



**Florida Fish and Wildlife
Conservation Commission**
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REGULATORY PLAN – OCTOBER 1, 2022

The Fish and Wildlife Conservation Commission, pursuant to the requirements of section 120.74(1), Florida Statutes, hereby publishes its Regulatory Plan, due October 1, 2022.

**List of Laws Enacted or Amended During the Previous 12 Months which
Create or Modify the Duties or Authority of the Fish and Wildlife Conservation Commission**

In compliance with paragraph 120.74(1)(a), F.S., below is a list of laws enacted or amended during the 12 months prior to October 1, 2022, which create or modify the statutory duties or authority of the Fish and Wildlife Conservation Commission (Commission):

- 1. Fish and Wildlife Conservation Commission:** Chapter 2022-142, Laws of Florida (CS/CS/SB 494), which made the following changes to the law, effective July 1, 2022:
 - Provided that forms related to refusal by an individual to submit to a blood test, breath test, or urine test when arrested for boating under the influence are to be provided by the Commission;
 - Exempted interscholastic, intercollegiate, intramural, and club rowing teams affiliated with an educational institution, when participating in practices and competitions, from limitations on operating within the marked channel of the intracoastal waterway, and required that these groups notify the Commission of such activities;
 - Added a new category of vessels that are at risk of becoming derelict – vessels that are tied to an unlawful or unpermitted structure or mooring;
 - Prohibited the creation of public bathing beach and swim area boating restricted areas within the intracoastal waterway and within 100 feet of the marked channel of the intracoastal waterway;
 - Repealed section 376.15, Fla. Stat.;
 - Added vessels declared a public nuisance pursuant to section 327.73(1)(aa), Fla. Stat. to the definition of abandoned property in section 705.101, Fla. Stat.;
 - Provided that the owner of a vessel declared a public nuisance in accordance with section 327.73(1)(aa), Fla. Stat. is responsible for repaying the costs of removal, destruction, and disposal when the government removes the vessel after proper due process, and provided that a person who does not repay may not register or reregister any vessel or motor vehicle in the State until all such costs are repaid; and

- Expanded the permissible uses of derelict vessel removal grant funding to also allow for the removal, destruction, and disposal of vessels declared a public nuisance in accordance with section 327.73(1)(aa), Fla. Stat.

The Commission must amend rules to implement portions of this law. The portion that will require rulemaking for implementation is the expanded permissible uses of derelict vessel removal grant funding. A Notice of Rule Development for these amendments was published July 6, 2022, in Volume 48, Number 130 of the Florida Administrative Register. The agency expects to publish the Notice of Proposed Rule by the end of December 2022.

Rulemaking is not necessary to implement the remaining portions of this law. Most components of the law will take effect pursuant to the language of the statute itself; the language does not require additional rule clarification or details. Moreover, the Commission is not making any programmatic changes where discretion has been authorized, so no changes to existing rules are necessary.

2. Boating Safety: Chapter 2022-197, Laws of Florida (CS/SB 606), which made the following changes to the law, with the indicated effective dates:

- Effective July 1, 2022, added an additional permissible fine to all violations of section 327.30, Fla. Stat., which fines are required to be deposited into the Marine Conservation Resources Trust Fund to be used to enhance State and local law enforcement activities related to boating infractions;
- Effective October 1, 2022, adds additional new components to required State boating safety education courses and required that these new components must be included in boating safety education campaigns and educational materials;
- Effective October 1, 2022, provides that the operator of a vessel used in the instruction of a water sport or activity must use an engine cutoff
- Effective January 1, 2023, defines liveries and other terms related to livery operations;
- Requires a new livery permit to be issued by the Commission for all liveries, effective January 1, 2023, with specific parameters, and creates a penalty for failure to have the required permit;
- Changes the operating requirements of liveries effective January 1, 2023, and provides for increasing penalties for violations;
- Provides that effective January 1, 2023, a livery who commits more than one operational livery violation within three years may not act as a livery for 90 days, and that the Commission may revoke or refuse to issue a livery permit based on repeated violations;
- Increased the monetary penalties for some noncriminal infractions under Chapter 327, Fla. Stat., effective July 1, 2022;
- Provided that effective July 1, 2022, a person convicted of a criminal violation under chapter 327, Fla. Stat., convicted of a noncriminal infraction of the 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), the said infractions

occurring within a 12-month period, must: pay a \$500 fine, which must be deposited into the Marine Conservation Resources Trust Fund to support law enforcement activities.

- Effective July 1, 2022, required the Commission to maintain a program to ensure compliance with the required mandatory education program for boating law violators that tracks citations and sends notices to those who are required to complete this training; and
- Effective July 1, 2022, required that the owner of each vessel required to register a vessel in the state must provide a physical residential or business address with the registration application and provided that upon receipt of an application from a live-aboard vessel owner whose primary residence is the vessel, the commission may authorize such owner to provide a post office box address in lieu of a physical residential or business address.

The Commission must amend rules to implement portions of this law. The portions that will require rulemaking for implementation are additions to required components of boating safety education courses and the creation of a livery permit. Notices of Rule Development for these rule amendments were published on July 6, 2022, in Volume 48, Number 130 of the Florida Administrative Register and on August 1, 2022, in Volume 48, Number 148 of the Florida Administrative Register. The agency expects to publish the Notice of Proposed Rule by the end of December 2022.

Rulemaking is not necessary to implement the remaining portions of this law. Most components of the law will take effect pursuant to the language of the statute itself; the language does not require additional rule clarification or details. Moreover, the Commission is not making any programmatic changes where discretion has been authorized, so no changes to existing rules are necessary.

3. Vessel Anchoring: Chapter 2022-78, Laws of Florida (CS/CS/SB 1432), which made the following changes to the law, effective July 1, 2022:

- Provided that tenancies on sovereign submerged lands of the State for approved or permitted moorings and mooring fields in Monroe County may exceed 12 months, if requested, but may not be longer than 10 years;
- Provided that a sovereign submerged land or other proprietary lease may not prohibit a vessel from an approved and permitted mooring or mooring field or limit the tenancy of a vessel because an individual has established it as his or her domicile in accordance with s. 222.17 or because the vessel is an individual's primary residence;
- Provided that at least once every 90 days, each vessel on waters of the state within Monroe County and within 10 linear nautical miles of a public mooring field or a designated anchoring area must pull anchor and be moved from its location using the vessel's propulsion system and be re-anchored in a new location. The new location must be: 1. No less than one-half linear nautical mile from the vessel's starting location. A vessel may not be re-anchored within one-half linear nautical mile from the vessel's starting location for at least 90 days; or 2. In a different designated anchoring area. A

vessel may not be re-anchored in its originating designated anchoring area for at least 90 days after anchoring within a new designated anchoring area, and exempted vessels moored to approved and permitted moorings, vessels in the County that established their vessel as their domicile until at least one hundred new moorings are available for public use within 1 mile of Key West Bight City Dock;

- Directed the commission, in consultation with Monroe County and the Florida Keys National Marine Sanctuary, to establish by rule designated anchoring areas throughout Monroe County which, 1. Specify a maximum vessel draft for each area; 2. Are created only in locations where the water depth is sufficient to allow vessels whose drafts are less than the area's specified maximum vessel draft to navigate into and out of the areas without grounding or stranding; 3. Are not located over coral reefs or other sensitive fish or wildlife habitat, to the maximum extent practicable, as determined by the commission; 4. Are not located in an area subject to ongoing hazardous water currents or tides or containing navigational hazards; and 5. Are not located within navigational channels, setbacks established by the United States Army Corps of Engineers associated with federal channels, areas where anchoring is prohibited pursuant to s. 327.4109, or any other lawfully established areas that prohibit anchoring; and
- Required the following vessels in Monroe County equipped with a marine sanitation device other than a composting toilet to maintain a record of the date and location of each pumpout for one year and showing the last pumpout occurred within the last 30 days:
 - A vessel that has enclosed living spaces or rooms and that is used by a person as a dwelling or living space overnight at any time, notwithstanding whether or not the vessel is also used for navigation.
 - A vessel moored in a public mooring field.

The Commission must adopt rules to implement one part of this law: the creation of designated anchoring areas within Monroe County. The Commission has not yet published a Notice of Rule Development on this rulemaking effort.

Rulemaking by the Commission is not necessary to implement the remaining portions of this law. The law will take effect pursuant to the language of the statute itself; the language does not require additional rule clarification or details.

**List of Commission Rules the Fish and Wildlife Conservation Commission
Commissioners Will Consider for Adoption Before July 1, 2023**

In compliance with section 120.74(1)(b), Florida Statutes, the following is a list of rules the Fish and Wildlife Conservation Commission will consider for adoption before July 1, 2023. For each rule listed below, a statement of whether the rulemaking is intended to simplify, clarify, increase efficiency, improve coordination with other agencies, reduce regulatory costs, or delete obsolete, unnecessary, or redundant rules is provided.

Law Enforcement

None

Division of Habitat and Species Conservation Grants

1. The Commission intends to undertake rulemaking to update State Wildlife Grants Program Guidelines and supporting forms for Rule 68-1.003(11). This rulemaking effort is intended to update Implementation Goals and hyperlinks, remove obsolete language, and make clarifications.
2. The Commission intends to undertake rulemaking regarding criteria and eligibility for ingress/egress permitting to traverse Commission managed land to access private property. This rulemaking will likely result in a rule for Wildlife Management Areas in 68A-15, and a rule for Wildlife Environmental Areas in 68A-17.

Marine Mammal Regulation

1. The Commission is exploring whether to amend 68C-22.011, F.A.C., to remove or modify small zone of the Withlacoochee River.
2. Proposed Final Rule Language 68C-22.029, F.A.C.: Create a permanent, seasonal rule for the establishment of a Manatee No Entry Zone at a warm-water site, as authorized in Ch. 379.2431(2), Florida Statutes. This is scheduled as a consent agenda item at the December 2022 Commission Meeting.

Update of 2021-2022 Regulatory Plan

The Florida Fish and Wildlife Conservation Commission previously filed its list of Commission rules considered for adoption for the Fiscal Year beginning July 1, 2021, pursuant to section 120.74(2), Florida Statutes. In compliance with section 120.74(1)(c), F.S., the Florida Fish and Wildlife Conservation Commission provides the following updates:

1. The Commission continues to work on rulemaking for Rule 68-1.003(9) – (Florida Boating Improvement Program Grants). A Notice of Rule Development has not yet been published.
2. The Commission continues to work on rulemaking for Rule 68-1.003(12) - (Boating Infrastructure Grant Program Grants). A Notice of Rule Development has not yet been published.

3. The Commission continues to work on rulemaking for a new subsection in Rule 68-1.003 (NOAA Irma Marine Fisheries Disaster Grant Program). A Notice of Rule Development has not yet been published.

CERTIFICATION

By way of this Certification, pursuant to section 120.74 (1)(d), Florida Statutes, the below signed agency head and principal legal advisor each verify that they have reviewed this regulatory plan, and that the Fish and Wildlife Conservation Commission regularly reviews all of its rules and identifies the period during which all rules have most recently been reviewed to determine if the rules remain consistent with the Fish and Wildlife Conservation Commission's rulemaking authority and the laws implemented.



Rodney Barreto, Chairman

Fish and Wildlife Conservation Commission

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Fish and Wildlife Conservation Commission