

*Environmental Protection Division*

**Proposed Amendments to Chapter 8  
Boats and Water Safety Ordinance**

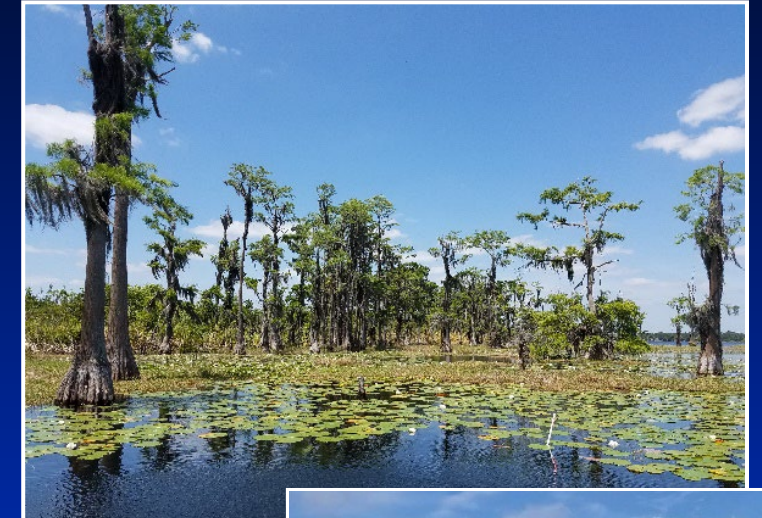
**Public Hearing**

**May 24, 2022**



# Presentation Outline

- Background
- Work Session Summary
- Key Issues
  - Wildlife & Environment
  - Public Safety
  - Noise Pollution Control
- Ordinance Overview
- Summary
- Action Requested

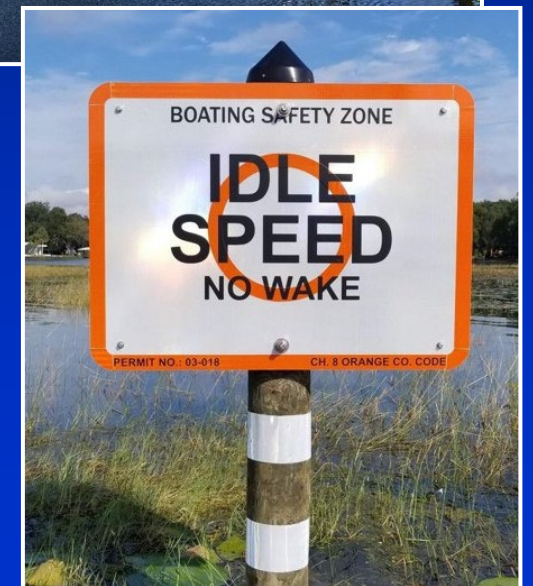






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# Background

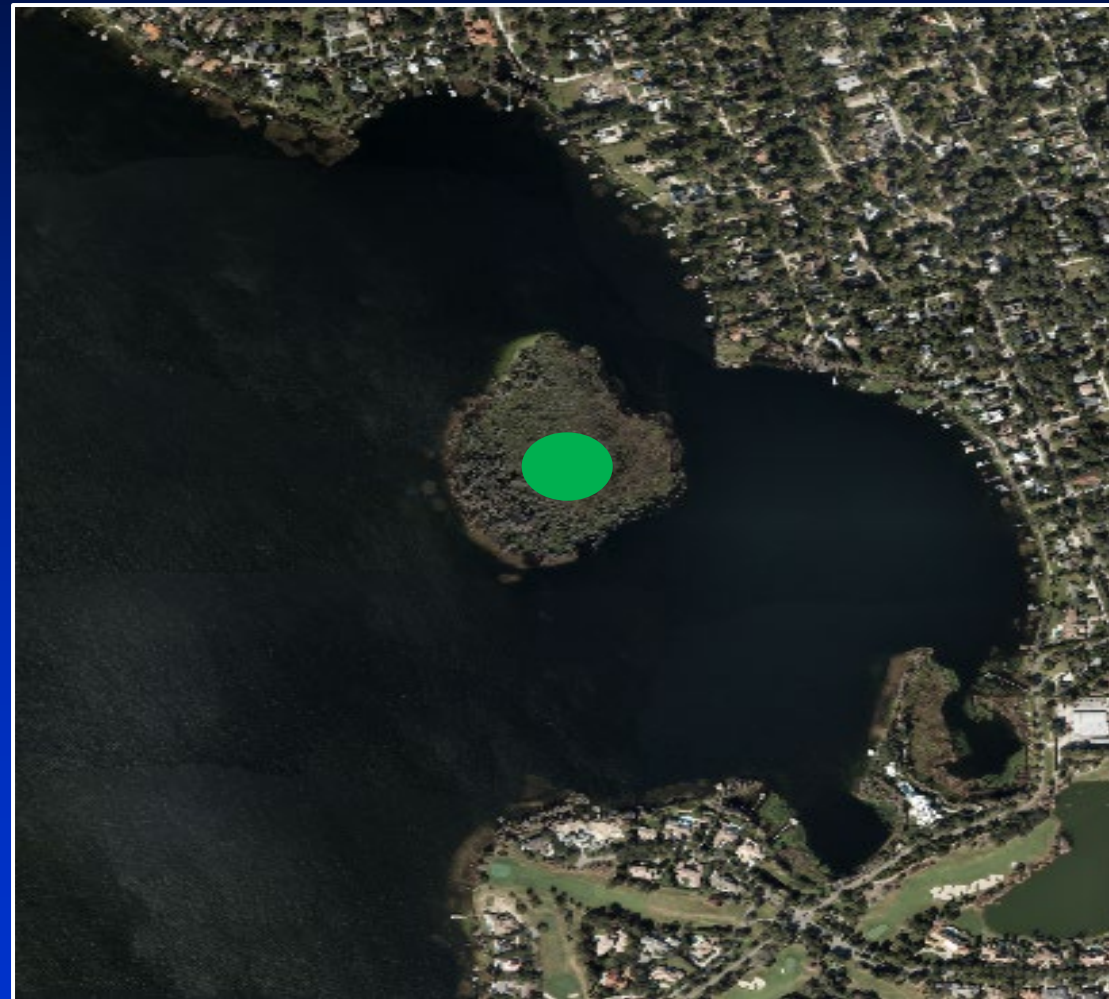
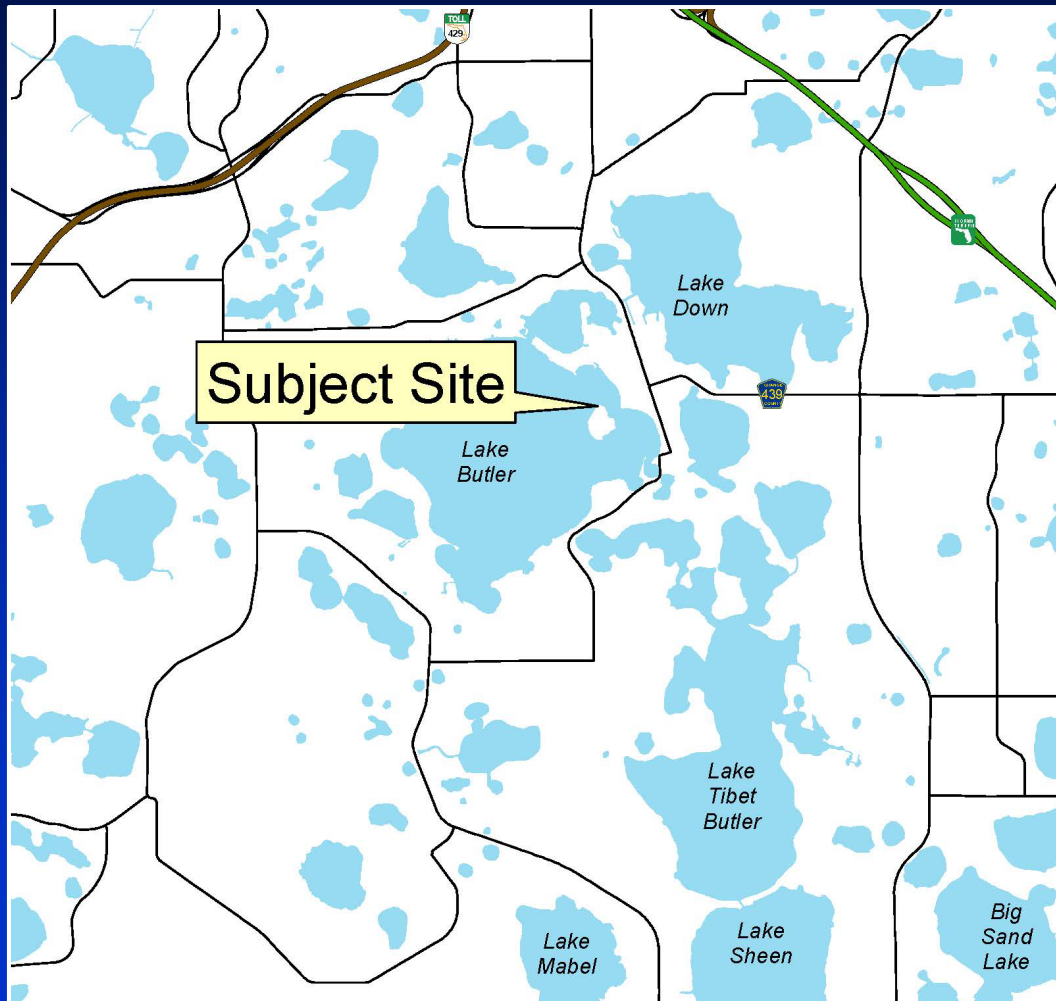
- In August 2020, the District 1 Commissioner submitted a memo to the Board which identified several issues associated with Egret Island:
  - Public safety
  - Congested gatherings
  - Natural resource impacts
  - Wildlife impacts







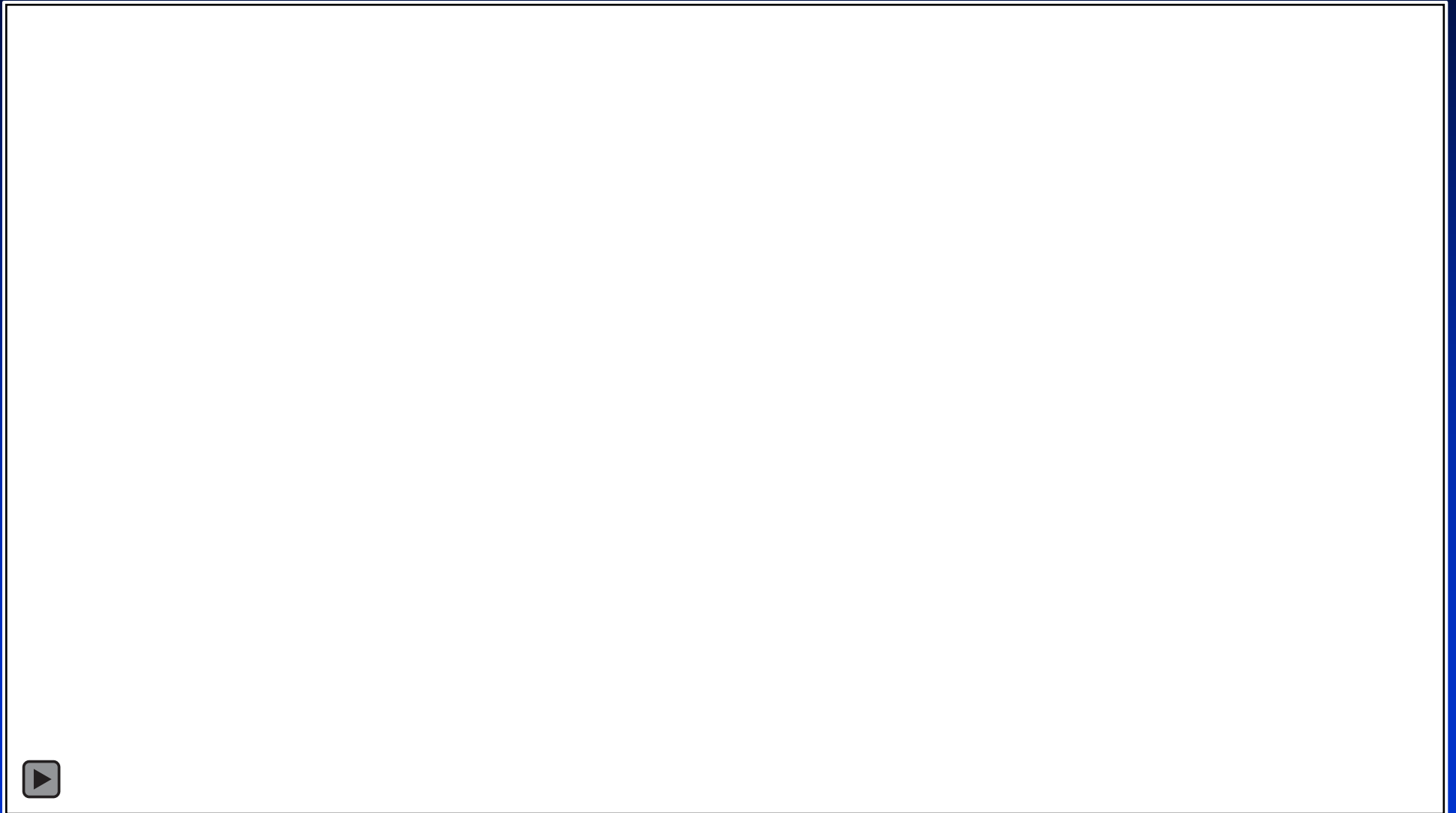
# Background





# Background

- YouTube video of island users (2018)





# Background

- On September 1, 2020, the District 1 Commissioner presented a Commissioner's report to the Board
  - EPD directed by the Board to work on a designated swim area
- EPD coordinated with FWC and OCSO on potential solutions to safety concerns starting in late 2020 to present
  - FWC suggested swim area/vessel exclusion zone utilized in other jurisdictions with similar circumstances





# Background

- **February 2021 - September 2021: Draft ordinance review meetings**
- **September 2021 - October 2021: FWC Boating and Waterways Section permitting review**
- **October 2021: Butler Chain of Lakes Advisory Board, Environmental Protection Commission (EPC), and public stakeholder meetings**
- **December 2021: Finalize draft with FWC Boating and Waterways Section permitting review**
- **December 2021 - January 2022: Briefings with District Commissioners, Senior Staff, County Administrator and Mayor**
- **February 2022: EPC Public Hearing**



# Background

## Stakeholder Feedback - Support

- OCSO, FWC, Town of Windermere, BCLAB, FL Audubon Society
- Nine individuals provided supportive comments at stakeholder meetings
- Swim area will improve:
  - Public safety
    - Separating swimmers and boats
  - Wildlife and environment
    - Wildlife abundance and diversity
    - Vegetative shoreline health
    - Water quality
  - Noise
    - Quality of life to nearby residents





# Background

## Stakeholder Feedback - Concerns

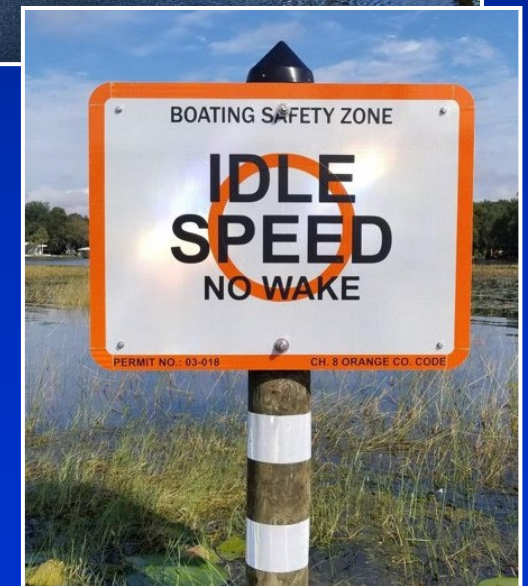
- **Three individuals expressed concerns at stakeholder meetings**
- **Public safety**
  - Boats being pushed further out into boat traffic areas
  - Concerns of swimmers being caught between vessels and in boat traffic areas
- **Lack of enforcement of current rules**





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# Work Session Summary

## ▪ Phase I

- Address safety, natural resources and wildlife issues at Egret Island that have been identified as a concern by residents and the Board
- Designate a new swim area/vessel exclusion zone at Egret Island to address these concerns

## ▪ Phase II

- Bring ordinance up-to-date to meet state requirements for existing and proposed boating safety zones throughout the County
- Update language for enforceability of boating safety regulations





# Work Session Summary







# Work Session Summary

- **Ten individuals provided comments at March 22, 2022 Work Session**
- **In Support: Florida Audubon Society and one resident**
  - **Swim Area will improve:**
    - **Wildlife and environment**
      - Wildlife abundance
      - Improve water quality
    - **Public safety**
      - Provides enforceable tool





# Work Session Summary

- **In Opposition: Eight residents**
  - **Public safety**
    - **Boats being pushed further out into boat traffic areas**
    - **Concerns of swimmers being caught between vessels and in boat traffic areas**
    - **Swimmers in deeper water**
    - **Request for no wake zone in lieu of swim area**
  - **Lack of enforcement of current rules**
  - **Loss of traditional enjoyment of the island**



# Work Session Summary

## Board Feedback

### ■ Wildlife and Environment

- Evaluate wildlife diversity and population data
- The island is designated for wildlife habitat by deed, not a public beach

### ■ Public Safety

- Proposed swim area solution may not address the issues of concern
- Underage drinking and intoxication
- Solution should set up law enforcement for success

### ■ Noise

- Possibility of noise ordinance around Egret Island
- Quality of life issues may remain





# Work Session Summary

## Post Work Session Public Feedback

### ▪ Supporters

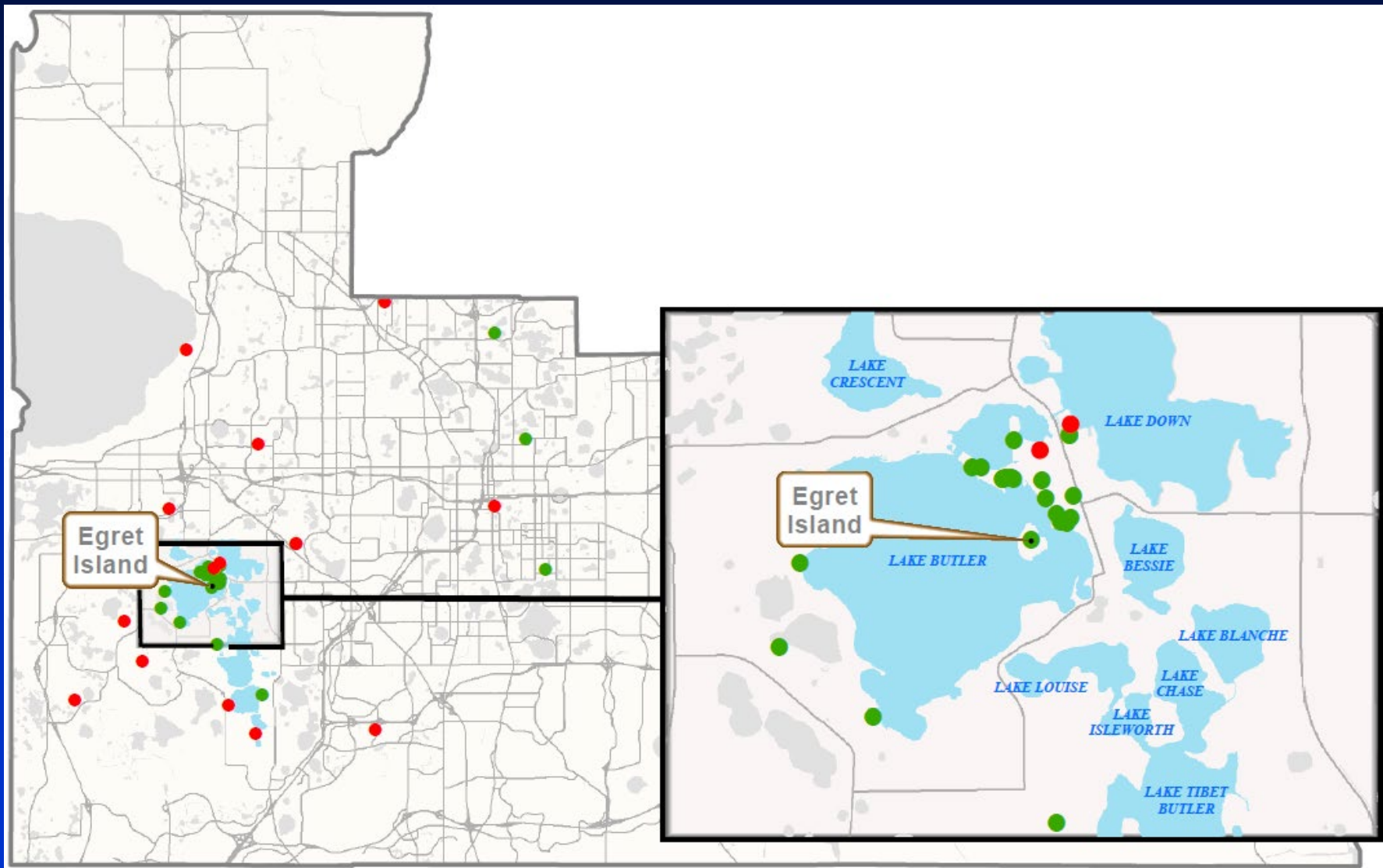
- Concern for wildlife, environmental, health impacts, property values, quality of life for the residents, loud music, indecency, unlawful behavior, and for the safety of residents.
- Concern for loss of time with delaying proposal

### ▪ Objectors

- Concern for swimmers and boats pushed too far out
- Proposal won't curtail noise, crowds, or safety concerns
- Petition for a no wake zone in lieu of swim area/vessel exclusion zone
- Annual passes at public ramps



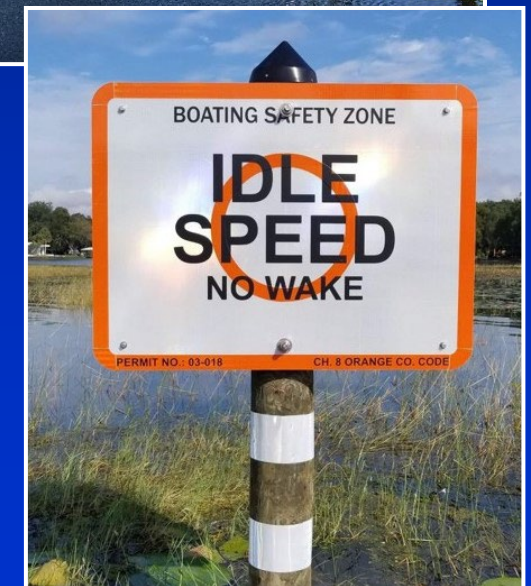
# Work Session Summary





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# Wildlife & Environment

## Florida Audubon Society observations

### ▪ Historic (1940):

- Approximately 15,000 nesting wading birds of various species

### ▪ Present day:

- Number of nests and species diversity greatly decreased
- Disturbance by island activity believed to be a factor
- Approximately 30 pairs of nesting brown pelicans on opposite side of island
  - Rare for an inland freshwater setting
  - Island activity is likely suppressing the offspring success rate
- Approximately 8 osprey nests located on the island
- A few wading birds roost and feed in the quieter portions of the island



# Wildlife & Environment

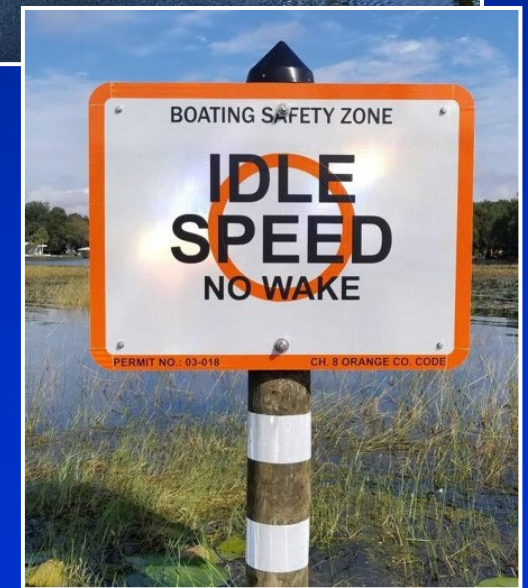
- **Florida Audubon recommendations:**
  - Adopt swim area/vessel exclusion zone as recommended by staff
  - Additional option (if needed) - Prohibit public access within 300' of the island if swim area doesn't have anticipated results





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# Public Safety

- **Boating restricted areas statutory framework**
  - **327.46(1)(b) FS & Chapter 68D-21: Municipalities and counties have the authority to establish boating restricted areas by ordinance**
  - **Section 327.46, Florida Statutes: Orange County has the authority to establish a vessel-exclusion zone if the area is designated as a swim area**
  - **The statute stipulates public safety as the sole purpose of a boating-restricted area**
  - **Environmental protection and noise restrictions are not statutory justifications for a swim area/vessel exclusion zone**

# Public Safety

## ▪ Egret Island Accidents

- Swimmer fatality due to interaction with vessel occurred on July 4, 2019
- Jet ski collided with boat (unrelated to fatality above)
- Several emergency response cases due to severe intoxication



## Mashta Flats

- **12-acre area off Key Biscayne in Miami-Dade County**
- **Issues identified**
  - Three deaths and two life changing injuries
  - Fifteen boating accidents
  - 156 citations
- **Village of Key Biscayne Code – Chapter 4, Article II, Section 4-32**
  - Swim area/vessel exclusion zone adopted January 23, 2018
  - Marked with piling markers





# Public Safety

## Mashta Flats (cont.)

- Alcohol prohibition and noise enforcement not considered
- Effectiveness of ordinance
  - Ordinance working, enforcement and outreach to the public is the key
  - Some nearby homeowners still complain about lack of privacy and noise
- Citations are issued by county law enforcement.



## Port Antigua & White Marlin Beach

- 10-acre area in Monroe County
- Issues identified:
  - Party boats
  - Boating traffic and activity
  - Noise and activity presenting quality of life issues for adjacent residents
- Village of Islamorada Code - Chapter 66, Article I, Section 66-2
  - Swim area/vessel exclusion zone adopted August 12, 2020
  - Marked with buoys



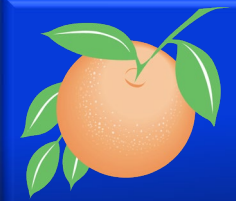
## Port Antigua & White Marlin Beach (cont.)

- Alcohol prohibition and noise enforcement not considered
- Effectiveness of ordinance
  - Compliance increased once citations issued
  - Ordinance working better than anticipated
  - Due to success of swim area, other vessel exclusion areas are being considered





- **OCSO Law Enforcement actions:**
  - Initiated numerous educational contacts
  - Citations/warnings issued when appropriate based on enforceable standards
    - 2016 – Present: 301 citations issued on Lake Butler, 17 citations at island
    - Missing or expired vessel registration, safety equipment, etc.
    - Careless/reckless operation
    - Trespassing



# Public Safety

- **OCSO Law Enforcement recommendations:**
  - **Prohibit alcohol possession and consumption in proposed swim area**
    - **Examples from Silver Glen Springs Run and Rainbow River ordinances**
  - **Multi-faceted, phased approach addressing noise and alcohol in conjunction with the swim area would have a more desirable impact**

# Public Safety

## Alcohol Prohibition Review

- Local ban on alcohol on vessels is preempted by Chapter 327-60(2)(H)
- Prohibition within swim area may be possible and is being evaluated
- Silver Glen Springs Run has an ordinance, but still attracts large numbers of vessels with loud music (screenshots from YouTube below)





## No Wake Zone Review

- Boating safety zones (idle/slow speed) can only be authorized in limited circumstances:
  - An area with consistent accident reports, citations, or vessel traffic studies
  - Required distance within proximity of boat ramps, fueling facilities, bridge system, lock system; canal width, presentation of blind corners, unsafe levels of traffic congestion, small lakes, or navigational hazards
- OCSO has not recommended a boating safety zone in the location of the swim area/vessel exclusion zone

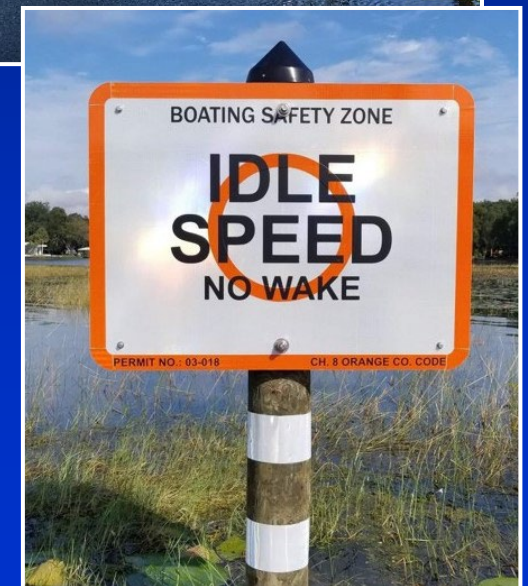






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# Noise Pollution Control

## ▪ Issues

- Nearby property owners affected by loud island activity
- Noise impacts to birds on the island

## ▪ Proposed swim area/vessel exclusion zone not intended to directly address these concerns





# Noise Pollution Control

## ▪ OC Code Chapter 15, Article V - Noise Pollution Control Ordinance

### –Role of EPD staff

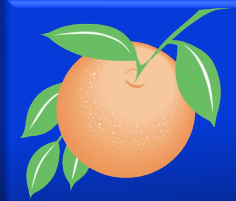
- Commercial establishments (non-alcohol related) and residential areas related to construction
- Measures noise levels using noise meter

### –Role of OCSO

- Residential areas (non-construction related) and commercial establishments that serve alcohol
- Plainly audible standard utilized







# Noise Pollution Control

## ■ Plainly Audible Standard

- *Any noise that can be heard by a person using normal hearing faculties at specified distances from real property lines*
- Difficult for OCSO to enforce on waterbodies as currently written
- OCSO recommends amending ordinance to make plainly audible standard applicable to vessels

## ■ Breach of Peace (F.S. 877.03)

- Requires the affected citizen to sign a sworn statement, and testify in court as the victim of the alleged misdemeanor
- Has not been used for successful prosecution in this situation







# Noise Pollution Control

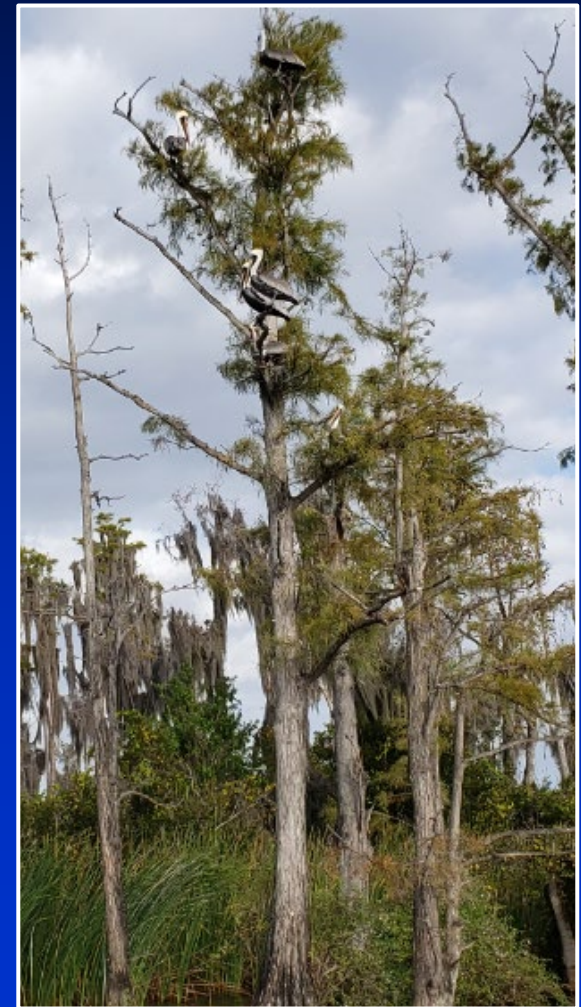
- **Noise-sensitive zones (Chapter 15, Article V, Sec 15-180(b)(18))**
  - Examples include schools, public libraries, churches, hospitals, nursing homes, and other areas defined as such pursuant to resolution adopted by the Board
  - Sound level limit is 55 dB any time of day (normal conversation or air conditioner can be 60 dB)
  - Does not appear to be applicable to Egret Island





# Noise Pollution Control

- FWC will issue waterway markers for quiet or noise restricted zones
  - **Informational Quiet Zone** would not require ordinance amendment
    - Signage can be permitted with the Swim Area/Vessel Exclusion Zone
  - **Noise Restricted Area** requires ordinance amendment
    - Local noise ordinance establishing a Noise Restricted Area would not be in conflict with Chapter 327, F.S.
    - Would require significant additional research, definitions, and standards, and penalties





# Noise Pollution Control

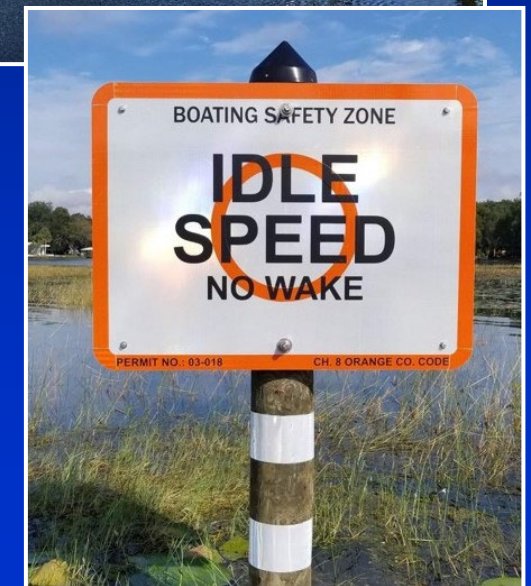
- **Law enforcement coordination is needed**
  - Discuss enforceability with OCSO
  - FWC stated they will not enforce local noise ordinance
- **Board direction would be needed regarding scope of ordinance amendments**
- **Possible Schedule:**
  - Remainder of 2022: Research phase
  - Spring 2023: Ordinance drafting
  - Summer 2023: Stakeholder meetings, workshops
  - Fall 2023: Adoption hearings
- **Last code update in 2014 – may be other issues to incorporate**

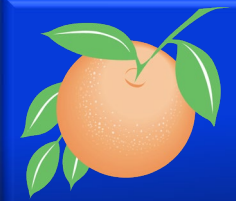




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# Ordinance Overview

## ▪ Phase I

- New Section 8-38 will be added to existing ordinance designating the swim area/vessel exclusion zone in Lake Butler adjacent to Egret Island.
- No changes to existing sections in Chapter 8
- Sec. 8-38(a) creates and identifies the location of the swim area/vessel exclusion zone; limits of area described with coordinates
- Sec. 8-38(b) prohibits operation of any vessel within swim area/vessel exclusion zone, notwithstanding exemptions



# Ordinance Overview

## ▪ Phase I (cont.)

–Sec. 8-38(c) identifies exemptions for some vessels:

- Owned and operated by the owner of Egret Island
- Operating under emergency conditions during an emergency
- Operating for law enforcement, firefighting, or rescue
- Operated by government staff or designated contractors for official duties

–Sec. 8-38(d) defines terms:

- Operate, operator, owner, person, swim area, vessel and Waters of the State

–Sec. 8-38(f) identifies enforcement by uniform boating citation

–Provides for an effective date pursuant to general law





# Ordinance Overview

## ▪ Phase I

- May 24, 2022: Adoption public hearing
- July 2022: Apply to FWC for swim area/vessel exclusion zone permit
- Fall 2022: Buoy installation

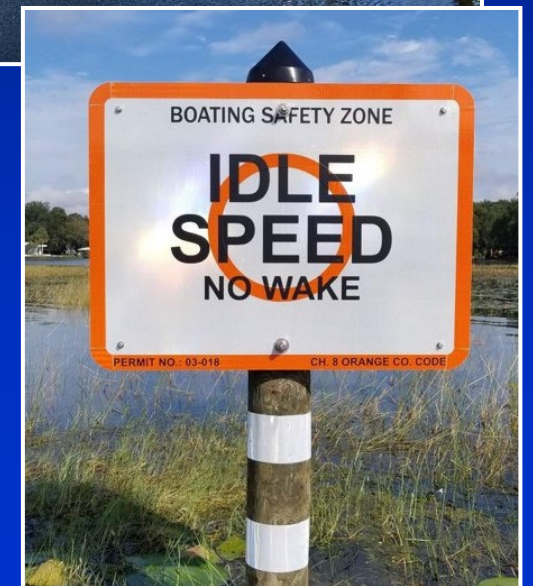
## ▪ Phase II

- More extensive updates to Chapter 8; bring forward later in 2022
- Evaluate efficacy of swim area/vessel exclusion zone to resolve the issues over time
- Bring ordinance up-to-date with current FWC waterway marker permit requirements
- Establish additional and modify existing boating safety zones
- Remove unenforceable language



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# Summary

- **Based on prior Board direction, EPD has worked since late 2020 with a broad stakeholder group to bring forward a designated swim area**
- **FWC recommended a swim area/vessel exclusion zone, which is permissible by statute and has proven to solve similar issues**
- **Broad support of proposed swim area/vessel exclusion zone received prior to work session on March 22, 2022. General opposition was heard at the work session.**
- **A multi-faceted approach addressing alcohol and noise is still being evaluated for feasibility with FWC, OCSO, and Orange County (EPD and Orange County Attorney's Office).**





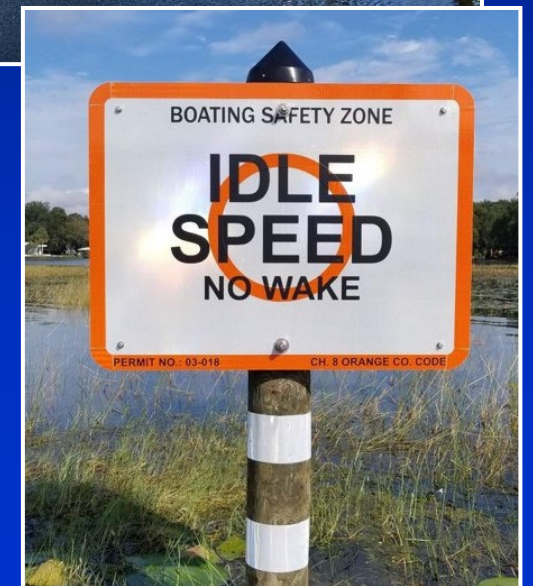
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- Staff recommends proceeding with Chapter 8 updates, Phase I as presented, with Phase II to follow towards the end of 2022.
- Additional Board direction is needed to identify which, if any, additional options to further pursue/investigate:
  - Informational Quiet Zone
  - Regulatory Noise Restricted Zone
  - Alcohol prohibition within swim area/vessel exclusion zone



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## Action Requested

- **Adopt an ordinance amending the Orange County Code, Chapter 8 (“Boats and Water Safety”) by creating Section 8-38; designating a swim area/vessel exclusion zone in a portion of Lake Butler, as further described on Appendix “A”; and providing an effective date.**

**All Districts**

- **Board direction regarding:**
  - Informational Quiet Zone
  - Regulatory Noise Restricted Zone
  - Alcohol prohibition within swim area/vessel exclusion zone