

Florida Lawmakers Amend Vessel Safety Regulations

Anchoring Restrictions

In May 2005, the City of Miami Beach joined a number of other Florida municipalities in passing ordinances to regulate anchoring within their city limits. Miami Beach's ordinance set off a firestorm of protest because it's one of the primary locations where cruising vessels stop enroute the Bahamas and beyond. SSCA encouraged its members to write letters of protest to the city commissioners and marine trade associations, such as the National Marine Manufacturers Association (NMMA), and the Marine Industry Association of South Florida (MIASF). NMMA represents the \$37 billion marine industry; its members count many of us as very good customers. If local governments wouldn't listen to us, perhaps they would listen to big business. There's no telling how many letters NMMA received, but Chairman George Bullwoar told me he was installing a full-time lobbyist to work exclusively on state water access issues. As a result of the combined efforts of SSCA members, NMMA, and MIASF, Florida Governor Jeb Bush signed House Bill 7175, amending several state statutes pertaining to vessel safety. The bill took effect July 1st, 2006.

There are three elements of the bill that are of particular interest to cruising sailors. Statute 327.60 (2) is now amended to read:

“Nothing contained in the provisions of this section shall be construed to prohibit local governmental authorities from the enactment or enforcement of regulations which prohibit or restrict the mooring or anchoring of floating structures or live-aboard vessels within their jurisdictions or of any vessels within the marked boundaries of mooring fields permitted as provided in s. 327.40. However, local governmental authorities are prohibited from regulating the anchoring outside of such mooring fields of non-live-aboard vessels in navigation.”

In plain English this means that, except in designated mooring fields, municipalities have no authority to regulate where a typical cruising vessel anchors, unless they can prove the vessel is not used for anything other than a residence or place of business.

Bear in mind that Florida defines the term “live-aboard vessel” quite differently than does the average cruiser. Here's how Statute 327.02 paragraph (17) of the Florida Statutes defines “live-aboard vessel”:

- (a) Any vessel **used solely** as a residence; **OR***
- (b) Any vessel **represented as** a place of business, a professional or other commercial enterprise, or a legal residence.*

A commercial fishing boat is expressly excluded from the term "live-aboard vessel".

[Emphasis mine]

By co-opting the term “live-aboard vessel”, the state is forcing boaters to alter their language. Maritime attorney Ted Guy advises cruising sailors who live aboard their boats to adopt the term “fulltime cruisers” when referring to their lifestyle, thus shifting the responsibility to municipalities to prove the vessel is a residence under Florida law. There are other formal

requirements for establishing a legal residence in Florida, but this statute is clear: if you *represent* your boat as your residence, a locality may regulate where you anchor.

Florida's Attorney General expressed his opinion 85-45 as follows: if you use your boat for transportation or any number of recreational purposes, regardless of how long you stay aboard, it's not a live-aboard vessel, unless you represent it as such. In his conclusion he writes: "*Thus, it would appear that the plain statutory language of s. 327.60(2) and the common-law inclusion of rights of anchorage as an element of the exercise of rights of navigation compel the conclusion that a municipality is prohibited from regulating the anchorage of non-live aboard vessels when such anchorage is incident to the exercise of rights of navigation.*"

Cities who want to regulate anchoring may do so by establishing marked mooring fields in accordance with state law. There are few approved mooring fields in the state at this time. Hopefully, this new legislation will pave the way for improved access and availability for both visiting and local boats. Those boaters unwilling to pay for moorings will still be allowed to anchor outside the marked boundaries of mooring fields.

The statute does *not* allow a locality to regulate anchoring by redefining a vessel as a "live-aboard vessel" after an arbitrary time limit, as Miami Beach does. A locality may *not* establish anchoring set-back requirements from docks, seawalls, or homes, as Marco Island does. Any area restricting anchoring must be permitted, and marked by approved signage or buoys, as required by Statutes 327.40 and 327.41. Restricted areas may only be established after consultations between municipalities, Florida Fish and Wildlife Conservation Commission (FWCC), and the U.S. Coast Guard to ensure that restrictions comply with state and federal regulations. Localities are prohibited from placing any regulatory markers in, on, or over the waters of the state or its shores without a permit from the state.

Marina Evacuations

Amendments to Statute 327.59 deal with new provisions designed to protect marina operators. While marinas *may not* adopt, maintain, or enforce policies which require vessels to be removed *by owners* following the issuance of a hurricane watch or warning; they *may* take reasonable action to further secure any vessel within the marina to protect the boat, marina, environment, or personal property, and charge the owner a reasonable fee for doing so. In addition, marina operators may now include specific wording in lease contracts that allows marina personnel to take measures to remove or secure vessels themselves if owners fail to do so promptly, and to charge a reasonable fee for the service. The statute also grants marina operators limited liability from damage, provided the damage is not caused by intentional acts or negligence when removing or securing vessels.

Abandoned and Derelict Vessels

Several changes will help law enforcement officers cope with the growing number of abandoned and derelict vessels. From increased reporting requirements when vessels are sold, to allocation of more funds for removing derelicts, these new provisions will make removal easier, and inflict greater penalties on unscrupulous owners who abandon their vessels on public or private property.

Richard Blackford, SSCA Director
- September 2006

New Law Prevents Florida Cities from Restricting Anchorage

Most captains cruising throughout Florida now have a new law on their side to prevent local cities and counties from forcing them to weigh anchor after a limited number of days. However, the law will do little good if local governments are not aware of the change.

The National Marine Manufacturers Association (NMMA) has asked that SSCA members help them to identify which Florida cities are currently enforcing anchorage bans so that it can bring the new law to the attention of local officials.

As of 01 July, the state law now forbids local governmental authorities from regulating the anchoring of a private sailboat, yacht, or motorboat outside of a mooring field unless that vessel is the operator's residence or place of business.

The state defines a live-aboard vessel as: a) any vessel **used solely as** a residence; or (b) any vessel **represented as** a place of business, a professional or other commercial enterprise, or a legal residence. By this definition, most cruising boats are not live-aboard vessels.

The statute formerly required non-live-aboard vessels to be "engaged in the exercise of rights of navigation" in order to fall outside of a local government's right to regulate its anchoring. The new amendment, however, strictly prohibits a local government from enacting or enforcing an anchoring ordinance against a non-live-aboard vessel outside of a mooring field.

NMMA sought the help of legislators after Miami Beach restricted anchorage to seven days in 2005.

"In truth, local officials ignored the previous law that protected those vessels that are in navigation, so the boating community needs to do more to force local officials to comply with state law," said David Dickerson, NMMA's director of state government relations. "NMMA will be glad to begin the process of alerting officials of the new law, but needs to know which cities are actively enforcing anchorage restrictions."

If you have been forced to "move it along" while in navigation or gunkholing in Florida, please let Dickerson know where and when it happened. He can be reached at ddickerson@nmma.org or at 202-737-9761.

Read the letter below that NMMA attorneys will be sending to offending municipalities:

June 27, 2006

Dear [City / County Attorney],

Our firm represents the National Marine Manufacturers Association (NMMA). NMMA is the nation's largest recreational marine industry association, representing over 1,600 boat builders, engine manufacturers, and marine accessory manufacturers. NMMA members collectively produce more than 80 percent of all recreational marine products made in the United States. Recreational

boating is a popular American pastime, with almost 71 million boaters nationwide and over 13 million registered boats. In 2004, Florida ranked as the top state for boat registrations with over 946,000 boats registered. The recreational boating industry is a substantial contributor to the nation's economy with expenditures on recreational marine products and services of over \$37 billion in 2005 alone. In addition, the Florida Legislature recently determined that the annual economic impact of boating on the state of Florida was \$14 billion.

Several boating advocates have called to our attention your ordinance related to [insert ordinance description and citation].

Because of a 2006 amendment to the Florida Statutes by the adoption of chapter 2006-309, Laws of Florida, we believe your ordinance is likely inconsistent with Florida law effective July 1, 2006. Chapter 2006-309 amends chapter 327.60, Florida Statutes, as follows:

(2) Nothing contained in the provisions of this section shall be construed to prohibit local governmental authorities from the enactment or enforcement of regulations which prohibit or restrict the mooring or anchoring of floating structures or live-aboard vessels within their jurisdictions or of any vessels within the marked boundaries of mooring fields permitted as provided in s. 327.40. However, local governmental authorities are prohibited from regulating the anchoring outside of such mooring fields ~~anchorage~~ of non-live-aboard vessels ~~engaged in the exercise of rights of navigation.~~¹

Pursuant to this statutory amendment, a local government's anchoring ordinance may apply to any vessels anchored in a mooring field; however, outside of mooring fields, an anchoring ordinance may only apply to floating structures² or live-aboard vessels.³ Prior to the new legislative change, the law required non-live-aboard vessels to be "engaged in the exercise of rights of navigation" to fall outside of a local government's right to regulate its anchoring. This new law, however, prohibits a local government from enacting or enforcing an anchoring ordinance against any vessel which is not being used as a live-aboard residence outside of a mooring field.

The issue of whether a vessel is a live-aboard or non-live-aboard vessel is a question of fact relating to the boater's intent; the size or type of vessel is irrelevant. Even a yacht with a full kitchen and sleeping quarters fails to qualify as a live-aboard vessel if the boater does not intend to reside in the vessel for an "unlimited time" or use the vessel "solely as a residence." *See* footnote 2, *infra*. Thus

¹ Underlined and strike-through language represents the chapter 2006-309 amendments to chapter 327.60.

² Chapter 327.02(9), Florida Statutes, defines a "floating structure" as 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."

³ Chapter 327.02(16), Florida Statutes, narrowly defines "live-aboard vessel" as "any vessel used solely as a residence;" or "any vessel represented as a place of business, a professional or other commercial enterprise, or a legal residence." In Florida, "[a] legal residence is the place where a person has a fixed abode with the present intention of making it their permanent home." *Perez v. Marti*, 770 So.2d 284, 289 (Fla. 3d DCA 2000). The law requires "positive or presumptive proof" of the vessel owner's intention to remain in the vessel "for unlimited time" in order for it to qualify as a legal residence. *Miller v. Gross*, 788 So.2d 256, 259 (Fla. 4th DCA 2000).

any ordinance that seeks to regulate the anchoring of a vessel outside of a mooring field cannot extend to such vessels.

In sum, the recent legislative amendment prohibits local governments from regulating the anchoring of a vessel outside of a mooring field, unless it is a live-aboard vessel or a floating structure. The [City of / County] ordinance apparently does not comply with this statute because [briefly describe why it does not comply using the ordinance language].

Therefore, we request that you review your local anchoring ordinance and determine if you agree with NMMA that it does not comply with chapter 327.60, Florida Statutes, amended by chapter 2006-309, Laws of Florida. We believe that your anchoring ordinance regulates non-live-aboard vessels in a manner that is not allowed by the newly amended statute, and the ordinance thus needs to be amended.

Sincerely,

Wade Hopping, Esq.
David Childs, Esq.
Hopping Green & Sams
On behalf of the National Marine Manufacturers Association

SSCA is dedicated to the protection of Boater's Rights, including unfair Anchoring Legislation anywhere it exists. Keep checking the SSCA website for updates on this very important issue which affects all cruisers and recreational boaters.

Nancy Birnbaum – Editor, SSCA Commodores' Bulletin

