



Town of Longboat Key Town Commission

Town Hall

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Longboat Key, FL 34228

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WWW.LONGBOATKEY.ORG

- AGENDA - **REGULAR WORKSHOP MEETING**

2:00 PM

November 20, 2003

Pledge of Public Conduct

- We may disagree, but we will be respectful of one another.
- We will direct all comments to issues.
- We will avoid personal attacks.

Committee Reports and Communications

1. Presentation of Life-Saving Awards
2. Manatee County Special Liaison Report
3. Sarasota County Special Liaison Report
4. Other Reports

Public to be Heard

Discussion Items for Consideration of the Town Commission

5. Community Center Advisory Committee (CCAC) Report and Recommendations
(Proposed Resolution 03-14, Community Center Bond Referendum)

CCAC Chairman Jim Brown will report recommendations for the proposed Community Center followed by a presentation of conceptual drawings for a site plan, floor plans, and building elevations by Lisa Wannamacher of Wannamacher & Russell Architects. Recommended Action: Pending discussion, provide direction to Manager.

6. Proposed Resolution 03-13, Sarasota Downtown Mobility

At their last meeting the Town Commission directed staff to draft a resolution encouraging the City of Sarasota to consider alternate mobility plans to provide the best flow of traffic for the City of Sarasota as well as for residents of Bird Key, St. Armand's Key, and Longboat Key. Recommended Action: Pending discussion.

7. Term Limit Elimination & Three-Year Terms for Commissioners
(Proposed Ordinance 03-17, Charter Amendment)

Commissioner Lenobel has requested that the Town Commission consider referendum questions for the March 9, 2004 election that would address the elimination of term limits and provide for three-year terms for Commissioners. This will require a Charter change. Recommended Action: Pending discussion, provide direction to Manager.

8. Utility Rate Study

The Town's 30-year old water and sewer system needs repairs and upgrading. Current rates only provide part of the capital funds necessary requiring the Town to turn to cash reserves for the balance. New rates will provide for utility improvements to be paid for on a "pay as you go" basis and are structured to encourage water conservation. Recommended Action: Pending discussion, provide direction to Manager.

9. Proposed Ordinance 03-16, Approving Cable Franchise Agreement Between the Town and Comcast of West Florida, Inc.

The Town's current franchise agreement with Comcast will expire in March 2004; renewal of this agreement is done by Ordinance. Proposed Ordinance 03-16 and the franchise agreement is attached for your review and consideration. Recommended Action: Pending discussion, provide direction to Manager.

10. Request for Referendum, Comprehensive and Zoning Code Map Amendment

At the September 8, 2003 Regular Meeting Mr. Alan Moore requested Town Commission support for him to pursue a Charter referendum to allow residential zoning of his property as well as the adjacent property, Mar Vista Restaurant, owned by Mr. Ed Chiles. Town Commission requested staff review procedures and report back to the Commission at a future workshop meeting. Recommended Action: Pending discussion.

11. Manatee County Impact Fees

Jim Lee, Manatee County Building Department Director, will discuss this item which proposes impact fees for services which include roads, parks and open space, public safety, and law enforcement. This will require an interlocal agreement similar to the ones with Sarasota County for imposing and collecting impact fees for library and transportation. Recommended Action: Pending discussion, provide direction to Manager.

12. Intracoastal Waterway and Navigational Markers

Police Chief Hogle and Officer Dennis Silverio, in conjunction with officials from Sarasota and Manatee Counties and the Florida Fish & Wildlife Commission, have prepared a comprehensive recommendation for navigational markers throughout the Town. This report and recommendations will be presented at the workshop meeting for Town Commission consideration. Recommended Action: Pending discussion, provide direction to Manager.

13. Incentives for Hi-Rise Building Sprinkler Retrofit

Due to concerns for public safety in the event of hi-rise condominium fires, the Town Commission directed staff to investigate means to provide incentives to have sprinklers installed in buildings greater than 75 feet in height. Fire Chief Halas and Building Official Fowler will report their findings and recommendations for Town Commission consideration. Recommended Action: Pending discussion, provide direction to Manager.

14. Request from Friends of Tennis

The Friends of Tennis wish to address the Town Commission to discuss acknowledging some of the donations to the Tennis Center expansion project. Recommended Action: Pending discussion, provide direction to Manager.

15. Proposal for 2004 Academy of Government

The Citizen's Relations Committee (CRC) will present a proposal for a 2004 Academy of Government to be offered. Recommended Action: Pending discussion, provide direction.

Town Commission Comments

Town Attorney Comments

Town Manager Comments




Press to be Heard

MANATEE COUNTY



SARASOTA COUNTY

LONGBOAT KEY

Waterway Signs

-  To Be Removed
-  To Be Replaced
-  New Sign

Speed Zones

-  ISNW
-  SSMW



2000 0 2000 4000 Feet

Map Date: 05/07/03
Aerial Date 1995

Regular Workshop – November 20, 2003
Agenda Item 12

Agenda Item: Intracoastal Waterway and Navigational Markers

Presenter: Police Chief Hogle

Summary: Police Department staff will update the Town Commission on the status of various marine markers and regulatory signs. That review will include:

1. Sarasota County waters and pending new markers
2. Manatee County waters and pending Manatee County Ordinance
3. Water Speed Zones in waters surrounding Longboat Key
4. Town Ordinance 03-09 (Jewfish Key area)
5. Town Ordinance 96-26 (Emerald Harbor area)

Attachments: 11-14-03 Memo, Manager to Commission;
11-14-03 Memo, Manager to Commission;
Sarasota County chart of Longboat Key waters with planned signage
Florida Fish and Wildlife Conservation Commission Rule titled:
68D-23 Uniform Waterway Markers in Florida Waters

Recommended

Action: Pending discussion, provide direction to Manager

M E M O R A N D U M

DATE: November 14, 2003

TO: Town Commission

FROM: Bruce St. Denis, Town Manager

SUBJECT: Intracoastal Waterway and Navigation Markers

As of press time for the November 20, 2003 Regular Workshop agenda we do not have the narrative nor the Manatee County map that goes with the Intracoastal Waterway and Navigation Marker item.

That will be provided to you by special delivery on Monday, November 17, 2003.

I apologize for any inconveniences this may have caused.

M E M O R A N D U M

DATE: November 14, 2003

TO: Town Commission

FROM: Bruce St. Denis, Town Manager

SUBJECT: Intracoastal Waterway and Longboat Key Waterway Markers

Earlier this year the Town Commission asked staff to develop a comprehensive recommendation for navigational markers throughout the Town. The Police Department has been working with both Sarasota and Manatee Counties to develop this plan.

The proposed marker locations and types of markers are discussed in the attached report from Police Chief Al Hogle who will be at the November 20, 2003 Workshop meeting to discuss the proposal.




Please don't hesitate to contact me if you have any questions.

MANATEE COUNTY



SARASOTA COUNTY

LONGBOAT KEY

Waterway Signs

-  To Be Removed
-  To Be Replaced
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FISH AND WILDLIFE CONSERVATION COMMISSION

Division of Law Enforcement

Boating Safety and Waterway Management Section

**Uniform Waterway Markers in Florida Waters
68D-23**

Intent.	68D-23.101
Scope.	68D-23.102
Definitions.	68D-23.103
Placement of Markers.	68D-23.104
Criteria for Approval.	68D-23.105
Permit Conditions.	68D-23.106
Federal System Adopted.	68D-23.107
Specifications for Markers.	68D-23.108
Additional Specifications for Information and Regulatory Markers.	68D-23.109
Triennial Inspection.	68D-23.110
Enforcement.	68D-23.111
Exemptions.	68D-24.112

FISH AND WILDLIFE CONSERVATION COMMISSION
Division of Law Enforcement

RULE TITLE:

Uniform Waterway Markers in Florida Waters.

RULE NUMBER:

68D-23

Intent.	68D-23.101
Scope.	68D-23.102
Definitions.	68D-23.103
Placement of Markers.	68D-23.104
Criteria for Approval.	68D-23.105
Permit Conditions.	68D-23.106
Federal System Adopted.	68D-23.107
Specifications for Markers.	68D-23.108
Additional Specifications for Information and Regulatory Markers.	68D-23.109
Triennial Inspection.	68D-23.110
Enforcement.	68D-23.111
Exemptions.	68D-24.112

68D-23.003 Placement of Regulatory Markers in Waters of the State.

Specific Authority 327.40 FS. Law Implemented 327.40 FS. History--New 10-21-80, Formerly 16N-23.03, 16N-23.003, Formerly 62N-23.003, Repealed 12-23-01.

68D-23.101 Intent.

(1) It is the intent of this chapter:

(a) To provide for uniformity in design, construction and coloring of markers so that all vessel operators may readily recognize, identify and distinguish between authorized markers and unlawfully placed markers;

(b) To provide a means by which the Division and its officers and all other law enforcement officers charged with the enforcement of this chapter may determine with reasonable certainty which boating restricted areas are lawfully established and marked;

(c) To provide a grace period until December 31, 2003, during which time all markers shall be brought into conformity with the provisions of Chapter 327, F.S., this chapter, and Part 62 of Title 33 of the Code of Federal Regulations, and to provide for the removal of all nonconforming markers after that date; and,

(d) To insure that regulatory markers noticing boating restricted areas created pursuant to Sections 327.22, 327.60 and 370.12, F.S., are authorized only for the purposes of protecting human life and limb, vessel traffic safety and maritime property, and manatees.

(2) It is further the intent of this chapter that no boating restricted area be established,

continued in effect, or enforced 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 Division will not issue any permit authorizing the placement of regulatory markers for:

(a) Ordinances that apply within the Florida Intracoastal Waterway, in violation of Section 327.60(2), F.S.;

(b) Ordinances adopted pursuant to Section 370.12(2)(o), F.S., until such ordinances have been reviewed and approved by the commission, and provided that such ordinances do not apply within the marked navigation channel of the Florida Intracoastal Waterway nor to the waters within 100 feet of said channel;

(c) Ordinances that discriminate against personal watercraft, in violation of Section 327.60(1), F.S.;

(d) Ordinances regulating the anchoring of non-live-aboard vessels in navigation, in violation of Section 327.60(2), F.S.

(4) Where conflicting speed or operational restrictions are established by law or pursuant to law, the more restrictive shall be posted and shall apply.

(5) Regulatory markers placed pursuant to a permit issued as provided herein shall be prima facie evidence of the boundaries of boating restricted areas and the speed or operational restrictions imposed therein.

Specific Authority 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History--New 12-23-01.

68D-23.102 Scope.

The provisions of this chapter prescribe the procedures by which the Division permits and regulates the placement of markers in, on, and over the waters of this state and the shores thereof. This chapter also provides for the design, construction, characteristics and coloring of all markers placed in, on, and over the waters of this state and the shores thereof by adopting by reference the United States Aids to Navigation System, Part 62 of Title 33 of the Code of Federal Regulations.

Specific Authority 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History--New 12-23-01.

68D-23.103 Definitions.

(1) For purposes of this chapter and Chapters 68C-22 and 68D-24, F.A.C., the following definitions shall apply:

(a) "Aid to navigation" means any device external to a vessel intended to assist a

navigator to determine position or safe course, or to warn of dangers or obstructions to navigation.

(b) "Information marker" means a device external to a vessel intended to provide the mariner with information concerning matters other than dangers or obstructions to navigation, or regulatory matters.

(c) "Regulatory marker" means a device used to alert the mariner to various warnings or regulatory matters such as horsepower, speed, or wake restrictions.

(d) "Mooring buoy" means a device that is permanently secured to the bottom of a body of water and to which a vessel may be secured when not underway.

(e) "Buoy" means any device designed to float which is anchored in the waters of the state and which is used to convey a message or carry a sign.

(f) "Sign" means an object which displays a message and which is attached to another object such as a piling, buoy, structure, or the land itself.

(g) "Symbol" means the orange geometric shape displayed on an information or regulatory marker. The meanings associated with the orange geometric shapes are as follows:

1. A vertical open-faced diamond signifies danger;
2. A vertical diamond shape having a cross centered within indicates that all vessels or certain classes of vessels are excluded from the marked area;
3. A circular shape indicates that certain operating restrictions are in effect within the marked area; and,
4. A square or rectangular shape will contain directions or instructions lettered within the shape.

(h) "Display area" means the area on an information marker or regulatory marker within which the symbol is displayed.

(i) "Boating restricted area" means an area of the waters of the state within which the operation of vessels is subject to specified restrictions or from which vessels are excluded.

(j) "Shore" means that area of land immediately adjacent or contiguous to the waters of the state such that a sign or marker erected thereon is readily visible to the operator of a vessel who might reasonably believe that the sign or marker displays navigational, regulatory or other information relevant to the operation of the vessel.

(k) "Florida Intracoastal Waterway" means:

1. All waters within the right-of-way of 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 Route 1 across Lake Okeechobee; the Gulf Intracoastal Waterway, Anclote to Fort Myers; the Gulf Intracoastal Waterway, Carrabelle to Tampa Bay; the Gulf Intracoastal Waterway, Carrabelle to Anclote open bay section (using the Gulf of Mexico); and the Gulf Intracoastal Waterway, Carrabelle to the Alabama state line west of Pensacola; and,

2. All waters from shoreline to shoreline within the Okeechobee Waterway, Stuart to Fort Myers, not including Route 1 across Lake Okeechobee; the St. Johns River, Jacksonville to Sanford; and, the Apalachicola, Chattahoochee, and Flint Rivers in Florida.

(l) "Uniform State Waterway Marking System" means the system of aids to navigation, information markers, regulatory markers, and mooring buoys, as specified in Part 66 of Title 33 of the Code of Federal Regulations.

(m) "United States Aids to Navigation System" means the system of aids to navigation, information markers, regulatory markers, and mooring buoys, as specified in Part 62 of Title 33 of the Code of Federal Regulations.

(n) "Private Aid to Navigation" means an aid to navigation the establishment of which is authorized by a permit issued by the United States Coast Guard pursuant to Part 66 of Title 33 of the Code of Federal Regulations.

(o) "Maritime property" means vessels and their engines, tackle, gear, equipment, appurtenances, furnishings, cargoes, stores, personal property then on board belonging to the vessels' occupants, and such other similar property as is consistent with the general maritime law of the United States. This definition does not include littoral or riparian property, the shores thereof, seawalls, docks, wharfs, or other property intentionally and permanently attached to the shore.

(2) When used on markers, the terms:

(a) "Idle Speed No Wake" and "Idle Speed" may be used interchangeably and mean that a vessel must proceed at a speed no greater than that which will maintain steerageway and headway. At no time is any vessel required to proceed so slowly that the operator is unable to maintain control over the vessel or any other vessel or object that it has under tow.

(b) "Slow Speed" and "Slow Speed Minimum Wake" may be used interchangeably and mean that a vessel must be fully off plane and completely settled into the water. The vessel must then proceed at a speed which is reasonable and prudent under the prevailing circumstances so as to avoid the creation of an excessive wake or other hazardous condition which endangers or is likely to endanger other vessels or other persons using the waterway. A vessel that is:

1. Operating on plane is not proceeding at this speed;
2. In the process of coming off plane and settling into the water or coming up onto plane is not proceeding at this speed;
3. Operating at a speed that creates a wake which unreasonably or unnecessarily endangers other vessels or other persons using the waterway, or is likely to do so, is not proceeding at this speed;
4. Completely off plane and which has fully settled into the water and is proceeding at a reasonable and prudent speed with little or no wake is proceeding at this speed.

"Slow Speed" and "Slow Speed Minimum Wake" are the preferred terms. "Slow Down Minimum Wake" markers may continue to be used for restricted areas authorized prior to January 1, 2001, except when such a restricted area is contiguous to an Idle Speed No Wake

boating restricted area.

(c) "Caution zone" means an area presenting a significant risk of navigational hazard, an area frequently inhabited by manatees on a somewhat regular basis, or other area similarly requiring that vessels be operated with particular alertness and caution so as to avoid endangering life, limb, vessel traffic safety or maritime property, or manatees.

(d) "Vessel exclusion zone" means an area from which all vessels or certain classes of vessels are excluded. Examples include:

1. "No Vessels" or "Swim Area" - All vessels of any type are prohibited from entering the marked area.

2. "No Motorized Vessels" or "No Motorboats" or "Motorboats Prohibited" - All vessels equipped with any mechanical means of propulsion are prohibited from entering the marked area, even if the mechanical means of propulsion is not in use.

3. "No Power-driven Vessels" - All vessels equipped with any mechanical means of propulsion are prohibited from entering the marked area unless the mechanical means of propulsion is not in use and, if possible to do so, is tilted or raised out of the water.

4. "No Internal Combustion Motors" - All vessels equipped with internal combustion motors (e.g.: gasoline or diesel motors) for propulsion are prohibited from entering the marked area, even if the motor is not in use.

5. "Manually Propelled Vessels Only" - All vessels other than those propelled by oars, paddles, or poles are prohibited from entering the marked area. Vessels equipped with mechanical means of propulsion may enter the marked area only if the mechanical means of propulsion is not in use and, if possible to do so, is tilted or raised out of the water.

6. "No Entry Area" - All vessels and all persons, either in vessels or swimming, diving, or wading, are prohibited from entering the marked area.

(e) "Miles per hour" and "MPH" mean speed made good over the bottom measured in statute miles. A specific number will be posted in conjunction with "miles per hour" or "MPH" and is the maximum speed at which a vessel may lawfully be operated within the marked area. Although it is the intention of the Commission to allow those vessels capable of attaining a planing configuration at posted numerical speed limit to do so, this posted speed limit shall not be construed as permitting the reckless or careless operation of a vessel, in violation of Section 327.33, F.S., or authorizing any vessel to travel at an unsafe speed, in violation of navigation rule 6 as adopted pursuant to Section 327.33, F.S., by reason of:

1. Having an elevated bow which restricts visibility, or

2. Producing an excessive wake or other hazardous condition which endangers or is likely to endanger other vessels, other persons using the waterway, or natural resources of the state.

(f) "Wake," when used in conjunction with a numerical size limit, means all changes in the vertical height of the water's surface caused by the passage of a vessel including, but not limited to, a vessel's bow wave, stern wake, and propeller wash, measured from the ambient tide level to the crest of the vessel's wake at a distance of not less than 25 feet from the vessel.

(g) "Holiday" means:

1. New Year's Day.
2. Birthday of Martin Luther King, Jr., the third Monday in January.
3. Memorial Day.
4. Independence Day, the Fourth of July.
5. Labor Day.
6. Columbus Day.
7. Veterans' Day, November 11.
8. Thanksgiving Day.
9. Friday after Thanksgiving.
10. Christmas Day.
11. If any of these holidays falls on Saturday, the preceding Friday shall be observed as a holiday. If any of these holidays falls on Sunday, the following Monday shall be observed as a holiday.

(3) The division may authorize the use of other terminology on regulatory markers if the message is clear, unambiguous, and accurately describes a lawfully imposed restriction.

Specific Authority 327.40, 327.41, 327.46, 370.12 FS. Law Implemented 327.40, 327.41, 327.46, 370.12 FS. History--New 12-23-01.

68D-23.104 Placement of Markers.

(1) No person, municipality, county or other governmental entity shall place, cause to be placed, or maintain in place any marker in, on or over the waters of the state or the shores thereof without a permit from the division.

(2) Any person, municipality, county, or other governmental entity desiring to place a marker shall make application to the division on the Florida Uniform Waterway Marker Application form, FWC/DLE 153(01/2001), which is adopted and incorporated herein by reference. Application forms may be obtained by submitting a request to: Fish and Wildlife Conservation Commission, Division of Law Enforcement, Office of Boating Safety and Waterway Management, 620 South Meridian Street, Tallahassee, Florida 32399-1600. Each application must include:

(a) A scale drawing no larger than 8 1/2 inches by 11 inches, reproducible on standard office photocopying equipment, showing the approximate placement of the proposed markers with each proposed marker labeled to correspond to the list required below. If the application is for regulatory markers, the drawing must also depict the exact boundaries of the proposed boating restricted area.

(b) A list of the markers proposed, labeled to correspond to the drawing required above.

(c) A statement of the specifications for the markers proposed, including:

1. A description giving each marker's size, shape, color, height above mean high water, and number, letter or message;

2. A description of the type, size, shape, and material used for any structure which will support the markers;

3. A statement of the color, characteristic, height above mean high water, intensity, and nominal range of any light which will be placed on the markers;

4. A statement of the type signal (whistle, horn, bell, etc.) and characteristic for any audible fog signal.

5. The latitude and longitude expressed in degrees, minutes, and seconds or degrees and decimal minutes of the location where each marker will be placed.

(d) A statement of the purpose for placing the proposed markers. If the application is for regulatory markers, this statement must include the purpose for regulating vessel operation and a statement of the facts and circumstances justifying the establishment of the restriction on speed or operation.

(e) A statement listing the names or titles of the individuals responsible for the placement and maintenance of the markers along with an address and a contact telephone number for each individual.

(f) If the application is for regulatory markers, the applicant must enclose therewith proof of the lawful imposition of restrictions on the speed or operation of vessels for which the regulatory markers are requested, as follows:

1. A copy of an ordinance adopted pursuant to Section 327.22, F.S., which imposes the restriction only upon vessels resident within the county or municipality imposing the restriction; or

2. A copy of an ordinance adopted pursuant to Section 327.60, F.S., which imposes the restriction for reasons of vessel traffic safety or public safety; or

3. A copy of an ordinance adopted by a county or municipality and approved by the commission pursuant to paragraph 370.12(2)(o), F.S., which imposes the restriction for reasons of manatee protection; or

4. A copy of the statute, special act, rule, regulation, order, or other instrument which imposes the restriction for reasons other than public safety or manatee protection, and a statement of the specific authority under which the restriction is imposed.

(3) Upon receipt of all statements and other documents specified above, the division will:

(a) Determine whether or not there exists a conflict with the provisions of Chapter 327, F.S., or any amendments thereto or regulations thereunder, for ordinances adopted pursuant to Section 327.60, F.S.

(b) Forward the request to the Bureau of Protected Species Management for review and approval pursuant to paragraph 370.12(2)(o), F.S., for ordinances adopted thereunder.

(c) For regulatory markers, determine whether or not the markers as proposed would

clearly mark the area as a boating restricted area and adequately notice mariners of the restrictions imposed on vessel speed or operation.

(d) Determine whether or not the placement of the proposed markers in the proposed locations would create an unreasonable hazard to navigation.

(e) Determine whether the proposed markers conform to the United States Aids to Navigation System.

(4) The division may consult, coordinate, or cooperate with any other governmental entity having concurrent jurisdiction over the waters for which the permit is requested.

(5) After obtaining the requested permit, the applicant must install, inspect, maintain, and remove the permitted marker at its own expense and as directed by the division.

Specific Authority 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History--New 12-23-01

68D-23.105 Criteria for Approval of Regulatory Markers.

(1) The division shall find a valid vessel traffic safety or public safety purpose is presented for ordinances adopted pursuant to Section 327.60, F.S., under the following facts and circumstances:

(a) For an Idle Speed-No Wake boating restricted area, if the area is:

1. 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 wide and 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 wide.

2. Within 500 feet of fuel pumps or dispensers at any marine fueling facility which sells motor fuel to the general boating public on waterways more than 300 feet wide and within 300 feet of the fuel pumps or dispensers at any licensed terminal facility which sells motor fuel to the general boating public on waterways not exceeding 300 feet wide.

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

4. An area where boating accident reports, uniform boating citations, vessel traffic studies, or other creditable data demonstrate a high risk of collision or where any significant vessel wake would be likely to endanger life, limb, vessel traffic safety or maritime property.

(b) For a Slow Speed Minimum Wake boating restricted area if the area is:

1. Within 300 feet of any bridge fender system.

2. 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.

3. 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 where an intervening obstruction to visibility may obscure other vessels or other users of the waterway.

4. Subject to unsafe levels of vessel traffic congestion.

5. Subject to hazardous water levels or currents, or containing other navigational hazards.

6. 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 public safety.

(c) For a numerical speed limit boating restricted area if the area is:

1. Subject to unsafe levels of vessel traffic.

2. Subject to hazardous water levels or currents or containing other navigational hazards.

3. An area that accident reports, uniform boating citations, vessel traffic studies, or other creditable data demonstrate to present a risk of collision or a risk to public safety.

4. An area within which a proposed numerical speed limit is less restrictive than the speed limit in place for the surrounding area if hazardous tides or currents require that vessels operate faster than the surrounding speed limit in order to properly maintain maneuvering ability and headway or if the geographic configuration of the area and levels of vessel traffic density indicate that higher speeds do not pose a threat to life, limb, property, or manatees. Any dispute concerning the threat to manatees shall be resolved as provided in paragraph 370.12(2)(o), F.S.

(d) For vessel exclusion zones if the area is:

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

2. Reserved exclusively as a canoe trail or otherwise limited to vessels under oars or under sail.

3. Reserved exclusively for a particular activity and user group separation must be imposed to protect the safety of those participating in such activity.

(e) For other boating restricted areas (caution zone, no skiing, no parasailing, one-way vessel traffic, etc.) if the area is one that accident reports, uniform boating citations, vessel traffic studies, or other creditable data demonstrate to present a risk to vessel traffic safety or public safety.

(2) (a) An ordinance for the protection of manatees, adopted pursuant to paragraph 370.12(2)(o), F.S., must be reviewed and approved by the commission before any regulatory marker implementing such an ordinance may be installed. Any disagreement on the provisions of such an ordinance shall be resolved as provided in said paragraph.

(b) In order to avoid a duplicate review and approval process, the division shall defer to the findings of the commission. Therefore, upon the review of such an ordinance and the commission's approval of the ordinance upon a finding that manatees are frequently sighted, that manatees can be generally assumed to inhabit the area periodically or continuously, and that the restrictions imposed are justified and necessary for the protection of manatees or their habitat, the division shall find a valid manatee safety purpose is presented.

Specific Authority 327.40, 327.41 FS. Law Implemented 327.40, 327.41, 370.12 FS. History-- New 12-23-01.

68D-23.106 Permit Conditions.

(1) All permits issued pursuant to this chapter are subject to the following conditions:

(a) Placement of these markers must be as requested in the application. Any deviation will require that the applicant apply to have the permit amended.

(b) The applicant must display the permit number on each marker and the ordinance number, municipal code section number, or rule number (etc.) on each regulatory marker. These numbers must be displayed in black, block characters approximately one inch in height.

1. The permit number must be displayed in the lower left corner on the face of each regulatory marker. The ordinance number, municipal code section number, or rule number (etc.) must be displayed in the lower right corner on the face of each regulatory marker.

2. All markers other than regulatory markers must display the permit number. This display shall be placed at any location on the marker where it can easily be read, including the reverse side of a sign, provided that it does not interfere with the message of the marker.

(c) Upon completion of the installation of markers, the applicant must notify the division in writing within 10 working days. If the latitude and longitude of each marker, as installed, is different from that listed in the application, this notification must include the correct latitude and longitude in degrees, minutes, and seconds.

(d) All markers must be maintained in proper condition at all times. A discrepancy exists whenever a marker is not exactly as described in the approved application or is destroyed, damaged, moved, or is otherwise unserviceable or not watching properly. The applicant must immediately report any discrepancy in the marker to the division by telephone, telefacsimile or other similarly rapid means of communication. Unless the applicant's permit expressly provides for a longer period, the applicant must correct any discrepancy within not more than 30 days and must notify the division when the correction is accomplished.

(e) Authorization by the division for the placement of a marker does not authorize any invasion of private rights, nor grant any exclusive privileges, nor does it obviate the necessity of complying with any other federal, state or local laws or regulations.

(f) All permits issued pursuant to this chapter are contingent upon the consent of and, if necessary, the issuance of appropriate permits by the United States Army Corps of Engineers authorizing the placement of structures for the support of the proposed markers. Consent may be by nationwide permit, regional permit, letter permit, authorization letter, statement of no objection, or other similar means.

(g) All permits issued pursuant to this chapter are contingent upon the consent of and, if necessary, the issuance of appropriate permits by the United States Coast Guard authorizing the establishment of private aids to navigation pursuant to Part 66 of Title 33 of the Code of Federal Regulations.

(h) All permits issued pursuant to this chapter authorizing the placement of markers, buoys, or signs on submerged lands, or other property or structure not owned by the applicant are contingent upon the applicant receiving the written consent of the owner of the submerged lands, other property, or structure to the placement of said signs and providing a copy of such consent to the division.

(i) By accepting any permit and placing the markers authorized therein, the applicant other than a governmental entity, to the extent authorized by law, agrees and promises to hold harmless the State of Florida and its agencies, employees, agents, or successors from fault with respect to any claim or claims arising from alleged negligence in the placement, maintenance, operation and removal of any and all markers placed by applicants pursuant to such permits. The applicant other than a governmental entity further agrees to indemnify the State of Florida for any and all legal fees and costs incurred in defense of any suit brought against the State as a result of alleged negligence by applicant in the placement, maintenance, operation or removal of the markers.

(j) Applicants for permits to place regulatory markers or the governmental entities establishing the rules, ordinances, or other actions imposing the regulations must provide for the enforcement of operating restrictions noticed by said markers.

Specific Authority 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History--New 12-23-01.

68D-23.107 Federal System Adopted.

(1) The following are adopted and incorporated by reference:

(a) The United States Aids to Navigation System, Part 62 of Title 33 of the Code of Federal Regulations;

(b) The United States Coast Guard Aids to Navigation - Administration Manual (Comdtinst M16500.7);

(c) The United States Coast Guard Aids to Navigation - Technical Manual (Comdtinst M16500.3A).

(2) All markers and mooring buoys placed or maintained in, on or over the waters of the state or the shores thereof shall conform to the United States Aids to Navigation System.

(a) Until December 31, 2003, channel markers and obstruction markers conforming to the Uniform State Waterway Marking System may continue to be used on waters of this state that are not navigable waters of the United States.

(b) No person, municipality, county or other governmental entity shall place any new marker or replace any existing marker unless such new or replacement marker or mooring buoy conforms to the United States Aids to Navigation System and all other provisions of this chapter.

(c) On or before December 31, 2003, all markers in, on or over the waters of the state or the shores thereof shall be brought into conformity with the United States Aids to Navigation System and all other provisions of this chapter, or removed from the waters or shores of the state.

(d) After December 31, 2003, no person, municipality, county, or other governmental entity shall place, maintain, or permit to remain in, on or over the waters of the state or shores thereof any nonconforming marker.

(e) After December 31, 2003, all nonconforming markers in place in, on, or over the waters of the state or shores thereof shall be declared a nuisance. The division and its officers and

all other law enforcement officers charged with the enforcement of Chapter 327, F.S., shall have the authority to remove or cause the removal of any such nonconforming marker.

Specific Authority 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History--New 12-23-01.

68D-23.108 Specifications for Markers.

(1) A marker placed in, on or over the waters of the state or shores thereof may be displayed as a buoy bearing letters, numbers or a symbol on its surface, or as a sign mounted on a buoy, piling or other structure, or as a sign on the shore.

(2) Buoyed signs and markers must extend not less than 36 inches above the surface of the water. A sign suspended above the water must have a minimum of 25 feet clearance from the mean high water mark to the bottom of the sign.

(3) A buoy whose sole purpose is to carry a sign above it shall be marked with three horizontal bands of international orange alternating with two horizontal bands of white, each band placed completely around the circumference of the buoy and occupying approximately one-fifth of the total area of the buoy's surface above the waterline. All markers shall be made of materials which will retain, despite exposure to weather and other elements, their color, shape, legibility and position.

(4) All letters on green or black backgrounds shall be white. All letters and numerals on red or white backgrounds shall be black, except that white retroreflective letters and numerals may be used on a red background. All letters and numerals shall be of block characters of good proportion, spaced in a manner which will provide maximum legibility and of a size proportionate to the size of the marker.

(5) Retroreflective materials shall be used for all displays on markers that are required to be international orange. Retroreflective materials may be used for any other portion of a marker.

Specific Authority 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History--New 12-23-01.

68D-23.109 Additional Specifications for Information and Regulatory Markers.

(1) All information and regulatory markers shall be white in color and shall display international orange symbols.

(2) When a buoy is used as an information or regulatory marker, it shall be white with horizontal bands of international orange placed completely around the circumference of the buoy. One band shall be at the top of the buoy body, the second band shall be placed just above the waterline so that both international orange bands are clearly visible to approaching vessels. The international orange bands shall be not less than two inches in width. The display area shall be that portion of the buoy body between the bands and shall be white. Symbols shall be centered between the international orange bands. Only a cylindrical buoy may be used. The buoy shall have a diameter of not less than nine inches.

(3) When a sign is used for an information or regulatory marker it shall be square or rectangular. It shall be white with an international orange border. The display area shall be that

portion of the sign within the border. Symbols shall be centered within the display area. The size of the sign shall be appropriate to the size of the waterway where the sign is located and the nature of the vessels transiting the waterway, however, no such sign shall be smaller than three feet by three feet.

(4) Specifications for Display of Symbols.

(a) The thickness of the international orange line used to draw the borders and the symbols shall be not less than 2 inches.

(b) The height of the symbol shall be at least half and not more than two-thirds the height of the display area.

(c) The sides of the diamond shape shall slope at a thirty to forty-five degree angle from the vertical on a plane surface. Appropriate adjustments for curvature shall be made when applied to a cylindrical surface.

(d) In addition to the permit number required to be displayed under subsection 68D-23.106(7), F.A.C., every regulatory marker shall display the number of the statute, special act, rule, ordinance, or other governmental action that created the boating restricted area or other operating restriction, and the name of the municipality, county or other governmental agency which placed and maintains the marker. This number and name shall be displayed in characters not less than one inch in height and shall be placed in the lower right hand corner of the display area on each sign, and at any location on each buoy where it can easily be read, provided that it shall not interfere with the message of the marker.

Specific Authority 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History--New 12-23-01.

68D-23.110 Inspection and Certification.

(1) Each person holding a permit to place and maintain one or more markers must inspect all markers for which the permit was issued and report such inspection to the division triennially, beginning 36 months from the date the permit was issued or 36 months after this rule becomes effective, whichever comes later. The report must be submitted at least thirty but not more than ninety days prior to expiration of the three-year period.

(2) The required report shall consist of the following:

- (a) The name of the permit holder and permit number;
- (b) The name of the person or persons currently responsible for the placement and maintenance of the markers; and,
- (c) A statement certifying that the markers placed pursuant to the permit have been inspected during the ninety days preceding the statement and that:
 - 1. The markers are properly maintained and in serviceable condition,
 - 2. The markers conform to the requirements of this chapter,
 - 3. The markers are still properly on station, and
 - 4. The date or dates on which the markers were inspected.

(3) Failure to inspect a marker and to report the results of the inspection to the division during the specified time period shall be grounds for rescinding the permit authorizing placement of the marker and for removing or ordering the removal of the marker.

Specific Authority 327.40, 327.41 FS. Law Implemented 327.40, 327.41, 370.12 FS. History--New 12-23-01.

68D-23.111 Enforcement.

This chapter shall be enforced by the division and its officers, and any other authorized law enforcement officer as provided in Section 327.70, F.S., all of whom shall have the authority to remove or cause the removal of any marker found to be in violation of this chapter.

Specific Authority 327.40, 327.41 FS. Law Implemented 327.22, 327.40, 327.41, 327.22, 327.46, 327.60, 327.70, 370.12 FS. History--New 12-23-01.

68D-23.112 Exemptions.

(1) Nothing herein shall apply to the United States Government or its agencies, nor to any aid to navigation, marker, mooring buoy, or other similar device placed thereby.

(2) Persons establishing private aids to navigation other than regulatory markers and mooring buoys on waters of concurrent state/federal jurisdiction pursuant to the provisions of 33 CFR ' 66.01 shall submit to the division a copy of their United States Coast Guard permit (CG-2554) in lieu of the materials required under Rule 68D-23.104, F.A.C. Upon receipt by this division of said copy of their permit, such private aids to navigation shall be exempt from further permitting and need not display a permit number.

(3) Regulatory markers authorized by the former Florida Department of Natural Resources prior to January 1, 1988, are exempt until December 31, 2003, from the requirement that they display a permit number. After that date, every regulatory marker without a permit number, in place in, on or over the waters of the state or shores thereof shall be declared a nuisance. The division and its officers and all other law enforcement officers charged with the enforcement of Chapter 327, F.S., shall have the authority to remove or cause the removal of any unpermitted regulatory marker. Markers authorized prior to January 1, 1988, for which no permit number was assigned shall be issued a permit number upon receipt by the division of the following:

- (a) A copy of the correspondence authorizing placement of said markers;
- (b) A statement of the specifications for the markers, including:
 - 1. A list of the markers,
 - 2. A description giving each markers size and message,
 - 3. The latitude and longitude coordinates in degrees-minutes-seconds of the location of each marker, and
 - 4. A statement that the markers have been inspected during the ninety days preceding the instant request and that:
 - a. The markers are properly maintained and in serviceable condition,
 - b. The markers conform to the requirements of this chapter,
 - c. The markers are still properly on station, and
 - d. The date or dates on which the markers were inspected.
- (4) The inspection and certification requirements in Rule 68D-23.110, F.A.C., shall not apply to markers maintained by an Inland Navigation District pursuant to Section 374.997, F.S., but shall instead be specified in each permit.
- (5) The restrictions displayed on regulatory markers shall not apply:
 - (a) In the case of an emergency;
 - (b) To law enforcement patrol vessels or firefighting vessels; or
 - (c) To any rescue vessel owned or operated by a governmental entity.

Specific Authority 327.40, 327.41 FS. Law Implemented 327.40, 327.41, 327.46, 370.12 FS.
History--New 12-23-01.