



September 9, 2011

Florida Fish
and Wildlife
Conservation
Commission

Mr. Gary McAlpin, Director
Collier County Coastal Zone Management
3299 Tamiami Trail East, Suite 102
Naples, Florida 34412

**RE: Permittee: Collier County
Permit # 11-020
Clam Pass/Bay Canoe and Information Markers, Collier County.**

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Dear Mr. McAlpin:

The Florida Fish and Wildlife Conservation Commission (FWC) received your initial Florida Uniform Waterway Application on August 5, 2011, requesting permission to install ninety-five (95) information markers within the Clam Pass/Bay system.

The FWC is authorized to issue this type of permit pursuant to Rule 68D-23.101, Florida Administrative Code (F.A.C.). Based on the complete information submitted with your application, your request for a uniform waterway permit has been **approved** subject to the following conditions:

1. Permit is approved contingent upon the consent of and, if necessary, the issuance of appropriate permits by the United States Army Corps of Engineers and the United States Coast Guard.
2. It is unlawful to place markers on private submerged lands or other property or structure not owned by the person or governmental entity placing them without first receiving the written consent of the owner of the submerged lands, other property, or structure as to the placement of the markers. A copy of such written consent, if required, must be provided to the FWC's Boating and Waterways Section. (Pursuant to Section 327.40, Florida Statutes (F.S.), the placement of any uniform waterway marker on state-owned submerged lands does not subject such lands to the lease requirements of Chapter 253, F.S.)
3. Permit provides for the placement of ninety-five (95) uniform waterway information markers at the coordinate positions identified on both the map and in the application.
4. Per your application a website address is to be included on your information markers. The presence of information on the website that is contrary to law or this permit is cause for revocation.
5. Permit authorizes the placement of markers and does not authorize any invasion of private rights, grant any exclusive privileges, or obviate the necessity of complying with any other federal, state or local laws or regulations.
6. All markers associated with this permit must be installed within a reasonable period of time. Upon completion of the installation of markers, the Permittee will notify this office in writing within 30 days. If the latitude and longitude of any marker installed is different from that listed in the application, a request for a permit amendment must be submitted. Such a request must include the final "as-built" latitude and longitude in degrees and decimal minutes (referenced to the WGS-84 datum) for the markers installed.
7. Permittee must comply with the marker specifications and placement requirements detailed in Rules 68D-23.106, 68D-23.108 and 68D-23.109, F.A.C. The permit number and, if

applicable, reference to the regulatory instrument creating the restricted area must be displayed on each marker. These numbers and/or letters must be displayed in black block characters measuring at least one inch in height. Retroreflective materials must be used for all white background and international orange displays on markers. An example of authorized "Information" markers is enclosed as Attachment A.

8. Permittee must immediately report discrepancies of markers covered by this permit and make corrections to discrepancies within 30 days. Reports of discrepant markers and/or notice of corrective action completed will be made by calling FWC's Boating and Waterways Section at (850) 488-5600.
9. Permittee must comply with Rule 68D-23.110, F.A.C., which requires the inspection of all markers triennially, notification of completed inspection made to FWC within five (5) days, and maintenance of the inspection documentation. Failure to inspect and maintain documentation of the results of the marker inspection is grounds for rescinding the permit. Please be advised that FWC may request a copy of the inspection documentation at any time.
10. Permittee, by accepting this permit and placement of the uniform waterway markers, does hereby, to the extent authorized by law, agree and promise to hold harmless the State of Florida, its 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 marker(s) placed pursuant to the permit. Permittee 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 the Permittee in the placement, maintenance, operation, or removal of the uniform waterway marker(s).
11. Permittee must install, inspect, maintain, and remove all markers covered by this permit at its own expense and as directed by state law and these permit conditions.
12. Permittee shall comply with Rule 68D-23.106(4), F.A.C., in the event of discontinuance or removal of any marker covered by this permit.
13. Failure to comply with the requirements or conditions of this permit shall be cause for immediate revocation of the permit.

The FWC retains the right to modify or rescind this permit should information become available indicating the permitted activity is likely to create a serious threat to public safety or that the recipient does not need the permit (in its current form). If you have any questions regarding this permit or its applicability, please contact our office at (850) 488-5600.

A person whose substantial interests are affected by FWC's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. A person seeking a hearing on FWC's action shall file a petition for hearing with the agency within 21 days of receipt of written notice of the decision. The petition must contain the information and otherwise comply with Section 120.569, F.S., and the uniform rules of the Florida Division of Administration, Chapter 28-106, F.A.C. Upon such notification, the Permittee shall cease all work authorized by this permit until the petition is resolved. The enclosed Explanation of Rights statement provides additional information as to the rights of parties whose substantial interests are or may be affected by this action.

Sincerely,



Ryan Moreau, Planner
Division of Law Enforcement
Boating and Waterways Section
Waterway Management Unit

DG/rm

Enclosures: Explanation of Rights
 Chapter 68D-23 FAC
 Attachment A – Marker Example

FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION
EXPLANATION OF RIGHTS

If your substantial interests are or will be determined by the Florida Fish and Wildlife Conservation Commission's action or proposed action stated in the accompanying notice, you may make any one of the following elections on the attached Election of Rights form and file the form within twenty-one (21) days from the date you receive the notice of agency action or proposed action. If you so choose, please return the completed Election of Rights form with the enclosed Petition for Administrative Proceeding form completed in accordance with Chapter 28-106, Florida Administrative code, or a substitute document in compliance with Chapter 28-106, of the Florida Administrative code, to the address listed on the Election of Rights form.

1. If you wish to contest the agency action or proposed action, but do not dispute any of the issues of material fact set forth in the notice, you may request an informal proceeding pursuant to Sections 120.569 and 120.57(2), Florida Statutes. In the event that your request for an informal proceeding is granted, you will be given the opportunity to either simply present a written statement challenging the grounds upon which the Commission has chosen to justify its action or inaction or present evidence in mitigation.

Any request for an informal proceeding in this matter should be directed to the Commission by checking the space marked as 1 on the Election of Rights form and filing the completed and signed form with the Commission within twenty-one (21) days from the date of receipt of the notice. In making such a request, you must include with the completed and signed Election of Rights form either the completed and signed Petition for Administrative Proceeding form completed in accordance with Chapter 28-106, Florida Administrative code, or a substitute document in compliance with Chapter 28-106, of the Florida Administrative code.

2. If you wish to contest the notice of agency action or proposed action and you dispute one or more of the issues of material fact as set forth in the notice, you may request a formal hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes. If there is a disputed issue of material fact and your request is otherwise complete, an administrative law judge shall be furnished by the Division of Administrative Hearings of the Department of Management Services pursuant to Sections 120.569 and 120.57(1), Florida Statutes. A petition shall be dismissed if it fails to state disputed issues of material fact, it otherwise is not in substantial compliance with the requirements of 28-106.201(2) FAC, or it has been untimely filed.

Any request for a formal hearing in this matter should be directed to the Commission by checking the space marked as 2 on the Election of Rights form and filing the completed and signed form with the Commission within twenty-one (21) days from the date of receipt of the notice. In making such a request, you must include with the completed and signed Election of Rights form either the completed and signed Petition for Administrative Proceeding form completed in accordance with Chapter 28-106, Florida Administrative code, or a substitute document in compliance with Chapter 28-106, of the Florida Administrative code.

Failure to make any election in this matter, as provided above, within twenty-one (21) days from the date you received the notice, shall be considered a waiver of your rights to any administrative proceeding as provided in either 1 or 2, above.

Mediation is not an available alternative with respect to this action or proposed action.

FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION
ELECTION OF RIGHTS

I have read the Explanation of Rights provided to me by the Florida Fish and Wildlife Conservation Commission (Commission) and understand my options. (You may select one of the options below and return this form to the Commission no later than twenty-one (21) days from the receipt of the notice of agency action or proposed action.)

1. I do not dispute any of the issues of material fact in the notice of agency action or proposed action, but do wish to be accorded an informal proceeding, pursuant to Sections 120.569 and 120.57(2), Florida Statutes. I understand that I may either submit a written statement or submit evidence in mitigation to the agency head or designated representative. I have attached the completed and signed Petition for Administrative Proceeding form completed in accordance with Chapter 28-106, Florida Administrative code, or a substitute document in compliance with Chapter 28-106, of the Florida Administrative code.

2. I do dispute one or more issues of material fact in the notice of agency action or proposed action, I have attached the completed and signed Petition for Administrative Proceeding form completed in accordance with Chapter 28-106, Florida Administrative code, or a substitute document in compliance with Chapter 28-106, of the Florida Administrative code, and I request a formal hearing, pursuant to Sections 120.569 and 120.57(1), Florida Statutes, before an administrative law judge appointed by the Division of Administrative Hearings.

I have read and understand the Election of Rights form and understand that I have the right to be represented by counsel or a qualified representative at an administrative proceeding. I also understand that I must attach a petition to this request if I have requested an informal proceeding or hearing.

Please sign and state your current address and telephone number:

Signature

Date

PRINT NAME

The above indicated person is _____ the Petitioner, _____ counsel for the Petitioner, or _____ the qualified representative of the Petitioner (Please check one).

Petitioner's name and address

Attorney or representative's
name and address (if applicable)

If applicable, please list the type of Permit /License applied for and the Permit/License Number

Please mail form to:

**Office of General Counsel
Florida Fish and Wildlife Conservation Commission
620 South Meridian Street
Tallahassee, Florida 32399-1600**

FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION
PETITION FOR ADMINISTRATIVE PROCEEDING
Compliance of Section 120.569(2)(c), Florida Statutes, and
Chapter 28-106, Florida Administrative Code

If requesting a proceeding, please complete this form or otherwise provide the information required by Chapter 28-106, of the Florida Administrative code on single sided 8 1/2" X 11" white paper and send to the following address along with the completed Election of Rights form:

Office of General Counsel
Florida Fish and Wildlife Conservation Commission
620 South Meridian Street
Tallahassee, Florida 32399-1600

1. Please list the name and address of each agency affected and each agency's file or identification number, if known:

2. Please identify the petitioner (the individual or organization requesting the hearing):

Name: _____
Address: _____

Phone number: (____) ____ — _____

3. Please identify the petitioner's representative or counsel (if any):

Name: _____
Address: _____

Phone number: (____) ____ — _____

[The address of petitioner's representative, if listed above, shall be the address for service purposes during the course of the proceedings]

4. Please explain how the petitioner's substantial interests are or will be affected by the Commission's action or proposed action:

5. Please explain when and how the petitioner received notice of the Commission's action or proposed action:

6. Please indicate whether the petitioner disputes any material facts and, if so, state all disputed material facts:

7. Please concisely state the ultimate facts alleged, including a statement of the specific facts that the petitioner contends warrant reversal or modification of the Commission's action or proposed action:

8. Please state the specific rules or statutes that the petitioner contends require reversal or modification of the Commission's action or proposed action:

9. Please state the relief sought by the petitioner, stating precisely the action that the petitioner wants the Commission to take with respect to the action or proposed action:

Either the Petitioner, counsel for the Petitioner, or the qualified representative of the Petitioner must sign below agreeing that the person signing this document has read this Petition, made a reasonable inquiry, and is not filing this document for any improper purposes, frivolous purpose, or needless increase in the cost of litigation.

Signature

Date

PRINT NAME

The above indicated person is the Petitioner, counsel for the Petitioner, or the qualified representative of the Petitioner (Please check one).

CHAPTER 68D-23
UNIFORM WATERWAY MARKERS IN FLORIDA WATERS

68D-23.101	Intent
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68D-23.104	Permits Required; Application for Permits
68D-23.105	Criteria for Approval of Markers
68D-23.106	Marker Replacement Requirements
68D-23.107	Federal System Adopted
68D-23.108	Specifications for Markers
68D-23.109	Additional Specifications for Information, Danger, and Regulatory Markers
68D-23.110	Inspections and Certification
68D-23.111	Enforcement
68D-23.112	Exemptions

68D-23.101 Intent.

(1) This chapter is consistent with and conforms to 33 C.F.R. part 62 – The navigable waters of the United States and non-navigable State waters (which together include all waters of this state), are marked to assist navigation using the United States Aids to Navigation System, a system consistent with the International Association of Lighthouse Authorities (IALA) Maritime Buoyage System. The IALA Maritime Buoyage System is followed by most of the world’s maritime nations and will improve maritime safety by encouraging conformity with buoyage systems used worldwide.

(2) 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 Fish and Wildlife Conservation Commission 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 insure that regulatory markers noticing boating restricted areas created pursuant to Sections 327.46 and 379.2431, F.S., are authorized only for the purposes of protecting human life and limb, vessel traffic safety and maritime property, and manatees.

(3) 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.

(4) The Fish and Wildlife Conservation Commission will not issue any permit authorizing the placement of regulatory markers implementing municipal or county ordinances that:

(a) Are in violation of Section 327.60, F.S.;

(b) Establish boating-restricted areas pursuant to Section 327.46(1)(c), F.S., until such ordinances have been reviewed and approved by the Boating and Waterways Section in accordance with Chapter 68D-21, F.A.C.;

(c) Regulate vessel speed or operation for manatee protection purposes pursuant to Section 379.2431(2)(p), F.S., until such ordinances have been reviewed and approved by the commission, coordinated through the Imperiled Species Management Section, 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;

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

(6) Regulatory markers placed and maintained 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.

Rulemaking Authority 327.04, 327.40, 327.41 F.S. Law Implemented 327.40, 327.41, 379.2431 F.S. History—New 12-23-01, Amended 10-5-06, 10-6-10.

68D-23.102 Scope.

The provisions of this chapter prescribe the procedures by which the Division of Law Enforcement's Boating and Waterways Section 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, characteristics and coloring, construction, placement, and maintenance 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, and the United States Coast Guard's manuals pertaining to aids to navigation and other waterway markers.

Rulemaking Authority 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History—New 12-23-01, Amended 10-6-10.

68D-23.103 Definitions.

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

(1) Types of markers:

(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) "Danger marker" means a device external to the vessel intended to provide the mariner with information concerning dangers or obstructions to navigation such as shoals, shallows, rocks, submerged pipes or cables, dams, or low clearance obstructions above the water such as power lines, trestles, or bridges.

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

(e) "Special mark" means a marker not primarily intended to assist safe navigation, but to indicate special areas or features referred to in charts or other nautical publications. They may be used, for example, to mark anchorages, mooring fields, park boundaries, cable or pipeline areas, marine events, etc. Special marks are colored solid yellow.

(f) "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.

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

(j) "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.

(i) "Symbol" means the orange geometric shape displayed on a danger, 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 a danger, information or regulatory marker within which the symbol is displayed.

(2) General definitions:

(a) "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.

(b) "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.

(c) "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 and Route 2 along the southern perimeter of the lake, from Port Mayaca to Clewiston; 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 and Route 2 along the southern perimeter of the lake, from Port Mayaca to Clewiston; the St. Johns River, Jacksonville to Sanford; and, the Apalachicola, Chattahoochee, and Flint Rivers in Florida.

(d) “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.

(e) “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.

(f) “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.

(g) “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.

(h) “Inland lake” means a naturally occurring or man-made fresh water lake or pond. The term does not include reservoirs, impoundments, or any portion of the Florida Intracoastal Waterway.

(i) “Associated canal” means a man-made canal that is directly attached to an inland lake and that does not connect to other waters or that connects only to another inland lake. The term does not include any portion of a state or federally funded navigation project or any portion of the Florida Intracoastal Waterway.

(j) “In writing” means any written or printed form of communication and includes electronic mail, files transferred as attachments to electronic mail, and telefacsimiles.

(3) 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. 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. 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) “No Power-driven Vessels” – All vessels equipped with any mechanical means of propulsion must turn off the mechanical means of propulsion and, if possible to do so, tilt or raise the mechanical means of propulsion out of the water. The use of any motor, including an electric motor, is prohibited.

(e) “No Internal Combustion Motors” or “No Motor Zone” – All vessels equipped with internal combustion motors (e.g.: gasoline or diesel motors) for propulsion must turn off the internal combustion motor and, if possible to do so, tilt or raise the internal combustion motor out of the water. The use of electric motors is not prohibited.

(f) "Vessel-exclusion zone" means an area from which all vessels or certain classes of vessels are excluded. The following list includes the most common examples of vessel-exclusion zones. Whenever the following messages are displayed on vessel-exclusion zone markers, they have the meaning provided. Other messages on vessel-exclusion zone markers are permissible, so long as the markers display language that accurately describes the vessels or classes of vessels that are excluded from the area. All vessel-exclusion zones must be marked with the crossed-diamond symbol as specified in subparagraph (1)(i)2., above.

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. "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 sails or a mechanical means of propulsion may enter the marked area only if the sails or mechanical means of propulsion is not in use and, if possible to do so, the mechanical means of propulsion is tilted or raised out of the water.
4. "No Entry Area" – All vessels and all persons, either in vessels or swimming, diving, or wading, are prohibited from entering the marked area.

(g) "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.

(h) "Wake," only 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.

(i) "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.

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.

(4) The Boating and Waterways Section will authorize the use of other terminology on regulatory markers if the message is clear, unambiguous, and accurately describes a lawfully imposed restriction.

Rulemaking Authority 327.04, 327.40, 327.41, 327.46, 379.2431 FS. Law Implemented 327.40, 327.41, 327.46, 379.2431 FS. History—New 12-23-01, Amended 10-5-06, 10-6-10.

68D-23.104 Permits Required; Application for Permits.

(1) Except as provided in subsection 68D-23.112(4), F.A.C., 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 Boating and Waterways Section.

(2) Any person, municipality, county, or other governmental entity desiring to place a marker shall apply to the Boating and Waterways Section on the Florida Uniform Waterway Marker Application form, FWCDLE 153 (07/2010), which is adopted and incorporated herein by reference. Application forms may be obtained by submitting a request to: Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, Boating and Waterways Section, 620 South Meridian Street, Tallahassee, Florida 32399-1600 or by downloading the application from the Commission website at: http://www.myfwc.com/RECREATION/boat_waterways_index.htm. Each application must include:

(a) One or more scale drawings no larger than 8 1/2 inches by 11 inches, reproducible on standard office photocopying equipment, showing the intended locations for the placement of all proposed markers with each proposed marker labeled to correspond to the list required in paragraph (b) below.

1. If the application is for regulatory markers, the drawing must also depict the exact boundaries of the area within which regulation or restriction is to be in effect.

2. If the application is for the following markers the drawing must also depict:

a. The location of the danger, hazard to navigation, or obstruction if the application is for a danger marker, isolated danger mark, or inland waters obstruction mark.

b. Water depths within and adjacent to the area being marked if the application is for lateral marks, preferred channel marks, or safe water marks.

c. The location and boundaries of the anchorage, mooring field, park, cable or pipeline area, marine event, or other special area or feature for which the markers are proposed if the application is for special marks.

d. Any information needed to identify and support the proposed information marker.

3. If the application is for mooring buoys of any type, the drawing must also depict the watch circle and water depth for each mooring and any channels or fairways within 500 feet of the proposed mooring buoys.

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

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

1. A description giving the type, size, shape, color, material, height above mean high water for each marker sign or buoy, and the number, letter or message displayed thereon;

2. A description of the type, size, and material used for:

a. Any structure which will support a marker sign;

b. Any anchor, anchoring system, chain, tether, rode, or other ground tackle which will secure a marker buoy, including a mooring buoy, to the bottom;

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 signal.

5. The latitude and longitude of the location where each marker will be placed, expressed in degrees and decimal minutes and referenced to the WGS-84 datum.

(d) A statement of the purpose for placing the proposed markers.

1. If the application is for regulatory markers, this statement must include the purpose for regulating or restricting vessel speed or operation in sufficient detail to permit the Boating and Waterways Section to ascertain whether there are a proper number of markers proposed to be installed in proper locations so that the boating public is given adequate notice of the regulation or restriction on vessel speed or operation.

2. If the application is for a danger marker, isolated danger mark, or inland obstruction mark, this statement must include a description of the danger, hazard to navigation, or obstruction in sufficient detail to permit the Boating and Waterways Section to ascertain whether there are a proper number of markers proposed to be installed in proper locations so that the boating public is given adequate notice of the danger, hazard to navigation, or obstruction.

3. If the application is for lateral marks, preferred channel marks, or safe water marks, this statement must include a description of the channel, fairway, or other area of safe water in sufficient detail to permit the Boating and Waterways Section to ascertain whether there are a proper number of markers proposed to be installed in proper locations so that the boating public is given adequate notice of channel, preferred channel, fairway, or safe water area.

4. If the application is for special marks, this statement must include a description of the anchorage, mooring field, park, cable or pipeline area, marine event, or other special area or feature for which the markers are proposed in sufficient detail to permit the

Boating and Waterways Section to ascertain whether there are a proper number of markers proposed to be installed in proper locations so that the boating public is given adequate notice of the area's or feature's nature, location, and boundaries.

5. If the application is for mooring buoys, this statement must include the following:

- a. A statement of the type, maximum overall length, and maximum draft of vessels that will be allowed to moor at each buoy.
- b. An estimate of the average daily weekday traffic and average daily weekend and holiday traffic that will be arriving or departing the proposed moorings.
- c. A description of any navigation channels or fairways within 500 feet of the proposed mooring buoys and a description of nature and volume of vessel traffic within such channels or fairways.
- d. A description of any upland amenities that will be provided to vessels moored at the proposed mooring buoys.
- e. A list of any rules, regulations, requirements, or prohibitions that will be imposed on vessels moored at the proposed mooring buoys.
- f. A statement of whether the area in which the mooring buoys are proposed to be located has been designated by the United States Coast Guard as a special anchorage area (i.e., vessels moored there will not need to display anchor lights) or whether the applicant intends to seek such a designation.
- g. A statement of whether the mooring buoys will be managed together as a mooring field and, if so, whether the applicant intends to seek the adoption of an ordinance prohibiting anchoring within the marked boundaries of the mooring field. This information must be provided in sufficient detail to permit the Boating and Waterways Section to ascertain whether the placement of mooring buoys and the mooring of vessels at the proposed locations may be safely accomplished and whether the mooring of vessels at the proposed locations will unreasonably or unnecessarily constitute a navigational hazard or otherwise obstruct, impede, or interfere with the navigation of other vessels.

(e) A list of 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 include proof of the lawful imposition of a regulation or restriction on the speed or operation of vessels for which the regulatory markers are proposed, as follows:

1. For regulatory markers to implement boating-restricted areas established by a municipal or county ordinance:
 - a. A copy of an ordinance adopted pursuant to Section 327.46(1)(b), F.S., which imposes the restriction for reasons of vessel traffic safety or public safety; or
 - b. A copy of an ordinance approved by the commission pursuant to Section 327.46(1)(c), F.S.; or
 - c. A copy of an ordinance approved by the commission pursuant to Section 379.2431(2)(p), F.S., such approval shall be coordinated through the commission's Imperiled Species Management Section.
2. For all other regulatory markers, a copy of the statute, special act, rule, regulation, order, or other instrument which imposes the regulation or restriction and a statement of the specific authority under which the restriction is imposed.

Rulemaking Authority 327.04, 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History—New 12-23-01, Amended 10-5-06, 10-6-10.

68D-23.105 Criteria for Approval of Markers.

(1) Upon receipt of a completed application, the Boating and Waterways Section will determine:

(a) For all markers, whether or not:

1. The proposed markers conform to the United States Aids to Navigation System and this chapter.
2. The proposed markers, if placed in the proposed locations, would create an unreasonable hazard to navigation.

(b) For regulatory markers only, determine whether or not:

1. The markers as proposed would clearly mark the location in which the regulation or restriction is in effect and adequately notice mariners of the regulation or restriction imposed on vessel speed or operation.
2. The regulation or restriction to be implemented by the proposed markers and the message to be displayed thereon are supported by statute, special act, rule, ordinance, or other enactment or order.

(c) For danger markers, isolated danger marks, or inland obstruction marks only, whether or not the danger, hazard to navigation, or obstruction actually exists and, if so, whether or not there are a proper number of markers proposed to be installed in proper locations so that mariners are given adequate notice of the danger, hazard to navigation, or obstruction.

(d) For lateral marks, preferred channel marks, or safe water marks only, whether or not there are a proper number of markers proposed to be installed in proper locations so that the boating public is given adequate notice of channel, preferred channel, fairway, or safe water area.

(e) For mooring buoys only, whether the placement of mooring buoys and the mooring of vessel at the proposed locations may be safely accomplished and whether the mooring of vessels at the proposed locations will unreasonably or unnecessarily constitute a navigational hazard or otherwise obstruct, impede, or interfere with the navigation of other vessels.

(f) For special marks only, whether or not there are a proper number of markers proposed to be installed in proper locations so that the boating public is given adequate notice of the area's or feature's nature, location, and boundaries.

(2) The Boating and Waterways Section is authorized to consult, coordinate, or cooperate with any other governmental entity having concurrent jurisdiction over the waters for which the permit is applied.

Rulemaking Authority 327.40, 327.41 FS. Law Implemented 327.40, 327.41, 379.2431 FS. History—New 12-23-01, Amended 10-6-10.

68D-23.106 Marker Placement Requirements.

(1) All persons placing or maintaining in place any markers must comply with the following requirements:

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

(b) The permittee must display the permit number (except as provided below) on each marker and the ordinance number, code section number, statute number, regulation or rule number (etc.) on each regulatory marker. These numbers must be displayed in black, block characters approximately one inch in height.

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

2. On all markers other than regulatory markers, the permit number must be displayed on the marker 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.

3. Information markers placed by counties, municipalities, or other governmental entities on inland lakes and their associated canals are exempt from permitting under this rule. Such markers, if not permitted, must display in lieu of a permit number, the name of the county, municipality, or other governmental entity that placed the marker.

(c) Upon completion of the installation of markers, the permittee must notify the Boating and Waterways Section in writing within 30 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 and decimal minutes as referenced to the WGS-84-datum along with a request for the permit to be amended.

(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 permittee must immediately report any discrepancy in the marker to the Boating and Waterways Section by telephone, telefacsimile or other similarly rapid means of communication. The permittee must correct any discrepancy within not more than 30 days and must notify the Boating and Waterways Section when the correction is accomplished.

(e) A permit 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) It is unlawful to place markers, buoys, or signs on submerged lands, or other property or structure not owned by the person or governmental entity placing them without first receiving the written consent of the owner of the submerged lands, other property, or structure to the placement of said markers, buoys, or signs. For markers, buoys, or signs placed pursuant to a permit issued under

this rule, the permit is contingent upon the permittee providing a copy of such consent to the Boating and Waterways Section.

(i) By accepting any permit and placing the markers authorized therein, the permittee, 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 the permittee pursuant to such permit. The permittee 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 the permittee in the placement, maintenance, operation or removal of the markers.

(2) Additional requirements for regulatory markers.

(a) All regulatory markers must be supported by a statute, special act, rule, regulation, ordinance, order, or other similar regulatory instrument which imposes the restriction displayed on the marker.

(b) If the regulatory instrument supporting a regulatory marker is amended or if it is repealed, rescinded, revoked, or otherwise becomes a nullity, the permit holder must within 30 days notify the Boating and Waterways Section of the change and must also:

1. In the case of an amendment to the regulatory instrument, file an amended permit application showing the markers that will be removed, replaced, modified, or added in order to implement the amendment to the regulatory instrument.

2. In the case of the repeal, rescission, revocation, or other nullification of the regulatory instrument, remove from the waters of this state and the shores thereof all regulatory markers implementing that regulatory instrument.

(c) 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 regulations or operating restrictions noticed by said markers. The issuance of a permit authorizing the placement of regulatory markers does not obligate the Fish and Wildlife Conservation Commission or its officers to enforce the regulations or operating restrictions noticed by said markers.

(3) After obtaining the requested permit, the permittee must install, inspect, maintain, and remove the permitted marker at its own expense and as directed by the Boating and Waterways Section.

(4) Discontinuance and removal. Any permitted waterway marker may be discontinued and removed by the permittee owner after 30 days notice to the Boating and Waterways Section. Upon completion of the removal of the marker, the permittee must notify the Boating and Waterways Section in writing within 30 days.

(5) The division and its officers and all other law enforcement officers charged with the enforcement of Chapter 327, F.S., have the authority to remove or cause the removal of any marker found in violation of the requirements imposed under this section or conditions imposed in the permit authorizing the placement of the marker if the violation is not corrected within 30 days following notification of the permittee of the violation.

Rulemaking Authority 327.04, 327.40, 327.41 FS. Law Implemented 327.40, 327.41, 327.70 FS. History--New 12-23-01, Amended 10-5-06, 10-6-10.

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 (April 1, 2010);

(b) The United States Coast Guard Aids to Navigation Manual – Administration (COMDTINST M16500.7A, March 2, 2005);

(c) The United States Coast Guard Aids to Navigation Manual – Technical (COMDTINST M16500.3A, February 11, 2005);

(d) The United States Coast Guard Aids to Navigation Manual – Structures (COMDTINST M16500.25, November 7, 2005).

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

(a) Any marker in, on or over the waters of the state or the shores thereof that does not conform to the United States Aids to Navigation System and all provisions of this chapter, must be brought into conformity or be removed from the waters or shores of the state.

(b) 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.

(c) All nonconforming markers in place in, on or over the waters of the state or shores thereof are declared a nuisance. The division and its officers and all other law enforcement officers charged with the enforcement of Chapter 327, F.S., have the authority to remove or cause the removal of any such nonconforming marker.

Rulemaking Authority 327.04, 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History--New 12-23-01, Amended 10-5-06, 10-6-10.

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 must be used for all displays on markers that are required to be international orange and as otherwise required in the United States Coast Guard Aids to Navigation Manual – Technical (COMDTINST M16500.3A). The white background dayboard film material for all information, danger, exclusion, and regulatory signs installed or replaced after July 1, 2006, shall be retroreflective. Retroreflective materials may be used for any other portion of a marker.

(6) Every pile used in waters of this state to support signs for waterway marking purposes must have two bands of white tape placed around it. The bands of tape must be placed separately around each pile for dolphins, clusters, and other structures using multiple piles for support. The tape must be six inches wide and made of self-adhesive (pressure sensitive), diamond-grade, white, retroreflective material. The top of the first band must be placed six inches from the bottom of the sign; the top of the second band must be placed eight inches from the bottom of the first band. The tape must be installed with a minimum overlap of one inch over the entire six-inch width of the band. On wooden piles, the tape must be additionally secured using not less than four stainless steel, one inch staples driven through the area of the overlap. If the tape becomes delaminated, cracked, checked, weathered, or abraded so as to have a dull or roughened surface, it must be replaced. Any existing tape must be removed before applying the replacement tape.

(7) All buoys other than mooring buoys must be attached to the water body bottom using anchors, sinkers, chains, shackles, swivels, and bridles that meet or exceed the specifications in the United States Coast Guard Aids to Navigation Manual – Technical (COMDTINST M16500.3A).

(8) Mooring buoys are white cylindrical or spherical with a blue band located near the top of the buoy. All mooring buoys must be attached to the water body bottom using anchors, chains, shackles, and swivels, and must be equipped with pennants that are of sufficient size, strength, and holding power for their intended purpose. Anchors or anchoring systems for mooring buoys must embed in the water body bottom. The use of a sinker (a weight, usually metal or concrete, that rests on the bottom without embedding) to anchor a mooring buoy is prohibited.

Rulemaking Authority 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History—New 12-23-01, Amended 10-5-06, 10-6-10.

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

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

(2) When a buoy is used as an information, danger, 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 sufficiently 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, danger, or regulatory marker it must be white with an international orange border. The display area is that portion of the sign within the border. Symbols must be centered within the display area. The size of the sign must 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.

(a) Information or regulatory marker signs shall be rectangular.

(b) Danger marker signs shall be rectangular or diamond-shaped (a square sign rotated 45 degrees so that one corner is pointed straight down). If a diamond-shaped sign is used, the international orange border shall serve as the vertical open-faced diamond symbol and no additional symbol shall be displayed.

(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(1), 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.

Rulemaking Authority 327.04, 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History--New 12-23-01, Amended 10-5-06, 10-6-10.

68D-23.110 Inspections 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 triennially (every three years).

(2) The required inspection must be documented in writing and must include the following:

(a) The name of the permit holder and permit number of the markers being inspected;

(b) The name of the person or persons currently responsible for the placement and maintenance of the markers; and

(c) A photograph of each marker taken in close enough proximity to legibly show all symbols, borders, and letters and numbers, including the text of any message, the permit number, and the ordinance number, code section number, statute number, regulation or rule number, (etc.). For marker installations with two or more signs, a sufficient number of photographs must be taken to legibly show the information on each sign. Digital photography is acceptable for this purpose. Photographs must be labeled with the location of the marker depicted and the date the photograph was taken.

(d) 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) The permit holder must maintain the inspection documentation until it is replaced by a subsequent inspection and documentation. The inspection documentation must be available for inspection by any law enforcement officer during the permittee's normal business hours. Failure to inspect a marker and to maintain documentation of the results of the inspection during the specified time period is grounds for rescinding the permit authorizing placement of the marker and for removing or ordering the removal of the marker.

(4) Dayboard and buoy surfaces and dayboard backing materials will deteriorate because of the effects of weathering. Wind, rain, freezing temperatures, and sunlight cause delamination (separation), cracking, peeling, and fading. Attention must be given to these conditions during inspections.

(a) Markers will be considered discrepant under the following guidelines:

1. Backing materials. Delamination of the plies on a plywood dayboard backing must not effect more than 25 percent of the surface area. Any warpage must not visibly detract from the signal or message presented to the mariner. The backing must not be softened or otherwise deteriorated around the mounting points to a degree that the board could come loose in a storm typical for the area in which the marker is placed.

2. Elastomeric films, numerals, letters, symbols, and borders. Delamination of films and retroreflective markings on dayboards and buoys must not affect more than 10 percent of the surface of the material. Films and retroreflective markings must not be cracked, checked, weathered, or abraded so as to have a dull or roughened surface. Peeling of the film or markings from the

dayboard or buoy must not affect more than 10 percent of the surface area. Letters, numerals, symbols, and borders must not be faded or weathered so as to visibly detract from the signal or message presented to the mariner.

(b) A dayboard or buoy must be replaced if any of the deteriorations noted above is observed or, if for any reason, it cannot function as intended (including significant fading or other discoloration) until the next regularly scheduled inspection. Onsite repairs are permitted if they do not interfere with or detract from the intended signal function of the marker.

(5) Within 5 business days following the completion of the triennial inspection, the permittee must notify the Boating and Waterways Section that the inspection has been performed and whether or not any markers were determined to be discrepant. All discrepancies documented during an inspection must be reported to the Boating and Waterways Section and corrected within 30 days, as provided in paragraph 68D-23.106(1)(d), F.A.C.

Rulemaking Authority 327.04, 327.40, 327.41 FS. Law Implemented 327.40, 327.41, 379.2431 FS. History—New 12-23-01, Amended 10-5-06, 10-6-10.

68D-23.111 Enforcement.

This chapter shall be enforced by the division and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officer as defined in Section 943.10, F.S., 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.

Rulemaking Authority 327.40, 327.41 FS. Law Implemented 327.22, 327.40, 327.41, 327.46, 327.60, 327.70, 379.2431 FS. History—New 12-23-01, Amended 10-6-10.

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 may submit to the Boating and Waterways Section 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 section of said copy of their permit, such private aids to navigation are exempt from further permitting and need not display a permit number.

(3) Every regulatory marker without a properly displayed permit number, in place in, on or over the waters of the state or shores thereof is declared a nuisance. The division and its officers and all other law enforcement officers charged with the enforcement of Chapter 327, F.S., have the authority to remove or cause the removal of any unpermitted regulatory marker. Markers authorized by the former Florida Department of Natural Resources prior to January 1, 1988, for which no permit number was assigned shall be issued a permit number upon receipt by the Boating and Waterways Section 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 marker's size and message;

3. The latitude and longitude coordinates in degrees and decimal minutes of the location of each marker and the datum in which those coordinates are expressed;

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) Counties, municipalities and other government entities are exempt from permitting under this chapter only when placing information markers on inland lakes and their associated canals. However, nothing herein shall prevent counties, municipalities or other governmental entities from choosing to voluntarily apply for waterway marker permits for such information markers.

(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.

Rulemaking Authority 327.04, 327.40, 327.41, 327.71 FS. Law Implemented 327.40, 327.41, 327.46, 327.71, 379.2431 FS. History—New 12-23-01, Amended 10-5-06, 10-6-10.

