

CHAPTER 68D-21
APPROVAL OF LOCAL ORDINANCES ESTABLISHING BOATING RESTRICTED AREAS

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68D-21.001 Requirements for Applications.

(1) Approval by the Florida Fish and Wildlife Conservation Commission is not required for ordinances adopted pursuant to Section 327.46(1)(b), F.S. Regulatory markers necessary for implementing those ordinances must be permitted as required in Sections 327.40 and 327.41, F.S., and as provided in Chapter 68D-23, F.A.C.

(2) Any municipality or county application for approval of an ordinance establishing a boating-restricted area pursuant to Section 327.46(1)(c), F.S., must be submitted to: Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, Boating and Waterways Section.

(3) Each application must include:

(a) The name of the applicant municipality or county.

(b) The name, mailing address, telephone number, and any email address or facsimile number of the applicant's:

1. Primary contact person; and
2. Attorney or qualified representative.

(c) A certified copy of the adopted ordinance for which approval is sought. A county or municipality may submit a draft ordinance for review and approval. Approval, if granted, is conditioned upon the draft ordinance being adopted without amendment and does not become effective until a certified copy of the ordinance as adopted is received by the Boating and Waterways Section. If the draft ordinance is amended, approval of the draft ordinance will be rescinded and the ordinance as adopted will be reviewed.

(d) A statement identifying the provision within Section 327.46(1)(c), F.S., authorizing regulation of vessel speed or operation by the ordinance.

(e) One or more scaled drawings no larger than 8 1/2 inches by 11 inches, reproducible in black and white on standard office photocopying equipment which clearly show the following:

1. The jurisdictional boundaries of the municipality or county enacting the ordinance and, for county ordinances, the jurisdictional boundaries of any municipality in which a boating-restricted area is located.

2. The exact boundaries of each boating-restricted area established by the ordinance and the restrictions on vessel operation imposed within each boating-restricted area.

3. Any other known boating-restricted area (federal, state, county, other municipality, etc.) located within 2,500 feet of any boating-restricted area established by the ordinance.

4. The location of any of the following within a proposed boating-restricted area or used as a basis for establishing a boating restricted area, identified with a label or legend as to whether or not it is available for use by the general public:

- a. Any boat ramp, hoist, marine railway, or other launching or landing facility.
- b. Any fuel pump or dispenser at any marine fueling facility or licensed terminal facility.
- c. Any lock structure.
- d. Any designated public bathing beach or swim area.

5. The location of any of the following within a proposed boating-restricted area or used as a basis for establishing a boating restricted area:

- a. Any bridge, including any bridge fender system, if present.
- b. Any dam, spillway, or flood control structure.
- c. Any confluence of water bodies presenting a blind corner.
- d. Any bend or other intervening obstruction to visibility that may obscure other vessels or other users of the waterway in a narrow channel, fairway, or other similar area within the meaning of Inland Navigation Rule 9 (33 U.S.C. § 2009) as adopted by Section 327.33, F.S.

6. Any specific hazards to navigation (with a label or legend describing the hazard).

7. If relied upon as a basis for establishing the boating-restricted area, the location and description of any of the following:

- a. Any specific area subject to unsafe levels of vessel traffic congestion.
 - b. Any specific area subject to hazardous water levels or currents.
 - c. Any reported boating accident.
 - d. Any issuance of a Uniform Boating Citation.
7. The shoreline-to-shoreline width of the body of water upon which the boating restricted area is to be established and, if the water body is a lake or pond, the total surface area expressed in acres.
- (f) Documentation that the ordinance was developed, prior to presenting language for adoption, in consultation and coordination with:
- 1. The governing body of every other county or municipality sharing jurisdiction over the area in which the boating-restricted area is located.
 - 2. The United States Coast Guard if the boating-restricted area is to be established on navigable waters of the United States as defined in 33 C.F.R. § 2.36(a) (2009), which is adopted by reference and is available at <http://www.gpoaccess.gov/cfr/index.html>.
 - 3. The United States Army Corps of Engineers if the boating-restricted area is to be established on navigable waters of the United States as defined in 33 C.F.R. § 329.4 (2009), which is adopted by reference and is available at <http://www.gpoaccess.gov/cfr/index.html>.
- (g) A summary of the facts and circumstances the applicant contends justifies the establishment of the restriction on speed or operation and a list of the evidence in support of that contention the applicant desires for the agency to review.
- (h) An appendix containing all evidence listed in paragraph (g) above, except that the appendix need not include the following:
- 1. Copies of Boating Accident Reports or Boating Accident Investigation Reports if those reports are identified by law enforcement agency case number and provided in a list. If the Boating and Waterways Section does not have a copy on file of one or more such reports, it will request that the applicant supplement the application appendix with copies of those reports.
 - 2. Copies of Florida Uniform Boating Citations if identified by citation number in a list. If one or more citations are not already entered into the ArrestNet Database maintained by the Field Services Section, the Boating and Waterways Section will request the applicant to supplement the application appendix with copies of those citations.
- (i) Proof that the applicant has at its own cost published, as provided by Sections 50.011-.031, F.S., once a week for 2 consecutive weeks, prior notice of the public hearing on the ordinance in a newspaper of general circulation in the area(s) affected by the ordinance.
- (j) The signature of the applicant's attorney or qualified representative.
- (k) The date the application is submitted.
- (4) Complete applications may be submitted:
- (a) By mail or in person to the Fish and Wildlife Conservation Commission, Boating and Waterways Section, 620 South Meridian Street, Tallahassee, FL 32399-1600; or
 - (b) As a Portable Document Format (.pdf) file attached to an email addressed to waterway.management@myfwc.com.
- (5) The Boating and Waterways Section will not process partial or incomplete applications.

Rulemaking Authority 327.04, 327.46 FS. Law Implemented 327.46 FS. History—New 10-6-10.

68D-21.002 Procedures for Reviewing Applications.

(1) Upon receipt of all statements and other documents specified above, the Boating and Waterways Section will determine whether or not the application is complete.

(a) If the application is not substantially complete or has not been completed substantially correctly, the Boating and Waterways Section will within 30 days of receipt return it to the applicant with a statement of the items that are missing or that must be corrected.

(b) If the application is substantially complete and only minor additions or corrections are required, the Boating and Waterways Section will within 30 days following receipt notify the applicant of the apparent errors or omissions and request the required additional or corrected information. If the requested additional or corrected information is not received within 30 days, the Boating and Waterways Section will return the application to the applicant with a statement of the items that are missing or that must be corrected.

(2) Within 30 days following receipt of a completed application, the Boating and Waterways Section will provide notice of such receipt to the applicant by mail or by email using the same method by which the application was submitted and to the public as provided in Rule 68D-21.003, F.A.C.

(3) The Boating and Waterways Section will within 90 days following receipt of a completed application, review and act upon the application as follows:

(a) The Boating and Waterways Section will determine whether or not each boating-restricted area created in the ordinance is authorized under Section 327.46(1)(b) or (c), F.S. If any boating-restricted area created in the ordinance is not authorized pursuant to one of those paragraphs, the application will be denied. As provided in subsection 68D-21.001(1), F.A.C., approval is not required for ordinances in which every boating-restricted area established therein is authorized under Section 327.46(1)(b), F.S.

(b) The Boating and Waterways Section will determine whether or not each boating-restricted area established in the ordinance was developed prior to adoption of the ordinance:

1. For municipal ordinances, in consultation and coordination with the governing body of the county in which the boating-restricted area is located;

2. For county ordinances, in consultation and coordination with the governing body of each municipality in which a boating-restricted area is located unless all boating-restricted areas are located in unincorporated portions of the county;

3. For boating-restricted area on navigable waters of the United States, in consultation and coordination with the United States Coast Guard and the United States Army Corps of Engineers.

If the required consultation and coordination has not taken place, the application will be denied. This paragraph shall not be construed to require an applicant to wait indefinitely for a response to a request for consultation and coordination. If a municipality or county has made such a request for consultation and coordination in writing and has not received a response within 30 days, the Boating and Waterways Section will, if requested, attempt to facilitate such consultation and coordination. If a response is still not forthcoming, the Boating and Waterways Section will conclude that the municipality, county, or federal agency to whom the request was addressed has no objection to the proposed ordinance and no further consultation or coordination will be required.

(c) The Boating and Waterways Section will determine whether or not the application and appendix establish a *prima facie* showing that the ordinance is necessary to protect public safety by evaluating if at least one of the criteria in Rule 68D-21.004, F.A.C., has been met.

(d) If there is a *prima facie* showing that the ordinance is necessary to protect public safety and that at least one of the criteria in Rule 68D-21.004, F.A.C., has been met, the Boating and Waterways Section will:

1. Review all written public comments received within 21 days following the notice provided to the public as required in Rule 68D-21.003, F.A.C., and all testimony, evidence, and exhibits presented at a public hearing if one was requested;

2. Review all comments provided by the United States Coast Guard and the United States Army Corps of Engineers received prior to the determination.

3. Conduct a public hearing within the applicant's jurisdiction if a written request for such a hearing is received within 21 days following the notice provided to the public as required in Rule 68D-21.003, F.A.C.

(e) Based on the totality of the information received, the Boating and Waterways Section will determine whether or not there is substantial competent evidence that the ordinance is necessary to protect public safety.

1. An ordinance will be considered necessary to protect public safety only if it is required for the purposes of protecting human life and limb, vessel traffic safety, and, as defined in Rule 68D-23.103, F.A.C., maritime property.

2. No ordinance establishing a boating restricted area will be approved for the purpose of noise abatement or for the protection of shoreline, shore-based structures, or upland property from vessel wake or shoreline wash. As provided in Section 327.33(2), F.S., "vessel wake and shoreline wash resulting from the reasonable and prudent operation of a vessel shall, absent negligence, not constitute damage or endangerment to property." The wake resulting from the reasonable and prudent operation of a vessel is a force which should be anticipated by the owners of property adjacent to the navigable waters of this state.

(4) The Boating and Waterways Section will act to approve or deny the application within the time limits specified in Section 327.46(1)(c), F.S. Upon approval or denial of the application, the Boating and Waterways Section will provide notice of the approval or denial as provided in Rule 68D-21.003, F.A.C. If no request for review is timely received, this notice will constitute final agency action.

(5) The Florida Fish and Wildlife Conservation Commission, sitting as agency head at its next available regularly scheduled meeting, will review any approval or denial determination made by the Boating and Waterways Section upon timely receipt of a

request for review. Any substantially affected person may request review of the approval or denial; the request must be received by the Boating and Waterway Section within 21 days following the notice provided to the public as required in Rule 68D-21.003, F.A.C.

Rulemaking Authority 327.04, 327.46 FS. Law Implemented 327.46 FS. History—New 10-6-10.

68D-21.003 Procedures for Providing for Public Notice and Participation.

(1) Public Notice. The Boating and Waterways Section will provide notice of complete applications received, public meetings or hearing concerning applications, and denial or approval of applications: on the Boating and Waterways Section’s web page at http://www.myfwc.com/RECREATION/boat_index.htm and to all parties listed in the “Boating and Waterways Section’s Public Distribution List – Ordinances” in which any member of the public may join by a request to the mailing or email address found below in paragraph 68D-21.003(2)(a), F.A.C.

(2) Public Participation.

(a) Members of the public may provide written comments, recommendations, requests, inquiries, or other correspondence to the Boating and Waterways Section at 620 South Meridian Street, Tallahassee, FL 32399-1600; or by email at waterway.management@myfwc.com. Any attachments to emails must be in one or more of the following file formats, as appropriate: Microsoft Word Document (.doc or .docx); Rich Text File (.rtf); Portable Document Format (.pdf); Joint Photographic Experts Group format (.jpg or .jpeg); or Tagged Image File Format (.tif or .tiff).

(b) If a public hearing is requested under subparagraph 68D-21.002(3)(d)3., F.A.C., or review by the agency head is requested under subsection 68D-21.002(5), F.A.C., members of the public may:

1. Testify at the hearing or Commission meeting;
2. Submit relevant and material exhibits to the record of the proceeding.

Rulemaking Authority 327.04, 327.46 FS. Law Implemented 327.46 FS. History—New 10-6-10.

68D-21.004 Criteria for Approval of Ordinances.

(1) Any ordinance submitted pursuant to Section 327.46(1)(c), F.S., and in compliance with Chapter 68D-21, F.A.C., is subject to review and approval by the Commission.

(2) An ordinance establishing either an “idle speed, no wake” or a “slow speed, minimum wake” boating restricted area will be approved for areas not more than 300 feet from a confluence (intersection) of water bodies presenting a blind corner, a bend in a narrow channel or fairway, or such other area if an intervening obstruction to visibility may obscure other vessels or other users of the waterway.

(a) A blind corner is presented where an intervening obstruction to visibility prevents the operator of a vessel on one of the water bodies from seeing a vessel on the other water body at a distance of 300 feet or less from the confluence.

(b) A bend or other intervening obstruction to visibility in a narrow channel, fairway, or other similar water body within the meaning of Inland Navigation Rule 9 (33 U.S.C. § 2009) as adopted by Section 327.33, F.S., is presented where a decision sight distance of less than 300 feet exists and prevents the operator of a vessel from seeing other vessels or other users of the waterway.

(3) An ordinance establishing a “slow speed, minimum wake” boating-restricted area or numerical speed limit boating-restricted area regulated at 25 or 30 miles per hour will be approved for areas:

(a) Subject to hazardous water levels or currents if:

1. The boating-restricted area established in the ordinance is active and enforceable only when the water levels are at or above flood stage on a river gauge operated or reported by the National Weather Service’s River Forecast Center (<http://www.srh.noaa.gov/serfc/>) or at the equivalent level on a river gauge operated or reported by the United States Geological Survey’s National Water Information System (<http://waterdata.usgs.gov/fl/nwis/rt>) and the specific gauge and flood stage water level is specified in the ordinance.

2. The United States Coast Pilot (<http://www.nauticalcharts.noaa.gov/nsd/cpdownload.htm>) identifies the area as being subject to hazardous tides or currents.

3. A navigation chart published by the National Oceanic and Atmospheric Administration’s National Ocean Service (<http://www.nauticalcharts.noaa.gov/>) identifies the area as being subject to hazardous tides or currents.

4. Creditable data demonstrate that the area is subject to water levels or currents that endanger vessels operating in the area or the occupants of such vessels.

(b) Containing a documented navigational hazard of a nature that vessel operation in its vicinity at speed in excess of slow speed, minimum wake endangers the vessel or its occupants. Navigational hazards are presumed to exist within the marked boundaries of mooring fields as permitted by Section 327.40, F.S.

(c) Subject to unsafe levels of vessel traffic congestion, seasonal or year-round, such that:

1. The traffic density including concentration of fishing vessels or any other vessels would require that vessels slacken speed under Inland Navigation Rule 6(a)(ii) (33 U.S.C. § 2006) as adopted by Section 327.33, F.S.; or

2. It presents a significant risk of collision or a significant threat to boating safety.

3. Unsafe levels of vessel traffic congestion, a significant risk of collision, or a significant threat to boating safety may be demonstrated by:

a. Accident reports – The following reports of boating accidents are acceptable if prepared contemporaneously with the boating accident being reported and if vessel traffic congestion or the speed or wake of a vessel involved in the accident caused or contributed to the accident:

i. Florida Boating Accident Investigation Report, form FWCDLE 146, or Florida Boating Accident Self Report, form FWCDLE 146C, supplied by the Commission as provided in Section 327.302, F.S.; United States Coast Guard Recreational Boating Accident Report, form CG-3865, as provided in 33 C.F.R. §§ 173.55, 173.57; United States Coast Guard Report of Marine Casualty, Injury or Death, form CG-2692, as provided in 46 C.F.R. § 4.05-10. The current versions of these forms are adopted by reference in subsection (5); prior editions of these forms are also acceptable.

ii. A law enforcement agency's official offense or incident report prepared and signed by an officer authorized under Section 327.70, F.S., to enforce the provisions of Chapters 327 and 328, F.S.

iii. Medical records, including EMS and medical examiner reports, if they document death or injuries as a result of a boating accident and specify the nature and location of the boating accident;

b. Uniform boating citations issued on citation forms supplied by the Commission as provided in Section 327.74, F.S., if the violation alleged in the citation is related to the cited vessel's speed or wake.

c. A vessel traffic study if the conclusions of the study are, as determined by the Boating and Waterways Section, based upon sufficient facts or data, are the product of reliable principles and methods, and if the study has applied the principles and methods reliably to the facts or data considered. In assessing the creditability of a vessel traffic study, the following factors (as applicable) shall be among those considered:

i. Whether the study's methodology can be or has been tested (i.e., whether the study's methodology can be challenged in some objective sense, or whether it is instead simply a subjective, conclusory approach that cannot reasonably be assessed for reliability);

ii. Whether the study's methodology has been subject to peer review and publication;

iii. The known or potential rate of error of the study's methodology;

iv. The existence and maintenance of standards and controls; and

v. Whether the methodology has been generally accepted in the scientific community.

d. Other creditable data. For the purposes of this subparagraph, "other creditable data" means facts or data that are of a type reasonably relied upon by experts in the fields of boating safety, maritime safety, navigation safety, ports and waterways safety assessments, or vessel traffic management, as contemplated in Section 90.704, F.S.

(d) That could have been established as an idle speed, no wake boating-restricted area under Section 327.46(1)(b)1., F.S., provided the applicant demonstrates by competent substantial evidence how the specific regulation will adequately solve public safety concerns in the area.

(4) An ordinance establishing a vessel exclusion zone (an area from which all vessels or certain classes of vessels are excluded) will be approved if the area is reserved exclusively:

1. As a canoe trail or otherwise limits vessel propulsion if the applicant demonstrates by competent substantial evidence how the restriction is necessary to protect public safety pursuant to Section 327.46, F.S., and if:

a. One of the following restrictions, as defined in Rule 68D-23.103, F.A.C., is imposed: "No Motorized Vessels" or "No Motorboats" or "Motorboats Prohibited"; "No Power-driven Vessels"; "No Internal Combustion Motors"; "Manually Propelled Vessels Only" and

b. Imposition of the restriction will not unreasonably or unnecessarily endanger navigation or interfere with the use of a navigation channel that is lawfully marked with lateral aids to navigation.

2. For a particular specified activity (e.g.: sailing instruction, marine research, water skiing, personal watercraft use, sailboard use, etc.) if the applicant demonstrates by competent substantial evidence how certain classes of vessels (including all vessels if appropriate under the prevailing circumstances) endanger or are likely to endanger those participating in the specified activity and that the specified classes of vessels must be excluded from the area in order to adequately protect the safety of those participating in the specified activity.

(5) The following forms are adopted and incorporated by reference:

(a) Florida Boating Accident Investigation Report, form FWCDLE 146 (07/2010), and Florida Boating Accident Self Report, form FWCDLE 146C (07/2010), supplied by the Commission as provided in Section 327.302, F.S. These forms may be obtained from the Boating and Waterways Section, 620 South Meridian Street, Tallahassee, FL 32399-1600.

(b) United States Coast Guard Recreational Boating Accident Report, form CG-3865 (Rev. 07/08), as provided in 33 C.F.R. §§ 173.55, 173.57. This form may be obtained from Commandant (CG-5422), U.S. Coast Guard Headquarters, 2100 Second St. SW, Stop 7581, Washington, DC 20593-7581, or downloaded at <http://www.uscgboating.org/assets/1/Publications/cg3865barform2008.pdf>.

(c) United States Coast Guard Report of Marine Casualty, Injury or Death, form CG-2692 (Rev. 06/04), as provided in 46 C.F.R. § 4.05-10. This form may be obtained from the Coast Guard Sector Office, Coast Guard Marine Inspection Office or Coast Guard Group Office nearest the scene of the marine casualty, or from Commander, USCG Seventh District, Brickell Plaza Federal Building, 909 S.E. 1st Avenue, Miami, FL 33131-3050, or downloaded at http://www.uscg.mil/forms/CG/CG_2692.pdf.

Rulemaking Authority 327.04, 327.302, 327.46 FS. Law Implemented 327.302, 327.46 FS. History—New 10-6-10.