

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: CS/SB 1666

INTRODUCER: Environment and Natural Resources Committee and Senator Flores

SUBJECT: Vessels

DATE: March 29, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Anderson</u>	<u>Rogers</u>	<u>EN</u>	<u>Fav/CS</u>
2.	<u>Toman</u>	<u>Yeatman</u>	<u>CA</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1666:

- Deletes the exemption for persons born on or after January 1, 1988, to have a boater safety identification card before operating a vessel with a 10 horsepower or higher engine.
- Defines the term “long-term stored vessel” to mean a vessel which has remained anchored or moored without supervision or control for at least 30 days out of a 60-day period.
- Requires the Fish and Wildlife Conservation Commission (FWC) to conduct a study, contingent upon appropriation, on the impacts of long-term stored vessels on local communities and the state, and to present the report to the Governor and Legislature.
- Authorizes counties designated as rural areas of opportunity to create in freshwater waterbodies within their jurisdiction a “no-discharge zone” where treated and untreated sewage discharges are prohibited.
- Requires vessel operators within a no-discharge zone to keep sewage discharges onboard for discharge at sea or onshore at a pump-out facility.
- Imposes a civil penalty and declares the vessel or floating structure a nuisance and hazard to public safety and health if an unlawful discharge is made in a no-discharge zone.
- Requires a certain portion of vessel registration fees designated for use by the counties to be deposited into the Marine Resources Conservation Trust Fund to fund grants for derelict vessel removal.
- Prohibits a person who leaves or abandons a derelict vessel from residing or dwelling on the vessel until it is permanently removed from state waters or returned to waters in a non-derelict condition.

## II. Present Situation:

Anchoring or mooring refers to a boater's practice of seeking and using a safe harbor on the public waterway system for an undefined duration. Anchoring is accomplished using an anchor carried on the vessel.<sup>1</sup> Mooring is accomplished through the utilization of moorings permanently affixed to the bottom of the water body. Anchorages are areas that boaters regularly use for anchoring or mooring, whether designated or managed for that purpose or not. Mooring fields are areas designated and used for a system of properly spaced moorings.<sup>2</sup>

The anchoring of vessels has created conflicts in some areas of the state related to the use and enjoyment of the waters for many years. These issues include, but are not limited to:

- The locations where anchored vessels accumulate;
- Unattended vessels;
- Anchored vessels that are dragging anchor or not showing proper lighting;
- Vessels that are not maintained properly;
- Vessels that become derelict;
- Interpretation of state laws leading to inconsistent regulation of anchoring on state waters and confusion among the boating community; and
- Questions about local governmental authority to regulate anchoring.<sup>3</sup>

### State Regulation of the Anchoring or Mooring of Vessels

The Board of Trustees of the Internal Improvement Trust Fund (BOT) is authorized to adopt rules governing all uses of sovereignty submerged lands including rules for anchoring, mooring, or otherwise attaching to the bottom, the establishment of anchorages, the discharge of sewage, pump-out requirements, and facilities associated with anchorages.<sup>4</sup> Such rules must control the use of sovereignty submerged lands as a place of business or residence but are prohibited from interfering with commerce or the transitory operation of vessels through navigable water.<sup>5</sup> The BOT has not adopted rules relating to the anchoring of vessels on the waters of the state.

State law prohibits a person from anchoring a vessel in several specific scenarios, including:

- In a manner that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel;<sup>6</sup>
- Between one-half hour after sunset and one-half hour before sunrise in certain designated anchoring limitation areas;<sup>7</sup> and

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<sup>1</sup> Section 327.02, F.S., defines the term "vessel" to include every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

<sup>2</sup> Ankersen, Hamann, & Flagg, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida*, 2 (Rev. May 2012), available at <https://www.law.ufl.edu/pdf/academics/centers-clinics/clinics/conservation/resources/anchaway.pdf> (last visited Mar. 29, 2019).

<sup>3</sup> Fish and Wildlife Conservation Commission (FWC), *Anchoring and Mooring Pilot Program Report of Findings and Recommendations*, 6 (Dec. 31, 2016), available at <http://www.boatus.com/gov/assets/pdf/fwc-2016-anchoring-and-mooring-report.pdf> (last visited Mar. 21, 2019).

<sup>4</sup> Section 253.03(7), F.S.

<sup>5</sup> *Id.*; see Fla. Admin. Code ch. 18-21.

<sup>6</sup> Section 327.44(2), F.S.

<sup>7</sup> Section 327.4108, F.S.

- If the nearest approach of the vessel or floating structure is within a certain distance of a marina, boat ramp, boatyard, or other vessel launching or loading facility; a superyacht repair facility; or the marked boundary of a public mooring field.<sup>8</sup>

### **Local Regulation of the Anchoring or Mooring of Vessels**

Local governments are authorized by general permit to construct, operate, and maintain public mooring fields, each for up to 100 vessels.<sup>9</sup> Mooring fields are required to be located where navigational access already exists between the mooring field and the nearest customarily used access channel or navigable waters which the mooring field is designed to serve. Each mooring field must be associated with a land-based support facility that provides amenities and conveniences, such as parking, bathrooms, showers, and laundry facilities. Major boat repairs and maintenance, fueling activities other than from the land-based support facility, and boat hull scraping and painting are not authorized within mooring fields.<sup>10</sup>

Local governments are authorized to enact and enforce ordinances that prohibit or restrict the mooring or anchoring of floating structures or live-aboard vessels within their jurisdictions and vessels that are within the marked boundaries of permitted mooring fields.<sup>11</sup> However, local governments are prohibited from enacting, continuing in effect, or enforcing any ordinance or local regulation that regulates the anchoring of vessels, other than live-aboard vessels, outside the marked boundaries of permitted mooring fields.<sup>12</sup>

### **Derelict Vessels**

A derelict vessel is a vessel that is left, stored, or abandoned in a wrecked, junked, or substantially dismantled condition upon any public waters of this state; at a port in the state without the consent of the agency that has jurisdiction of the port; or docked, grounded, or beached upon the property of another without the consent of the owner of the property.<sup>13</sup>

It is unlawful to store, leave, or abandon a derelict vessel in Florida.<sup>14</sup> A person found in violation of this law commits a first degree misdemeanor.<sup>15</sup> State law further provides that a violation of derelict vessel laws may also be subject to a civil penalty of up to \$50,000 per day.<sup>16</sup> Each day during any portion of which the violation occurs constitutes a separate offense.<sup>17</sup>

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<sup>8</sup> Section 327.4109, F.S.

<sup>9</sup> Section 373.118, F.S.; Fla. Admin. Code R. 62-330.420(1).

<sup>10</sup> Fla. Admin. Code R. 62-330.420.

<sup>11</sup> Section 327.60(3), F.S., *see also* s. 327.02(14) and (22) for definitions of the terms “floating structure” and “live-aboard vessel.”

<sup>12</sup> Section 327.60(2)(f), F.S.

<sup>13</sup> Section 823.11(1)(b), F.S.

<sup>14</sup> Section 823.11(2), F.S.

<sup>15</sup> A first degree misdemeanor is punishable by a term of imprisonment of no more than one year and a fine of up to \$1,000.

<sup>16</sup> Section 376.16(1), F.S.

<sup>17</sup> *Id.*

### ***Removal of Derelict Vessels***

The Division of Law Enforcement of the FWC and its officers, and the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officers, have the responsibility and authority to enforce vessel safety and vessel title certificates, liens, and registration.<sup>18</sup>

Both state and local law enforcement are authorized and empowered to relocate or remove a derelict vessel from public waters if the derelict vessel obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment, property, or persons.<sup>19</sup> The costs incurred for relocating or removing a derelict vessel are recoverable against the vessel owner.<sup>20</sup> A vessel owner who neglects or refuses to pay the costs of removal, storage, and destruction of the vessel, less any salvage value obtained by disposal of the vessel, is not entitled to be issued a certificate of registration for such vessel, or any other vessel or motor vehicle, until the costs are paid.<sup>21</sup>

FWC may provide grants, funded from the Florida Coastal Protection Trust Fund, to local governments for the removal of derelict vessels from waters of the state, if funds are appropriated for the grant program.<sup>22</sup> Grants are awarded based on a set of criteria outlined in FWC rules.<sup>23</sup> Removal or relocation of a vessel on private property is not eligible for grant funding.<sup>24</sup>

### ***At-Risk Vessels***

In 2016, the Legislature prohibited neglected vessels or those in deteriorating conditions from anchoring, mooring, or occupying the waters of the state.<sup>25</sup> A vessel is at risk of becoming derelict if any of the following conditions exist:

- The vessel is taking on or has taken on water without an effective means to dewater;
- Spaces on the vessel that are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time;
- The vessel has broken loose or is in danger of breaking loose from its anchor; or
- The vessel is left or stored aground unattended in such a state that would prevent the vessel from getting underway, or is listing due to water intrusion, or is sunk or partially sunk.

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<sup>18</sup> Section 327.70 F.S.; *see* section 943.10(1), F.S., which defines “law enforcement officer” as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The definition also includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

<sup>19</sup> Section 327.44(3), F.S.

<sup>20</sup> Section 327.44(5), F.S.

<sup>21</sup> Section 705.103(4), F.S.

<sup>22</sup> Section 376.15, F.S.

<sup>23</sup> Rule 68-1.003, F.A.C.

<sup>24</sup> National Oceanic and Atmospheric Association: Marine Debris Program, *Abandoned and Derelict Vessels in Florida*, available at <https://marinedebris.noaa.gov/abandoned-and-derelict-vessels/florida> (last visited Mar. 15, 2019).

<sup>25</sup> Chapter 2016-108, Laws of Fla.; s. 327.4107, F.S.

- The vessel does not have an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives telephonic or written notice from an officer, and the vessel owner or operator is unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair.<sup>26</sup>

A violation for anchoring, mooring, or occupying a vessel at risk of becoming derelict on the waters of the state is a noncriminal infraction, for which the civil penalty is \$50 for a first offense, \$100 for a second offense occurring 30 days or more after a first offense, and \$250 for a third or subsequent offense occurring 30 days or more after a previous offense.<sup>27</sup>

### **Boating Safety Identification Cards**

A person born on or after January 1, 1988 who will be operating a boat in Florida waters with an engine of 10 horsepower or more, must obtain a Florida boating safety identification card.<sup>28</sup> To obtain a card, a person must complete an approved boating safety course.<sup>29</sup> There are several courses available at various price points ranging from free up to \$30.<sup>30</sup> The course must meet the 8-hour instruction requirement established by the National Association of State Boating Law Administrators and must include a component regarding diving vessels.<sup>31</sup> The card is valid for life, unless it was obtained by passing a temporary certificate examination, in which case it is valid for 12 months.<sup>32</sup>

Certain persons are exempt from the requirement to obtain a boating safety identification card. A person is exempt if he or she:

- Is licensed by the United States Coast Guard to serve as master of a vessel.
- Operates a vessel only on a private lake or pond.
- Is accompanied in the vessel by a person who is exempt from this section or who holds an identification card in compliance with this section, is 18 years of age or older, and is attendant to the operation of the vessel and responsible for the safe operation of the vessel and for any violation that occurs during the operation of the vessel.
- Is a nonresident who has in his or her possession proof that he or she has completed a boater education course or equivalency examination in another state which meets or exceeds the requirements in Florida.
- Is operating a vessel within 90 days after the purchase of that vessel and has available for inspection aboard that vessel a bill of sale.
- Is operating a vessel within 90 days after completing the boater education course and has a photographic identification card and a boater education certificate available for inspection as proof of having completed a boater education course. The boater education certificate must

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<sup>26</sup> Section 327.4107, F.S.

<sup>27</sup> Section 327.73(1)(aa), F.S.

<sup>28</sup> Section 327.395(1), F.S.

<sup>29</sup> FWC, *Boater Education Identification Card*, <https://myfwc.com/boating/safety-education/id/> (last visited Mar. 29, 2019). This card is not a boating license, it is a certification that the person named on the card has successfully completed the required boating safety course.

<sup>30</sup> FWC, *Boating Safety Courses*, <https://myfwc.com/boating/safety-education/courses/> (last visited Mar. 29, 2019).

<sup>31</sup> Section 327.395(1), F.S.

<sup>32</sup> Section 327.395(5), F.S.

provide, at a minimum, the student's first and last name, the student's date of birth, and the date that he or she passed the course examination.

- Is exempted by FWC rule.<sup>33</sup>

### **Penalties for Boating Infractions**

Section 327.73, F.S., provides for non-criminal violations relating to vessel laws. An owner or operator of a vessel or floating structure who violates the law by anchoring in an anchoring limitation area or anchoring or mooring in a prohibited area is subject to a uniform boating citation and penalties.<sup>34</sup> The penalties are:

- For a first offense, up to a maximum of \$50;
- For a second offense, up to a maximum of \$100; and
- For a third offense, up to a maximum of \$250.

A person who operates a vessel without the required boating safety identification card can be charged with a noncriminal infraction and is subject to a uniform boating citation and a \$50 civil penalty.<sup>35</sup>

In addition to civil penalties, the section provides that a person who fails to appear or otherwise properly respond to a uniform boating citation will be charged with a second-degree misdemeanor, which is punishable by a maximum fine of \$500 and no more than 60 days imprisonment.<sup>36</sup>

### **No-Discharge Zones**

A no-discharge zone is a designated body of water that prohibits the discharge of treated and untreated boat sewage.<sup>37</sup> Within the boundaries of a no-discharge zone, vessel operators are required to retain their sewage discharges onboard for discharge at sea (beyond three miles from shore) or onshore at a pump-out facility.

A state may initiate the process to establish a no-discharge zone if:

- The state determines that the water body requires greater environmental protection than the current federal standards allow and EPA finds that adequate pump-out facilities are available;
- The EPA, upon application by the state, determines that the protection and enhancement of the water body requires establishment of a no-discharge zone; or
- The area is within a drinking water intake zone.<sup>38</sup>

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<sup>33</sup> Section 327.395(6), F.S.

<sup>34</sup> Section 327.73(1)(z) and (bb), F.S.

<sup>35</sup> Section 327.73(1)(s), F.S.

<sup>36</sup> Sections 775.082 and 775.083, F.S.

<sup>37</sup> U.S. Environmental Protection Agency, *Vessel Sewage Discharges: No-Discharge Zones*, <https://www.epa.gov/vessels-marinas-and-ports/vessel-sewage-discharges-no-discharge-zones-ndzs> (last visited Mar. 29, 2019).

<sup>38</sup> *Id.*

Currently, Florida has three designated no-discharge zones. These are Destin Harbor, the city of Key West waters, and the state waters within the Florida Keys National Marine Sanctuary.<sup>39</sup>

**Vessel Registration Fees**

A portion of the state vessel registration fees for recreational vessels are distributed to county governments.<sup>40</sup> Of the portion designated for counties, \$1 is remitted to the state for deposit into the Save the Manatee Trust Fund created within the Fish and Wildlife Conservation Commission and \$1 is remitted to the state for deposit into the Marine Resources Conservation Trust Fund to fund a grant program for public launching facilities, with priority consideration given to counties with more than 35,000 registered vessels.<sup>41</sup> The following chart shows the base registration fee and portion of the fee that is remitted to the county.

Vessel Class <sup>42</sup>	Base Registration Fee	Portion of Fee Remitted to County
A-1	\$5.50	N/A
A-2	\$16.25	2.85
1	\$28.75	8.85
2	\$78.25	32.85
3	\$127.75	56.85
4	\$152.75	68.86
5	\$189.75	86.85

**Rural Areas of Opportunity**

A rural area of opportunity (RAO) is a rural community, or a region composed of rural communities, designated by the Governor, which has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster or that presents a unique economic development opportunity of regional impact.<sup>43</sup> The Governor may designate up to three RAOs, which establishes each region as a priority assignment for Rural and Economic Development Initiative (REDI) agencies.<sup>44</sup>

<sup>39</sup> U.S. EPA, *No-Discharge Zones by State*, <https://www.epa.gov/vessels-marinas-and-ports/no-discharge-zones-ndzs-state#fl> (last visited Mar. 29, 2019).

<sup>40</sup> Section 328.72(1), F.S.

<sup>41</sup> Section 328.72(15), F.S.

<sup>42</sup> In general, the vessel class designates various length increments of vessels which range from less than 12 feet in length (class A1) up to 110 feet or more in length (class 5).

<sup>43</sup> Section 288.0656, F.S.

<sup>44</sup> Section 288.0656(7)(a), F.S. The Northwest Rural Area of Opportunity includes Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, Walton, and Washington Counties and portions of Walton County; the South Central Rural Area of Opportunity includes DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee Counties and portions of Collier and Palm Beach Counties; the North Central Rural Area of Opportunity includes Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union Counties. See Department of Economic Opportunity, *Rural Areas of Opportunity*, available at <http://floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity> (last visited Mar. 29, 2019)

### III. Effect of Proposed Changes:

The bill defines “long-term stored vessel” to mean a vessel on the waters of the state which is not under the supervision and control of a person capable of operating, maintaining, or moving it from one location to another and which has remained anchored or moored outside of a public mooring field for at least 30 days out of a 60-day period. The definition is applicable only to the study required under the bill.

The bill requires the Fish and Wildlife Conservation Commission (FWC), contingent upon appropriation, to conduct, for no longer than two years, a study of the impacts of long-term stored vessels on local communities and the state. FWC must submit a report of its findings to the Governor and the Legislature within six months after the date the study is completed. The bill clarifies that the subsection governing the study expires January 1, 2024. The study must:

- Investigate whether, and to what extent, long-term stored vessels and vessels anchored or moored outside of public mooring fields for more than 30 days contribute to the number of derelict and abandoned vessels on the waters of the state;
- Investigate the impacts of long-term stored vessels, vessels anchored or moored outside of public mooring fields for more than 30 days, and vessels anchored within public mooring fields on the local and state economies, public safety, and the environment during and after a significant tropical storm or hurricane event; and
- Provide recommendations for appropriate management options for long-term stored vessels and vessels anchored or moored outside of public mooring fields for more than 30 days to mitigate any identified negative impacts.

The bill authorizes a county designated as a rural area of opportunity to create a no-discharge zone for freshwater waterbodies within the county’s jurisdiction. The bill prohibits treated and untreated sewage discharges from live-aboard vessels, houseboats, floating structures, and commercial vessels within the no-discharge zone. Vessel operators would have to retain their sewage on board for discharge at sea or onshore at a pump out facility. The bill provides that a violation in a no-discharge zone would be a noncriminal infraction, subject to a \$250 civil penalty and declaration that the vessel or floating structure a nuisance and hazard to public safety and health.

The bill authorizes grant funding from the Marine Resources Conservation Trust Fund for the removal of derelict vessels. The bill requires certain amounts to be remitted to the state from the vessel registration fees designated for use by the counties, as follows:

- Class A-2: \$0.25 for each 12-month period registered.
- Class 1: \$2.06 for each 12-month period registered.
- Class 2: \$9.26 for each 12-month period registered.
- Class 3: \$16.45 for each 12-month period registered.
- Class 4: \$20.06 for each 12-month period registered.
- Class 5: \$25.46 for each 12-month period registered.

The bill prohibits a person from residing or dwelling on a vessel that has been charged by an officer of FWC or any law enforcement agency as derelict until the vessel is removed from the



waters of the state permanently or returned to the waters of the state in a condition that is no longer derelict.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Boat operators born prior to January 1, 1988 will have to obtain boater safety identification cards. Costs for current safety training courses range from free up to \$30.

C. Government Sector Impact:

The bill may have an indeterminate fiscal impact on state government. The FWC may experience a positive fiscal impact resulting from the issuance of boating citations. However, FWC may also experience increased costs due to increased enforcement efforts, issuing boater safety identification cards to persons who no longer fall under the grandfather provision in current law, and conducting a study on long-term stored vessels.

The bill may have a positive fiscal impact on local governments that are eligible for the derelict vessel removal grant program. A portion of county vessel registration fees will be redirected for deposit into the Marine Resources Conservation Trust Fund.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 327.295, 327.4109, 327.60, 327.73, 328.72, 376.15, and 823.11 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Environment and Natural Resources Committee on March 26, 2019:**

- Deletes the exemption for persons born on or after January 1, 1988, to have a boater safety identification card before operating a vessel with a 10 horsepower or higher engine.
- Defines the term “long-term stored vessel” to mean a vessel which has remained anchored or moored without supervision or control for at least 30 days out of a 60-day period.
- Requires FWC to conduct a study, contingent upon appropriation, on the impacts of long-term stored vessels on local communities and the state, and to present the report to the Governor and Legislature.
- Authorizes counties designated as rural areas of opportunity to create in freshwater waterbodies within their jurisdiction a “no-discharge zone” where treated and untreated sewage discharges are prohibited.
- Requires vessel operators within a no-discharge zone to keep sewage discharges onboard for discharge at sea or onshore at a pump-out facility.
- Imposes a civil penalty and declares the vessel or floating structure a nuisance and hazard to public safety and health if an unlawful discharge is made in a no-discharge zone.
- Requires a certain portion of vessel registration fees designated for use by the counties to be deposited into the Marine Resources Conservation Trust Fund to fund grants for derelict vessel removal.
- Prohibits a person who leaves or abandons a derelict vessel from residing or dwelling on the vessel until it is permanently removed from state waters or returned to waters in a non-derelict condition.

**B. Amendments:**

None.