as high as \$12,000 per square meter, depending on factors such as prior offenses, size of damage, occurrence in a state park or aquatic preserve, or other aggravating circumstances.
  - Amends s. 403.1651, F.S., to allow DEP to enter into settlement agreements that require responsible parties to fund third-party projects to conserve or protect coral reefs or to support law enforcement activities related to coral reef injury response.
  - Repeals ss. 253.04(3) and 380.0558, F.S., relating to civil penalties for damage to coral reefs and coral reef restoration.

## **Boating Under the Influence:**

- Amends s. 327.35, F.S. (effective 7-1-2009)
  - Lowers the threshold for enhanced penalties when charged with a BUI, from a BAL of 0.20 or more to 0.15 or more (the same as for DUI).
- Amends s. 327.36, F.S. (effective 7-1-2009)
  - Lowers the threshold for Mandatory adjudication from a BAL of 0.16 or more to 0.15 or more (the same as for DUI).

## **Boating Safety Education:**

- Amends s. 327.395, F.S. (effective 1-1-2010)

- Changes the age requirement from “21 years of age or younger” to “born on or after January 1, 1988” (persons who have not yet turned 22 by the effective date).
- Provides an exception for persons operating a vessel within 90 days after the purchase of that vessel if the operator carries a bill of sale meeting the requirements of s. 328.46(1) (i.e., one that lists all the information that would normally be on a certificate of registration).

**Waterway Markers:**

- Amends s. 327.40, F.S. (effective 10-1-2009)
  - Prohibits using any marker not conforming to the U.S. Aids to Navigation System in 33 C.F.R. Part 62.
  - Clarifies prohibition against placement of any uniform waterway marker without an FWC permit.
  - Clarifies the exemption for “information markers” placed by governmental entities on lakes and associated canals. (See definition of “information marker” in rule 68D-23.103, F.A.C.; see also 33 C.F.R. § 62.33).
- Amends ss. 327.41 and .42, F.S. (effective 10-1-2009)
  - Makes clarifying and conforming amendments.
  - Extends the prohibition against mooring to governmentally placed waterway markers to all lawfully placed waterway markers except when done in an emergency or with the written consent of the marker’s owner.

**Regulation of Vessel Operation by Municipalities and Counties:**

- Amends s. 327.02(17), F.S. (effective 7-1-2009)
  - Clarifies definition of “Live-aboard vessel.”
    - Excludes any vessel used for navigation.
    - Replaces in definition “Any vessel represented as ... a legal residence” with “Any vessel for which a declaration of domicile has been filed pursuant to s. 222.17.”
- Amends s. 327.46, F.S. (effective 10-1-2009)
  - Applies existing FWC rulemaking criteria for establishing boating-restricted areas to boating restricted areas established by county or municipal ordinance. All boating-restricted areas must be:
    - Necessary to protect public safety on the waters of this state.
    - Developed in consultation and coordination with:
      - Any governing body with concurrent jurisdiction (municipalities must work with the county; counties must work with any municipality in which the boating-restricted area occurs)
      - USCG and USACE if on navigable waters of the US.
  - Provides a list of locations where municipalities and counties are allowed to establish Idle Speed No Wake or Slow Speed Minimum Wake boating-restricted areas.

- All other boating-restricted area ordinances cannot take effect until FWC “has reviewed the ordinance and determined by substantial competent evidence that the ordinance is necessary to protect public safety.”
- FWC must:
  - Approve or reject ordinance within 90 days of receiving completed application.
  - Initiate rulemaking by 1-1-2010 to provide:
    - Criteria and procedures for reviewing applications.
    - Procedures for public notice and participation.
- Amends s. 327.60, F.S. (effective 10-1-2009)
  - Clarifies that this section is a limitation on ordaining authority rather than a grant of authority.
  - Specifically prohibits certain municipal or county ordinances (“shall not enact, continue in effect, or enforce”):
    - Vessel safety standards or equipment requirements (see also 46 U.S.C. § 4306).
    - Marine sanitation requirements (see also 33 U.S.C. § 1322).
    - Any ordinance on the Florida Intracoastal Waterway (see rule 68D-23.103(1)(k) for definition).
      - Within the rights-of-way of the Atlantic or Gulf ICW.
      - Shoreline to shoreline within the Okeechobee Waterway or the St. Johns, Apalachicola, Flint, or Chattahoochee Rivers.
    - Any ordinance that discriminates against personal watercraft (Jet-Skis®, Sea-Doos, Wave-Runners, etc.).
    - Ordinances that discriminate against airboats unless adopted by a two-thirds supermajority.
    - All anchoring ordinances except those prohibiting anchoring:
      - By floating structures.
      - By live-aboard vessels as defined in s. 327.02, F.S.
      - “[W]ithin the marked boundaries of mooring fields permitted as provided in s. 327.40.”
    - All engine or exhaust noise ordinances “except as provided in s. 327.65.”
    - All ordinances in conflict with chapter 327, F.S. or rules adopted under that chapter.
- Repeals s. 327.22, F.S. (effective 10-1-2009)
  - Removes the ability of municipalities and counties to regulate resident vessels more stringently than transient vessels.

#### **Carriage of Gasoline on Vessels**

- Creates s. 327.66, F.S. (effective 7-1-2009)
- Prohibits:
  - Possessing or operating any vessel with nonconforming or unapproved gasoline containers.
  - Transporting gasoline in an approved container if stored in an unventilated or improperly ventilated compartment.

- Gasoline and container used in violation are nuisances – law enforcement must abate this nuisance by seizing the gasoline and containers (may keep, transfer to another government unit, donate, or sell). All costs are recoverable against the owner.
- All conveyances, vessels, vehicles, and other equipment (except gasoline and containers) are contraband:
  - Upon conviction, the court must forfeit and chapter 932 provisions do not apply.
  - If no arrest or conviction, seize and forfeit as provided in chapter 932.
  - “[C]onviction’ means a finding of guilt or the acceptance of a plea of guilty or *nolo contendere*, regardless of whether adjudication is withheld or whether imposition of sentence is withheld, deferred, or suspended.”
- Foreign flagged vessels are exempt.

#### **Boating Citations by Mail to Registered Owners:**

- Amends s. 327.70, F.S. (effective 10-1-2009).
- The following infractions may be enforced by a uniform boating citation mailed to the registered owner of an unattended vessel anchored, aground, or moored on the waters of this state:
  - s. 327.33(3)(b), relating to navigation rules.
  - s. 327.44, relating to interference with navigation.
  - s. 327.50(2), relating to required lights and shapes.
  - s. 327.53, relating to marine sanitation.
  - s. 328.48(5), relating to display of decal.
  - s. 328.52(2), relating to display of number.
- Citations issued to livery (rented) vessels are the responsibility of the renter if:
  - The livery includes a warning in the rental agreement.
  - Provides the issuing agency with the renter’s name, address, and date of birth.
- The livery is not responsible for payment if the livery provides the warning and renter information.

#### **Vessel Titles, Registration, and Numbering:**

- Amends ss. 328.46, .48, .56, .58, .60, .65, and .66, F.S. (effective 10-1-2009).
  - Old statutes used a variety of combinations of used, using, operating, being operated, stored, etc. on the waters of this state.
  - Effective 10-1-2009, all provisions pertaining to titling, registration, and numbering will apply to any vessel operated, used, or stored on the waters of this state.
- Amends s. 328.72, F.S. (effective 10-1-2009).
  - Adds use and storage to the prohibition against operation with expired registration
  - Applies to the operation, use, or storage on the waters of this state of a previously registered vessel.
  - Provides an exception for vessels lawfully stored at a dock or in a marina.

### **Anchoring Pilot Program:**

- No section number – not codified in Florida Statutes (effective 7-1-2009).
- FWC is directed to establish a pilot program to explore potential options for regulating the anchoring of non-live-aboard vessels outside of public mooring fields.
- FWC must consult with DEP.
- The Goals of the pilot program are to develop and test policies and regulations that:
  - Promote the establishment and use of public mooring fields.
  - Promote public access to the waters of this state.
  - Enhance navigational safety.
  - Protect maritime infrastructure.
  - Protect the marine environment.
  - Deter improperly stored, abandoned, or derelict vessels.
- Locations selected for the pilot program must be:
  - Chosen in consultation with DEP by 7-1-2011.
  - Associated with a properly permitted mooring field
  - Must be in geographically diverse locations:
    - 2 locations on the Atlantic coast.
    - 2 locations on the Gulf coast.
    - 1 location in Monroe County (the Florida Keys)
- If chosen for participation in the pilot program:
  - Municipal or county participant may regulate anchoring outside of the mooring field by ordinance.
  - The ordinance will not take effect or become enforceable until approved by FWC.
  - The ordinance expires with the pilot program on 7-1-2014 and will “be inoperative and unenforceable thereafter” unless the program is reenacted.
- FWC must:
  - Provide consultation and technical assistance to participating municipalities and counties.
  - Coordinate the review of any proposed ordinance with:
    - DEP;
    - United States Coast Guard;
    - the appropriate Inland Navigation District; and
    - Associations or organizations representing vessel owners or operators.
  - Monitor and evaluate at least annually each location selected for participation.
  - Report its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2014.

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The history of the world is a long and varied one, filled with many interesting events and people. It is a story that has been told for thousands of years, and it continues to be told today. The history of the world is a story of progress, of discovery, and of the human spirit. It is a story that has shaped the world we live in today, and it will continue to shape the world of the future.

The history of the world is a story of many different cultures and civilizations. Each culture has its own unique way of life, its own beliefs, and its own traditions. The history of the world is a story of how these different cultures and civilizations have interacted with each other, and how they have shaped the world we live in today.

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