



**AGENDA
MARINA ADVISORY BOARD
REGULAR MEETING
MARCH 25, 2019
6:00 PM
CITY HALL COMMISSION CHAMBERS
204 ASH STREET
FERNANDINA BEACH, FL 32034**

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. APPROVAL OF MINUTES**
 - 3.1 Minutes form Feb 25, 2019 Regular Meeting
- 4. PUBLIC COMMENT REGARDING ITEMS NOT ON THE AGENDA**
- 5. OLD BUSINESS**
 - 5.1 Atlantic Lease
 - 5.2 Marina Mission Statement
 - 5.3 Live Aboard Boaters
 - 5.4 Air B&B
- 6. NEW BUSINESS**
 - 6.1 Commercial utilization of the marina by Non Slip Holders
- 7. MARINA MANAGER REPORT**
- 8. BOARD MEMBER REPORTS/COMMENTS**
- 9. NEXT MEETING DATE**
- 10. ADJOURNMENT**

All members of the public are invited to be present and be heard. Persons with disabilities requiring accommodations in order to participate in this program or activity should contact the City Clerk at (904) 310-3115 or TTY/TDD 711 (for the hearing or speech impaired). All interested parties may appear at said meeting and be heard as to the advisability of any action, which may be considered with respect to such matter. For information regarding this matter, please contact the Marina Manager.



MARINA ADVISORY BOARD
REGULAR MEETING MINUTES
February 25th, 2019
6:00 PM
City Hall Commission Chambers

1. CALL TO ORDER 6:01 PM

2. ROLL CALL

VOTING MEMBERS PRESENT:

Chairperson Kevin McCarthy, Recording Secretary Coleman Langshaw, Ronald Scott Stewart, Paul Lore, Joe Blanchard, Allen Mills, Terry Lacoss (non-voting member)

VOTING MEMBERS ABSENT: Vice-Chair Cathy Chapman

3. APPROVAL OF MINUTES

3.1 MAB Regular Meeting Minutes for January 28, 2019

ACTION: *Approve Minutes*

Motion: Joe Blanchard; Second: Allen Mills

APPROVED: 6-0

4. PUBLIC COMMENT

*Bronson Lamb, 69 Marsh Creek Road, Fernandina Beach
Addressed dock layout and dredging*

*Lynn Williams, 997 Egans Creek Road, Fernandina Beach
Discussed Florida Inland Navigation District (FIND) grants*

*Commissioner Chip Ross, 210 North 3rd Street, Fernandina Beach
Addressed and answered comments from MAB members*

*Commissioner Mike Lednovich, 1586 Canopy drive, Fernandina Beach
Addressed and answered comments from MAB members*

5. OLD BUSINESS

5.1 Critical Path/ Gantt Charts

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MAB Member Joe Blanchard gave an overview of the Marina repair process and recapped a meeting he had with Project Manager Bronson Lamb

6. NEW BUSINESS

- 6.1 Air B&B
- 6.2 Westrec to provide Marina Presentation
- 6.3 Create a deliverable/recommendation to Commissioners
- 6.4 Create a vision statement
- 6.5 Public access to docks and boat ramp
- 6.6 Public parking for Marina for boat ramp users
- 6.7 Transient Boater Amenities

Discussion followed on all topics with a motion that the MAB “requests to the City Commission, that any action or recommendation by other boards, that could or would affect the marina, be brought to the Marina Advisory Board for consideration, before taking action”.

ACTION: *Approve Motion as stated*

Motion: Coleman Langshaw; Second: Allen Mills

APPROVED: 6-0

7. MARINA MANAGER REPORT

Marina Manager Springer previously provided input and comments during the meeting, that were accepted by the MAB, as a manager's report.

8. BOARD MEMBER REPORTS/COMMENTS

No additional reports/comments

9. NEXT MEETING DATE

March 25th, 2019

10. ADJOURNMENT: 7:51 PM

Coleman Langshaw, Secretary

Kevin McCarthy, Chairperson

✓ Reso 2008-71

LEASE

THIS LEASE OF LEASE made this 6th day of May 2008, between the City of Fernandina Beach, Florida, whose principal address is 204 Ash Street, Fernandina Beach, FL 32034, (hereinafter referred to as "Landlord") and ANNE T. COONROD, d/b/a Atlantic Seafood, whose principal address is Ten Ash Street, Fernandina Beach, FL 32034, (hereinafter referred to as "Tenant"), its successors and assigns.

1. **DEMISED PREMISES.** In consideration of the rents, covenants and Leases hereinafter reserved and contained on the part of the Tenant to be observed and performed, the Landlord demises and leases to the Tenant, and the Tenant rents from the Landlord those certain premises now erected and located at Ten Ash Street, Fernandina Beach, FL 32034, in City of Fernandina Beach, Nassau County, State of Florida, which premises consists of a floor area of approximately one thousand (1,000) square feet and outdoor space contiguous to the present building. The premises shall be referred to herein as the "Demised Premises". The land upon which the Demised Premises are located is referred to herein as the "Land". This Lease and the rights of the parties set forth herein shall create the relationship of "landlord" and "tenant" only between Landlord and Tenant. The exact legal description is set forth on Exhibit "A".

2. **TERM.** Duration and Commencement. The term of this Lease shall be for a period of twenty (20) years (2028), commencing on the date (herein referred to as the "Commencement Date") specified in Paragraph 7.

3. **BASE RENT.** For each year under the term of this Lease, Tenant agrees to pay Landlord as annual Base Rent for the Demised Premises, the sum of One Thousand Two Hundred Eighty-Seven (\$1,287.00) Dollars per month (subject to adjustment as hereinafter provided). Said Base Rent shall be paid in advance on the first day of each and every calendar month during said term, except that the first month's rent shall be paid upon the execution hereof. In the event the term of this Lease commences on a day other than the first day of a calendar month, then the rental for the first month of the lease term shall be prorated in the proportion that the number of days this Lease is in effect during such month bears to thirty (30) and such rental shall be paid on the Commencement Date, in addition to the first full month's rent paid upon the execution hereof. In addition to said Base Rent, Tenant agrees to pay the amount of the rental adjustments as and when hereinafter provided in this Lease. Said rental (including Base Rent, Additional Rent and all other sums payable to Landlord under this Lease) shall be paid to Landlord, without deduction or offset, in lawful money of the United States of America, which shall be legal tender at the time of payment, at the office of Landlord or to such other person or at such other place as Landlord may from time to time designate in writing.

The Base Rent payable hereunder may be increased twelve (12) months after the Commencement Date hereof, and every twelve (12) months thereafter during the term hereof, including any renewal or extension period, in an amount equal to the increase in the United States Department of Labor Consumer Price Index-South Urban from the previous year which will not be more than six percent (6%) over the Base Rent charged for the immediately preceding twelve (12) month period.

4. **ADDITIONAL RENT.** Tenant hereby agrees to pay any and all taxes assessed.

A. Definitions.

(1) The term "Taxes" shall mean real property taxes and personal property taxes, sales taxes, charges and assessments which are levied, assessed upon or imposed by any governmental authority or political subdivision thereof during any calendar year of the term hereof with respect to the Land and all buildings (including the Demised Premises) located thereon.

5. **USE OF DEMISED PREMISES.** Tenant's Business. The Demised Premises shall be used and occupied by Tenant for general retail purposes, including the sale of seafood, bait and tackle, food, and beer and wine.

6. **OPTION TO RENEW.** Tenant may elect to extend the term of this Lease, with approval by the Fernandina Beach City Commission, in its sole discretion, which shall not be unreasonably withheld, upon the same covenants and conditions as herein provided, with the exception that the Base Rent (as defined in paragraph 3) shall be adjusted for each extension period as otherwise provided herein. If Tenant shall elect to extend the term of this Lease, it shall do so by giving Landlord written notice at least one hundred eighty (180) days prior to the expiration of the primary term or of the then current extension.

7. **COMMENCEMENT OF TERM.** The term of this Lease shall commence upon the earlier of the following dates (herein referred to as the "Commencement Date"):

A. On the 16th day of May, 2008; or

B. The date thirty (30) days after the day Landlord shall notify Tenant that the Demised Premises are ready for occupancy; or

C. The date on which Tenant actually occupies the Demised Premises for business.

8. **UTILITIES.** Tenant shall be solely responsible for, and shall promptly pay, all charges for use or consumption for water, sewer, telephone, sanitation, heat, gas, electricity or any other utility services.

9. **MAINTENANCE AND REPAIRS.** Tenant Responsibility. Tenant shall at Tenant's sole cost and expense keep and maintain the Demised Premises in good condition and repair; except damage thereto from causes beyond the reasonable control of Tenant. All damage or injury to the Demised Premises caused by the act or negligence of Tenant, its employees, agents or visitors, shall be repaired by Tenant at Tenant's sole cost and expense. Tenant shall upon the expiration or sooner termination of the term hereof surrender the Demised premises to Landlord in the same condition as they existed on the Commencement Date, ordinary wear and tear and damage from causes beyond the reasonable control of Tenant excepted. Landlord shall have no obligation to alter, remodel, improve, decorate, or paint the Demised Premises or any part thereof, and the parties hereto affirm that Landlord has made no representations to Tenant

respecting the condition of the Demised Premises, except as specifically herein set forth. Tenant accepts the Demised Property in its "as is" condition.

10. **INDEMNIFICATION.** Tenant agrees to assume liability for and indemnify, hold harmless, and defend the Landlord, its commissioners, mayor, officers, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, arising directly or indirectly out of or in connection with any negligent and/or deliberate act or omission of Tenant, its officers, employees, agents, and representatives. Tenant's liability hereunder shall include all attorney's fees and costs incurred by the Landlord in the enforcement of this indemnification provision. This includes claims made by the employees of Tenant against the Landlord and Tenant hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination of this Lease and shall not be limited by the amount of any insurance required to be obtained or maintained under this Lease. Nothing contained in the foregoing indemnification shall be construed to be a waiver of any immunity or limitation of liability the Landlord may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

11. **MECHANIC'S LIENS.** Tenant shall have no authority to subject the Demised Premises or the Land, or any part thereof or any interest of Landlord therein, to any mechanic's or other lien. Should any mechanic's or other liens be filed against the Demised Premises or the Land or any part thereof or any interest of Landlord therein, by reason of Tenant's acts or omissions or because of a claim against Tenant, Tenant shall cause the same to be canceled and discharged of record by bond or otherwise within ten (10) days after notice by Landlord.

12. **INSURANCE.**

A. Tenant Insurance/Property Damage. At all times during the term hereof, Tenant shall maintain in effect policies of property damage insurance covering: (i) all leasehold improvements (including any alterations, additions or improvements as may be made by Tenant pursuant to provisions of Paragraph 14 hereof) and in which Tenant may have an insurable interest; and (ii) trade fixtures, merchandise and other personal property from time to time in, on or upon the Demised Premises, in an amount not less than one hundred percent (100%) of their actual replacement cost from time to time during the term of this Lease, providing protection against any peril included within the classification "Fire and Extended Coverage" together with insurance against vandalism and malicious mischief. The proceeds of such insurance shall be used for the repair or replacement of the property so insured. Upon termination of this Lease following a casualty as set forth herein, the proceeds under subsection (i) shall be paid to Landlord and the proceeds under subsection (ii) shall be paid to Tenant.

B. Tenant Liability Insurance. Tenant shall, at all times during the term hereof and at its own cost and expense, procure and continue in force comprehensive general liability insurance for bodily injury and property damage, adequate to protect Landlord against liability for injury to or death of any person, arising in connection with the construction of improvements

on the Demised Premises or use, operation or condition of the Demised Premises. Such insurance at all times shall be in an amount of not less than a combined single limit of One Million and 00/100 Dollars (\$1,000,000.00), insuring against any and all liability of the insured with respect to the Demised Premises or arising out of the use or occupancy thereof.

C. Policy Form. All insurance required to be carried by Tenant hereunder shall be issued by responsible insurance companies, qualified to do business in the State of Florida. Each policy shall name Landlord as an additional insured, as their respective interests may appear, and copies of all policies or certificates evidencing the existence and amounts of such insurance shall be delivered to Landlord by Tenant at least ten (10) days prior to Tenant's occupancy of the Demised Premises. No such policy shall be cancelable or materially altered except after ten (10) days prior written notice to Landlord. Tenant shall furnish Landlord with renewals or "binders" of any such policy at least ten (10) days prior to the expiration thereof.

13. **DAMAGE AND RESTORATION.**

A. Tenant's Obligations. In the event the Demised Premises, or any portion thereof, should be damaged or destroyed, Tenant may, at its option reconstruct or restore the Demised Premises after any damage or destruction thereof.

B. Abatement of Rent. During the period commencing with the date of ~~any such~~ damage or destruction which Landlord elects hereunder to repair, reconstruct or restore, and ending with the completion of such repairs, reconstruction or restoration, the Base Rent and Additional Rent shall be proportionately abated in an amount equal to the proportion thereof which the number of square feet of gross floor area in the Demised Premises rendered untenable thereby bears to the total number of square feet of gross floor area in the Demised Premises immediately prior to such damage or destruction. The full amount of said Base Rent and all other charges shall again become payable immediately upon the completion of such work of repair, reconstruction or restoration.

14. **RENOVATION.** Tenant shall have the right to renovate or remodel the current building, subject to approval by Landlord, which shall not be unreasonably withheld.

15. **EMINENT DOMAIN.** If the whole of the Demised Premises shall be taken, or such part thereof, shall be taken as shall substantially interfere with Tenant's use and occupancy of the balance thereof, under power of eminent domain, or sold, transferred, or conveyed in lieu thereof, either Tenant or Landlord may terminate this Lease as of the date of such condemnation or as of the date possession is taken by the condemning authority, whichever date occurs later. No award for any partial or entire taking shall be apportioned, and Tenant hereby assigns to Landlord any award which may be made in such taking or condemnation, together with any and all rights of Tenant now or hereafter arising in or to the same or any part thereof; provided, however, that nothing contained herein shall be deemed to give Landlord any interest in or require Tenant to assign to Landlord any award made to Tenant for the taking of personal property and fixtures belonging to Tenant and removable by Tenant at the expiration of the term hereof, as provided hereunder or for the interruption of, or damage to Tenant's business or for relocation expenses recoverable against the condemning authority. No temporary taking of a

part of the Demised Premises, including parking facilities, shall give Tenant any right to terminate this Lease or to any abatement of rent hereunder.

16. **QUIET ENJOYMENT.** Landlord shall not take any action that restricts Tenant's quiet enjoyment of the property, except as provided hereunder. Landlord shall provide adequate access to the property during the term of the Lease including non-exclusive use of existing parking areas. Landlord shall have the right to improve the Demised Premises and surrounding areas, including but not limited to, the parking areas and waterfront property on the Amelia River. Tenant hereby acknowledges and understands that construction activity and/or disruption of Tenant's use and business enterprise on the Demised Premises is likely. No construction activity and/or disruption of Tenant's use and business enterprise on the Demised Premises, including parking facilities, shall give Tenant any right to terminate this Lease or to any abatement of rent hereunder, except as approved by the City Commission.

17. **DEFAULT BY TENANT/REMEDIES.**

A. Defaults. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Tenant:

- (1) The vacating or abandonment of the Demised Premises by Tenant.
- (2) The failure by Tenant to make any payment of rent or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of ten (10) days after written notice thereof from Landlord to Tenant.
- (3) The making by Tenant of any general arrangement or assignment for the benefit of creditors; b) Tenant becomes a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); c) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Demised Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or d) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Demised Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days. Provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect.

B. Remedies. In the event of any such material default or breach by Tenant, Landlord may at any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of any right or remedy which Landlord may have by reason of such default or breach:

- (1) Terminate Tenant's right to possession of the Demised Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Demised Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of

Tenant's default including, but not limited to, the cost of recovering possession of the Demised Premises; expenses of re-letting, including necessary renovation and alteration of the Demised Premises, reasonable attorney's fees, and any real estate commission actually paid; the worth at the time of award by the court having jurisdiction thereof of the amount by which the unpaid rent for the balance of the term after the time of such award exceeds the amount of such rental loss for the same period that Tenant proves could be reasonably avoided; that portion of any leasing commission paid by Landlord applicable to the unexpired term of this Lease.

(2) Maintain Tenant's right to possession in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the Demised Premises. In such event Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover the rent as it becomes due hereunder.

(3) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the state wherein the Demised Premises are located. Unpaid installments of rent and other unpaid monetary obligations of Tenant under the terms of this Lease shall bear interest from the date due at the maximum rate then allowable by law.

18. **DEFAULT BY LANDLORD/REMEDIES/EXCULPATION.** Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event shall Landlord be deemed in default sooner than thirty (30) days after written notice by Tenant to Landlord, specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than such thirty (30) days are required for performance, then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and, thereafter, diligently prosecutes the same to completion. Anything in this Lease to the contrary notwithstanding, Landlord shall be liable for any damages resulting from its default under the terms of this Lease.

19. **ASSIGNMENT AND SUBLETTING.** Tenant shall be permitted to assign this Lease or sublet its rights, duties, or obligations hereunder with the prior written consent of Landlord, which consent shall not be unreasonably withheld.

20. **END OF TERM**

A. At the expiration of this Lease, subject to renewals, Tenant shall surrender the Demised Premises in the same condition as it was in upon delivery of possession thereto under this Lease, reasonable wear and tear excepted, and shall deliver all keys and combinations to locks, safes and vaults to Landlord. Before surrendering the Demised Premises, Tenant shall remove all its personal property, trade fixtures, alterations, additions and decorations, and shall repair any damage caused thereby. Tenant's obligations to perform this provision shall survive the end of the term of this Lease. If Tenant fails to remove its property upon the expiration of this Lease, the said property, at Landlord's option, shall be deemed abandoned and shall become the property of Landlord.

B. If the Demised Premises are not surrendered at the end of the term, then Tenant shall indemnify Landlord against loss or liability resulting from delay by Tenant in so surrendering the Demised Premises, including, without limitation, any claims founded on such delay made by any succeeding occupant of the Demised Premises or any part thereof, and Tenant shall be liable to Landlord for any and all legal expenses, costs, and fees incurred by Landlord in obtaining the possession of the Demised Premises.

21. **HOLDING OVER.** Any holding over after the expiration of this term or upon termination, shall be construed to be a tenancy from month to month and shall otherwise be on the terms herein specified so far as applicable.

22. **NO WAIVER.** Failure of Landlord to insist upon the strict performance of any provision or to exercise any option or enforce any rules and regulations shall not be construed as a waiver for the future of any such provision, rule or option. The receipt by Landlord of rent with knowledge of the breach of any provision of this Lease shall not be deemed a waiver of such breach. No provision of this Lease shall be deemed to have been waived unless such waiver be in writing signed by Landlord. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly rent shall be deemed to be other than on account of the earliest rent then unpaid nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided in this Lease.

23. **NOTICES.** Any notice, demand, request or other instrument which may be or required to be given under this Lease shall be delivered in person or sent by United States Certified or Registered Mail, postage prepaid, and shall be addressed to either party at the address as hereinabove given. Any notice shall be deemed delivered upon hand deliver or three (3) days after depositing such notice in postal receptacles, return receipt requested. Either party may designate such other address as shall be given by written notice.

24. **RECORDING.** Tenant shall record this Lease.

25. **PARTIAL INVALIDITY.** If any provision of this Lease or application thereof to any person or circumstance shall, to any extent, be invalid, the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby and each provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

26. **PROVISIONS BINDING, ETC.** Except as otherwise expressly provided, all provisions herein shall be binding upon and shall inure to the benefit of the parties, their legal representatives, successors and assigns and any sale by Landlord of the Land or of the Demised Premises shall be subject to this Lease provided the same is not in default at the time of such sale. Each provision to be performed by Tenant shall be construed to be both a covenant and a condition, and if there shall be more than one lessee, they shall all be bound, jointly and severally, by these provisions.

27. **ENTIRE LEASE, ETC.** This Lease and the Exhibits, Riders and/or Addenda if any attached, set forth the entire Lease between the parties. Any prior conversations or writings are merged herein and extinguished. No subsequent amendment to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by the party sought to be charged. Submission of this Lease for examination does not constitute an option for the Demised Premises and becomes effective as a Lease only upon execution and delivery thereof by Landlord to Tenant. It is herewith agreed that this Lease contains no restrictive covenants in favor of Tenant. The captions and numbers appearing herein are inserted only as a matter of convenience and are not intended to define, limit, construe or describe the scope or intent of any paragraph, nor in any way affect this Lease.

28. **NO PARTNERSHIP.** Nothing contained in this Lease shall, or shall be deemed or construed so as to create the relationship of principal-agent, joint venturers, co-adventurers, partners or co-tenants between Landlord and Tenant; it being the express intention of the parties that they are and shall remain independent contractors one as to the other.

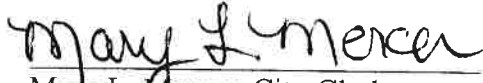
29. **RADON GAS DISCLOSURE.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

30. **EXTENSION OF CITY BOARDWALK.**

The Landlord has previously built and established a boardwalk system on its property adjacent to the Amelia River, but not currently extending across the Demised Premises. The Landlord is desirous of extending the boardwalk in order to establish a continuous pedestrian linkage on the waterfront. The Landlord and Tenant hereby agree that a continuous boardwalk is in the best interest of the public and the parties, and the parties will meet to determine the most feasible and cost effective method to construct the boardwalk across or around the Demised Premises. The Tenant the City Manager or his/her designee shall meet upon written notice to the Tenant, to determine the best method and location for the boardwalk extension. In the event that the Tenant and City Manager or his/her designee can not agree, the Tenant shall have the right to ask the City Commission to determine the best method and location for the boardwalk extension. The Landlord shall provide one hundred eighty (180) days written notice of commencement of the work to install the new boardwalk. If it is necessary to remove that portion of the existing Demised Premises required to accommodate the new boardwalk, it shall be at the City's sole cost and expense. In order to minimize interruption to Tenant's business, the Tenant shall be permitted to construct additional square footage to replace that portion of the Demised Premises to be removed prior to demolition. Any such construction of square footage on the Demised Premises shall be at Tenant's sole cost and expense. Tenant shall only be permitted to construct the same square footage of the Demised Premises to be removed to accommodate the new boardwalk. In the event that additional land, space or square footage is required by Tenant to accommodate the replacement of the Demised Premises and/or add additional services to the business, the parties shall renegotiate this Lease and the description of the Demised Premises as identified in Exhibit "A", attached hereto.

IN WITNESS WHEREOF, the parties hereto have signed and sealed this Lease as of the day and year first above written.

ATTEST:


Mary L. Mercer, City Clerk

"LANDLORD"
CITY OF FERNANDINA BEACH


Michael J. Czymbor, City Manager

APPROVED AS TO FORM:

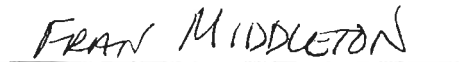

Tammi E. Bach, City Attorney

WITNESS:

"TENANT"


Witness Signature


By: Anne T. Coonrod
d/b/a Atlantic Seafood


Print Name of Witness

Marina Department Mission Statement

Fernandina Harbor Marina, as a self-sustaining business of the Marina Department for the City of Fernandina Beach, is dedicated to exceptional first class service to the community and our customers at a reasonable cost. As ambassadors for the City, we believe in offering a Sunshine State welcome to all boaters, by providing personalized service from a competent and pleasant staff. As the gateway to Florida and its many waterways, we are committed to enhancing our environment through education of our guests, best management practices for our employees and by maintaining our Clean Marina status. Our mission will be achieved through quality employees, teamwork, caring, integrity, initiative and a commitment to excellence.

Select Year: 2018 ▼ Go

The 2018 Florida Statutes

[Title XXIV](#)
VESSELS

[Chapter 327](#)
VESSEL SAFETY

[View Entire Chapter](#)

CHAPTER 327 VESSEL SAFETY

- 327.01 Short title.
- 327.02 Definitions.
- 327.04 Rules.
- 327.30 Collisions, accidents, and casualties.
- 327.301 Written reports of accidents.
- 327.302 Accident report forms.
- 327.31 Transmittal of information.
- 327.32 Vessel declared dangerous instrumentality; civil liability.
- 327.33 Reckless or careless operation of vessel.
- 327.331 Divers; definitions; divers-down warning device required; obstruction to navigation of certain waters; penalty.
- 327.34 Incapacity of operator.
- 327.35 Boating under the influence; penalties; “designated drivers.”
- 327.352 Tests for alcohol, chemical substances, or controlled substances; implied consent; refusal.
- 327.35215 Penalty for failure to submit to test.
- 327.353 Blood test for impairment or intoxication in cases of death or serious bodily injury; right to use reasonable force.
- 327.354 Presumption of impairment; testing methods.
- 327.355 Operation of vessels by persons under 21 years of age who have consumed alcoholic beverages.
- 327.359 Refusal to submit to testing; penalties.
- 327.36 Mandatory adjudication; prohibition against accepting plea to lesser included offense.
- 327.37 Water skis, parasails, aquaplanes, kiteboarding, kitesurfing, and moored ballooning regulated.
- 327.375 Commercial parasailing.
- 327.38 Skiing prohibited while intoxicated or under influence of drugs.
- 327.39 Personal watercraft regulated.
- 327.391 Airboats regulated.
- 327.395 Boating safety identification cards.
- 327.40 Uniform waterway markers.
- 327.41 Uniform waterway regulatory markers.
- 327.4107 Vessels at risk of becoming derelict on waters of this state.
- 327.4108 Anchoring of vessels in anchoring limitation areas.
- 327.4109 Anchoring or mooring prohibited; exceptions; penalties.
- 327.42 Mooring to or damaging of uniform waterway markers prohibited.
- 327.43 Silver Glen Run and Silver Glen Springs; navigation channel.
- 327.44 Interference with navigation; relocation or removal; recovery of costs.

- 327.45 Protection zones for springs.
- 327.46 Boating-restricted areas.
- 327.461 Safety zones, security zones, regulated navigation areas, and naval vessel protection zones; prohibited entry; penalties.
- 327.47 Competitive grant programs.
- 327.48 Regattas, races, marine parades, tournaments, or exhibitions.
- 327.49 Testing vessels and vessel motors.
- 327.50 Vessel safety regulations; equipment and lighting requirements.
- 327.52 Maximum loading and horsepower.
- 327.53 Marine sanitation.
- 327.54 Liveries; safety regulations; penalty.
- 327.56 Safety and marine sanitation equipment inspections; qualified.
- 327.58 Jurisdiction.
- 327.59 Marina evacuations.
- 327.60 Local regulations; limitations.
- 327.65 Muffling devices.
- 327.66 Carriage of gasoline on vessels.
- 327.70 Enforcement of this chapter and chapter 328.
- 327.71 Exemption.
- 327.72 Penalties.
- 327.73 Noncriminal infractions.
- 327.731 Mandatory education for violators.
- 327.74 Uniform boating citations.
- 327.803 Boating Advisory Council.
- 327.804 Compilation of statistics on boating accidents and violations.

327.01 Short title.—This chapter shall be known as the “Florida Vessel Safety Law.”

History.—s. 1, ch. 59-399; s. 1, ch. 65-361; s. 1, ch. 84-184; s. 5, ch. 99-289.

Note.—Former s. 371.011.

327.02 Definitions.—As used in this chapter and in chapter 328, unless the context clearly requires a different meaning, the term:

- (1) “Airboat” means a vessel that is primarily designed for use in shallow waters and powered by an internal combustion engine with an airplane-type propeller mounted above the stern and used to push air across a set of rudders.
- (2) “Alien” means a person who is not a citizen of the United States.
- (3) “Barge” means a vessel that does not have living quarters, is not propelled by its own power, and is designed to be pushed or pulled by another vessel.
- (4) “Boating accident” means a collision, accident, or casualty involving a vessel in or upon, or entering into or exiting from, the water, including capsizing, collision with another vessel or object, sinking, personal injury, death, disappearance of a person from on board under circumstances that indicate the possibility of death or injury, or property damage to any vessel or dock.
- (5) “Canoe” means a light, narrow vessel with curved sides and with both ends pointed. A canoe-like vessel with a transom may not be excluded from the definition of a canoe if the width of its transom is less than 45 percent of the width of its beam or it has been designated as a canoe by the United States Coast Guard.
- (6) “Commercial fishing vessel” means a vessel primarily engaged in the taking or landing of saltwater fish or saltwater products or freshwater fish or freshwater products, or a vessel licensed pursuant to s. 379.361 from which commercial quantities of saltwater products are harvested, from within and without the waters of this state for sale to the consumer or to a retail or wholesale dealer.

(7) “Commercial parasailing” means providing or offering to provide, for consideration, any activity involving the towing of a person by a motorboat if:

- (a) One or more persons are tethered to the towing vessel;
- (b) The person or persons ascend above the water; and
- (c) The person or persons remain suspended under a canopy, chute, or parasail above the water while the vessel is underway.

The term does not include ultralight glider towing conducted under rules of the Federal Aviation Administration governing ultralight vehicles as defined in 14 C.F.R. part 103.

(8) “Commercial vessel” means a vessel used as a place of business or a professional or other commercial enterprise.

(9) “Commission” means the Fish and Wildlife Conservation Commission.

(10) “Dealer” means a person authorized by the Department of Revenue to buy, sell, resell, or otherwise distribute vessels. Such person must have a valid sales tax certificate of registration issued by the Department of Revenue and a valid commercial or occupational license required by any county, municipality, or political subdivision of the state in which the person operates.

(11) “Division” means the Division of Law Enforcement of the Fish and Wildlife Conservation Commission.

(12) “Documented vessel” means a vessel for which a valid certificate of documentation is outstanding pursuant to 46 C.F.R. part 67.

(13) “Effective means of propulsion for safe navigation” means a vessel, other than a barge, that is equipped with:

- (a) A functioning motor, controls, and steering system; or
- (b) Rigging and sails that are present and in good working order, and a functioning steering system.

(14) “Floating structure” means a floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term includes, but is not limited to, an entity used as a residence, place of business or office with public access; a hotel or motel; a restaurant or lounge; a clubhouse; a meeting facility; a storage or parking facility; or a mining platform, dredge, dragline, or similar facility or entity represented as such. Floating structures are expressly excluded from the definition of the term “vessel” provided in this section. Incidental movement upon water or resting partially or entirely on the bottom does not, in and of itself, preclude an entity from classification as a floating structure.

(15) “Florida Intracoastal Waterway” means the Atlantic Intracoastal Waterway, the Georgia state line north of Fernandina to Miami; the Port Canaveral lock and canal to the Atlantic Intracoastal Waterway; the Atlantic Intracoastal Waterway, Miami to Key West; the Okeechobee Waterway, Stuart to Fort Myers; the St. Johns River, Jacksonville to Sanford; the Gulf Intracoastal Waterway, Anclote to Fort Myers; the Gulf Intracoastal Waterway, Carrabelle to Tampa Bay; Carrabelle to Anclote open bay section, using the Gulf of Mexico; the Gulf Intracoastal Waterway, Carrabelle to the Alabama state line west of Pensacola; and the Apalachicola, Chattahoochee, and Flint Rivers in Florida.

(16) “Homemade vessel” means a vessel built after October 31, 1972, for which a federal hull identification number is not required to be assigned by the manufacturer pursuant to federal law, or a vessel constructed or assembled before November 1, 1972, by an entity other than a licensed manufacturer for its own use or the use of a specific person. A vessel assembled from a manufacturer’s kit or constructed from an unfinished manufactured hull is considered to be a homemade vessel if such a vessel is not required to have a hull identification number assigned by the United States Coast Guard. A rebuilt or reconstructed vessel may not be construed to be a homemade vessel.

(17) “Houseboat” means a vessel that is used primarily as a residence for at least 21 days during any 30-day period in a county of this state if such residential use of the vessel is to the preclusion of its use as a means of transportation.

(18) “Kiteboarding” or “kitesurfing” means an activity in which a kiteboard or surfboard is tethered to a kite so as to harness the power of the wind and propel the board across a body of water. For purposes of this subsection, the term “kite” has the same meaning as used in 14 C.F.R. part 101.

(19) “Length” means the measurement from end to end over the deck parallel to the centerline, excluding sheer.

(20) “Lien” means a security interest that is reserved or created by a written agreement recorded with the Department of Highway Safety and Motor Vehicles pursuant to s. 328.15 and that secures payment or performance of an obligation and is generally valid against third parties.

(21) “Lienholder” means a person holding a security interest in a vessel, which interest is recorded with the Department of Highway Safety and Motor Vehicles pursuant to s. 328.15.

(22) “Live-aboard vessel” means:

- (a) A vessel used solely as a residence and not for navigation;
- (b) A vessel for which a declaration of domicile has been filed pursuant to s. 222.17; or
- (c) A vessel used as a residence that does not have an effective means of propulsion for safe navigation.

A commercial fishing vessel is expressly excluded from the term “live-aboard vessel.”

(23) “Livery vessel” means a vessel leased, rented, or chartered to another for consideration.

(24) “Manufactured vessel” means a vessel built after October 31, 1972, for which a federal hull identification number is required pursuant to federal law, or a vessel constructed or assembled before November 1, 1972, by a duly licensed manufacturer.

(25) “Marina” means a licensed commercial facility that provides secured public moorings or dry storage for vessels on a leased basis. A commercial establishment authorized by a licensed vessel manufacturer as a dealership is considered a marina for nonjudicial sale purposes.

(26) “Marine sanitation device” means equipment, other than a toilet, for installation on board a vessel which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage. Marine sanitation device Types I, II, and III shall be defined as provided in 33 C.F.R. part 159.

(27) “Marker” means a channel mark or other aid to navigation, an information or regulatory mark, an isolated danger mark, a safe water mark, a special mark, an inland waters obstruction mark, or mooring buoy in, on, or over the waters of the state or the shores thereof, and includes, but is not limited to, a sign, beacon, buoy, or light.

(28) “Moored ballooning” means the operation of a moored balloon pursuant to 14 C.F.R. part 101.

(29) “Motorboat” means a vessel equipped with machinery for propulsion, irrespective of whether the propulsion machinery is in actual operation.

(30) “Muffler” means an automotive-style sound-suppression device or system designed to effectively abate the sound of exhaust gases emitted from an internal combustion engine and prevent excessive sound when installed on such an engine.

(31) “Navigation rules” means, for vessels on:

(a) Waters outside established navigational lines of demarcation as specified in 33 C.F.R. part 80, the International Navigational Rules Act of 1977, 33 U.S.C. s. 1602, as amended, including the appendix and annexes thereto, through October 1, 2012.

(b) All waters not outside of such established lines of demarcation, the Inland Navigational Rules Act of 1980, 33 C.F.R. parts 83-90, as amended, through October 1, 2012.

(32) “Nonresident” means a citizen of the United States who has not established residence in this state and has not continuously resided in this state for 1 year and in one county for the 6 months immediately preceding the initiation of a vessel titling or registration action.

(33) “Operate” means to be in charge of, in command of, or in actual physical control of a vessel upon the waters of this state, to exercise control over or to have responsibility for a vessel’s navigation or safety while the vessel is underway upon the waters of this state, or to control or steer a vessel being towed by another vessel upon the waters of the state.

(34) “Owner” means a person, other than a lienholder, having the property in or title to a vessel. The term includes a person entitled to the use or possession of a vessel subject to an interest in another person which is reserved or created by agreement and securing payment of performance of an obligation. The term does not include a lessee under a lease not intended as security.

(35) “Person” means an individual, partnership, firm, corporation, association, or other entity.

(36) “Personal watercraft” means a vessel less than 16 feet in length which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

(37) “Portable toilet” means a device consisting of a lid, seat, containment vessel, and support structure which is specifically designed to receive, retain, and discharge human waste and which is capable of being removed from a vessel by hand.

(38) “Prohibited activity” means activity that will impede or disturb navigation or creates a safety hazard on waterways of this state.

(39) “Racing shell,” “rowing scull,” or “racing kayak” means a manually propelled vessel that is recognized by national or international racing associations for use in competitive racing and in which all occupants, with the exception of a coxswain, if one is provided, row, scull, or paddle and that is not designed to carry and does not carry any equipment not solely for competitive racing.

(40) “Recreational vessel” means a vessel:

- (a) Manufactured and used primarily for noncommercial purposes; or
- (b) Leased, rented, or chartered to a person for his or her noncommercial use.

(41) “Registration” means a state operating license on a vessel which is issued with an identifying number, an annual certificate of registration, and a decal designating the year for which a registration fee is paid.

(42) “Resident” means a citizen of the United States who has established residence in this state and has continuously resided in this state for 1 year and in one county for the 6 months immediately preceding the initiation of a vessel titling or registration action.

(43) “Sailboat” means a vessel whose sole source of propulsion is the wind.

(44) “Sustained wind speed” means a wind speed determined by averaging the observed wind speed rounded up to the nearest mile per hour over a 2-minute period.

(45) “Unclaimed vessel” means an undocumented vessel, including its machinery, rigging, and accessories, which is in the physical possession of a marina, garage, or repair shop for repairs, improvements, or other work with the knowledge of the vessel owner and for which the costs of such services have been unpaid for more than 90 days after the date written notice of the completed work is given by the marina, garage, or repair shop to the vessel owner.

(46) “Vessel” is synonymous with boat as referenced in s. 1(b), Art. VII of the State Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(47) “Waters of this state” means any navigable waters of the United States within the territorial limits of this state, the marginal sea adjacent to this state and the high seas when navigated as a part of a journey or ride to or from the shore of this state, and all the inland lakes, rivers, and canals under the jurisdiction of this state.

History.—s. 1, ch. 59-399; s. 1, ch. 63-103; s. 1, ch. 65-361; s. 17, ch. 69-216; ss. 25, 35, ch. 69-106; s. 3, ch. 70-336; s. 132, ch. 71-377; s. 1, ch. 72-16; s. 1, ch. 72-55; ss. 1, 15, ch. 74-327; s. 23, ch. 79-334; s. 1, ch. 81-100; s. 1, ch. 81-114; s. 76, ch. 82-226; s. 1, ch. 83-20; s. 2, ch. 84-184; s. 1, ch. 85-252; s. 1, ch. 88-133; s. 1, ch. 89-136; s. 2, ch. 89-250; s. 2, ch. 94-241; s. 152, ch. 94-356; s. 951, ch. 95-148; s. 1, ch. 95-333; s. 3, ch. 98-308; ss. 18, 89, ch. 99-245; s. 2, ch. 2000-362; s. 1, ch. 2006-172; s. 194, ch. 2008-247; s. 6, ch. 2009-86; s. 1, ch. 2013-194; s. 2, ch. 2014-70; s. 2, ch. 2017-163.

Note.—Former s. 371.021.

327.04 Rules.—The commission has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter conferring powers or duties upon it.

History.—s. 1, ch. 59-399; s. 4, ch. 63-103; s. 1, ch. 65-361; ss. 25, 35, ch. 69-106; s. 154, ch. 94-356; s. 48, ch. 95-333; s. 53, ch. 96-413; s. 67, ch. 98-200; s. 8, ch. 99-289; s. 3, ch. 2000-362.

Note.—Former s. 371.161.

327.30 Collisions, accidents, and casualties.—

(1) It is the duty of the operator of a vessel involved in a collision, accident, or other casualty, so far as he or she can do so without serious danger to the operator's own vessel, crew, and passengers, if any, to render to other persons affected by the collision, accident, or other casualty such assistance as is practicable and necessary in order to save them from or minimize any danger caused by the collision, accident, or other casualty, and also to give his or her name, address, and identification of his or her vessel in writing to any person injured and to the owner of any property damaged in the collision, accident, or other casualty. The operator of a vessel involved in an accident with an unattended vessel shall take all reasonable steps to locate and notify the owner or person in charge of such vessel of the accident, furnishing to such owner his or her name, address, and registration number and reporting as required under this section.

(2) In the case of collision, accident, or other casualty involving a vessel in or upon or entering into or exiting from the water, including capsizing, collision with another vessel or object, sinking, personal injury requiring medical treatment beyond immediate first aid, death, disappearance of any person from on board under circumstances which indicate the possibility of death or injury, or damage to any vessel or other property in an apparent aggregate amount of at least \$2,000, the operator shall without delay, by the quickest means available give notice of the accident to one of the following agencies: the Division of Law Enforcement of the Fish and Wildlife Conservation Commission; the sheriff of the county within which the accident occurred; or the police chief of the municipality within which the accident occurred, if applicable.

(3) The statutory duty of a person to make a report or give information to a law enforcement officer making a written report relating to an accident does not extend to information that would violate the privilege of such person against self-incrimination.

(4) Each coroner or other official performing like functions, upon learning of the death of a person in his or her jurisdiction as a result of a boating accident, shall immediately notify the nearest office of the Department of Law Enforcement.

(5) It is unlawful for a person operating a vessel involved in an accident or injury to leave the scene of the accident or injury without giving all possible aid to all persons involved and making a reasonable effort to locate the owner or persons affected and subsequently complying with and notifying the appropriate law enforcement official as required under this section. Any person who violates this subsection with respect to an accident resulting in personal injury commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any person who violates this subsection with respect to an accident resulting in property damage only commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(6) Any law enforcement officer who investigates a boating collision or accident may arrest or cite the operator of any vessel involved in the accident or collision when, based upon personal investigation, the officer has probable cause to believe that the operator has committed any offense in connection with the accident or collision.

History.—s. 1, ch. 59-399; s. 4, ch. 61-511; s. 1, ch. 65-361; ss. 25, 35, ch. 69-106; s. 34, ch. 79-65; s. 5, ch. 81-100; s. 24, ch. 87-243; s. 1, ch. 87-392; s. 3, ch. 89-117; s. 44, ch. 91-224; s. 455, ch. 95-148; s. 16, ch. 96-330; s. 41, ch. 97-96; s. 22, ch. 99-245; s. 2, ch. 2003-143.

Note.—Former s. 371.141.

327.301 Written reports of accidents.—

(1) The operator of a vessel that is in any manner involved in an accident resulting in bodily injury, death, or disappearance of any person or damage to any vessel or other property in an apparent aggregate amount of at least \$2,000 shall, within the time limits specified in 33 C.F.R. s. 173.55, forward a written report of the accident to the division. Whenever the operator of the vessel is incapable of making a written report, the owner of the vessel shall, within the time limits specified in 33 C.F.R. s. 173.55, make the report not made by the operator. However, when the investigating officer has made a written report of the accident pursuant to subsection (3), a written report need not be forwarded to the division by the operator.

(2) The division may require any operator of a vessel involved in an accident of which written report must be made as provided in this section to file supplemental written reports whenever the original report is insufficient in

the opinion of the division, and may require any witness to the accident to render a report to the division.

(3) Every law enforcement officer who in the regular course of duty investigates a boating accident that resulted in bodily injury, death, or disappearance of any person or damage to any vessel or other property in an apparent aggregate amount of at least \$2,000 shall, within 24 hours after completing the investigation, forward a written report of the accident to the division. However, in every case in which an accident report is required by this section and a written report by a law enforcement officer is not prepared, the law enforcement officer shall provide each party involved in the accident a short-form report, prescribed by the division, to be completed by the party. The short-form report must include, but is not limited to: the date, time, and location of the accident; a description of the vessels involved; the names and addresses of the parties involved; the names and addresses of witnesses; and the name, badge number, and law enforcement agency of the officer investigating the accident. Accident reports made by law enforcement officers may not be used for commercial solicitation purposes; however, use of an accident report for purposes of publication in a newspaper or other news periodical or a radio or television broadcast shall not be construed as a “commercial purpose.”

(4) Except as specified in this subsection, each accident report made by a person involved in an accident and any statement made by such person to a law enforcement officer for the purpose of completing an accident report required by this section is without prejudice to the individual reporting. Such report or statement may not be used as evidence in any trial, civil or criminal. However, subject to the applicable rules of evidence, a law enforcement officer who is a witness in a criminal trial may testify as to any statement made to the officer by the person involved in the accident if that person’s privilege against self-incrimination is not violated. The results of breath, urine, and blood tests administered as provided in s. 327.352 or s. 327.353 are not confidential and shall be admissible into evidence in accordance with the provisions of s. 327.354. Accident reports made by persons involved in accidents may not be used for commercial solicitation purposes; however, use of an accident report for purposes of publication in a newspaper or other news periodical or a radio or television broadcast shall not be construed as a “commercial purpose.”

(5) For the purposes of this section, a written report includes a report generated through the use of information technology resources as defined in s. 119.011.

(6) If the vessel is leased, rented, or chartered at the time of the accident, the person who offered the vessel for lease, rental, or charter shall be responsible for complying with this section and s. 327.30.

(7) Any person failing to file the written report required under subsection (1) or a supplemental written report when required by the division under subsection (2) is guilty of a noncriminal infraction.

History.—s. 17, ch. 96-330; s. 48, ch. 2002-1; s. 2, ch. 2004-74; s. 26, ch. 2014-221.

327.302 Accident report forms.—

(1) The commission shall prepare and, upon request, supply to police departments, sheriffs, and other appropriate agencies or individuals forms for accident reports as required in this chapter, suitable with respect to the persons required to make such reports and the purposes to be served. The forms must call for sufficiently detailed information to disclose, with reference to a boating accident, the cause and conditions existing at the time of the accident and the persons and vessels involved. Accident report forms may call for the policy numbers of liability insurance and the names of carriers covering any vessel involved in an accident required to be reported under this chapter.

(2) Every accident report required to be made in writing must be made on the appropriate form approved by the commission and must contain all the information required therein unless not available. Notwithstanding any other provisions of this section, an accident report produced electronically by a law enforcement officer must, at a minimum, contain the same information as is required on those forms approved by the commission.

History.—s. 5, ch. 2000-362.

327.31 Transmittal of information.—In accordance with any request made by an authorized official or agency of the United States, any information compiled or otherwise available to the Division of Law Enforcement concerning boating accidents or other data shall be transmitted to that official or agency of the United States and annual statistics shall be assembled as required by federal law.

History.—s. 1, ch. 59-399; s. 1, ch. 65-361; ss. 25, 35, ch. 69-106; s. 18, ch. 96-330.

Note.—Former s. 371.151.

327.32 Vessel declared dangerous instrumentality; civil liability.—All vessels, of whatever classification, shall be considered dangerous instrumentalities in this state, and any operator of a vessel shall, during any utilization of the vessel, exercise the highest degree of care in order to prevent injuries to others. Liability for reckless or careless operation of a vessel shall be confined to the operator in immediate charge of the vessel and not imposed upon the owner of the vessel, unless the owner is the operator or is present in the vessel when any injury or damage is occasioned by the reckless or careless operation of such vessel, whether such recklessness or carelessness consists of a violation of the provisions of the statutes of this state, or disregard in observing such care and such operation as the rules of the common law require.

History.—s. 3, ch. 59-400; s. 1, ch. 65-361; s. 5, ch. 84-188; s. 11, ch. 85-81.

Note.—Former s. 371.52.

327.33 Reckless or careless operation of vessel.—

(1) It is unlawful to operate a vessel in a reckless manner. A person who operates any vessel, or manipulates any water skis, aquaplane, or similar device, in willful or wanton disregard for the safety of persons or property at a speed or in a manner as to endanger, or likely to endanger, life or limb, or damage the property of, or injure a person is guilty of reckless operation of a vessel. Reckless operation of a vessel includes, but is not limited to, a violation of s. 327.331(6). A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A person who operates any vessel upon the waters of this state shall operate the vessel in a reasonable and prudent manner, having regard for other waterborne traffic, posted speed and wake restrictions, and all other attendant circumstances so as not to endanger the life, limb, or property of another person outside the vessel or to endanger the life, limb, or property of another person due to vessel overloading or excessive speed. The failure to operate a vessel in a manner described in this subsection constitutes careless operation. However, vessel wake and shoreline wash resulting from the reasonable and prudent operation of a vessel, absent negligence, does not constitute damage or endangerment to property. A person who violates this subsection commits a noncriminal violation as defined in s. 775.08.

(3) Each person operating a vessel upon the waters of this state shall comply with the navigation rules.

(a) A person who violates the navigation rules and the violation results in a boating accident causing serious bodily injury as defined in s. 327.353 or death, but the violation does not constitute reckless operation of a vessel, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person who violates the navigation rules and the violation does not constitute reckless operation of a vessel commits a noncriminal violation as defined in s. 775.08, punishable as provided in s. 327.73.

(c) Law enforcement vessels may deviate from the navigational rules when such diversion is necessary to the performance of their duties and when such deviation may be safely accomplished.

(4) Unless otherwise provided in this chapter, the ascertainment of fault in vessel operations and boating accidents shall be determined according to the navigation rules.

History.—s. 1, ch. 59-400; s. 3, ch. 63-105; s. 1, ch. 65-361; s. 6, ch. 81-100; s. 6, ch. 84-188; s. 6, ch. 86-35; s. 2, ch. 88-133; s. 2, ch. 89-136; s. 45, ch. 91-224; s. 1, ch. 92-92; s. 6, ch. 2000-362; s. 1, ch. 2011-152; s. 1, ch. 2016-134; s. 4, ch. 2016-171.

Note.—Former s. 371.50.

327.331 Divers; definitions; divers-down warning device required; obstruction to navigation of certain waters; penalty.—

(1) As used in this section:

(a) “Diver” means a person who is wholly or partially submerged in the waters of the state and is equipped with a face mask and snorkel or underwater breathing apparatus.

(b) “Divers-down buoy” means a buoyant device, other than a vessel, which displays a divers-down symbol on three or four flat sides.

(c) “Divers-down flag” means a flag that displays a divers-down symbol and:

1. Is square or rectangular and has a divers-down symbol on each face.
2. Has white diagonal stripes on each face which begin at the top, staff-side of the flag and extend diagonally to the lower opposite corner.
3. If rectangular, is of a length that is not less than the height or more than 25 percent longer than the height.
4. Has a wire, or other stiffener, or is otherwise constructed to ensure that it remains fully unfurled and extended in the absence of a wind or breeze.

(d) “Divers-down symbol” means a rectangular or square red symbol with a white diagonal stripe. If rectangular, the length may not be less than the height or more than 25 percent longer than the height. The width of the stripe must be 25 percent of the height of the symbol and the stripes must be oriented in the same direction if multiple stripes are displayed.

(e) “Divers-down warning device” means a divers-down flag, buoy, or other similar warning device that:

1. Contains a divers-down symbol that is at least 12 inches by 12 inches in dimension when displayed from the water or at least 20 by 24 inches in dimension when displayed from a vessel;
2. Is designed for, and used by, divers and dive vessels as a means to notify nearby boaters of the presence of a diver in the waters of the immediate area; and
3. Is prominently visible when in use.

(f) “Underwater breathing apparatus” means any apparatus, whether self-contained or connected to a distant source of air or other gas, whereby a person wholly or partially submerged in water is enabled to obtain or reuse air or any other gas or gases for breathing without returning to the surface of the water.

(2) All divers must prominently display a divers-down warning device in the area in which the diving occurs, other than when diving in an area customarily used for swimming only. A divers-down buoy may not be used or displayed onboard a vessel.

(3) A diver or group of divers may not display one or more divers-down warning devices on a river, inlet, or navigation channel, except in case of emergency, in a manner that unreasonably constitutes a navigational hazard.

(4) Divers shall make reasonable efforts to stay within 100 feet of a divers-down warning device on rivers, inlets, and navigation channels. A person operating a vessel on a river, inlet, or navigation channel must make a reasonable effort to maintain a distance of at least 100 feet from any divers-down warning device.

(5) Divers must make reasonable efforts to stay within 300 feet of a divers-down warning device on all waters other than rivers, inlets, and navigation channels. A person operating a vessel on waters other than a river, inlet, or navigation channel must make a reasonable effort to maintain a distance of at least 300 feet from any divers-down warning device.

(6) A vessel other than a law-enforcement or rescue vessel that approaches within 100 feet of a divers-down warning device on a river, inlet, or navigation channel, or within 300 feet of a divers-down warning device on waters other than a river, inlet, or navigation channel, must proceed no faster than is necessary to maintain headway and steerageway.

(7) A divers-down warning device may not be displayed once all divers are aboard or ashore. A person may not operate any vessel displaying a divers-down warning device unless the vessel has one or more divers in the water.

(8) A divers-down warning device displayed from a vessel must be displayed from the highest point of the vessel or another location that ensures that the visibility of the divers-down warning device is not obstructed from any direction.

(9) Except as provided in s. 327.33, a violation of this section is a noncriminal infraction punishable as provided in s. 327.73.

History.—ss. 1, 2, 3, ch. 74-344; s. 64, ch. 74-383; s. 1, ch. 77-174; s. 1, ch. 86-35; ss. 7, 8, ch. 2000-362; s. 1, ch. 2014-138; s. 1, ch. 2016-171.

Note.—Former s. 861.065.

327.34 Incapacity of operator.—It is unlawful for the owner of any vessel or any person having such in charge or in control to authorize or knowingly permit the same to be operated by any person who by reason of physical or mental disability is incapable of operating such vessel under the prevailing circumstances. Nothing in

this section shall be construed to prohibit operation of boats by paraprofessionals who are licensed to operate motor vehicles on the highways.

History.—s. 4, ch. 63-105; s. 1, ch. 65-361.

Note.—Former s. 371.504.

327.35 Boating under the influence; penalties; “designated drivers.”—

(1) A person is guilty of the offense of boating under the influence and is subject to punishment as provided in subsection (2) if the person is operating a vessel within this state and:

(a) The person is under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, or any substance controlled under chapter 893, when affected to the extent that the person’s normal faculties are impaired;

(b) The person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or

(c) The person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.

(2)(a) Except as provided in paragraph (b), subsection (3), or subsection (4), any person who is convicted of a violation of subsection (1) shall be punished:

1. By a fine of:

a. Not less than \$500 or more than \$1,000 for a first conviction.

b. Not less than \$1,000 or more than \$2,000 for a second conviction; and

2. By imprisonment for:

a. Not more than 6 months for a first conviction.

b. Not more than 9 months for a second conviction.

(b)1. Any person who is convicted of a third violation of this section for an offense that occurs within 10 years after a prior conviction for a violation of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. Any person who is convicted of a third violation of this section for an offense that occurs more than 10 years after the date of a prior conviction for a violation of this section shall be punished by a fine of not less than \$2,000 or more than \$5,000 and by imprisonment for not more than 12 months.

3. Any person who is convicted of a fourth or subsequent violation of this section, regardless of when any prior conviction for a violation of this section occurred, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

However, the fine imposed for such fourth or subsequent violation may not be less than \$2,000.

(3) Any person:

(a) Who is in violation of subsection (1);

(b) Who operates a vessel; and

(c) Who, by reason of such operation, causes or contributes to causing:

1. Damage to the property or person of another commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. Serious bodily injury to another, as defined in s. 327.353, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. The death of any human being commits BUI manslaughter, and commits:

a. A felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. A felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if:

(I) At the time of the accident, the person knew, or should have known, that the accident occurred; and

(II) The person failed to give information and render aid as required by s. 327.30.

This sub-subparagraph does not require that the person knew that the accident resulted in injury or death.

(4) Any person who is convicted of a violation of subsection (1) and who has a blood-alcohol level or breath-alcohol level of 0.15 or higher, or any person who is convicted of a violation of subsection (1) and who at the time of the offense was accompanied in the vessel by a person under the age of 18 years, shall be punished:

- (a) By a fine of:
 - 1. Not less than \$1,000 or more than \$2,000 for a first conviction.
 - 2. Not less than \$2,000 or more than \$4,000 for a second conviction.
 - 3. Not less than \$4,000 for a third or subsequent conviction.
- (b) By imprisonment for:
 - 1. Not more than 9 months for a first conviction.
 - 2. Not more than 12 months for a second conviction.

For the purposes of this subsection, only the instant offense is required to be a violation of subsection (1) by a person who has a blood-alcohol level or breath-alcohol level of 0.15 or higher.

(5) In addition to any sentence or fine, the court shall place any offender convicted of violating this section on monthly reporting probation and shall require attendance at a substance abuse course specified by the court; and the agency conducting the course may refer the offender to an authorized service provider for substance abuse evaluation and treatment, in addition to any sentence or fine imposed under this section. The offender shall assume reasonable costs for such education, evaluation, and treatment, with completion of all such education, evaluation, and treatment being a condition of reporting probation. Treatment resulting from a psychosocial evaluation may not be waived without a supporting psychosocial evaluation conducted by an agency appointed by the court and with access to the original evaluation. The offender shall bear the cost of this procedure. The term "substance abuse" means the abuse of alcohol or any substance named or described in Schedules I-V of s. 893.03.

(6) With respect to any person convicted of a violation of subsection (1), regardless of any other penalty imposed:

(a) For the first conviction, the court shall place the defendant on probation for a period not to exceed 1 year and, as a condition of such probation, shall order the defendant to participate in public service or a community work project for a minimum of 50 hours. The court must also, as a condition of probation, order the impoundment or immobilization of the vessel that was operated by or in the actual control of the defendant or any one vehicle registered in the defendant's name at the time of impoundment or immobilization, for a period of 10 days or for the unexpired term of any lease or rental agreement that expires within 10 days. The impoundment or immobilization must not occur concurrently with the incarceration of the defendant. The impoundment or immobilization order may be dismissed in accordance with paragraph (e) or paragraph (f). The total period of probation and incarceration may not exceed 1 year.

(b) For the second conviction for an offense that occurs within a period of 5 years after the date of a prior conviction for violation of this section, the court shall order imprisonment for not less than 10 days. The court must also, as a condition of probation, order the impoundment or immobilization of the vessel that was operated by or in the actual control of the defendant or any one vehicle registered in the defendant's name at the time of impoundment or immobilization, for a period of 30 days or for the unexpired term of any lease or rental agreement that expires within 30 days. The impoundment or immobilization must not occur concurrently with the incarceration of the defendant. The impoundment or immobilization order may be dismissed in accordance with paragraph (e) or paragraph (f). At least 48 hours of confinement must be consecutive.

(c) For the third or subsequent conviction for an offense that occurs within a period of 10 years after the date of a prior conviction for violation of this section, the court shall order imprisonment for not less than 30 days. The court must also, as a condition of probation, order the impoundment or immobilization of the vessel that was operated by or in the actual control of the defendant or any one vehicle registered in the defendant's name at the time of impoundment or immobilization, for a period of 90 days or for the unexpired term of any lease or rental agreement that expires within 90 days. The impoundment or immobilization must not occur concurrently with the incarceration of the defendant. The impoundment or immobilization order may be dismissed in accordance with paragraph (e) or paragraph (f). At least 48 hours of confinement must be consecutive.

(d) The court must at the time of sentencing the defendant issue an order for the impoundment or immobilization of a vessel. Within 7 business days after the date that the court issues the order of impoundment, and once again 30 business days before the actual impoundment or immobilization of the vessel, the clerk of the

court must send notice by certified mail, return receipt requested, to the registered owner of each vessel, if the registered owner is a person other than the defendant, and to each person of record claiming a lien against the vessel.

(e) A person who owns but was not operating the vessel when the offense occurred may submit to the court a police report indicating that the vessel was stolen at the time of the offense or documentation of having purchased the vessel after the offense was committed from an entity other than the defendant or the defendant's agent. If the court finds that the vessel was stolen or that the sale was not made to circumvent the order and allow the defendant continued access to the vessel, the order must be dismissed and the owner of the vessel will incur no costs. If the court denies the request to dismiss the order of impoundment or immobilization, the petitioner may request an evidentiary hearing.

(f) A person who owns but was not operating the vessel when the offense occurred, and whose vessel was stolen or who purchased the vessel after the offense was committed directly from the defendant or the defendant's agent, may request an evidentiary hearing to determine whether the impoundment or immobilization should occur. If the court finds that either the vessel was stolen or the purchase was made without knowledge of the offense, that the purchaser had no relationship to the defendant other than through the transaction, and that such purchase would not circumvent the order and allow the defendant continued access to the vessel, the order must be dismissed and the owner of the vessel will incur no costs.

(g) All costs and fees for the impoundment or immobilization, including the cost of notification, must be paid by the owner of the vessel or, if the vessel is leased or rented, by the person leasing or renting the vessel, unless the impoundment or immobilization order is dismissed.

(h) The person who owns a vessel that is impounded or immobilized under this paragraph, or a person who has a lien of record against such a vessel and who has not requested a review of the impoundment pursuant to paragraph (e) or paragraph (f), may, within 10 days after the date that person has knowledge of the location of the vessel, file a complaint in the county in which the owner resides to determine whether the vessel was wrongfully taken or withheld from the owner or lienholder. Upon the filing of a complaint, the owner or lienholder may have the vessel released by posting with the court a bond or other adequate security equal to the amount of the costs and fees for impoundment or immobilization, including towing or storage, to ensure the payment of the costs and fees if the owner or lienholder does not prevail. When the bond is posted and the fee is paid as set forth in s. 28.24, the clerk of the court shall issue a certificate releasing the vessel. At the time of release, after reasonable inspection, the owner or lienholder must give a receipt to the towing or storage company indicating any loss or damage to the vessel or to the contents of the vessel.

(i) A defendant, in the court's discretion, may be required to serve all or any portion of a term of imprisonment to which the defendant has been sentenced pursuant to this section in a residential alcoholism treatment program or a residential drug abuse treatment program. Any time spent in such a program must be credited by the court toward the term of imprisonment.

For the purposes of this section, any conviction for a violation of s. 316.193, a previous conviction for the violation of former s. 316.1931, former s. 860.01, or former s. 316.028, or a previous conviction outside this state for driving under the influence, driving while intoxicated, driving with an unlawful blood-alcohol level, driving with an unlawful breath-alcohol level, or any other similar alcohol-related or drug-related traffic offense, is also considered a previous conviction for violation of this section.

(7) A conviction under this section does not bar any civil suit for damages against the person so convicted.

(8) A person who is arrested for a violation of this section may not be released from custody:

(a) Until the person is no longer under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, or any substance controlled under chapter 893 and affected to the extent that his or her normal faculties are impaired;

(b) Until the person's blood-alcohol level or breath-alcohol level is less than 0.05; or

(c) Until 8 hours have elapsed from the time the person was arrested.

(9) Notwithstanding any other provision of this section, for any person convicted of a violation of subsection (1), in addition to the fines set forth in subsections (2) and (4), an additional fine of \$60 shall be assessed and collected in the same manner as the fines set forth in subsections (2) and (4). All fines collected under this subsection shall be remitted by the clerk of the court to the Department of Revenue for deposit into the Brain and Spinal Cord Injury Program Trust Fund and used for the purposes set forth in s. 381.79, after 5 percent is deducted therefrom by the clerk of the court for administrative costs.

(10) It is the intent of the Legislature to encourage boaters to have a “designated driver” who does not consume alcoholic beverages.

History.—s. 2, ch. 59-400; s. 5, ch. 63-105; s. 1, ch. 65-361; s. 1, ch. 71-81; s. 22, ch. 73-331; s. 5, ch. 83-187; s. 7, ch. 84-188; s. 7, ch. 91-255; s. 8, ch. 93-124; s. 456, ch. 95-148; s. 19, ch. 96-330; s. 98, ch. 97-264; s. 49, ch. 97-271; s. 10, ch. 98-308; s. 14, ch. 98-324; s. 47, ch. 2000-152; s. 11, ch. 2000-320; s. 28, ch. 2001-122; s. 4, ch. 2002-78; s. 6, ch. 2002-263; s. 35, ch. 2008-111; s. 7, ch. 2009-86; s. 6, ch. 2010-161; s. 5, ch. 2015-34; s. 14, ch. 2016-105.

Note.—Former s. 371.51.

327.352 Tests for alcohol, chemical substances, or controlled substances; implied consent; refusal.—

(1)(a)1. The Legislature declares that the operation of a vessel is a privilege that must be exercised in a reasonable manner. In order to protect the public health and safety, it is essential that a lawful and effective means of reducing the incidence of boating while impaired or intoxicated be established. Therefore, any person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by so operating such vessel, deemed to have given his or her consent to submit to an approved chemical test or physical test including, but not limited to, an infrared light test of his or her breath for the purpose of determining the alcoholic content of his or her blood or breath if the person is lawfully arrested for any offense allegedly committed while the person was operating a vessel while under the influence of alcoholic beverages. The chemical or physical breath test must be incidental to a lawful arrest and administered at the request of a law enforcement officer who has reasonable cause to believe such person was operating the vessel within this state while under the influence of alcoholic beverages. The administration of a breath test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her breath will result in a civil penalty of \$500, and shall also be told that if he or she refuses to submit to a lawful test of his or her breath and he or she has been previously fined for refusal to submit to any lawful test of his or her breath, urine, or blood, he or she commits a misdemeanor in addition to any other penalties. The refusal to submit to a chemical or physical breath test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

2. Any person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by so operating such vessel, deemed to have given his or her consent to submit to a urine test for the purpose of detecting the presence of chemical substances as set forth in s. 877.111 or controlled substances if the person is lawfully arrested for any offense allegedly committed while the person was operating a vessel while under the influence of chemical substances or controlled substances. The urine test must be incidental to a lawful arrest and administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such tests at the request of a law enforcement officer who has reasonable cause to believe such person was operating a vessel within this state while under the influence of chemical substances or controlled substances. The urine test shall be administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such test in a reasonable manner that will ensure the accuracy of the specimen and maintain the privacy of the individual involved. The administration of a urine test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her urine will result in a civil penalty of \$500, and shall also be told that if he or she refuses to submit to a lawful test of his or her urine and he or she has been previously fined for refusal to submit to any lawful test of his or her breath, urine, or blood, he or she commits a misdemeanor in addition to any other penalties. The refusal to submit to a urine test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

(b)1. The blood-alcohol level must be based upon grams of alcohol per 100 milliliters of blood. The breath-alcohol level must be based upon grams of alcohol per 210 liters of breath.

2. An analysis of a person's breath, in order to be considered valid under this section, must have been performed substantially according to methods approved by the Department of Law Enforcement. Any insubstantial differences between approved techniques and actual testing procedures in any individual case do not render the test or test results invalid.

3. The Alcohol Testing Program within the Department of Law Enforcement is responsible for the regulation of the operation, inspection, and registration of breath test instruments utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 316 and 322. The program is responsible for the regulation of the individuals who operate, inspect, and instruct on the breath test instruments utilized in the driving and boating under the influence provisions and related provisions located in this chapter and chapters 316 and 322. The program is further responsible for the regulation of blood analysts who conduct blood testing to be utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 316 and 322. The program shall:

- a. Establish uniform criteria for the issuance of permits to breath test operators, agency inspectors, instructors, blood analysts, and instruments.
- b. Have the authority to permit breath test operators, agency inspectors, instructors, blood analysts, and instruments.
- c. Have the authority to discipline and suspend, revoke, or renew the permits of breath test operators, agency inspectors, instructors, blood analysts, and instruments.
- d. Establish uniform requirements for instruction and curricula for the operation and inspection of approved instruments.
- e. Have the authority to specify one approved curriculum for the operation and inspection of approved instruments.
- f. Establish a procedure for the approval of breath test operator and agency inspector classes.
- g. Have the authority to approve or disapprove breath test instruments and accompanying paraphernalia for use pursuant to the driving and boating under the influence provisions and related provisions located in this chapter and chapters 316 and 322.
- h. With the approval of the executive director of the Department of Law Enforcement, make and enter into contracts and agreements with other agencies, organizations, associations, corporations, individuals, or federal agencies as are necessary, expedient, or incidental to the performance of duties.
- i. Issue final orders which include findings of fact and conclusions of law and which constitute final agency action for the purpose of chapter 120.
- j. Enforce compliance with the provisions of this section through civil or administrative proceedings.
- k. Make recommendations concerning any matter within the purview of this section, this chapter, chapter 316, or chapter 322.
- l. Promulgate rules for the administration and implementation of this section, including definitions of terms.
- m. Consult and cooperate with other entities for the purpose of implementing the mandates of this section.
- n. Have the authority to approve the type of blood test utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 316 and 322.
- o. Have the authority to specify techniques and methods for breath alcohol testing and blood testing utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 316 and 322.
- p. Have the authority to approve repair facilities for the approved breath test instruments, including the authority to set criteria for approval.

Nothing in this section shall be construed to supersede provisions in this chapter and chapters 316 and 322. The specifications in this section are derived from the power and authority previously and currently possessed by the

Department of Law Enforcement and are enumerated to conform with the mandates of chapter 99-379, Laws of Florida.

(c) Any person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by operating such vessel, deemed to have given his or her consent to submit to an approved blood test for the purpose of determining the alcoholic content of the blood or a blood test for the purpose of determining the presence of chemical substances or controlled substances as provided in this section if there is reasonable cause to believe the person was operating a vessel while under the influence of alcoholic beverages or chemical or controlled substances and the person appears for treatment at a hospital, clinic, or other medical facility and the administration of a breath or urine test is impractical or impossible. As used in this paragraph, the term "other medical facility" includes an ambulance or other medical emergency vehicle. The blood test shall be performed in a reasonable manner. Any person who is incapable of refusal by reason of unconsciousness or other mental or physical condition is deemed not to have withdrawn his or her consent to such test. Any person who is capable of refusal shall be told that his or her failure to submit to such a blood test will result in a civil penalty of \$500 and that a refusal to submit to a lawful test of his or her blood, if he or she has previously been fined for refusal to submit to any lawful test of his or her breath, urine, or blood, is a misdemeanor. The refusal to submit to a blood test upon the request of a law enforcement officer shall be admissible in evidence in any criminal proceeding.

(d) If the arresting officer does not request a chemical or physical breath test of the person arrested for any offense allegedly committed while the person was operating a vessel while under the influence of alcoholic beverages or controlled substances, the person may request the arresting officer to have a chemical or physical test made of the arrested person's breath or a test of the urine or blood for the purpose of determining the alcoholic content of the person's blood or breath or the presence of chemical substances or controlled substances; and, if so requested, the arresting officer shall have the test performed.

(e)1. The tests determining the weight of alcohol in the defendant's blood or breath shall be administered at the request of a law enforcement officer substantially in accordance with rules of the Department of Law Enforcement. However, the failure of a law enforcement officer to request the withdrawal of blood does not affect the admissibility of a test of blood withdrawn for medical purposes.

2. Only a physician, certified paramedic, registered nurse, licensed practical nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, acting at the request of a law enforcement officer, may withdraw blood for the purpose of determining its alcoholic content or the presence of chemical substances or controlled substances therein. However, the failure of a law enforcement officer to request the withdrawal of blood does not affect the admissibility of a test of blood withdrawn for medical purposes.

3. The person tested may, at his or her own expense, have a physician, registered nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, or other person of his or her own choosing administer an independent test in addition to the test administered at the direction of the law enforcement officer for the purpose of determining the amount of alcohol in the person's blood or breath or the presence of chemical substances or controlled substances at the time alleged, as shown by chemical analysis of his or her blood or urine, or by chemical or physical test of his or her breath. The failure or inability to obtain an independent test by a person does not preclude the admissibility in evidence of the test taken at the direction of the law enforcement officer. The law enforcement officer shall not interfere with the person's opportunity to obtain the independent test and shall provide the person with timely telephone access to secure the test, but the burden is on the person to arrange and secure the test at the person's own expense.

4. Upon the request of the person tested, full information concerning the results of the test taken at the direction of the law enforcement officer shall be made available to the person or his or her attorney. Full information is limited to the following:

- a. The type of test administered and the procedures followed.
- b. The time of the collection of the blood or breath sample analyzed.
- c. The numerical results of the test indicating the alcohol content of the blood and breath.

d. The type and status of any permit issued by the Department of Law Enforcement which was held by the person who performed the test.

e. If the test was administered by means of a breath testing instrument, the date of performance of the most recent required inspection of such instrument.

Full information does not include manuals, schematics, or software of the instrument used to test the person or any other material that is not in the actual possession of the state. Additionally, full information does not include information in the possession of the manufacturer of the test instrument.

5. A hospital, clinical laboratory, medical clinic, or similar medical institution or physician, certified paramedic, registered nurse, licensed practical nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, or other person assisting a law enforcement officer does not incur any civil or criminal liability as a result of the withdrawal or analysis of a blood or urine specimen, or the chemical or physical test of a person's breath pursuant to accepted medical standards when requested by a law enforcement officer, regardless of whether or not the subject resisted administration of the test.

(2) The results of any test administered pursuant to this section for the purpose of detecting the presence of any controlled substance shall not be admissible as evidence in a criminal prosecution for the possession of a controlled substance.

(3) Notwithstanding any provision of law pertaining to the confidentiality of hospital records or other medical records, information relating to the alcoholic content of the blood or breath or the presence of chemical substances or controlled substances in the blood obtained pursuant to this section shall be released to a court, prosecuting attorney, defense attorney, or law enforcement officer in connection with an alleged violation of s. 327.35 upon request for such information.

History.—s. 2, ch. 84-188; s. 3, ch. 88-82; s. 3, ch. 88-133; s. 8, ch. 91-255; s. 458, ch. 95-148; s. 21, ch. 96-330; s. 5, ch. 98-308; s. 3, ch. 2000-226; s. 7, ch. 2002-263; s. 2, ch. 2003-54; s. 2, ch. 2006-247.

327.35215 Penalty for failure to submit to test.—

(1) A person who is lawfully arrested for an alleged violation of s. 327.35 and who refuses to submit to a blood test, breath test, or urine test pursuant to s. 327.352 is subject to a civil penalty of \$500.

(2) When a person refuses to submit to a blood test, breath test, or urine test pursuant to s. 327.352, a law enforcement officer who is authorized to make arrests for violations of this chapter shall file with the clerk of the court, on a form provided by the department, a certified statement that probable cause existed to arrest the person for a violation of s. 327.35 and that the person refused to submit to a test as required by s. 327.352. Along with the statement, the officer must also submit a sworn statement on a form provided by the department that the person has been advised of both the penalties for failure to submit to the blood, breath, or urine test and the procedure for requesting a hearing.

(3) A person who has been advised of the penalties pursuant to subsection (2) may, within 30 days afterwards, request a hearing before a county court judge. A request for a hearing tolls the period for payment of the civil penalty, and, if assessment of the civil penalty is sustained by the hearing and any subsequent judicial review, the civil penalty must be paid within 30 days after final disposition. The clerk of the court shall notify the department of the final disposition of all actions filed under this section.

(4) It is unlawful for any person who has not paid a civil penalty imposed pursuant to this section, or who has not requested a hearing with respect to the civil penalty, within 30 calendar days after receipt of notice of the civil penalty to operate a vessel upon the waters of this state. Violation of this subsection is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) Moneys collected by the clerk of the court pursuant to this section shall be disposed of in the following manner:

(a) If the arresting officer was employed or appointed by a state law enforcement agency, the moneys shall be deposited into the Marine Resources Conservation Trust Fund and used to directly enhance the ability of law enforcement officers to perform law enforcement functions on state waters.

(b) If the arresting officer was employed or appointed by a county or municipal law enforcement agency, the moneys shall be deposited into the law enforcement trust fund of that agency.

History.—s. 6, ch. 98-308; s. 23, ch. 99-245; s. 3, ch. 2004-74.

327.353 Blood test for impairment or intoxication in cases of death or serious bodily injury; right to use reasonable force.—

(1)(a) If a law enforcement officer has probable cause to believe that a vessel operated by a person under the influence of alcoholic beverages, any chemical substances, or any controlled substances has caused the death or serious bodily injury of a human being, a law enforcement officer shall require the person operating or in actual physical control of the vessel to submit to a test of the person's blood for the purpose of determining the alcoholic content thereof or the presence of chemical substances as set forth in s. 877.111 or any substance controlled under chapter 893. The law enforcement officer may use reasonable force if necessary to require the person to submit to the administration of the blood test. The blood test shall be performed in a reasonable manner. Notwithstanding s. 327.352, the testing required by this paragraph need not be incidental to a lawful arrest of the person.

(b) The term "serious bodily injury" means an injury to any person, including the operator, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(2)(a) Only a physician, certified paramedic, registered nurse, licensed practical nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, acting at the request of a law enforcement officer, may withdraw blood for the purpose of determining the alcoholic content thereof or the presence of chemical substances or controlled substances therein. However, the failure of a law enforcement officer to request the withdrawal of blood shall not affect the admissibility of a test of blood withdrawn for medical purposes.

(b) A chemical analysis of the person's blood to determine the alcoholic content thereof must have been performed substantially in accordance with methods approved by the Department of Law Enforcement and by an individual possessing a valid permit issued by the department for this purpose. The Department of Law Enforcement may approve satisfactory techniques or methods, ascertain the qualifications and competence of individuals to conduct such analyses, and issue permits that are subject to termination or revocation at the discretion of the department. Insubstantial differences between approved methods or techniques and actual testing procedures, or any insubstantial defects concerning the permit issued by the department, in any individual case, do not render the test or test results invalid.

(c) A hospital, clinical laboratory, medical clinic, or similar medical institution or physician, certified paramedic, registered nurse, licensed practical nurse, other personnel authorized by a hospital to draw blood, or duly licensed clinical laboratory director, supervisor, technologist, or technician, or other person assisting a law enforcement officer shall not incur any civil or criminal liability as a result of the withdrawal or analysis of a blood specimen pursuant to accepted medical standards when requested by a law enforcement officer, regardless of whether or not the subject resisted administration of the test.

(3)(a) Any criminal charge resulting from the incident giving rise to the officer's demand for testing shall be tried concurrently with a charge of any violation arising out of the same incident, unless, in the discretion of the court, such charges should be tried separately. If the charges are tried separately, the fact that the person refused, resisted, obstructed, or opposed testing is admissible at the trial of the criminal offense which gave rise to the demand for testing.

(b) The results of any test administered pursuant to this section for the purpose of detecting the presence of any controlled substance are not admissible as evidence in a criminal prosecution for the possession of a controlled substance.

(4) Notwithstanding any provision of law pertaining to the confidentiality of hospital records or other medical records, information relating to the alcoholic content of the blood or the presence of chemical substances or controlled substances in the blood obtained pursuant to this section shall be released to a court, prosecuting

attorney, defense attorney, or law enforcement officer in connection with an alleged violation of s. 327.35 upon request for such information.

History.—s. 3, ch. 84-188; s. 26, ch. 87-243; s. 4, ch. 87-392; s. 11, ch. 91-255; s. 460, ch. 95-148; s. 22, ch. 96-330; s. 8, ch. 2002-263.

327.354 Presumption of impairment; testing methods.—

(1) It is unlawful and punishable as provided in s. 327.35 for any person who is under the influence of alcoholic beverages or controlled substances, when affected to the extent that the person's normal faculties are impaired or to the extent that the person is deprived of full possession of normal faculties, to operate any vessel within this state. Such normal faculties include, but are not limited to, the ability to see, hear, walk, talk, judge distances, drive an automobile, make judgments, act in emergencies, and, in general, normally perform the many mental and physical acts of daily life.

(2) At the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while operating a vessel while under the influence of alcoholic beverages or controlled substances, when affected to the extent that the person's normal faculties were impaired or to the extent that he or she was deprived of full possession of his or her normal faculties, the results of any test administered in accordance with s. 327.352 or s. 327.353 and this section are admissible into evidence when otherwise admissible, and the amount of alcohol in the person's blood or breath at the time alleged, as shown by chemical analysis of the person's blood, or by chemical or physical test of the person's breath, gives rise to the following presumptions:

(a) If there was at that time a blood-alcohol level or breath-alcohol level of 0.05 or less, it is presumed that the person was not under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired.

(b) If there was at that time a blood-alcohol level or breath-alcohol level in excess of 0.05 but less than 0.08, that fact does not give rise to any presumption that the person was or was not under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired but may be considered with other competent evidence in determining whether the person was under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired.

(c) If there was at that time a blood-alcohol level or breath-alcohol level of 0.08 or higher, that fact is prima facie evidence that the person was under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired. Any person who operates a vessel and who has a blood-alcohol level or breath-alcohol level of 0.08 or higher is guilty of operating a vessel with an unlawful blood-alcohol level or breath-alcohol level.

The presumptions provided in this subsection do not limit the introduction of any other competent evidence bearing upon the question of whether the person was under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired.

(3) A chemical analysis of a person's blood to determine alcoholic content or a chemical or physical test of a person's breath, in order to be considered valid under this section, must have been performed substantially in accordance with methods approved by the Department of Law Enforcement and by an individual possessing a valid permit issued by the department for this purpose. Insubstantial differences between approved techniques and actual testing procedures or insubstantial defects concerning the permit issued by the department, in any individual case, do not render the test or test results invalid. The Department of Law Enforcement may approve satisfactory techniques or methods, ascertain the qualifications and competence of individuals to conduct such analyses, and issue permits subject to termination or revocation in accordance with rules adopted by the department.

(4) Any person charged with a violation of s. 327.35 is entitled to trial by jury according to the Florida Rules of Criminal Procedure.

(5) An affidavit containing the results of any test of a person's blood or breath to determine its alcohol content, as authorized by s. 327.352 or s. 327.353, is admissible in evidence under the exception to the hearsay rule in s. 90.803(8) for public records and reports. The affidavit is admissible without further authentication and is

presumptive proof of the results of an authorized test to determine alcohol content of the blood or breath if the affidavit discloses:

- (a) The type of test administered and the procedures followed;
- (b) The time of the collection of the blood or breath sample analyzed;
- (c) The numerical results of the test indicating the alcohol content of the blood or breath;
- (d) The type and status of any permit issued by the Department of Law Enforcement which was held by the person who performed the test; and
- (e) If the test was administered by means of a breath testing instrument, the date of performance of the most recent required maintenance on such instrument.

The Department of Law Enforcement shall provide a form for the affidavit. Admissibility of the affidavit does not abrogate the right of the person tested to subpoena the person who administered the test for examination as an adverse witness at a civil or criminal trial or other proceeding.

History.—s. 4, ch. 84-188; s. 4, ch. 88-82; s. 9, ch. 91-255; s. 24, ch. 92-58; s. 10, ch. 93-124; s. 461, ch. 95-148; s. 23, ch. 96-330.

327.355 Operation of vessels by persons under 21 years of age who have consumed alcoholic beverages.

(1)(a) Notwithstanding s. 327.35, it is unlawful for a person under the age of 21 who has a breath-alcohol level of 0.02 or higher to operate or be in actual physical control of a vessel.

(b) A law enforcement officer who has probable cause to believe that a vessel is being operated by or is in the actual physical control of a person who is under the age of 21 while under the influence of alcoholic beverages or who has any breath-alcohol level may lawfully detain such a person and may request that person to submit to a test to determine his or her breath-alcohol level. If the person under the age of 21 refuses to submit to such testing, the law enforcement officer shall warn the person that failure to submit to the breath test will result in the required performance of 50 hours of public service and that his or her vessel operating privilege will be suspended until the public service is performed. Failure or refusal to submit to a breath test after this warning is a violation of this section.

(2) Any person under the age of 21 who accepts the privilege extended by the laws of this state of operating a vessel upon the waters of this state, by so operating such vessel, is deemed to have expressed his or her consent to the provisions of this section.

(3) A breath test to determine breath-alcohol level pursuant to this section may be conducted as authorized by s. 316.1932 or s. 327.352, or by a preliminary alcohol screening test device listed in the United States Department of Transportation's conforming-product list of evidential breath-measurement devices. The reading from such a device is admissible in evidence in any trial or hearing.

(4) A violation of this section is a noncriminal infraction, and being detained pursuant to this section does not constitute an arrest. This section does not bar prosecution under s. 327.35, and the penalties provided herein shall be imposed in addition to any other penalty provided for boating under the influence or for refusal to submit to testing.

(5) A person convicted of a violation of subsection (1) shall be ordered by the court to:

- (a) Participate in public service or a community work project for a minimum of 50 hours;
- (b) Refrain from operating any vessel until the 50 hours of public service or community work has been performed; and

(c) Enroll in, attend, and successfully complete, at his or her own expense, a classroom or online boating safety course that meets minimum standards established by commission rule.

(6) For the purposes of this section, "conviction" means a finding of guilt or the acceptance of a plea of guilty or nolo contendere, regardless of whether or not adjudication was withheld. Notwithstanding the provisions of s. 948.01, no court may suspend, defer, or withhold imposition of sentence for any violation of this section. Any person who operates any vessel on the waters of this state while his or her vessel operating privilege is suspended

pursuant to this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 8, ch. 98-308; s. 9, ch. 2000-362; s. 1, ch. 2014-136.

327.359 Refusal to submit to testing; penalties.—Any person who has refused to submit to a chemical or physical test of his or her breath, blood, or urine, as described in s. 327.352, and who has been previously fined for refusal to submit to a lawful test of his or her breath, urine, or blood, and:

- (1) Who the arresting law enforcement officer had probable cause to believe was operating or in actual physical control of a vessel in this state while under the influence of alcoholic beverages, chemical substances, or controlled substances;
- (2) Who was placed under lawful arrest for a violation of s. 327.35 unless such test was requested pursuant to s. 327.352(1)(c);
- (3) Who was informed that if he or she refused to submit to such test he or she is subject to a fine of \$500;
- (4) Who was informed that a refusal to submit to a lawful test of his or her breath, urine, or blood, if he or she has been previously fined for refusal to submit to a lawful test of his or her breath, urine, or blood, is a misdemeanor; and
- (5) Who, after having been so informed, refused to submit to any such test when requested to do so by a law enforcement officer or correctional officer

commits a misdemeanor of the first degree and is subject to punishment as provided in s. 775.082 or s. 775.083.

History.—s. 9, ch. 2002-263.

327.36 Mandatory adjudication; prohibition against accepting plea to lesser included offense.—

(1) Notwithstanding the provisions of s. 948.01, no court may suspend, defer, or withhold adjudication of guilt or imposition of sentence for any violation of s. 327.35, for manslaughter resulting from the operation of a vessel, or for vessel homicide.

(2)(a) No trial judge may accept a plea of guilty to a lesser offense from a person who is charged with a violation of s. 327.35, manslaughter resulting from the operation of a vessel, or vessel homicide and who has been given a breath or blood test to determine blood or breath alcohol content, the results of which show a blood-alcohol level or breath-alcohol level of 0.15 or more.

(b) A trial judge may not accept a plea of guilty to a lesser offense from a person charged with a felony violation of s. 327.35, manslaughter resulting from the operation of a vessel, or vessel homicide.

History.—s. 27, ch. 87-243; s. 5, ch. 87-392; s. 10, ch. 91-255; s. 24, ch. 96-330; s. 10, ch. 2000-362; s. 8, ch. 2009-86.

327.37 Water skis, parasails, aquaplanes, kiteboarding, kitesurfing, and moored ballooning regulated.—

(1)(a) A person may not operate a vessel on any waters of this state towing a person on water skis, or an aquaplane, or similar device unless there is in such vessel a person, in addition to the operator, in a position to observe the progress of the person being towed, or the vessel is equipped with a wide-angle rear view mirror mounted in such manner as to permit the operator of the vessel to observe the progress of the person being towed. This subsection does not apply to class A motorboats operated by the person being towed and designed to be incapable of carrying the operator in the motorboat.

(b) A person may not operate a vessel on any waters of this state towing a person attached to a parasail or similar device unless there is a person in the vessel, in addition to the operator, in a position to observe the progress of the person being towed. A wide-angle rear view mirror is not acceptable for this purpose.

(2)(a) A person may not engage in water skiing, parasailing, aquaplaning, or any similar activity at any time between the hours from one-half hour after sunset to one-half hour before sunrise.

(b) A person may not engage in water skiing, parasailing, aquaplaning, or any similar activity unless such person is wearing a noninflatable personal flotation device currently approved by the United States Coast Guard and used in accordance with the United States Coast Guard approval label.

(3) The provisions of subsections (1) and (2) do not apply to a performer engaged in a professional exhibition or a person preparing to participate or participating in an official regatta, boat race, marine parade, tournament, or exhibition held pursuant to s. 327.48.

(4) A person may not operate or manipulate any vessel, tow rope, or other device by which the direction or location of water skis, parasail, aquaplane, innertube, sled, or similar device may be affected or controlled, in such a way as to cause the water skis, parasail, aquaplane, innertube, sled, or similar device or any person thereon to collide or strike against or be likely to collide or strike against any vessel, bridge, wharf, pier, dock, buoy, platform, piling, channel marker, or other object, except slalom buoys, ski jumps, or like objects used normally in competitive or recreational skiing.

(5) A person may not operate any vessel towing a parasail or engage in parasailing or moored ballooning within 100 feet of the marked channel of the Florida Intracoastal Waterway or within 2 miles of the boundary of any airport unless otherwise permitted under federal law.

(6) A person may not engage in kiteboarding or kitesurfing within an area that extends 1 mile in a direct line along the centerline of an airport runway and that has a width measuring one-half mile unless otherwise permitted under federal law.

History.—s. 5, ch. 59-400; s. 9, ch. 63-105; s. 1, ch. 65-361; s. 8, ch. 84-188; s. 6, ch. 87-392; s. 4, ch. 94-241; s. 1, ch. 99-162; s. 11, ch. 2000-362; s. 3, ch. 2014-70; s. 1, ch. 2015-161.

Note.—Former s. 371.54.

327.375 Commercial parasailing.—

(1) The operator of a vessel engaged in commercial parasailing shall ensure that the provisions of this section and s. 327.37 are met.

(2) The owner or operator of a vessel engaged in commercial parasailing may not offer or provide for consideration any parasailing activity unless the owner or operator first obtains and maintains in full force and effect a liability insurance policy from an insurance carrier licensed in this state or approved by the Office of Insurance Regulation or an eligible surplus lines insurer. Such policy must provide bodily injury liability coverage in the amounts of at least \$1 million per occurrence and \$2 million annual aggregate. Proof of insurance must be available for inspection at the location where commercial parasailing is offered or provided for consideration, and each customer who requests such proof shall be provided with the insurance carrier's name and address and the insurance policy number.

(3) The operator of a vessel engaged in commercial parasailing must have a current and valid license issued by the United States Coast Guard authorizing the operator to carry passengers for hire. The license must be appropriate for the number of passengers carried and the displacement of the vessel. The license must be carried on the vessel and be available for inspection while engaging in commercial parasailing activities.

(4) A vessel engaged in commercial parasailing must be equipped with a functional VHF marine transceiver and a separate electronic device capable of providing access to National Weather Service forecasts and current weather conditions.

(5)(a) Commercial parasailing is prohibited if the current observed wind conditions in the area of operation include a sustained wind speed of more than 20 miles per hour; if wind gusts are 15 miles per hour higher than the sustained wind speed; if the wind speed during gusts exceeds 25 miles per hour; if rain or heavy fog results in reduced visibility of less than 0.5 mile; or if a known lightning storm comes within 7 miles of the parasailing area.

(b) The operator of the vessel engaged in commercial parasailing shall use all available means to determine prevailing and forecasted weather conditions and record this information in a weather log each time passengers are to be taken out on the water. The weather log must be available for inspection at all times at the operator's place of business.

(6) A person or operator who violates this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 4, ch. 2014-70.

327.38 Skiing prohibited while intoxicated or under influence of drugs.—No person shall manipulate any water skis, aquaplane, or similar device from a vessel while intoxicated or under the influence of any narcotic drug, barbiturate, or marijuana, to the extent that the person's normal faculties are impaired.

History.—s. 4, ch. 59-400; s. 8, ch. 63-105; s. 1, ch. 65-361; s. 462, ch. 95-148.

Note.—Former s. 371.53.

327.39 Personal watercraft regulated.—

(1) A person may not operate a personal watercraft unless each person riding on or being towed behind such vessel is wearing a personal flotation device, other than an inflatable device, currently approved by the United States Coast Guard and used in accordance with the United States Coast Guard approval label.

(2) A person operating a personal watercraft equipped by the manufacturer with a lanyard type engine cutoff switch must attach such lanyard to his or her person, clothing, or personal flotation device as is appropriate for the specific vessel.

(3) A person may not operate a personal watercraft at any time between the hours from one-half hour after sunset to one-half hour before sunrise. However, an agent or employee of a fire or emergency rescue service is exempt from this subsection while performing his or her official duties.

(4) A personal watercraft must at all times be operated in a reasonable and prudent manner. Maneuvers which unreasonably or unnecessarily endanger life, limb, or property, including, but not limited to, weaving through congested vessel traffic, jumping the wake of another vessel unreasonably or unnecessarily close to such other vessel or when visibility around such other vessel is obstructed, and swerving at the last possible moment to avoid collision shall constitute reckless operation of a vessel, as provided in s. 327.33(1). Any person operating a personal watercraft must comply with the provisions of s. 327.33.

(5) No person under the age of 14 shall operate any personal watercraft on the waters of this state.

(6)(a) It is unlawful for the owner of any personal watercraft or any person having charge over or control of a personal watercraft to authorize or knowingly permit the same to be operated by a person under 14 years of age in violation of this section.

(b)1. It is unlawful for the owner of any leased, hired, or rented personal watercraft, or any person having charge over or control of a leased, hired, or rented personal watercraft, to authorize or knowingly permit the watercraft to be operated by any person who has not received instruction in the safe handling of personal watercraft, in compliance with rules established by the commission.

2. Any person receiving instruction in the safe handling of personal watercraft pursuant to a program established by rule of the commission must provide the owner of, or person having charge of or control over, a leased, hired, or rented personal watercraft with a written statement attesting to the same.

3. The commission shall have the authority to establish rules pursuant to chapter 120 prescribing the instruction to be given, which shall take into account the nature and operational characteristics of personal watercraft and general principles and regulations pertaining to boating safety.

(c) Any person who violates this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(7) This section does not apply to a performer engaged in a professional exhibition or a person preparing to participate or participating in a regatta, race, marine parade, tournament, or exhibition held in compliance with s. 327.48.

History.—s. 3, ch. 89-136; s. 1, ch. 94-295; s. 953, ch. 95-148; s. 12, ch. 2000-362; s. 2, ch. 2015-161.

327.391 Airboats regulated.—

(1) The exhaust of every internal combustion engine used on any airboat operated on the waters of this state shall be provided with an automotive-style factory muffler, underwater exhaust, or other manufactured device capable of adequately muffling the sound of the exhaust of the engine as described in s. 327.02(30). The use of cutouts or flex pipe as the sole source of muffling is prohibited, except as provided in subsection (4). Any person who violates this subsection commits a noncriminal infraction punishable as provided in s. 327.73(1).

(2) An airboat operator cited for an infraction of subsection (1) may not operate the airboat until a muffler as defined in s. 327.02 is installed.

(3) An airboat may not operate on the waters of the state unless it is equipped with a mast or flagpole bearing a flag at a height of at least 10 feet above the lowest portion of the vessel. The flag must be square or rectangular, at least 10 inches by 12 inches in size, international orange in color, and displayed so that the visibility of the flag is not obscured in any direction. Any person who violates this subsection commits a noncriminal infraction punishable as provided in s. 327.73(1).

(4) This section does not apply to a person participating in an event for which a permit is required, or of which notice must be given, under s. 327.48.

(5)(a) Beginning July 1, 2019, a person may not operate an airboat to carry one or more passengers for hire on waters of the state unless he or she has all of the following onboard the airboat:

1. A photographic identification card.
2. Proof of completion of a boater education course that complies with s. 327.395(1)(a). Except as provided in paragraph (b), no operator is exempt from this requirement, regardless of age or the exemptions provided under s. 327.395.

3. Proof of successful completion of a commission-approved airboat operator course that meets the minimum standards established by commission rule.

4. Proof of successful course completion in cardiopulmonary resuscitation and first aid.

(b) A person issued a captain's license by the United States Coast Guard is not required to complete a boating safety education course that complies with s. 327.395(1)(a). Proof of the captain's license must be onboard the airboat when carrying one or more passengers for hire on waters of the state.

(c) A person who violates this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(d) The commission shall adopt rules to implement this subsection no later than October 1, 2018.

History.—s. 2, ch. 2006-172; s. 6, ch. 2014-70; s. 23, ch. 2015-2; s. 3, ch. 2017-163; s. 2, ch. 2018-137.

327.395 Boating safety identification cards.—

(1) A person born on or after January 1, 1988, may not operate a vessel powered by a motor of 10 horsepower or greater unless such person has in his or her possession aboard the vessel photographic identification and a boater safety identification card issued by the commission, or a state-issued identification card or driver license indicating possession of the boater safety identification card, which shows that he or she has:

- (a) Completed a commission-approved boater education course that meets the minimum 8-hour instruction requirement established by the National Association of State Boating Law Administrators;

- (b) Passed a course equivalency examination approved by the commission; or

- (c) Passed a temporary certificate examination developed or approved by the commission.

(2) Any person may obtain a boater safety identification card by complying with the requirements of this section.

(3) Any commission-approved boater education or boater safety course, course-equivalency examination developed or approved by the commission, or temporary certificate examination developed or approved by the commission must include a component regarding diving vessels, awareness of divers in the water, divers-down warning devices, and the requirements of s. 327.331.

(4) The commission may appoint liveries, marinas, or other persons as its agents to administer the course, course equivalency examination, or temporary certificate examination and issue identification cards under guidelines established by the commission. An agent must charge the \$2 examination fee, which must be forwarded to the commission with proof of passage of the examination and may charge and keep a \$1 service fee.

(5) An identification card issued to a person who has completed a boating education course or a course equivalency examination is valid for life. A card issued to a person who has passed a temporary certification examination is valid for 12 months from the date of issuance.

(6) A person is exempt from subsection (1) if he or she:

- (a) Is licensed by the United States Coast Guard to serve as master of a vessel.
 - (b) Operates a vessel only on a private lake or pond.
 - (c) Is accompanied in the vessel by a person who is exempt from this section or who holds an identification card in compliance with this section, is 18 years of age or older, and is attendant to the operation of the vessel and responsible for the safe operation of the vessel and for any violation that occurs during the operation of the vessel.
 - (d) Is a nonresident who has in his or her possession proof that he or she has completed a boater education course or equivalency examination in another state which meets or exceeds the requirements of subsection (1).
 - (e) Is operating a vessel within 90 days after the purchase of that vessel and has available for inspection aboard that vessel a bill of sale meeting the requirements of s. 328.46(1).
 - (f) Is operating a vessel within 90 days after completing the requirements of paragraph (1)(a) or paragraph (1)(b) and has a photographic identification card and a boater education certificate available for inspection as proof of having completed a boater education course. The boater education certificate must provide, at a minimum, the student's first and last name, the student's date of birth, and the date that he or she passed the course examination.
 - (g) Is exempted by rule of the commission.
- (7) A person who operates a vessel in violation of subsection (1) commits a noncriminal infraction, punishable as provided in s. 327.73.
- (8) The commission shall design forms and adopt rules to administer this section. Such rules shall include provision for educational and other public and private entities to offer the course and administer examinations.
- (9) The commission shall institute and coordinate a statewide program of boating safety instruction and certification to ensure that boating courses and examinations are available in each county of the state.
- (10) The commission is authorized to establish and to collect a \$2 examination fee to cover administrative costs.
- (11) The commission is authorized to adopt rules pursuant to chapter 120 to implement the provisions of this section.
- (12) This section may be cited as the "Osmany 'Ozzie' Castellanos Boating Safety Education Act."
- History.**—s. 1, ch. 96-187; s. 24, ch. 99-245; s. 13, ch. 2000-362; s. 35, ch. 2005-2; s. 9, ch. 2009-86; s. 2, ch. 2011-152; s. 2, ch. 2014-138; s. 3, ch. 2016-4; s. 2, ch. 2016-171.

327.40 Uniform waterway markers.—

- (1) Waters of this state shall be marked only in conformity with the United States Aids to Navigation System, 33 C.F.R. part 62.
- (2)(a) Application for marking inland lakes and state waters and any navigable waters under concurrent jurisdiction of the Coast Guard and the division shall be made to the division, accompanied by a map locating the approximate placement of markers, a list of the markers to be placed, a statement of the specification of the markers, a statement of the purpose of marking, and the names of persons responsible for the placement and upkeep of such markers. The division will assist the applicant to secure the proper permission from the Coast Guard where required, make such investigations as needed, and issue a permit. The division shall furnish the applicant with the information concerning the system adopted and the rules existing for placing and maintaining the markers. The division shall keep records of all approvals given and counsel with individuals, counties, municipalities, motorboat clubs, or other groups desiring to mark waterways for safety and navigation purposes in Florida.
- (b)1. No person or municipality, county, or other governmental entity shall place any uniform waterway marker in, on, or over the waters or shores of the state without a permit from the division.
2. The placement of information markers by counties, municipalities, or other governmental entities on inland lakes and their associated canals are exempt from permitting under this section.
- (c) The commission is authorized to adopt rules pursuant to chapter 120 to implement this section.
- (3) The placement under this section or s. 327.41 of any uniform waterway marker on state submerged lands does not subject such lands to the lease requirements of chapter 253.

History.—s. 6, ch. 63-105; s. 1, ch. 65-361; ss. 25, 35, ch. 69-106; s. 4, ch. 90-219; s. 14, ch. 2000-362; s. 1, ch. 2005-217; s. 10, ch. 2009-86.

Note.—Former s. 371.521.

327.41 Uniform waterway regulatory markers.—

(1) The commission shall adopt rules pursuant to chapter 120 establishing a uniform system of regulatory markers for the waters of the state, compatible with the system of regulatory markers prescribed by the United States Coast Guard in the United States Aids to Navigation System, 33 C.F.R. part 62.

(2) Any county or municipality which has been granted a boating-restricted area designation, by rule of the commission pursuant to s. 327.46(1)(a), for a portion of the Florida Intracoastal Waterway within its jurisdiction or which has adopted a boating-restricted area by ordinance pursuant to s. 327.46(1)(b) or (c) or s. 379.2431(2)(p), or any other governmental entity which has legally established a boating-restricted area, may apply to the commission for permission to place regulatory markers within the boating-restricted area.

(3) Application for placing regulatory markers in the waters of the state shall be made to the division as provided in s. 327.40.

(4) No person or municipality, county, or other governmental entity shall place any regulatory markers in, on, or over the waters of the state or the shores thereof without a permit from the division pursuant to s. 327.40.

(5) Aquaculture leaseholds shall be marked as required by this section, and the commission may approve alternative marking requirements as a condition of the lease pursuant to s. 253.68. The provisions of this section notwithstanding, no permit shall be required for the placement of markers required by such a lease.

(6) The commission is authorized to adopt rules pursuant to chapter 120 to implement this section.

History.—s. 2, ch. 72-55; s. 158, ch. 94-356; s. 9, ch. 96-247; s. 25, ch. 99-245; s. 15, ch. 2000-362; s. 18, ch. 2002-264; s. 195, ch. 2008-247; s. 11, ch. 2009-86.

Note.—Former s. 371.523.

327.4107 Vessels at risk of becoming derelict on waters of this state.—

(1) To prevent vessels in neglected or deteriorating condition from reaching a likely and foreseeable state of disrepair, a vessel that is at risk of becoming derelict pursuant to subsection (2) may not anchor on, moor on, or occupy the waters of this state.

(2) An officer of the commission or of a law enforcement agency specified in s. 327.70 may determine that a vessel is at risk of becoming derelict if any of the following conditions exist:

(a) The vessel is taking on or has taken on water without an effective means to dewater.

(b) Spaces on the vessel that are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time.

(c) The vessel has broken loose or is in danger of breaking loose from its anchor.

(d) The vessel is left or stored aground unattended in such a state that would prevent the vessel from getting underway, is listing due to water intrusion, or is sunk or partially sunk.

(e) The vessel does not have an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives telephonic or written notice, which may be provided by facsimile, electronic mail, or other electronic means, stating such from an officer, and the vessel owner or operator is unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair. The commission may adopt rules to implement this paragraph.

(3) A person who anchors or moors a vessel at risk of becoming derelict on the waters of this state or allows such a vessel to occupy such waters commits a noncriminal infraction, punishable as provided in s. 327.73.

(4) The penalty under this section is in addition to other penalties provided by law.

(5) This section does not apply to a vessel that is moored to a private dock or wet slip with the consent of the owner for the purpose of receiving repairs.

History.—s. 1, ch. 2016-108; s. 4, ch. 2017-163.

327.4108 Anchoring of vessels in anchoring limitation areas.—

(1) The following densely populated urban areas, which have narrow state waterways, residential docking facilities, and significant recreational boating traffic, are designated as anchoring limitation areas:

(a) The section of Middle River lying between Northeast 21st Court and the Intracoastal Waterway in Broward County.

(b) Sunset Lake in Miami-Dade County.

(c) The sections of Biscayne Bay in Miami-Dade County lying between:

1. Rivo Alto Island and Di Lido Island.
2. San Marino Island and San Marco Island.
3. San Marco Island and Biscayne Island.

(2) To promote the public's use and enjoyment of the designated waterway, except as provided in subsections (3) and (4), a person may not anchor a vessel at any time during the period between one-half hour after sunset and one-half hour before sunrise in an anchoring limitation area.

(3) Notwithstanding subsection (2), a person may anchor a vessel in an anchoring limitation area:

(a) If the vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors. The vessel may anchor for 3 business days or until the vessel is repaired, whichever occurs first.

(b) If imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard unless the vessel anchors. The vessel may anchor until weather conditions no longer pose such risk. During a hurricane or tropical storm, weather conditions are deemed to no longer pose an unreasonable risk of harm when the hurricane or tropical storm warning affecting the area has expired.

(c) During events described in s. 327.48 or other special events, including, but not limited to, public music performances, local government waterfront activities, or fireworks displays. A vessel may anchor for the lesser of the duration of the special event or 3 days.

(4) This section does not apply to:

(a) Vessels owned or operated by a governmental entity for law enforcement, firefighting, military, or rescue purposes.

(b) Construction or dredging vessels on an active job site.

(c) Vessels actively engaged in commercial fishing.

(d) Vessels engaged in recreational fishing if the persons onboard are actively tending hook and line fishing gear or nets.

(5)(a) As used in this subsection, the term "law enforcement officer or agency" means an officer or agency authorized to enforce this section pursuant to s. 327.70.

(b) A law enforcement officer or agency may remove a vessel from an anchoring limitation area and impound the vessel for up to 48 hours, or cause such removal and impoundment, if the vessel operator, after being issued a citation for a violation of this section:

1. Anchors the vessel in violation of this section within 12 hours after being issued the citation; or
2. Refuses to leave the anchoring limitation area after being directed to do so by a law enforcement officer or agency.

(c) A law enforcement officer or agency acting under this subsection to remove or impound a vessel, or to cause such removal or impoundment, shall be held harmless for any damage to the vessel resulting from such removal or impoundment unless the damage results from gross negligence or willful misconduct.

(d) A contractor performing removal or impoundment services at the direction of a law enforcement officer or agency pursuant to this subsection must:

1. Be licensed in accordance with United States Coast Guard regulations, as applicable.
2. Obtain and carry a current policy issued by a licensed insurance carrier in this state to insure against any accident, loss, injury, property damage, or other casualty caused by or resulting from the contractor's actions.
3. Be properly equipped to perform such services.

(e) In addition to the civil penalty imposed under s. 327.73(1)(z), the operator of a vessel that is removed and impounded pursuant to paragraph (b) must pay all removal and storage fees before the vessel is released. A vessel

removed pursuant to paragraph (b) may not be impounded for longer than 48 hours.

(6) A violation of this section is punishable as provided in s. 327.73(1)(z).

(7) This section shall remain in effect notwithstanding the Legislature's adoption of the commission's recommendations for the regulation of mooring vessels outside of public mooring fields pursuant to ¹s. 327.4105.

History.—s. 1, ch. 2016-96; s. 5, ch. 2017-163.

¹Note.—Repealed by s. 11, ch. 2018-111.

327.4109 Anchoring or mooring prohibited; exceptions; penalties.—

(1)(a) The owner or operator of a vessel or floating structure may not anchor or moor such that the nearest approach of the anchored or moored vessel or floating structure is:

1. Within 150 feet of any marina, boat ramp, boatyard, or other vessel launching or loading facility;
2. Within 300 feet of a superyacht repair facility. For purposes of this subparagraph, the term “superyacht repair facility” means a facility that services or repairs a yacht with a water line of 120 feet or more in length; or
3. Within 100 feet outward from the marked boundary of a public mooring field or a lesser distance if approved by the commission upon request of a local government within which the mooring field is located. The commission may adopt rules to implement this subparagraph.

(b) This subsection does not apply to:

1. A vessel owned or operated by a governmental entity.
2. A construction or dredging vessel on an active job site.
3. A commercial fishing vessel actively engaged in commercial fishing.
4. A vessel actively engaged in recreational fishing if the persons onboard are actively tending hook and line fishing gear or nets.

(2) Notwithstanding subsection (1), an owner or operator of a vessel may anchor or moor within 150 feet of any marina, boat ramp, boatyard, or other vessel launching or loading facility; within 300 feet of a superyacht repair facility; or within 100 feet outward from the marked boundary of a public mooring field if:

(a) The vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard such vessel. The owner or operator of the vessel may anchor or moor for 5 business days or until the vessel is repaired, whichever occurs first.

(b) Imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard such vessel. The owner or operator of the vessel may anchor or moor until weather conditions no longer pose such risk. During a hurricane or tropical storm, weather conditions are deemed to no longer pose an unreasonable risk of harm when the hurricane or tropical storm warning affecting the area has expired.

(3) The owner or operator of a vessel or floating structure may not anchor or moor within the marked boundary of a public mooring field unless the owner or operator has a lawful right to do so by contractual agreement or other business arrangement.

(4) The owner or operator of a vessel or floating structure may not anchor, moor, tie, or otherwise affix or allow the vessel or floating structure to remain anchored, moored, tied, or otherwise affixed to an unpermitted, unauthorized, or otherwise unlawful object that is on or affixed to the bottom of the waters of this state. This subsection does not apply to a private mooring owned by the owner of privately owned submerged lands.

(5) A violation of this section is a noncriminal infraction, punishable as provided in s. 327.73(1)(bb).

History.—s. 6, ch. 2017-163.

327.42 Mooring to or damaging of uniform waterway markers prohibited.—

(1) No person shall moor or fasten a vessel to a lawfully placed uniform waterway marker, except in case of emergency or with the written consent of the marker's owner.

(2) No person shall willfully damage, alter, or move a lawfully placed uniform waterway marker.

History.—s. 1, ch. 72-20; s. 12, ch. 2009-86.

Note.—Former s. 371.524.

327.43 Silver Glen Run and Silver Glen Springs; navigation channel.—The Fish and Wildlife Conservation Commission is directed to mark a navigation channel within Silver Glen Run and Silver Glen Springs, located on the western shore of Lake George on the St. Johns River.

History.—ss. 1, 2, 3, 4, ch. 94-341; s. 26, ch. 99-245; s. 3, ch. 2003-143.

327.44 Interference with navigation; relocation or removal; recovery of costs.—

(1) As used in this section, the term:

(a) “Gross negligence” means conduct so reckless or wanting in care that it constitutes a conscious disregard or indifference to the safety of the property exposed to such conduct.

(b) “Willful misconduct” means conduct evidencing carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design or to show an intentional and substantial disregard of the interests of the vessel owner.

(2) A person may not anchor, moor, or allow to be anchored or moored, except in case of emergency, or operate a vessel or carry on any prohibited activity in a manner which unreasonably or unnecessarily constitutes a navigational hazard or interference with another vessel. Anchoring or mooring under bridges or in or adjacent to heavily traveled channels constitutes interference if unreasonable under the prevailing circumstances.

(3) The commission, officers of the commission, and any law enforcement agency or officer specified in s. 327.70 are authorized and empowered to relocate, remove, or cause to be relocated or removed a vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel. The commission, officers of the commission, or any other law enforcement agency or officer acting under this subsection to relocate, remove, or cause to be relocated or removed a vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel shall be held harmless for all damages to the vessel resulting from such relocation or removal unless the damage results from gross negligence or willful misconduct.

(4) A contractor performing relocation or removal activities at the direction of the commission, officers of the commission, or a law enforcement agency or officer pursuant to this section must be licensed in accordance with applicable United States Coast Guard regulations where required; obtain and carry in full force and effect a policy from a licensed insurance carrier in this state to insure against any accident, loss, injury, property damage, or other casualty caused by or resulting from the contractor’s actions; and be properly equipped to perform the services to be provided.

(5) All costs, including costs owed to a third party, incurred by the commission or other law enforcement agency in the relocation or removal of a vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel are recoverable against the vessel owner. The Department of Legal Affairs shall represent the commission in actions to recover such costs.

History.—s. 4, ch. 63-105; s. 1, ch. 65-361; s. 2, ch. 72-16; s. 1, ch. 2014-143; s. 7, ch. 2017-163.

Note.—Former s. 371.503.

327.45 Protection zones for springs.—

(1) As used in this section, the term “navigable waters of the United States” means the waters of the United States, including the territorial seas, as referenced in the Clean Water Act, 33 U.S.C. ss. 1251 et seq., and the federal rules and regulations promulgated thereunder.

(2) The commission may establish by rule protection zones that restrict the speed and operation of vessels to protect and prevent harm to springs. This harm includes negative impacts to water quality, water quantity, hydrology, wetlands, and aquatic and wetland-dependent species.

(3) When developing a protection zone, the commission shall do so in consultation and coordination with the water management district, the Department of Environmental Protection, and the governing bodies of the county and municipality, if applicable, in which the zone is located. If the zone includes navigable waters of the United States, the commission shall additionally coordinate with the United States Coast Guard and the United States Army Corps of Engineers.

(4) Any individual who operates a vessel in violation of a spring protection zone rule adopted pursuant to this section shall be charged on a uniform boating citation as provided in s. 327.74 and is subject to the penalties

provided in s. 327.73(1)(y).

(5) Restrictions in a protection zone do not apply:

(a) To law enforcement, firefighting, or rescue personnel operating a vessel in the course of performing their official duties; or

(b) In emergency situations. However, the emergency operation of a vessel must be a reasonable response given the circumstances.

(6) The commission is responsible for the posting and maintenance of regulatory markers identifying protection zones.

(7) The commission may adopt rules to implement this section.

History.—s. 1, ch. 2016-233.

327.46 Boating-restricted areas.—

(1) Boating-restricted areas, including, but not limited to, restrictions of vessel speeds and vessel traffic, may be established on the waters of this state for any purpose necessary to protect the safety of the public if such restrictions are necessary based on boating accidents, visibility, hazardous currents or water levels, vessel traffic congestion, or other navigational hazards or to protect seagrasses on privately owned submerged lands.

(a) The commission may establish boating-restricted areas by rule pursuant to chapter 120.

(b) Municipalities and counties have the authority to establish the following boating-restricted areas by ordinance:

1. An ordinance establishing an idle speed, no wake boating-restricted area, if the area is:

a. Within 500 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways more than 300 feet in width or within 300 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways not exceeding 300 feet in width.

b. Within 500 feet of fuel pumps or dispensers at any marine fueling facility that sells motor fuel to the general boating public on waterways more than 300 feet in width or within 300 feet of the fuel pumps or dispensers at any licensed terminal facility that sells motor fuel to the general boating public on waterways not exceeding 300 feet in width.

c. Inside or within 300 feet of any lock structure.

2. An ordinance establishing a slow speed, minimum wake boating-restricted area if the area is:

a. Within 300 feet of any bridge fender system.

b. Within 300 feet of any bridge span presenting a vertical clearance of less than 25 feet or a horizontal clearance of less than 100 feet.

c. On a creek, stream, canal, or similar linear waterway if the waterway is less than 75 feet in width from shoreline to shoreline.

d. On a lake or pond of less than 10 acres in total surface area.

3. An ordinance establishing a vessel-exclusion zone if the area is:

a. Designated as a public bathing beach or swim area.

b. Within 300 feet of a dam, spillway, or flood control structure.

(c) Municipalities and counties have the authority to establish by ordinance the following other boating-restricted areas:

1. An ordinance establishing an idle speed, no wake boating-restricted area, if the area is within 300 feet of a confluence 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.

2. An ordinance establishing a slow speed, minimum wake, or numerical speed limit boating-restricted area if the area is:

a. Within 300 feet of a confluence 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.

- b. Subject to unsafe levels of vessel traffic congestion.
- c. Subject to hazardous water levels or currents, or containing other navigational hazards.
- d. An area that accident reports, uniform boating citations, vessel traffic studies, or other creditable data demonstrate to present a significant risk of collision or a significant threat to boating safety.
- 3. An ordinance establishing a vessel-exclusion zone if the area is reserved exclusively:
 - a. As a canoe trail or otherwise limited to vessels under oars or under sail.
 - b. For a particular activity and user group separation must be imposed to protect the safety of those participating in such activity.

Any of the ordinances adopted pursuant to this paragraph shall not take effect until the commission has reviewed the ordinance and determined by substantial competent evidence that the ordinance is necessary to protect public safety pursuant to this paragraph. Any application for approval of an ordinance shall be reviewed and acted upon within 90 days after receipt of a completed application. Within 30 days after a municipality or county submits an application for approval to the commission, the commission shall advise the municipality or county as to what information, if any, is needed to deem the application complete. An application shall be considered complete upon receipt of all requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired. The commission's action on the application shall be subject to review under chapter 120. The commission shall initiate rulemaking no later than January 1, 2010, to provide criteria and procedures for reviewing applications and procedures for providing for public notice and participation pursuant to this paragraph.

(d) Owners of private submerged lands that are adjacent to Outstanding Florida Waters, as defined in s. 403.061(27), or an aquatic preserve established under ss. 258.39-258.399 may request that the commission establish boating-restricted areas solely to protect any seagrass and contiguous seagrass habitat within their private property boundaries from seagrass scarring due to propeller dredging. Owners making a request pursuant to this paragraph must demonstrate to the commission clear ownership of the submerged lands. The commission shall adopt rules to implement this paragraph, including, but not limited to, establishing an application process and criteria for meeting the requirements of this paragraph. Each approved boating-restricted area shall be established by commission rule. For marking boating-restricted zones established pursuant to this paragraph, owners of privately submerged lands shall apply to the commission for a uniform waterway marker permit in accordance with ss. 327.40 and 327.41, and shall be responsible for marking the boating-restricted zone in accordance with the terms of the permit.

(e) As used in this section, the term "seagrass" has the same meaning as in s. 253.04.

(2) Each such boating-restricted area shall be developed in consultation and coordination with the governing body of the county or municipality in which the boating-restricted area is located and, when the boating-restricted area is to be on the navigable waters of the United States, with the United States Coast Guard and the United States Army Corps of Engineers.

(3) It is unlawful for any person to operate a vessel in a prohibited manner or to carry on any prohibited activity, as defined in this chapter, within a boating-restricted area which has been clearly marked by regulatory markers as authorized under this chapter.

(4) Restrictions in a boating-restricted area established pursuant to this section shall not apply in the case of an emergency or to a law enforcement, firefighting, or rescue vessel owned or operated by a governmental entity.

History.—s. 7, ch. 63-105; s. 1, ch. 65-361; ss. 25, 35, ch. 69-106; s. 23, ch. 78-95; s. 7, ch. 81-100; s. 27, ch. 99-245; s. 16, ch. 2000-362; s. 13, ch. 2009-86; s. 8, ch. 2017-163.

Note.—Former s. 371.522.

327.461 Safety zones, security zones, regulated navigation areas, and naval vessel protection zones; prohibited entry; penalties.—

(1)(a) A person may not knowingly operate a vessel, or authorize the operation of a vessel, in violation of the restrictions of a safety zone, security zone, regulated navigation area, or naval vessel protection zone as defined in and established pursuant to 33 C.F.R. part 165.

(b) The intent of this section is to provide for state and local law enforcement agencies to operate in federally designated exclusion zones specified in paragraph (a). State and local law enforcement personnel may enforce these zones at the request of a federal authority if necessary to augment federal law enforcement efforts and if there is a compelling need to protect the residents and infrastructure of this state. Requests for state and local law enforcement personnel to enforce these zones must be made to the Department of Law Enforcement through the Florida Mutual Aid Plan described in s. 23.1231.

(2) A person who knowingly operates a vessel, or authorizes the operation of a vessel, in violation of the restrictions of such a safety zone, security zone, regulated navigation area, or naval vessel protection zone commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person who continues to operate, or authorize the operation of, a vessel in violation of the restrictions of such a safety zone, security zone, regulated navigation area, or naval vessel protection zone after being warned against doing so, or who refuses to leave or otherwise cease violating the restrictions of such a safety zone, security zone, regulated navigation area, or naval vessel protection zone after having been ordered to do so by a law enforcement officer or by competent military authority, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) A person who knowingly enters a safety zone, security zone, regulated navigation area, or naval vessel protection zone by swimming, diving, wading, or other similar means commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) A person who remains within or reenters such a safety zone, security zone, regulated navigation area, or naval vessel protection zone after being warned not to do so, or who refuses to leave or otherwise cease violating such a safety zone, security zone, regulated navigation area, or naval vessel protection zone after having been ordered to do so by a law enforcement officer or by competent military authority, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) Each incursion into such a safety zone, security zone, regulated navigation area, or naval vessel protection zone is considered a separate offense.

(7) An entry into such a safety zone, security zone, regulated navigation area, or naval vessel protection zone that has been authorized by the captain of the port or the captain's designee is not a violation of this section.

History.—s. 4, ch. 2004-74.

327.47 Competitive grant programs.—The commission shall develop and administer competitive grant programs funded with moneys transferred pursuant to s. 206.606(1)(d). Grants may be awarded for the construction and maintenance of publicly owned boat ramps, piers, and docks; boater education; deployment of manatee technical avoidance technology; and economic development initiatives that promote boating in the state. The commission may adopt rules pursuant to chapter 120 to implement this section.

History.—s. 5, ch. 2003-156.

327.48 Regattas, races, marine parades, tournaments, or exhibitions.—Any person directing the holding of a regatta, tournament, or marine parade or exhibition shall secure a permit from the Coast Guard when such event is held in navigable waters of the United States. A person directing any such affair in any county shall notify the sheriff of the county or the Fish and Wildlife Conservation Commission at least 15 days prior to any event in order that appropriate arrangements for safety and navigation may be assured. Any person or organization sponsoring a regatta or boat race, marine parade, tournament, or exhibition shall be responsible for providing adequate protection to the participants, spectators, and other users of the water.

History.—s. 6, ch. 59-400; s. 10, ch. 63-105; s. 1, ch. 65-361; ss. 25, 35, ch. 69-106; s. 6, ch. 74-327; s. 29, ch. 99-245.

Note.—Former s. 371.55.

327.49 Testing vessels and vessel motors.—Subject to reasonable rules adopted by the commission, manufacturers of vessels and vessel motors that operate vessel and vessel motor test facilities may be authorized to test such vessels, vessel motors, or combinations thereof, on the waters of the state to ensure that they meet generally accepted boating safety standards.

History.—s. 17, ch. 2000-362.

327.50 Vessel safety regulations; equipment and lighting requirements.—

(1)(a) The owner and operator of every vessel on the waters of this state shall carry, store, maintain, and use safety equipment in accordance with current United States Coast Guard safety equipment requirements as specified in the Code of Federal Regulations, unless expressly exempted by the department.

(b) A person may not operate a vessel less than 26 feet in length on the waters of this state unless every person under 6 years of age on board the vessel is wearing a personal flotation device currently approved by the United States Coast Guard and used in accordance with the United States Coast Guard approval label while such vessel is underway. For the purpose of this section, “underway” means at all times except when a vessel is anchored, moored, made fast to the shore, or aground.

(2) No person shall operate a vessel on the waters of this state unless said vessel is equipped with properly serviceable lights and shapes required by the navigation rules.

(3) The use of sirens or flashing, occulting, or revolving lights on any vessel is prohibited, except as expressly provided in the navigation rules or annexes thereto.

History.—s. 8, ch. 59-400; s. 13, ch. 63-105; s. 1, ch. 65-361; s. 7, ch. 74-327; s. 8, ch. 81-100; s. 2, ch. 81-114; s. 9, ch. 84-188; s. 2, ch. 86-35; s. 5, ch. 88-133; s. 2, ch. 92-188; s. 463, ch. 95-148; s. 7, ch. 98-308; s. 3, ch. 2015-161.

Note.—Former s. 371.57.

327.52 Maximum loading and horsepower.—

(1) Except for sailboats, canoes, kayaks, and inflatable boats, this section applies to all monohull motorboats less than 20 feet in length that are: manufactured or used primarily for noncommercial use; leased, rented, or chartered to another for the latter’s noncommercial use; or engaged in the carrying of six or fewer passengers for hire.

(2) No person shall sell or offer for sale any vessel described in subsection (1) unless said vessel displays the maximum capacity information as prescribed in 33 C.F.R. part 183. This shall not apply to resales, but it is the intent of this section to require dealers and manufacturers to furnish this information upon the original sale.

(3) No person shall operate any vessel described in subsection (1) when said vessel exceeds the maximum weight capacity, maximum persons capacity, or maximum horsepower capacity. If no maximum capacity information is displayed, the capacities shall be calculated as provided in 33 C.F.R. part 183, subparts C and D. This subsection shall not preclude the finding of reckless operation under s. 327.33(1) when a vessel is operated in a grossly overloaded or overpowered condition.

History.—s. 11, ch. 59-400; s. 17, ch. 63-105; s. 1, ch. 65-361; s. 2, ch. 97-16.

Note.—Former s. 371.60.

327.53 Marine sanitation.—

(1) Every vessel 26 feet or more in length which has an enclosed cabin with berthing facilities shall, while on the waters of the state, be equipped with a toilet. On a vessel other than a houseboat, the toilet may be portable or permanently installed. Every permanently installed toilet shall be properly attached to the appropriate United States Coast Guard certified or labeled marine sanitation device.

(2) Every houseboat shall be equipped with at least one permanently installed toilet which shall be properly connected to a United States Coast Guard certified or labeled Type III marine sanitation device. If the toilet is simultaneously connected to both a Type III marine sanitation device and to another approved marine sanitation device, the valve or other mechanism selecting between the two marine sanitation devices shall be set to direct all sewage to the Type III marine sanitation device and, while the vessel is on the waters of the state, shall be locked or otherwise secured by the boat operator, so as to prevent resetting.

(3) Every floating structure that has an enclosed living space with berthing facilities, or working space with public access, must be equipped with a permanently installed toilet properly connected to a Type III marine sanitation device or permanently attached via plumbing to shoreside sewage disposal. No structure shall be plumbed so as to permit the discharge of sewage into the waters of the state.

(4)(a) Raw sewage shall not be discharged from any vessel, including houseboats, or any floating structure in Florida waters. The operator of any vessel which is plumbed so that a toilet may be flushed directly into the water

or so that a holding tank may be emptied into the water shall, while the vessel is on the waters of the state, set the valve or other mechanism directing the sewage so as to prevent direct discharge and lock or otherwise secure the valve so as to prevent resetting.

(b) All waste from Type III marine sanitation devices shall be disposed in an approved sewage pumpout facility.

(c) All waste from portable toilets shall be disposed in an approved waste reception facility.

(5) Every vessel owner, operator, and occupant shall comply with United States Coast Guard regulations pertaining to marine sanitation devices and with United States Environmental Protection Agency regulations pertaining to areas in which the discharge of sewage, treated or untreated, is prohibited.

(6)(a) A violation of this section is a noncriminal infraction as provided in s. 327.73. Each violation shall be a separate offense. The owner and operator of any vessel shall be jointly and severally liable for the civil penalty imposed pursuant to this section.

(b) All civil penalties imposed and collected pursuant to this section shall be deposited in the Marine Resources Conservation Trust Fund and shall be used: to implement, administer, and enforce this act; to construct, renovate, or operate pumpout stations and waste reception facilities; and to conduct a program to educate vessel operators about the problem of human body waste discharges from vessels and inform them of the location of pumpout stations and waste reception facilities.

(7) Any vessel or floating structure operated or occupied on the waters of the state in violation of this section is declared a nuisance and a hazard to public safety and health. The owner or operator of any vessel or floating structure cited for violating this section shall, within 30 days following the issuance of the citation, correct the violation for which the citation was issued or remove the vessel or floating structure from the waters of the state. If the violation is not corrected within the 30 days and the vessel or floating structure remains on the waters of the state in violation of this section, law enforcement officers charged with the enforcement of this chapter under s. 327.70 shall apply to the appropriate court in the county in which the vessel or floating structure is located, to order or otherwise cause the removal of such vessel or floating structure from the waters of the state at the owner's expense. If the owner cannot be found or otherwise fails to pay the removal costs, the provisions of s. 328.17 shall apply. If the proceeds under s. 328.17 are not sufficient to pay all removal costs, funds appropriated from the Marine Resources Conservation Trust Fund pursuant to paragraph (6)(b) or s. 328.72(16) may be used.

History.—s. 5, ch. 94-241; s. 19, ch. 96-321; s. 29, ch. 99-289; s. 49, ch. 2000-158; s. 18, ch. 2000-362.

327.54 Liveries; safety regulations; penalty.—

(1) A livery may not knowingly lease, hire, or rent a vessel to any person:

(a) When the number of persons intending to use the vessel exceeds the number considered to constitute a maximum safety load for the vessel as specified on the authorized persons capacity plate of the vessel.

(b) When the horsepower of the motor exceeds the capacity of the vessel.

(c) When the vessel does not contain the required safety equipment required under s. 327.50.

(d) When the vessel is not seaworthy.

(e) When the vessel is equipped with a motor of 10 horsepower or greater, unless the livery provides prerenal or preride instruction that includes, but need not be limited to:

1. Operational characteristics of the vessel to be rented.
2. Safe vessel operation and vessel right-of-way.
3. The responsibility of the vessel operator for the safe and proper operation of the vessel.
4. Local characteristics of the waterway where the vessel will be operated.

Any person delivering the information specified in this paragraph must have successfully completed a boater safety course approved by the National Association of State Boating Law Administrators and this state.

(f) Unless the livery displays boating safety information in a place visible to the renting public. The commission shall prescribe by rule pursuant to chapter 120, the contents and size of the boating safety information to be displayed.

(2) A livery may not knowingly lease, hire, or rent any vessel powered by a motor of 10 horsepower or greater to any person who is required to comply with s. 327.395, unless such person presents to the livery photographic identification and a valid boater safety identification card as required under s. 327.395(1), or meets the exemption provided under s. 327.395(6)(f).

(3) If a vessel is unnecessarily overdue, the livery shall notify the proper authorities.

(4)(a) A livery may not knowingly lease, hire, or rent a personal watercraft to any person who is under 18 years of age.

(b) A livery may not knowingly lease, hire, or rent a personal watercraft to any person who has not received instruction in the safe handling of personal watercraft, in compliance with rules established by the commission pursuant to chapter 120.

(c) Any person receiving instruction in the safe handling of personal watercraft pursuant to a program established by rule of the commission must provide the livery with a written statement attesting to the same.

(5) A livery may not lease, hire, or rent any personal watercraft or offer to lease, hire, or rent any personal watercraft unless the livery first obtains and carries in full force and effect a policy from a licensed insurance carrier in this state, insuring against any accident, loss, injury, property damage, or other casualty caused by or resulting from the operation of the personal watercraft. The insurance policy shall provide coverage of at least \$500,000 per person and \$1 million per event. The livery must have proof of such insurance available for inspection at the location where personal watercraft are being leased, hired, or rented, or offered for lease, hire, or rent, and shall provide to each renter the insurance carrier's name and address and the insurance policy number.

(6) Any person convicted of violating this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 12, ch. 63-105; s. 1, ch. 65-361; s. 303, ch. 71-136; s. 10, ch. 84-188; s. 4, ch. 89-136; s. 2, ch. 96-187; s. 42, ch. 97-96; s. 19, ch. 2000-362; s. 3, ch. 2011-152.

Note.—Former s. 371.561.

327.56 Safety and marine sanitation equipment inspections; qualified.—

(1) No officer shall board any vessel to make a safety or marine sanitation equipment inspection if the owner or operator is not aboard. When the owner or operator is aboard, an officer may board a vessel with consent or when the officer has probable cause or knowledge to believe that a violation of a provision of this chapter has occurred or is occurring. An officer may board a vessel when the operator refuses or is unable to display the safety or marine sanitation equipment required by law, if requested to do so by a law enforcement officer, or when the safety or marine sanitation equipment to be inspected is permanently installed and is not visible for inspection unless the officer boards the vessel.

(2) Inspection of floating structures for compliance with this section shall be as provided in s. 403.091.

History.—s. 9, ch. 59-400; s. 14, ch. 63-105; s. 1, ch. 65-361; s. 11, ch. 84-188; s. 6, ch. 94-241; s. 954, ch. 95-148.

Note.—Former s. 371.58.

327.58 Jurisdiction.—The safety regulations included under this chapter shall apply to all vessels, except as specifically excluded, operating upon the waters of this state.

History.—s. 1, ch. 65-361; s. 27, ch. 79-334; s. 10, ch. 81-100; s. 79, ch. 82-226.

Note.—Former s. 371.66.

327.59 Marina evacuations.—

(1) After June 1, 1994, marinas may not adopt, maintain, or enforce policies pertaining to evacuation of vessels which require vessels to be removed from marinas following the issuance of a hurricane watch or warning, in order to ensure that protecting the lives and safety of vessel owners is placed before interests of protecting property.

(2) Nothing in this section may be construed to restrict the ability of an owner of a vessel or the owner's authorized representative to remove a vessel voluntarily from a marina at any time or to restrict a marina owner from dictating the kind of cleats, ropes, fenders, and other measures that must be used on vessels as a condition of use of a marina. After a tropical storm or hurricane watch has been issued, a marina owner or operator, or an

employee or agent of such owner or operator, may take reasonable actions to further secure any vessel within the marina to minimize damage to a vessel and to protect marina property, private property, and the environment and may charge a reasonable fee for such services.

(3) Notwithstanding any other provisions of this section, in order to minimize damage to a vessel and to protect marina property, private property, and the environment, a marina owner may provide by contract that in the event a vessel owner fails to promptly remove a vessel from a marina after a tropical storm or hurricane watch has been issued, the marina owner, operator, employee, or agent may remove the vessel, if reasonable, from its slip or take whatever reasonable actions are deemed necessary to properly secure a vessel to minimize damage to a vessel and to protect marina property, private property, and the environment and may charge the vessel owner a reasonable fee for any such services rendered. In order to add such a provision to a contract, the marina owner must provide notice to the vessel owner in any such contract in a font size of at least 10 points and in substantially the following form:

NOTICE TO VESSEL OWNER

The undersigned hereby informs you that in the event you fail to remove your vessel from the marina promptly (timeframe to be determined between the marina owner or operator and the vessel owner) after the issuance of a tropical storm or hurricane watch for (insert geographic area), Florida, under Florida law, the undersigned or his or her employees or agents are authorized to remove your vessel, if reasonable, from its slip or take any and all other reasonable actions deemed appropriate by the undersigned or his or her employees or agents in order to better secure your vessel and to protect marina property, private property, and the environment. You are further notified that you may be charged a reasonable fee for any such action.

(4) A marina owner, operator, employee, or agent shall not be held liable for any damage incurred to a vessel from storms or hurricanes and is held harmless as a result of such actions. Nothing in this section may be construed to provide immunity to a marina operator, employee, or agent for any damage caused by intentional acts or negligence when removing or securing a vessel as permitted under this section.

History.—s. 22, ch. 93-211; s. 11, ch. 95-146; s. 464, ch. 95-148; s. 2, ch. 95-150; s. 2, ch. 2006-309.

327.60 Local regulations; limitations.—

(1) The provisions of this chapter and chapter 328 shall govern the operation, equipment, and all other matters relating thereto whenever any vessel shall be operated upon the waters of this state or when any activity regulated hereby shall take place thereon.

(2) This chapter and chapter 328 do not prevent the adoption of any ordinance or local regulation relating to operation of vessels, except that a county or municipality may not enact, continue in effect, or enforce any ordinance or local regulation:

(a) Establishing a vessel or associated equipment performance or other safety standard, imposing a requirement for associated equipment, or regulating the carrying or use of marine safety articles;

(b) Relating to the design, manufacture, or installation of any marine sanitation device on any vessel, except as authorized in subsection (4);

(c) Regulating any vessel upon the Florida Intracoastal Waterway;

(d) Discriminating against personal watercraft;

(e) Discriminating against airboats, for ordinances adopted after July 1, 2006, unless adopted by a two-thirds vote of the governing body enacting such ordinance;

(f) Regulating the anchoring of vessels outside the marked boundaries of mooring fields permitted as provided in s. 327.40, except for:

1. Live-aboard vessels; and

2. Commercial vessels, excluding commercial fishing vessels;

(g) Regulating engine or exhaust noise, except as provided in s. 327.65; or

(h) That conflicts with any provisions of this chapter or any amendments thereto or rules adopted thereunder.

(3) This section does not prohibit local governmental authorities from the enactment or enforcement of regulations that prohibit or restrict the mooring or anchoring of floating structures, live-aboard vessels, or commercial vessels, excluding commercial fishing vessels, within their jurisdictions or of any vessels within the marked boundaries of mooring fields permitted as provided in s. 327.40.

(4)(a) A local government may enact and enforce regulations that require owners or operators of vessels or floating structures subject to the marine sanitation requirements of s. 327.53 to provide proof of proper sewage disposal by means of an approved sewage pumpout service, approved sewage pumpout facility, or approved waste reception facility when anchored or moored for more than 10 consecutive days within the following areas:

1. Marked boundaries of a permitted mooring field under the jurisdiction of the local government;
2. No-discharge zones as published in Volume 53, No. 13 of the Federal Register, page 1678 (1988); Volume 64, No. 164 of the Federal Register, pages 46390-46391 (1999); and Volume 67, No. 98 of the Federal Register, pages 35735-35743 (2002); or
3. No-discharge zones established pursuant to 40 C.F.R. s. 1700.10.

(b) Before a local government may adopt an ordinance to enact and enforce such regulations, the local government must ensure that there are approved sewage pumpout services, approved sewage pumpout facilities, or approved waste reception facilities available within its jurisdiction. Any ordinance adopted pursuant to this subsection may not take effect until reviewed and approved as consistent with this subsection by the commission.

(c) This subsection does not prohibit a local government from enacting or enforcing such sewage pumpout requirements for live-aboard vessels, floating structures, and commercial vessels, excluding commercial fishing vessels, within any areas of its jurisdiction.

(d) The commission may adopt rules to implement this subsection.

(5) A local government may enact and enforce regulations to implement the procedures for abandoned or lost property that allow the local law enforcement agency to remove a vessel affixed to a public dock within its jurisdiction that is abandoned or lost property pursuant to s. 705.103(1). Such regulation must require the local law enforcement agency to post a written notice at least 24 hours before removing the vessel.

History.—s. 10, ch. 59-400; s. 16, ch. 63-105; s. 1, ch. 65-361; s. 3, ch. 72-55; s. 2, ch. 83-20; s. 38, ch. 95-143; s. 30, ch. 99-289; s. 20, ch. 2000-362; s. 3, ch. 2006-172; s. 3, ch. 2006-309; s. 14, ch. 2009-86; s. 9, ch. 2017-163.

Note.—Former s. 371.59.

327.65 Muffling devices.—

(1) The exhaust of every internal combustion engine used on any vessel operated on the waters of this state shall be effectively muffled by equipment so constructed and used as to muffle the noise of the exhaust in a reasonable manner. The use of cutouts is prohibited, except for vessels competing in a regatta or official boat race, and for such vessels while on trial runs.

(2)(a) Any county wishing to impose additional noise pollution and exhaust regulations on vessels may, pursuant to s. 327.60(2), adopt by county ordinance the following regulations:

1. No person shall operate or give permission for the operation of any vessel on the waters of any county or on a specified portion of the waters of any county, including the Florida Intracoastal Waterway, which has adopted the provisions of this section in such a manner as to exceed the following sound levels at a distance of 50 feet from the vessel: for all vessels, a maximum sound level of 90 dB A.

2. Any person who refuses to submit to a sound level test when requested to do so by a law enforcement officer is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) The following words and phrases, when used in this section, shall have the meanings respectively assigned to them in this subsection.

1. “dB A” means the composite abbreviation for the A-weighted sound level and the unit of sound level, the decibel.

2. “Sound level” means the A-weighted sound pressure level measured with fast response using an instrument complying with the specification for sound level meters of the American National Standards Institute, Inc., or its successor bodies, except that only a weighting and fast dynamic response need be provided.

History.—s. 7, ch. 59-400; s. 11, ch. 63-105; s. 1, ch. 65-361; s. 5, ch. 86-35; s. 47, ch. 91-224; s. 15, ch. 2009-86.

Note.—Former s. 371.56.

327.66 Carriage of gasoline on vessels.—

(1)(a) A person shall not:

1. Possess or operate any vessel that has been equipped with tanks, bladders, drums, or other containers designed or intended to hold gasoline, or install or maintain such containers in a vessel, if such containers do not conform to federal regulations or have not been approved by the United States Coast Guard by inspection or special permit.
2. Transport any gasoline in an approved portable container when the container is in a compartment that is not ventilated in strict compliance with United States Coast Guard regulations pertaining to ventilation of compartments containing gasoline tanks.

(b) A person who violates paragraph (a) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2)(a) Gasoline possessed or transported in violation of this section and all containers holding such gasoline are declared to be a public nuisance. A law enforcement agency discovering gasoline possessed or transported in violation of paragraph (1)(a) shall abate the nuisance by removing the gasoline and containers from the vessel and from the waters of this state. A law enforcement agency that removes gasoline or containers pursuant to this subsection may elect to:

1. Retain the property for the agency's own use;
2. Transfer the property to another unit of state or local government;
3. Donate the property to a charitable organization; or
4. Sell the property at public sale pursuant to s. 705.103.

(b) A law enforcement agency that seizes gasoline or containers pursuant to this subsection shall remove and reclaim, recycle, or otherwise dispose of the gasoline as soon as practicable in a safe and proper manner.

(3) All conveyances, vessels, vehicles, and other equipment described in paragraph (1)(a) or used in the commission of a violation of paragraph (1)(a), other than gasoline or containers removed as provided in subsection (2), are declared to be contraband.

(a) Upon conviction of a person arrested for a violation of paragraph (1)(a), the judge shall issue an order adjudging and ordering that all conveyances, vessels, vehicles, and other equipment used in the violation shall be forfeited to the arresting agency. The requirement for a conviction before forfeiture of property establishes to the exclusion of any reasonable doubt that the property was used in connection with the violation resulting in the conviction, and the procedures of chapter 932 do not apply to any forfeiture of property under this subsection following a conviction.

(b) In the absence of an arrest or conviction, any such conveyance, vessel, vehicle, or other equipment used in violation of paragraph (1)(a) shall be subject to seizure and forfeiture as provided by the Florida Contraband Forfeiture Act.

(c) As used in this subsection, the term "conviction" 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.

(4) All costs incurred by the law enforcement agency in the removal of any gasoline, gasoline container, other equipment, or vessel as provided in this section shall be recoverable against the owner thereof. Any person who neglects or refuses to pay such amount shall not be issued a certificate of registration for such vessel or for any other vessel or motor vehicle until the costs have been paid.

(5) Foreign flagged vessels entering United States waters and waters of this state in compliance with 19 U.S.C. s. 1433 are exempt from this section.

History.—s. 16, ch. 2009-86.

327.70 Enforcement of this chapter and chapter 328.—

(1) This chapter and chapter 328 shall be enforced by the Division of Law Enforcement of the Fish and Wildlife Conservation Commission and its officers, the sheriffs of the various counties and their deputies, municipal police

officers, and any other law enforcement officer as defined in s. 943.10, all of whom may order the removal of vessels deemed to be an interference or a hazard to public safety, enforce the provisions of this chapter and chapter 328, or cause any inspections to be made of all vessels in accordance with this chapter and chapter 328.

(2)(a)1. Upon demonstrated compliance with the safety equipment carriage and use requirements of this chapter during a safety inspection initiated by a law enforcement officer, the operator of a vessel shall be issued a safety inspection decal signifying that the vessel is deemed to have met the safety equipment carriage and use requirements of this chapter at the time and location of such inspection. The commission may designate by rule the timeframe for expiration of, and the specific design for, the safety inspection decal. However, a decal may not be valid for less than 1 calendar year or more than 5 years and, at a minimum, must meet the standards specified in this paragraph. All decals issued by the commission on or before December 31, 2018, are no longer valid after that date.

2. The safety inspection decal, if displayed, must be located within 6 inches of the inspected vessel's properly displayed vessel registration decal. For nonmotorized vessels that are not required to be registered, the safety inspection decal, if displayed, must be located above the waterline on the forward half of the port side of the vessel.

(b) If a vessel properly displays a valid safety inspection decal created or approved by the division, a law enforcement officer may not stop the vessel for the sole purpose of inspecting the vessel for compliance with the safety equipment carriage and use requirements of this chapter unless there is reasonable suspicion that a violation of a safety equipment carriage or use requirement has occurred or is occurring. This subsection does not restrict a law enforcement officer from stopping a vessel for any other lawful purpose.

(3)(a) Noncriminal violations of the following statutes 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:

1. Section 327.33(3)(b), relating to navigation rules.
2. Section 327.44, relating to interference with navigation.
3. Section 327.50(2), relating to required lights and shapes.
4. Section 327.53, relating to marine sanitation.
5. Section 328.48(5), relating to display of decal.
6. Section 328.52(2), relating to display of number.
7. Section 327.4107, relating to vessels at risk of becoming derelict.
8. Section 327.4109, relating to prohibited anchoring or mooring.

(b) Citations issued to livery vessels under this subsection are the responsibility of the lessee of the vessel if the livery has included a warning of this responsibility as a part of the rental agreement and has provided to the agency issuing the citation the name, address, and date of birth of the lessee when requested by that agency. The livery is not responsible for the payment of citations if the livery provides the required warning and lessee information.

(c) A noncriminal violation of s. 327.4108 may be enforced by a uniform boating citation issued to the operator of a vessel unlawfully anchored in an anchoring limitation area.

(d) A noncriminal violation of s. 327.4109 may be enforced by a uniform boating citation issued to the owner or operator of a vessel or floating structure unlawfully anchored or moored in a prohibited area.

(4) Such officers shall have the power and duty to issue such orders and to make such investigations, reports, and arrests in connection with any violation of the provisions of this chapter and chapter 328 as are necessary to effectuate the intent and purpose of this chapter and chapter 328.

(5) The Fish and Wildlife Conservation Commission or any other law enforcement agency may make any investigation necessary to secure information required to carry out and enforce the provisions of this chapter and chapter 328.

History.—s. 1, ch. 65-361; ss. 25, 35, ch. 69-106; s. 3, ch. 72-16; s. 10, ch. 74-327; s. 3, ch. 78-181; ss. 10, 12, ch. 84-188; s. 30, ch. 99-245; s. 17, ch. 2009-86; s. 2, ch. 2016-96; s. 2, ch. 2016-108; s. 2, ch. 2016-134; s. 10, ch. 2017-163; s. 1, ch. 2018-27.

Note.—Former s. 371.67.

327.71 Exemption.—The commission may, if it finds that federal law imposes less restrictive requirements than provided herein or if it determines that boating safety will not be adversely affected, issue temporary exemptions from any provision of this chapter or rules established hereunder, on such terms and conditions as it considers appropriate.

History.—s. 11, ch. 81-100; s. 31, ch. 99-245.

327.72 Penalties.—Any person failing to comply with the provisions of this chapter or chapter 328 not specified in s. 327.73 or not paying the civil penalty specified in s. 327.73 within 30 days, except as otherwise provided in this chapter or chapter 328, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 65-361; s. 304, ch. 71-136; s. 1, ch. 78-181; s. 3, ch. 80-266; s. 13, ch. 84-188; s. 4, ch. 86-35; s. 48, ch. 91-224; s. 3, ch. 99-162; s. 21, ch. 2000-362; s. 5, ch. 2011-152.

Note.—Former s. 371.68.

327.73 Noncriminal infractions.—

- (1) Violations of the following provisions of the vessel laws of this state are noncriminal infractions:
 - (a) Section 328.46, relating to operation of unregistered and unnumbered vessels.
 - (b) Section 328.48(4), relating to display of number and possession of registration certificate.
 - (c) Section 328.48(5), relating to display of decal.
 - (d) Section 328.52(2), relating to display of number.
 - (e) Section 328.54, relating to spacing of digits and letters of identification number.
 - (f) Section 328.60, relating to military personnel and registration of vessels.
 - (g) Section 328.72(13), relating to operation with an expired registration, for which the penalty is:
 1. For a first or subsequent offense of s. 328.72(13)(a), up to a maximum of \$50.
 2. For a first offense of s. 328.72(13)(b), up to a maximum of \$250.
 3. For a second or subsequent offense of s. 328.72(13)(b), up to a maximum of \$500. Any person cited for a noncriminal infraction under this subparagraph may not have the provisions of paragraph (4)(a) available to him or her but must appear before the designated official at the time and location of the scheduled hearing.
 - (h) Section 327.33(2), relating to careless operation.
 - (i) Section 327.37, relating to water skiing, aquaplaning, parasailing, and similar activities.
 - (j) Section 327.44, relating to interference with navigation.
 - (k) Violations relating to boating-restricted areas and speed limits:
 1. Established by the commission or by local governmental authorities pursuant to s. 327.46.
 2. Speed limits established pursuant to s. 379.2431(2).
 - (l) Section 327.48, relating to regattas and races.
 - (m) Section 327.50(1) and (2), relating to required safety equipment, lights, and shapes.
 - (n) Section 327.65, relating to muffling devices.
 - (o) Section 327.33(3)(b), relating to a violation of navigation rules:
 1. That does not result in an accident; or
 2. That results in an accident not causing serious bodily injury or death, for which the penalty is:
 - a. For a first offense, up to a maximum of \$250.
 - b. For a second offense, up to a maximum of \$750.
 - c. For a third or subsequent offense, up to a maximum of \$1,000.
 - (p) Section 327.39(1), (2), (3), and (5), relating to personal watercraft.
 - (q) Section 327.53(1), (2), and (3), relating to marine sanitation.
 - (r) Section 327.53(4), (5), and (7), relating to marine sanitation, for which the civil penalty is \$250.
 - (s) Section 327.395, relating to boater safety education.
 - (t) Section 327.52(3), relating to operation of overloaded or overpowered vessels.
 - (u) Section 327.331, relating to divers-down warning devices, except for violations meeting the requirements of s. 327.33.

- (v) Section 327.391(1), relating to the requirement for an adequate muffler on an airboat.
- (w) Section 327.391(3), relating to the display of a flag on an airboat.
- (x) Section 253.04(3)(a), relating to carelessly causing seagrass scarring, for which the civil penalty upon conviction is:
 - 1. For a first offense, \$50.
 - 2. For a second offense occurring within 12 months after a prior conviction, \$250.
 - 3. For a third offense occurring within 36 months after a prior conviction, \$500.
 - 4. For a fourth or subsequent offense occurring within 72 months after a prior conviction, \$1,000.
- (y) Section 327.45, relating to protection zones for springs, for which the penalty is:
 - 1. For a first offense, \$50.
 - 2. For a second offense occurring within 12 months after a prior conviction, \$250.
 - 3. For a third offense occurring within 36 months after a prior conviction, \$500.
 - 4. For a fourth or subsequent offense occurring within 72 months after a prior conviction, \$1,000.
- (z) Section 327.4108, relating to the anchoring of vessels in anchoring limitation areas, for which the penalty is:
 - 1. For a first offense, up to a maximum of \$50.
 - 2. For a second offense, up to a maximum of \$100.
 - 3. For a third or subsequent offense, up to a maximum of \$250.
- (aa) Section 327.4107, relating to vessels at risk of becoming derelict on waters of this state, for which the civil penalty is:
 - 1. For a first offense, \$50.
 - 2. For a second offense occurring 30 days or more after a first offense, \$100.
 - 3. For a third or subsequent offense occurring 30 days or more after a previous offense, \$250.
- (bb) Section 327.4109, relating to anchoring or mooring in a prohibited area, for which the penalty is:
 - 1. For a first offense, up to a maximum of \$50.
 - 2. For a second offense, up to a maximum of \$100.
 - 3. For a third or subsequent offense, up to a maximum of \$250.

Any person cited for a violation of any provision of this subsection shall be deemed to be charged with a noncriminal infraction, shall be cited for such an infraction, and shall be cited to appear before the county court. The civil penalty for any such infraction is \$50, except as otherwise provided in this section. Any person who fails to appear or otherwise properly respond to a uniform boating citation shall, in addition to the charge relating to the violation of the boating laws of this state, be charged with the offense of failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect shall be provided at the time such uniform boating citation is issued.

- (2) Any person cited for an infraction under this section may:
 - (a) Post a bond, which shall be equal in amount to the applicable civil penalty; or
 - (b) Sign and accept a citation indicating a promise to appear.

The officer may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.

- (3) Any person who willfully refuses to post a bond or accept and sign a summons is guilty of a misdemeanor of the second degree.
- (4) Any person charged with a noncriminal infraction under this section may:
 - (a) Pay the civil penalty, either by mail or in person, within 30 days of the date of receiving the citation; or,
 - (b) If he or she has posted bond, forfeit bond by not appearing at the designated time and location.

If the person cited follows either of the above procedures, he or she shall be deemed to have admitted the noncriminal infraction and to have waived the right to a hearing on the issue of commission of the infraction. Such admission shall not be used as evidence in any other proceedings. If a person who is cited for a violation of s.

327.395 can show a boating safety identification card issued to that person and valid at the time of the citation, the clerk of the court may dismiss the case and may assess a dismissal fee of up to \$10. If a person who is cited for a violation of s. 328.72(13) can show proof of having a registration for that vessel which was valid at the time of the citation, the clerk may dismiss the case and may assess the dismissal fee.

(5) Any person electing to appear before the county court or who is required so to appear shall be deemed to have waived the limitations on the civil penalty specified in subsection (1). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven, the court may impose a civil penalty not to exceed \$500 or a higher amount as specified in subsection (1).

(6) At a hearing under this chapter the commission of a charged infraction must be proved beyond a reasonable doubt.

(7) If a person is found by the hearing official to have committed an infraction, he or she may appeal that finding to the circuit court.

(8) All fees and civil penalties assessed and collected pursuant to this section shall be remitted by the clerk of the court to the Department of Revenue to be deposited into the Marine Resources Conservation Trust Fund for boating safety education purposes.

(9)(a) Any person who fails to comply with the court's requirements or who fails to pay the civil penalties specified in this section within the 30-day period provided for in s. 327.72 must pay an additional court cost of up to \$20, which shall be used by the clerks of the courts to defray the costs of tracking unpaid uniform boating citations.

(b) Any person who fails to comply with the court's requirements as to civil penalties specified in this section due to demonstrated financial hardship shall be authorized to satisfy such civil penalties by public works or community service. Each hour of such service shall be applied, at the rate of the minimum wage, toward payment of the person's civil penalties; provided, however, that if the person has a trade or profession for which there is a community service need and application, the rate for each hour of such service shall be the average standard wage for such trade or profession. Any person who fails to comply with the court's requirements as to such civil penalties who does not demonstrate financial hardship may also, at the discretion of the court, be authorized to satisfy such civil penalties by public works or community service in the same manner.

(c) If the noncriminal infraction has caused or resulted in the death of another, the court may require the person who committed the infraction to perform 120 community service hours in addition to any other penalties.

(10) Any person cited for any noncriminal infraction which results in an accident that causes the death of another, or which results in an accident that causes "serious bodily injury" of another as defined in s. 327.353(1), shall not have the provisions of subsection (4) available to him or her but must appear before the designated official at the time and location of the scheduled hearing.

(11)(a) Court costs that are to be in addition to the stated civil penalty shall be imposed by the court in an amount not less than the following:

1. For swimming or diving infractions, \$4.
2. For nonmoving boating infractions, \$18.
3. For boating infractions listed in s. 327.731(1), \$35.

(b) In addition to the court cost assessed under paragraph (a), the court shall impose a \$3 court cost for each noncriminal infraction, to be distributed as provided in s. 938.01, and a \$2 court cost as provided in s. 938.15 when assessed by a municipality or county.

Court costs imposed under this subsection may not exceed \$45. A criminal justice selection center or both local criminal justice access and assessment centers may be funded from these court costs.

History.—s. 3, ch. 86-35; s. 7, ch. 87-392; s. 6, ch. 88-133; s. 4, ch. 88-144; s. 5, ch. 89-136; s. 32, ch. 91-221; s. 2, ch. 93-83; s. 2, ch. 93-254; s. 7, ch. 94-241; s. 955, ch. 95-148; s. 3, ch. 96-187; s. 60, ch. 96-413; s. 3, ch. 97-16; s. 2, ch. 99-162; s. 31, ch. 99-289; s. 48, ch. 2000-152; ss. 22, 23, ch. 2000-362; s. 13, ch. 2001-122; s. 3, ch. 2002-46; s. 13, ch. 2003-143; s. 103, ch. 2003-402; s. 6, ch. 2004-74; s. 65, ch. 2004-265; s. 4, ch. 2006-172; s. 36, ch. 2008-111; s. 196, ch. 2008-247; s. 18, ch. 2009-86; s. 63, ch. 2010-5; s. 20, ch. 2011-4; s. 4, ch. 2011-152; s. 3, ch. 2014-138; s. 3, ch. 2016-96; s. 3, ch. 2016-108; s. 3, ch. 2016-171; s. 2, ch. 2016-233; s. 11, ch. 2017-163.

327.731 Mandatory education for violators.—

(1) A person convicted of a criminal violation under this chapter, convicted of a noncriminal infraction under this chapter if the infraction resulted in a reportable boating accident, or convicted of two noncriminal infractions as specified in s. 327.73(1)(h)-(k), (m), (o), (p), and (s)-(y), said infractions occurring within a 12-month period, must:

- (a) Enroll in, attend, and successfully complete, at his or her own expense, a classroom or online boating safety course that is approved by and meets the minimum standards established by commission rule;
- (b) File with the commission within 90 days proof of successful completion of the course; and
- (c) Refrain from operating a vessel until he or she has filed proof of successful completion of the course with the commission.

(2) For the purposes of this section, “conviction” means a finding of guilt, or the acceptance of a plea of guilty or nolo contendere, regardless of whether or not adjudication was withheld or whether imposition of sentence was withheld, deferred, or suspended. Any person who operates a vessel on the waters of this state in violation of the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) The commission shall print on the reverse side of the defendant’s copy of the boating citation a notice of the provisions of this section. Upon conviction, the clerk of the court shall notify the defendant that it is unlawful for him or her to operate any vessel until he or she has complied with this section, but failure of the clerk of the court to provide such a notice shall not be a defense to a charge of unlawful operation of a vessel under subsection (2).

History.—s. 7, ch. 88-133; s. 49, ch. 91-224; s. 465, ch. 95-148; s. 4, ch. 96-187; s. 9, ch. 98-308; s. 4, ch. 99-162; s. 32, ch. 99-245; s. 24, ch. 2000-362; s. 5, ch. 2004-74; s. 5, ch. 2006-172; s. 19, ch. 2009-86; s. 6, ch. 2011-152; s. 3, ch. 2014-136; s. 3, ch. 2016-233.

327.74 Uniform boating citations.—

(1) The commission shall prepare, and supply to every law enforcement agency in this state which enforces the laws of this state regulating the operation of vessels, an appropriate form boating citation containing a notice to appear (which shall be issued in prenumbered books with citations in quintuplicate) and meeting the requirements of this chapter or any laws of this state regulating boating, which form shall be consistent with the state’s county court rules and the procedures established by the commission.

(2) Courts, enforcement agencies, and the commission are jointly responsible to account for all uniform boating citations in accordance with the procedures promulgated by the commission.

(3) Every law enforcement officer, upon issuing a boating citation to an alleged violator of any provision of the boating laws of this state or any boating ordinance of any municipality, shall deposit the original and one copy of such boating citation with a court having jurisdiction over the alleged offense or with its traffic violations bureau within 5 days after issuance to the violator.

(4) The chief administrative officer of every law enforcement agency shall require the return to him or her of the commission record copy of every boating citation issued by an officer under his or her supervision to an alleged violator of any boating law or ordinance and all copies of every boating citation which has been spoiled or upon which any entry has been made and not issued to an alleged violator.

(5) Upon the deposit of the original and one copy of such boating citation with a court having jurisdiction over the alleged offense or with its traffic violations bureau as aforesaid, the original or copy of such boating citation may be disposed of only by trial in the court or other official action by a judge of the court, including forfeiture of the bail, or by the deposit of sufficient bail with, or payment of a fine to, the traffic violations bureau by the person to whom such boating citation has been issued by the law enforcement officer.

(6) The chief administrative officer shall transmit, on a form approved by the commission, the commission record copy of the uniform boating citation to the commission within 5 days after submission of the original and one copy to the court. A copy of such transmittal shall also be provided to the court having jurisdiction for accountability purposes.

(7) It is unlawful and official misconduct for any law enforcement officer or other officer or public employee to dispose of a boating citation or copies thereof or of the record of the issuance of the same in a manner other than as required in this section.

(8) Such citations shall not be admissible evidence in any trial.

(9) If a uniform boating citation has not been issued with respect to a criminal boating offense, and the prosecution is by affidavit, information, or indictment, the prosecutor shall direct the arresting officer to prepare a citation. In the absence of an arresting officer, the prosecutor shall prepare the citation. For the purpose of this subsection, the term "arresting officer" means the law enforcement officer who apprehended or took into custody the alleged offender.

(10) Upon final disposition of any alleged offense for which a uniform boating citation has been issued, the court shall, within 10 days, certify said disposition to the commission.

History.—s. 8, ch. 87-392; s. 6, ch. 89-136; s. 466, ch. 95-148; s. 33, ch. 99-245.

327.803 Boating Advisory Council.—

(1) The Boating Advisory Council is created within the Fish and Wildlife Conservation Commission and shall be composed of 18 members. The members include:

(a) One representative from the Fish and Wildlife Conservation Commission, who shall serve as the chair of the council.

(b) One representative each from the Department of Environmental Protection, the United States Coast Guard Auxiliary, the United States Power Squadron, and the inland navigation districts.

(c) One representative of manatee protection interests, one representative of the marine industries, one representative of water-related environmental groups, one representative of canoe or kayak enthusiasts, one representative of marine manufacturers, one representative of commercial vessel owners or operators, one representative of marine special events, one representative actively involved and working full-time in the scuba diving industry who has experience in recreational boating, one representative of either the commercial fishing industry or the commercial shellfishing industry, and two representatives of the boating public, each of whom shall be nominated by the executive director of the Fish and Wildlife Conservation Commission and appointed by the Governor to serve staggered 3-year terms. Members appointed by the Governor may serve no more than two full consecutive terms.

(d) One member of the House of Representatives, who shall be appointed by the Speaker of the House of Representatives.

(e) One member of the Senate, who shall be appointed by the President of the Senate.

(2) The council shall meet at the call of the chair, at the request of a majority of its membership, or at such times as may be prescribed by rule.

(3) The purpose of the council is to make recommendations to the Fish and Wildlife Conservation Commission and the Department of Economic Opportunity regarding issues affecting the boating community, including, but not limited to, issues related to:

(a) Boating and diving safety education.

(b) Boating-related facilities, including marinas and boat testing facilities.

(c) Boat usage.

(d) Boat access.

(e) Working waterfronts.

(4) Members of the council shall serve without compensation but are entitled to reimbursement of expenses as provided in s. 112.061.

(5) A vacancy on the council shall be filled for the remainder of the unexpired term in the same manner as the original appointment. Members whose terms have expired may continue to serve until replaced or reappointed.

(6) Members of the council may be removed for cause.

History.—s. 13, ch. 94-241; s. 34, ch. 99-245; s. 25, ch. 2000-362; s. 1, ch. 2005-158; s. 229, ch. 2011-142.

327.804 Compilation of statistics on boating accidents and violations.—The Fish and Wildlife Conservation Commission shall compile statistics on boating accidents and boating violations of the age groups of persons affected by chapter 96-187, Laws of Florida.

History.—s. 5, ch. 96-187; s. 35, ch. 99-245.

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Florida Marina Liveaboard Discussion, New Comments

- Dec 30, 2016by: Claiborne Young 4 Comments [Leave A Comment](#)

For the last week or so, there has been a lively discussion on the American Great Loop Cruisers' Association forum (<http://www.greatloop.org>) about the issue of liveaboards, particularly as this issue relates to facilities in Florida. All of us at the Salty Southeast Cruisers' Net are aware of the importance of this issue to the cruising community, and will soon make available a comprehensive, professionally researched list of marinas where liveaboards are welcome. Until that happy event, listen to what our fellow mariners have to say below!

This area is murky, complicated and not well understood by anyone, including many marina operators, and certainly not the public, and very certainly not by many cruisers! It may be that some privately held marinas are "looking the other way" in this relatively bad economy, but there are both laws and administrative regulations dealing with liveaboards. In Florida, the law defines liveaboards as persons who stay aboard their vessels for 10 days out of any 30 calendar days. Those days do not need to be contiguous. That is the **only** definition under Florida Law. The fact that you are not a Florida Resident, do not receive mail at the marina, intend to leave in 60 or 90 or 120 days and are transient, etc., etc., has nothing to do with it. If you stay aboard, the clock is running in FLorida on your liveaboard status.

The short story...

Riparian Lands (tidal lands up to the mean high tide line) are held in trust for the people of Florida by the State of Florida, and this trust is administered by the Florida Fish and Wildlife Commission. Since the bottom land is public, to operate a marina in Florida, on Riparian Lands, the operator must get a lease from the State to do so. The lease, like any lease, specifies what services the marina can offer. One of these services is "liveaboard" tenants. The state has been loathe over the past 30 years to allow startup or new marinas to provide liveaboard services. Liveabards poop in the water, don'tcha know. Some municipal marinas have gone through the hoops the state has mandated, and have obtained a lease. I know of no new privately held marinas that have prevailed against the FWC bureaucracy.

Now, what complicates this further is that some marinas actually own their own bottom lands. One that I know of is Burnt Store Marina on Charlotte Harbor. In the early 60s, that land was bought, and the boat basins were dredged then. Until that building, those basins did not exist, and the land was privately held. So, even though there is tidal ebb and flood in those basins today, the land is not under FWC administrative controls because of how it evolved in that real estate, legal sense. Of course, today, you couldn't get the permits to do that dredging, but there it is. So, yes, there are some privately-held marinas that can legally offer liveaboard tenancy, but not all, and maybe, not the majority.

So here's the net: when you are asked to sign a long term dockage agreement, ask about liveaboard tenancy and have them point to it in writing; or add it to your contract in one of those "blank line" items.

How did we learn this stuff? Sanctuary and crew have wintered in Florida for the past 7

Live aboard Marinas. We really enjoy Cocoa Village Marina in Cocoa Fl on the Indian River between Titusville and Melbourne. Cocoa is a great town, good public transportation to Merritt Island to the Big box stores.

Robert & Helen Kovach

Hi Chuck,

“Relevant” is a very interesting word. I definitely agree that individual cruisers may not run afoul of this. I’d even be OK with, “probably will not.” As I suggested, many people have never heard of it. Your personal testimony confirms that many marina managers have never heard of it, and many more do not understand it. But it’s there. Lurking... Sorta like “Sojourner Permits...” And I did – personally – run afoul of it. And I assure you, it becomes “relevant” if you have to move because the marina manager got caught ignoring it. My post did not address the point you raise on marina liveaboard fees and charges. That is a different topic entirely. You are quite correct that those local marina fees vary from place to place.

It is **not** correct that, “There are local municipalities such as Marco Island that have regulations restricting the number of days you can stay on a boat within their waters.” Is it possible you’re thinking of a different topic? All of that was struck down by the Florida Supreme Court in about 2005, and subsequently re-codified by the Florida Legislature in about 2006/2007. That had to do with “anchoring rights,” not “liveaboard tenancy” in a marina. Marco – over about the six years between 2004 and 2010 – was embroiled in a series of law suits over local anchoring restrictions against Dave Dumas. Dave is a super guy, by the way, and we all owe him a huge debt-of-gratitude for actually pursuing that against the city! The city lost those battles over-and-over again at every level of the Florida legal and legislative system. I think they have finally given up, facing another likely loss in their second attempt before the Florida Supreme Court. The Florida Legislature removed the right to restrict anchoring from all local jurisdictions throughout the state through a revision of Florida State statute in 2006, maybe 2007. (I’m doing this from memory...) (Ref: Florida Statute, 327.60 (3);

http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0327/Sections/0327.60.html.)

Anchoring rights has nothing to do with this conversation, of course, except that while Marco was in the process of wasting their money and good will fighting with Dave, they used their battle with Dave as PR leverage in the community to also pursue – in parallel – upgrading their operator’s lease for the Marco City Marina to provide liveaboard tenancy. The argument was, fallacious in my view, that liveaboard tenancy would replace the loss of anchoring space in the city. I don’t know if it’s all slips or just some in the marina that now have the tenancy option. I do know the city spent a lot of money doing it; state and local building permits, then re-permitting, new sanitary and shower facilities, new pump out facilities, OSHA and ADA compliance upgrades to the docks, buildings and grounds, etc.,

etc., and they did (finally) get it done. I believe tenancy has been part of their offerings portfolio for two full seasons now, but I admit I’m not current on that. I know there were several delays. Other than a couple of places that upgraded leases after Hurricane Charlie, justified on the destruction of neighboring marina facility space, it’s the only new liveaboard lease I know of in Florida in many, many years. Fisherman’s Village in Punta

Captain Pat Carter,

The problem is that there are ***at least*** two different definitions of “liveaboard” in Florida. The first is in F.S. 327. That is the statute that has to do with boats and boating; specifically, anchoring rights or boats in navigation.

The second is used by the Florida Department of Environmental Protection. It governs when the discussion is a marina operator “renting” “Sovereignty Lands” (riparian lands) from the State as the site of a marina. Because of this thread, I spent some time locating a template of the standard DEC marina lease online. It can be read by those interested – if any – here:

https://www.google.com/url?q=http://www.dep.state.fl.us/lands/files/ssl_lease_template.pdf&sa=U&ei=DkhjUJKZDefL0QG6xIGoCQ&ved=0CBYQFjAH&client=internal-uds-cse&usg=AFQjCNFuV7nNsSn3gDK3tAhGNC8hYDyYCQ

Paragraph 29 of the standard lease agreement contains the DEP’s definition of “liveaboard vessel” that started all this. Paragraph 1 contains the language that controls whether or not the marina can offer liveaboard tenancy as a service.

The above marina operator’s lease is based on DEC rule-making, which the DEP is empowered to do under Florida Statute. Those rules, once adopted, have the same force and effect as if they were statute adopted by the legislature itself.

For marina operators leasing riparian lands (Sovereignty Lands), the DEC lease controls, and it is as I previously stated it: 5 continuous days, 10 days in any 30-day period.

For the record, Pat, I ***did not*** invent this. This is government bureaucracy at it’s very finest. I just made an effort to understand it. As I said, if you’re gonna enjoy the game, you gotta know the rules...

Jim

Peg and Jim Healy, aboard Sanctuary

So, are we to be governed by the above 10 day limit if we are tourists and wish to spend 15-30 days in one particular Marina in order to explore the area by car ? surely a detriment to tourism via vessel, would be interesting to see it tested, I know that here in Canada that Municipalities who make a local by law cannot have it challenged in court unless proven it is against the Charter of Rights.

Dennis McMurtry

Go to the Ft Myers City Yacht Basin. Great staff, great downtown, great facilities. NO PROBLEM with live aboard but there was a \$75 per month live aboard fee. we lived aboard and cruised SW FL for 4 years. Fantastic.

Bob Barry

Hmmm. Where to start.

I agree with the idea that the issues involving rights, particularly Riparian rights is complex, and possibly “murky.” However, I don’t agree with all the legal analysis. My differences come from my understanding of these riparian rights from reading this document: [http://www.llw-](http://www.llw-law.com/files/presentations/General%20Overview%20of%20Riparian%20Rights%20in%20Florida.pdf)

[law.com/files/presentations/General%20Overview%20of%20Riparian%20Rights%20in%20Florida.pdf](http://www.llw-law.com/files/presentations/General%20Overview%20of%20Riparian%20Rights%20in%20Florida.pdf)

Until then, I can't see that happening.
Jimbo

Comments from Cruisers (4) Add Comment

1. Jim Healy - January 13, 2017 - 5:17 pm

FOLKS...

THIS THREAD DATES BACK TO 2012. THIS IS JANUARY, 2017. SOME OF IT MAY HAVE CHANGED SINCE MY ORIGINAL POST.

REGARDING "LIVE-ABOARDS:" THERE ARE TWO DEFINITIONS FOR THE TERM "LIVE-ABOARD" IN FLORIDA. ONE IS FOUND IN STATUTE (327.60) AND THE OTHER IS FOUND IN FLORIDA DEP "REGULATION." THEY ARE DIFFERENT; I.E., THEY ARE NOT THE SAME.

IN FLORIDA, SOME MARINA OPERATORS OWN THEIR BOTTOMLANDS. MANY – IF NOT MOST – DO NOT. THOSE THAT DO CAN OFFER WHATEVER SERVICES THEY WANT. THOSE THAT DO NOT OPERATE UNDER A LEASE FOR THE USE OF THE BOTTOMLAND. THE LEASE IS GRATED BY THE STATE OF FLORIDA THROUGH THE FLORIDA DEP. THE FLORIDA DEP LEASE AGREEMENT DETERMINES WHAT THOSE LEASEE MARINAS CAN OFFER.

YOU DO NOT HAVE TO LIKE ANY OF THIS, BUT YOU DO NEED TO UNDERSTAND IT IF YOU WANT TO "LIVE-ABOARD" IN FLORIDA WITHOUT WORRYING ABOUT HAVING TO MOVE AT SOME POINT. A FORCED MOVE HAPPENED TO US, AND IT CAN HAPPEN TO YOU. MANY MARINA PERSONNEL DO NOT UNDERSTAND ANY OF THIS. THEIR LAWYERS MIGHT, BUT THE PERSONNEL ON THE GROUND WILL TELL YOU WHATEVER THEY THINK YOU WANT TO HEAR.

KNOW THE RULES. ENJOY THE GAME. CAVEAT EMPTOR!

THE ANCHORING RIGHTS ISSUE IS DIFFERENT. THIS THREAD DOES NOT APPLY TO THE ANCHORING RIGHTS ISSUE EXCEPT THAT THE SAME ACTORS ARE INVOLVED (Florida FWC, Florida Legislature, Florida Public Trust waters).

Jim

Peg and Jim Healy, aboard Sanctuary

Reply to Jim

against most common laws to poop in the front yard, but if you have a septic tank or public sewage it is legal. If you have a condo on the beach, what is the time limitation on living on that property? If you are working on a boat are you limited to stay on the boat if it's down for maintenance? Seems this needs to be addressed further. Noha, would have been breaking Florida laws. What a shame.

Reply to Richard