

On Tues., Sept. 9 in a public meeting in , FL., the FWC (Fish and Wildlife Conservation Commission) and the FDEP (Florida Dept. of Environmental Protection) presented "draft statutes" for public discussion on vessel management including anchoring and mooring. The .pdf document can be found at: <http://myfwc.com/boating/Docs/Boating2009.pdf>. Important changes and additions to anchoring and mooring statutes start on pg. 24. Local cities and counties in have been prohibited by statute 327.60(2) from regulating the anchoring of non live-aboard vessels even though many of them have been doing so for years. Statute 327.60(2) was the basis for the rejection of the Marco Is. anchoring ordinance by a Collier Co. Court Judge last Oct. in City of v. Dumas.

A new section 327.61 is being proposed as "draft legislation" to be presented to the Florida Legislature in the 2009 session. Section 327.61(1) will allow cities or counties, irrespective of whether they have a state approved mooring field, to pass ordinances limiting anchoring anywhere in their jurisdictions to a maximum of 30 consecutive days or 120 days cumulatively in any calendar year. At the end of every 30 day period you would have to move out of the jurisdiction for a day and then return and so forth until the 120 days are up. You could be there Sept. through Dec. and then Jan. through Apr. If Monroe Co. enacted the ordinance, you would have to leave anchor in the Keys for a day every 30 days.

The more troubling proposal is 327.61(2). It would allow a city or county that HAS established a state approved mooring field to enact an ordinance that limits anchoring anywhere else in that jurisdiction outside the mooring field to a maximum of 3 consecutive days or 10 days in a calendar year. A 3/10 day ordinance may only take effect and be enforced if the FWC determines adequate "pubic moorings" are available. Enforcement of this FWC approval process is worrisome. The FWC could not confront cities and counties when they violated 327.60(2)and there is nothing to indicate they could enforce the mooring availability requirements of 327.61(2).

"Public moorings" means mooring buoys, dock slips, and wharfage berths that are available for rental or lease on a first come-first serve basis. You'll notice docks and slips (at up to \$3/ft./day) are included in "public moorings". Large jurisdictions like Monroe Co. could have one mooring field (as in although that may be a City of Marathon facility) and restrict anchoring elsewhere in the entire Keys to 3/10 days.

Section 327.61(3) and its explanatory note uses the words "may" and "can" and not "shall" in describing the need for cities and counties to consult with the FWC and its rules about the sufficiency of public moorings. The rules refer to the Florida Administrative Code (FAC) that agencies use to administer statutes. In boating, cities have routinely violated STATUTES, let alone FAC rules.

The FDEP, in their mooring field leases, considers a vessel occupied for 3 days out of 5 to be a "liveaboard" vessel which requires shore side support facilities. According to the FDEP; "If a marina or mooring field does not provide services, the lease limits overnight stays to that 3 out of 5 day term. If a facility provides services such as sewage pumpout (the lessee must keep accurate records of pumpout services provided and the holding tanks are sealed), trash collection and other services that limit or prevent discharges from the vessel, they may have a term that allows "liveaboards" for 6 months out of a 12 month period."

(Harold Vielhauer-FDEP Deputy General Counsel for Public Lands:

See: <http://www.dep.state.fl.us/legal/programs/default.htm>.) No exception to the 3/10 limit or FDEP mooring field 3 in 5 day limit for vessels with Type I MSDs appears. Indeed, in a Temporary Use agreement (a prelude to a lease) with the City of , FL., the FDEP has limited occupancy on transient vessels at either the City Dock or in the mooring field to 4 consecutive days or 8 days in 30. See:

<http://www.naplesnews.com/news/2008/jul/31/naples-bay-mooring-field-dispute-appears-over/>.

The 3 in 5, 4 and 8 in 30, 3/10 and 30 and 120 day limits get confusing!

Statute 327.60(2) was very clear and a court in the Dumas case thought so too.

Nowhere in the proposed statutes are allowances made to the time limits for weather, equipment delays and repairs or crew issues.

Public moorings prohibit moorage by uninsured vessels! Marine insurance is very expensive and sometimes nearly impossible to obtain. There are people who cannot afford to buy insurance for their vessels or who are self-insured. It is wrong to restrict anchoring for uninsured vessels that are prohibited from using public moorings. What about provision when the city closes the public moorings....as the city of has done during 6 months of construction of a new marina in the area.

Proposed draft statute 327.61(2) is a potential nightmare for Florida cruisers. I can see enacting the 3/10 day ordinance creating an entire community with a maximum 4 day occupancy limit determined by the FDEP lease. Wouldn't they have to get FWC approval first? Marco Is. didn't consult the state when they drafted their anchoring ordinance despite massive opposition from boaters claiming it violated 327.60(2). The present city manager and assistant manager were the Marco Is. city manager and police chief when Marco's anchoring ordinance was created. The then Marco police chief admitted to being one of the architects of the Marco ordinance. At the Dumas court hearing, he testified under oath that he had not contacted anyone at the state (FWC) level about the legality of the ordinance.

The FWC is soliciting comments on the proposed draft statutes at the e-mail address:
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