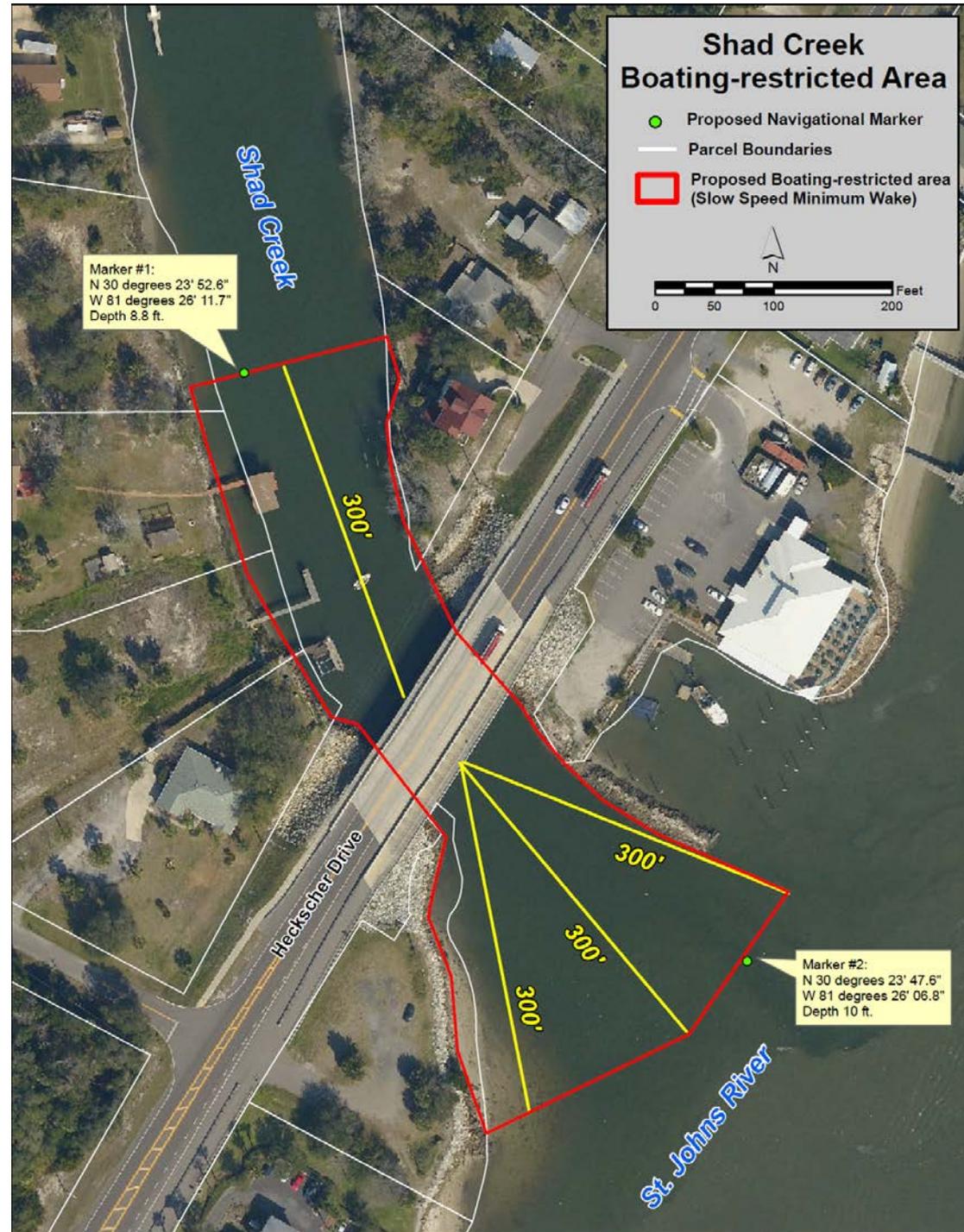




# Waterways Commission: Shad Creek Update

September 9, 2020

# Slow Speed/ Minimum Wake Markers: Installed May 2020 per Ordinance 2019- 463-E



Florida Statutes 327.46(1)(b)(2)(b) specifically allows local governments to establish a “Slow Speed, Minimum Wake” boating-restricted area within 300’ of any bridge span presenting a vertical clearance of less than 25’ or a horizontal clearance of less than 100’.

# FL Statutes 327.46 Boating-restricted areas

- (a) The commission may establish boating-restricted areas by rule pursuant to chapter 120.
- (b) Municipalities and counties have the authority to establish the following boating-restricted areas by ordinance:
  - 1. An ordinance establishing an idle speed, no wake boating-restricted area, if the area is:
    - a. Within 500 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways more than 300 feet in width or within 300 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways not exceeding 300 feet in width.
    - b. Within 500 feet of fuel pumps or dispensers at any marine fueling facility that sells motor fuel to the general boating public on waterways more than 300 feet in width or within 300 feet of the fuel pumps or dispensers at any licensed terminal facility that sells motor fuel to the general boating public on waterways not exceeding 300 feet in width.
    - c. Inside or within 300 feet of any lock structure.
  - 2. An ordinance establishing a slow speed, minimum wake boating-restricted area if the area is:
    - a. Within 300 feet of any bridge fender system.
    - b. Within 300 feet of any bridge span presenting a vertical clearance of less than 25 feet or a horizontal clearance of less than 100 feet.
    - c. On a creek, stream, canal, or similar linear waterway if the waterway is less than 75 feet in width from shoreline to shoreline.
    - d. On a lake or pond of less than 10 acres in total surface area.
  - 3. An ordinance establishing a vessel-exclusion zone if the area is:
    - a. Designated as a public bathing beach or swim area.
    - b. Within 300 feet of a dam, spillway, or flood control structure.
- (c) Municipalities and counties have the authority to establish by ordinance the following other boating-restricted areas:
  - 1. An ordinance establishing an idle speed, no wake boating-restricted area, if the area is within 300 feet of a confluence of water bodies presenting a blind corner, a bend in a narrow channel or fairway, or such other area if an intervening obstruction to visibility may obscure other vessels or other users of the waterway.
  - 2. An ordinance establishing a slow speed, minimum wake, or numerical speed limit boating-restricted area if the area is:
    - a. Within 300 feet of a confluence of water bodies presenting a blind corner, a bend in a narrow channel or fairway, or such other area if an intervening obstruction to visibility may obscure other vessels or other users of the waterway.
    - b. Subject to unsafe levels of vessel traffic congestion.
    - c. Subject to hazardous water levels or currents, or containing other navigational hazards.
    - d. An area that accident reports, uniform boating citations, vessel traffic studies, or other credible data demonstrate to present a significant risk of collision or a significant threat to boating safety.
  - 3. An ordinance establishing a vessel-exclusion zone if the area is reserved exclusively:
    - a. As a canoe trail or otherwise limited to vessels under oars or under sail.
    - b. For a particular activity and user group separation must be imposed to protect the safety of those participating in such activity.
- (d) Owners of private submerged lands that are adjacent to Outstanding Florida Waters, as defined in s. 403.061(27), or an aquatic preserve established under ss. 258.39-258.399 may request that the commission establish boating-restricted areas solely to protect any seagrass and contiguous seagrass habitat within their private property boundaries from seagrass scarring due to propeller dredging.

## Process for Requesting Expansion of Boating Restricted Zone:

- Must apply for authorization from FWC/Division of Law Enforcement/Boating and Waterways Section
- Application needs to include a draft local ordinance with the following:
  1. Type of restriction: slow speed/min. wake or numeric speed limit?
  2. Statement identifying what provision of Sec. 327.46(1)(c), F.S. City is requesting authorization to regulate vessel speed:
    - within 300 feet of a bend in a narrow channel or fairway, or other intervening obstruction to visibility that obscures other vessels
    - unsafe levels of vessel traffic congestion
    - hazardous water levels or currents, or containing other navigational hazards (as documented by USCG, NOAA or other creditable data)
    - an area that accident reports, uniform boating citations, vessel traffic studies, or other creditable data demonstrate a significant risk of collision or a significant threat to boating safety.

## Application Requirements continued:

### 3. Scaled drawings showing:

- County map & general project location.
- Exact location of the proposed speed limit zone.
  - Need to determine desired length of expansion.
- Any other boating-restricted area within 2,500 feet.
  - i.e. Recent 300' zone on either side of the bridge.
- Width of waterway
- Bridge location and fender system.
- Any bend or other obstruction to visibility that may obscure other vessels in the waterway.
- Any hazards to navigation.
- Any area subject to unsafe levels of vessel traffic congestion.
- Any area subject to hazardous water levels or currents.
- Any reported boating accidents or issuance of Uniform Boating Citations.

## **Application Requirements continued:**

4. Documentation that the ordinance was developed in consultation/coordination with USCG & ACOE.
5. Summary of the facts and circumstances that the City feels justifies the establishment of the speed limit area.
6. Appendix containing all evidence listed above.
7. Proof that the City published notice of the public hearing on the ordinance once a week for 2 consecutive weeks.

## FWC Review Process:

- FWC reviews application for completeness within 30 days.
- FWC then has 90 days to review final application, including a 21-day public comment period.
- FWC will determine:
  - if the boating-restricted area is eligible per Sec. 327.46(1)(c), F.S.
  - if the application establishes a *prima facie* showing that it is necessary to protect public safety by evaluating if at least one of the criteria in Rule 68D-21.004, F.A.C. is met.
    - If so, FWC will then:
      - review written public comments
      - review comments from USCG and ACOE
      - conduct public hearing, if requested.

## FWC Review Process continued:

- Based on all the information received, an ordinance will be considered necessary to protect public safety only if it is required for the purposes of:
  - protecting human life and limb,
  - vessel traffic safety, and
  - maritime property
    - “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.

## FWC Review Process continued:

- No area will be approved for the purpose of noise abatement or for the protection of shoreline, shore-based structures, or upland property from vessel wake or shoreline wash. Pursuant to 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 water of this state.

## **FWC Determination:**

- FWC (Boating and Waterways Section) will either approve or deny the application within 90 days.
- Any substantially affected person may, within 21 days, request review of the decision with the FWC Commissioners.
- The Commissioners will review the at its next available regularly scheduled meeting.



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