

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

- 68D-21.001 Requirements for Applications
- 68D-21.002 Procedures for Reviewing Applications
- 68D-21.003 Procedures for Providing for Public Notice and Requesting Administrative Hearing
- 68D-21.004 Criteria for Approval of Ordinances
- 68D-21.005 Seasonal or Year-round Boating Restricted Areas.

68D-21.001 Requirements for Applications.

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

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

(3) Each application must include:

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

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

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

(c) A certified copy of the adopted ordinance for which approval is sought, including proof that the applicant has followed the required procedures for ordinance notice and adoption as set forth in Ch.166, F.S. A county or municipality may submit a draft ordinance for informal agency review and discussion prior to adoption.

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

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

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

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

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

(f) Documentation that the ordinance was developed, prior to presenting language for adoption, in consultation and coordination with:

1. The governing body of every other county or municipality sharing jurisdiction over the area in which the boating-restricted area is located.

2. The United States Coast Guard if the boating-restricted area is to be established on navigable waters of the United States as defined in 33 C.F.R. §2.36(a) (2009), which is adopted by reference and is available at <http://www.gpoaccess.gov/cfr/index.html>.

3. The United States Army Corps of Engineers if the boating-restricted area is to be established on navigable waters of the United States as defined in 33 C.F.R. §329.4 (2009), which is adopted by reference and is available at <http://www.gpoaccess.gov/cfr/index.html>.

(g) Identification of the provision under section 327.46(1)(c)1. through 3., F.S. on which the county or municipality is seeking to establish the proposed boating restricted area.

(h) A summary of the facts and circumstances the applicant contends justifies the establishment of the restriction on speed or operation and a list of the evidence in support of that contention the applicant desires for the agency to review.

(i) An appendix containing all evidence listed in paragraph (h) above.

(4) Complete applications may be submitted by mail to the Fish and Wildlife Conservation Commission, Boating and Waterways Section, 620 South Meridian Street, Tallahassee, FL 32399-1600, or by email as a Portable Document Format (.pdf) file to waterway.management@myfwc.com.

Rulemaking Authority 327.04, 327.46 FS. Law Implemented 327.46 FS. History—New 10-6-10, Amended 11-10-21, 9-10-24.

68D-21.002 Procedures for Reviewing Applications.

(1) The Boating and Waterways Section shall notice the applicant within 30 days as to whether the application is complete or what information is needed to complete the application.

(2) The Boating and Waterways Section will review and act upon a complete application within 90 days of receipt as follows:

(a) The Boating and Waterways Section will determine whether each boating-restricted area created in the ordinance is authorized under Section 327.46(1)(c), F.S. As provided in subsection 68D-21.001(1), F.A.C., approval is not required for ordinances unless a boating-restricted area set forth therein is authorized under Section 327.46(1)(b), F.S. Where the ordinance includes boating restricted areas under both 327.46(1)(b) and (c) F.S., the Commission will only review those that are being created pursuant to subsection (c).

(b) The Boating and Waterways Section will determine whether the required consultation and coordination set forth in Rule 68D-21.001(3)(f) above has taken place.

(c) The Boating and Waterways Section will review the application and appendix submitted to determine whether competent, substantial evidence exists pursuant to the criteria set forth in Rule 68D-21.004, F.A.C.

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

(3) The Boating and Waterways Section will issue a determination approving or denying the application. The Boating and Waterways Section will provide notice as provided in Rule 68D-21.003, F.A.C

Rulemaking Authority 327.04, 327.46 FS. Law Implemented 327.46 FS. History—New 10-6-10, Amended 9-10-24.

68D-21.003 Procedures for Providing for Public Notice and Requesting Administrative Hearing.

(1) Public Notice. The Boating and Waterways Section will provide notice of denial or approval of applications: on the Boating and Waterways Section’s web page at <http://www.myfwc.com/boating>. In addition, notice will be sent to all parties listed in the “Boating and Waterways Section’s Public Distribution List – Rules, Regulations, and Waterway Management Notifications.” Any member of the public may join the distribution list by submitting a request to waterway.management@myfwc.com.

(2) Anyone who wishes to challenge the Commission’s determination may do so by filing a petition for administrative hearing pursuant to chapter 120, Florida Statutes. Petitions must be received by the Commission within 21 days of posting of the determination approving or denying the application to the Boating and Waterways Section, 620 South Meridian Street, Tallahassee, Florida 32399-1600, or by email to waterwaymanagement@mfwc.com.

Rulemaking Authority 327.04, 327.46 FS. Law Implemented 327.46 FS. History—New 10-6-10, Amended 9-10-24.

68D-21.004 Criteria for Approval of Ordinances.

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

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

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

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

(3) An ordinance establishing an “idle speed, no wake” or “slow speed, minimum wake” boating restricted area will be approved to close the gap with a “slow speed, minimum wake” zone where there are two or more existing or newly created boating restricted areas that are separated by 500’ or less, such that acceleration of vessels between the areas is unsafe or presents risk of collision.

(4) An ordinance establishing a “slow speed, minimum wake” boating-restricted area or numerical speed limit boating-restricted area if the area is:

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

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

2. A navigation chart published by the National Oceanic and Atmospheric Administration’s National Ocean Service identifies the area as being subject to hazardous tides or currents.

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

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

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

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

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

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

a. Accident reports – The following reports of boating accidents are acceptable if prepared contemporaneously with the boating accident being reported and if such reports reflect law enforcement’s determination that vessel traffic congestion or the speed, wake, or operation of a vessel involved in the accident was a primary contributing factor in the accident:

(I) Florida Boating Accident Investigation Report, form FWCDLE 146, (05/2024), available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-16821> and incorporated by reference herein; Florida Boating Accident Self Report, form FWCDLE 146C (05/2024), available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-16904> and incorporated by reference herein; or any United States Coast Guard forms related to recreational boating accident or marine casualty, injury or death.

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

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

b. Uniform boating citations issued on citation forms supplied by the Commission as provided in Section 327.74, F.S., or written warnings if the violation alleged in the citation or warning is related to the cited vessel’s speed, wake, or operation. Citations and written warnings unrelated to vessel speed, wake, or operation will not be considered, nor will verbal warnings. In no event will citations or written warnings issued for violations of Chapter 328, or Sections 327.50, 327.53, 327.54, 327.65, 327.66, F.S., be considered.

c. A vessel traffic study demonstrating that vessel traffic congestion or the speed, wake, or operation of vessels in the area create unsafe levels of vessel traffic congestion, a significant risk of collision, or a significant threat to boating safety. The conclusions of the study, as determined by the Boating and Waterways Section, must be based upon sufficient facts or data, be the product of reliable principles and methods, and apply the principles and methods reliably to the facts or data considered. In assessing the creditability of a vessel traffic study, the following factors (as applicable) shall be among those considered:

- (I) Whether the study's methodology can be or has been tested (i.e., whether the study's methodology can be challenged in some objective sense, or whether it is instead simply a subjective, conclusory approach that cannot reasonably be assessed for reliability),
- (II) Whether the study's methodology has been subject to peer review and publication,
- (III) The known or potential rate of error of the study's methodology,
- (IV) The existence and maintenance of standards and controls; and,
- (V) Whether the methodology has been generally accepted in the scientific community.

Vessel traffic studies must identify the number of vessels transiting the proposed boating restricted area each hour for no less than six hours out of each twenty-four-hour period documented and provided to the Commission. When this minimum threshold is met, the area will be evaluated taking all other relevant factors into consideration, including width of the waterway, vessel types using the waterway, navigational hazards, and other conditions specific to the proposed boating restricted area.

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

4. When relying upon vessel traffic studies for reviews under this rule, video surveillance made during a vessel traffic study may be submitted with a corresponding log documenting number of vessels, vessel types, examples of careless or reckless operation of vessels, navigation rule violations, actions taken to avoid collisions, unsafe vessel speeds, near misses of navigational hazards by vessels, or any other specific criteria the applicant wants considered, along with relevant video time stamps for each item. Without such a corresponding log documenting the specific identified issues, video surveillance will not be considered. Video surveillance which has been altered or edited will not be considered.

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

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

(a) As a canoe trail or otherwise limits vessel propulsion if the applicant demonstrates by competent substantial evidence how the restriction is necessary to protect public safety pursuant to Section 327.46, F.S. if imposition of the restriction will not unreasonably or unnecessarily endanger navigation or interfere with the use of a navigation channel that is lawfully marked with lateral aids to navigation.

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

Rulemaking Authority 327.04, 327.302, 327.46 FS. Law Implemented 327.302, 327.46 FS. History—New 10-6-10, Amended 6-24-21, 9-10-24.

68D-21.005 Seasonal or Year-Round Boating Restricted Areas.

(1) The Commission will approve an ordinance creating a year-round boating restricted area when the documentation provided reflects competent substantial evidence that such a restriction is necessary to protect public safety throughout the entire year. When vessel traffic studies alone are relied upon to apply for a year-round boating restricted area, the studies must document the area for a minimum of four consecutive, non-holiday (those days not identified as "holidays" in Rule 68D-23.103, F.A.C.) days, for each season (spring, summer, fall, and winter).

(2) The Commission will approve an ordinance creating a seasonal boating restricted area when the documentation provided reflects competent substantial evidence that such a restriction is necessary to protect public safety throughout the requested season. When vessel traffic studies alone are relied upon to apply for a seasonal boating restricted area, the studies must document the area for a minimum of four consecutive, non-holiday days (those days not identified as "holidays" in Rule 68D-23.103, F.A.C.), for each season sought to be regulated. For purposes of this chapter, a seasonal boating restricted area shall mean a boating restricted area in force and effect for any time period less than a complete calendar year.

Rulemaking Authority 327.04, 327.46 FS. Law Implemented 327.46 FS. History—New 9-10-24.