

# **Statement of Estimated Regulatory Costs**

## **April 2012**

### **Proposed Rule 68C-22.028, FAC** **(Flagler County manatee protection rule)**

#### **Executive Summary**

In February 2012, the Florida Fish and Wildlife Conservation Commission (FWC) proposed the Flagler County manatee protection rule (68C-22.028, FAC) to establish new manatee protection zones in portions of waterways in Flagler County, along with proposed amendments to the Volusia County manatee protection rule (68C-22.012, FAC) to remove existing zones in Flagler County from the Volusia County rule. The proposed rule for Flagler County would establish zones in several sections of the county (mostly in the southern half of the county) to improve protection for and reduce risks to manatees. Before and during the rule development process, the FWC collected and evaluated data to assess regulatory costs and other economic issues associated with the proposed rule. Information was gathered from multiple sources, including the Florida Department of Highway Safety and Motor Vehicles, the U.S. Census Bureau, the U.S. Department of Labor, and the Florida Small Business Regulatory Council. Information was also requested from the Flagler County Chamber of Commerce, the Flagler County Commission, and other local governments whose jurisdictions are adjacent or within close proximity to waterways affected by the proposed rule. This Statement of Estimated Regulatory Costs (SERC) presents our findings. If needed, a revised SERC will be prepared at the end of the rule development process to address any changes that are made to the proposed rule and to incorporate any relevant information that comes to light after the release of this SERC.

Anyone operating a boat on waterways affected by the proposed rule would be required to comply with the zones and thus potentially could be affected. The primary impact would be increased travel times for some trips as a result of the slower speeds required; however, some activities that can only be accomplished at higher speeds, such as water skiing, would no longer be able to be conducted when and where slower speeds are required. Boat operators who potentially could be affected include those who live in Flagler County, those who live in neighboring counties and travel to Flagler County to operate their boats, as well as those who visit the area from other parts of Florida and beyond. In 2011, there were 5,276 boats registered in Flagler County. Not everyone who owns a boat in Flagler County would be affected, but this total represents the maximum number of Flagler County boat owners who could be affected. The number of potential boaters from outside of Flagler County is unknown.

Area businesses could be affected by the rule directly if they involve boat operation on affected waterways, or indirectly if the rule alters boater behavior such that demand for their services is affected. Businesses that potentially could be directly affected include commercial fishers, professional fishing guides, other charter services (e.g., sightseeing tours, etc.), and water taxi services. Businesses that potentially could experience indirect effects include marinas and other boat storage facilities, boat dealers, boat renters, boat builders, waterfront restaurants, and other businesses such as those that sell fuel or other marine supplies.

The FWC anticipates nominal adverse economic impacts on boaters, local businesses, or the overall economy of Flagler County as a result of the proposed rule given the relatively small scope and seasonal duration of the zones and the fact that discernable adverse impacts have not been evident in other counties as a result of more substantial zones. Sea Ray Boats, which operates a vessel manufacturing plant on Lehigh Canal in the southern portion of the county, has indicated the proposed zones will have a minimal impact on its operations. While some individual boaters and other businesses could be affected, prior experience suggests neither overall boating activity nor general boat use patterns would change significantly. For these same reasons, the FWC has determined it is unlikely the proposed rule changes will: (1) have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within five years after implementation; (2) have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within five years after implementation; or (3) increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within five years after implementation.

## **I. Introduction**

The Manatee Sanctuary Act [379.2431(2), Florida Statutes (FS)] designates the state of Florida as “...a refuge and sanctuary for the manatee” and directs and authorizes the FWC to adopt rules regulating “motorboat speed and operation which are necessary to protect manatees from harmful collisions with motorboats and from harassment... and to protect manatee habitat...” In addition, the FWC approved a Manatee Management Plan (MMP) in 2007 to provide a state framework for conserving and managing manatees in Florida. The MMP is complementary to the federal Florida Manatee Recovery Plan, with both plans describing actions that will ensure the manatee’s long-term survival. One of the many tasks called for in the MMP is to review areas that currently have limited or no manatee protection zones to determine if zones are warranted.

Flagler County is identified for review in the MMP primarily because the area experienced significant growth and development in the last 10+ years and there are very limited protections in place. The southernmost 0.7 miles of the Intracoastal Waterway (ICW) immediately adjacent to Volusia County has had limited year-round zones since 1991 but there are no manatee protection zones anywhere else in the county. Prior to the current action, a comprehensive review of manatee protection needs had not previously been performed in the county.

## **II. Summary of Proposed Rule and Effect of Proposed Zones**

The proposed rule action would: [1] remove the existing zones in the extreme southern end of Flagler County that are a part of the rule for Volusia County; and [2] establish new zones in this area and other portions of Flagler County that would be in effect only from May 1 through September 7. The proposed zones would include 2.7 linear miles of Slow Speed zones on the Intracoastal Waterway (ICW). Zones would be established in the vicinity of the Hammock Dunes Parkway Bridge, in the general area between Silver Lake and the State Road 100 (Moody Blvd) Bridge (including Lehigh Canal), and in the southernmost roughly 2.1 miles of Flagler County. Adoption of the proposed rule would add about 15 minutes to the time it currently requires to transit the county in the ICW during the warm season, with no change during the rest of the year.

### III. Required Components

Section 120.541(2), FS, identifies seven components that must be included in a SERC. Each of these components is addressed below.

- A. An economic analysis showing whether the rule directly or indirectly is likely: (1) to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within five years after implementation; (2) to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within five years after implementation; or (3) to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within five years after implementation.**

FWC has determined it is unlikely the proposed rule changes will meet any of these triggers. The basis for this determination is provided below in the discussions for Sections III. B. through E.

- B. A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.**

Anyone operating a boat on waterways affected by the rule would be required to comply with the zones and thus potentially could be affected. The primary impact would be increased travel times for some trips as a result of the slower speeds required; however, some activities that can only be accomplished at higher speeds, such as water skiing, would no longer be able to be conducted when and where slower speeds are required. Boat operators who potentially could be affected include those who live in Flagler County, those who live in neighboring counties and travel to Flagler County to operate their boats, as well as those who visit the area from other parts of Florida and beyond. In 2011, there were 5,276 boats registered in Flagler County. Not everyone who owns a boat in Flagler County would be affected, but this total represents the maximum number of Flagler County boat owners who could be affected. The number of potential boaters from outside of Flagler County is unknown.

Area businesses could be affected by the rule directly if they involve boat operation on affected waterways, or indirectly if the rule alters boater behavior such that demand for their services is affected. Businesses that potentially could be directly affected include commercial fishers, professional fishing guides, other charter services (e.g., sightseeing tours, etc.), and water taxi services. Businesses that potentially could experience indirect effects include marinas and other boat storage facilities, boat dealers, boat renters, boat builders, waterfront restaurants, and other businesses such as those that sell fuel or other marine supplies. An estimate of the number of Flagler County businesses in each of the categories described above was made using 2009 data from the U.S. Census (the most recent year available) and other supplemental data as discussed below. One specific business that could be affected is Sea Ray Boats, which operates a vessel manufacturing plant on Lehigh Canal in the southern portion of the county. FWC staff met with representatives of Sea Ray while developing the proposed rule.

Available data indicate there are approximately 18-24 commercial fishers in Flagler County (based on Census data and the number of individuals who hold a current Saltwater Products License) and six people or businesses with charter boat or charter captain licenses (includes guides, other charters, and water taxis). Some of these businesses could operate primarily in the Atlantic Ocean but would likely travel on inland waterways for at least a portion of their time in order to get offshore.

Census data indicate there were two marinas (North American Industry Classification System [NAICS] Code 713930), one boat dealer (NAICS 441222), and two boat builders (NAICS 336612) with one or more employees in Flagler County in 2009. (Other sources indicate there are currently three marinas in the county.) Personal watercraft dealers are not listed as a separate category but are instead included with motorcycle dealers (NAICS 441221); three such businesses with one or more employees are documented in the county. Boat rental businesses are included in recreational goods rentals (NAICS 532292), with one such business with one or more employees documented in the county. Numbers for other types of businesses that could potentially be affected, such as waterfront restaurants or businesses that sell fuel or other marine supplies are much more difficult to estimate because they are included in categories that include many other businesses that have no association with water-based activities. For instance, marine service stations are included with other gasoline stations (NAICS 447190), which include many businesses that cater exclusively to automobiles. The Census data cited above do not include self-employed businesses (i.e., no employees). Census data on the number of self-employed businesses are available for some specific categories but in most cases are only available for groups of related businesses. Data are not available for any of the specific categories discussed above.

Some boaters and businesses would not be affected at all by the proposed zones because of where the zones would be in relation to where the business or its customers operate boats. To the extent there could be impacts on businesses, the level of impact could vary and the impacts could be adverse for some and beneficial for others, depending on if and how boater behavior changes. The FWC anticipates nominal adverse economic impacts on boaters or local businesses as a result of the proposed zones given the relatively small scope and seasonal duration of the zones and the fact that discernable adverse impacts have not been evident in other counties as a result of more substantial zones. Sea Ray has indicated the proposed zones will have a minimal impact on its operations. While some individual boaters and other businesses could be affected, prior experience suggests neither overall boating activity nor general boat use patterns would change significantly.

**C. A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.**

Implementation costs for the rule include one-time expenses incurred by FWC related to the administrative process for proposing and adopting the rule, as well as potential future expenditures needed to respond to requests for permits and/or variances from the rule. These latter costs would likely be small and would be limited primarily to staff time spent handling the requests. Implementation costs for FWC would also include expenses related to posting or revising regulatory signs to mark zone boundaries. Law enforcement agencies, mainly the FWC's Division of Law Enforcement, would not likely incur additional costs associated with enforcing the rule. Each of these cost categories is discussed below. FWC does not anticipate any change in state or local revenues as a result of the rule.

One-time costs for rule-making include such expenses as those related to data analysis and rule preparation, publishing notices in the *Florida Administrative Weekly*, disseminating the proposal to the public, and conducting meetings and public hearings. These costs, including those needed to prepare this SERC, are not expected to exceed \$5,000. Additional funds will not be allocated specifically for this rule action and all expenses will be absorbed as part of the FWC's standard operating costs.

The FWC is responsible for installing and maintaining regulatory markers. Based on an initial assessment of the rule and on what has been required to post markers in other areas, FWC estimates posting costs would not likely exceed \$30,000 to install or revise regulatory markers. Annual sign maintenance and repair costs would likely average about 10% of the installation costs (\$3,000 or less per year).

Law enforcement agencies (FWC and others, including local agencies) would not likely incur any significant additional costs for enforcement as a result of the rule. Officers already operate on all waterways (to enforce existing regulations, perform safety checks, etc.) so the amount of area being covered would not change. The proposed rule would add new restrictions in a few areas, mainly in the southern half of the county, but adoption of the rule would not require that new officers be hired.

**D. A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. As used in this paragraph, “transactional costs” are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule.**

No direct costs would be imposed on area businesses or boaters. No one would be required to obtain new licenses or certifications, nor would anyone be required to pay additional fees or purchase new equipment. As discussed in the last section, neither Flagler County nor any of the other local governments are expected to incur any significant costs as a result of the proposed rule.

During rule-making actions in other counties, some boaters have claimed that slower speeds will result in higher operating costs for their boats because of less efficient engine operation and potentially more frequent engine maintenance. No one has ever provided an estimate of the magnitude of these potential cost increases and they are not readily ascertainable. If operating costs for some boats do increase as a result of the proposed rule changes, the FWC does not believe the increases would be significant.

**E. An analysis of the impact on small businesses as defined by s. 288.703, FS, and an analysis of the impact on small counties and small cities as defined by s. 120.52. The impact analysis for small business must include the basis for the agency’s decision not to implement alternatives that would reduce adverse impacts on small businesses.**

A small business is defined in 288.703, FS, as “...an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a)

certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.”

By the definition in s. 288.703, FS, most of the businesses that potentially could be affected by the rule probably qualify as small businesses. However, as discussed in Section III. B. above, the FWC does not expect the proposed rule to have any significant impact on any local businesses given the relatively small scope and seasonal duration of the zones and the fact that discernable adverse impacts have not been evident in other counties as a result of more substantial zones.

The potential for indirect impacts on area businesses has been explored during previous rule making actions, including during the development of the Lee County rule that was adopted in November 1999. For the SERC that was prepared for the Lee County rule, the numbers of water-related businesses and employees before and after the imposition of manatee protection zones in several counties (Broward, Collier, Dade, Duval, Lee, Martin, Palm Beach, Sarasota, and Volusia) were compared to data from several coastal counties without manatee protection zones (Bay, Escambia, Manatee, Monroe, and Pinellas).

The analysis indicated no clear pattern of decline in water-related industries. In general, the numbers of businesses and employees appeared to show a fairly stable rate of increase from 1987-1995, following the broad pattern that characterized Florida's economy over the same period. This was true of those counties that had manatee protection zones during this period, as well as for those that did not. While there was some year-to-year variation in the number of businesses and employed workers, no clear connection with the imposition of zones was found. A similar result was seen when changes in the numbers of registered boats in these counties were compared.

For the SERC that was prepared for amendments to the Broward County rule in August 2011, FWC staff performed a similar analysis using U.S. Census data for 1998 and 2008 and looking at several counties with manatee protection zones (Brevard, Broward, Collier, Duval, Lee, and Sarasota) and several counties with very limited or no zones (Bay, Escambia, Flagler, Okaloosa, and Pinellas). As before, there was no clear difference between changes in the numbers of businesses in counties with zones versus counties with limited or no zones. Although all categories of businesses did not show the same generally increasing trend that was evident for 1987-95, the changes were similar for counties with and without zones. For instance, while the total number of marinas (NAICS 713930) in the counties with zones declined 10% between 1998 and 2008, the decline was 20% in the counties without zones. Another example is the number of boat dealers (NAICS 441222), which increased by 18% in the counties with zones, while it increased by 15% in the counties without zones. Statewide, the number of marinas declined 11% between 1998 and 2008 while the number of boat dealers increased by 20%. In Flagler County, the number of marinas fell 60% (from five to two) and the number of boat dealers doubled (from one to two).

Also supporting the conclusion that area businesses are not likely to be significantly affected is the fact that neither overall boating activity nor general boat use patterns is likely to change significantly. This position is further supported by a 1995 study<sup>1</sup> that found no statistical support for the claim that manatee protection zones had decreased demand for boating in Florida. Since potential impacts to area businesses are a function of

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<sup>1</sup> Bell, F. and B. Bendle. 1995. An Estimation of the Total Willingness to Pay by Floridians to Protect the Endangered West Indian Manatee through Donations.

changes to boating patterns or use, it stands to reason that business impacts would be small if impacts on boating are small. Given all of this, there is no reason to expect the proposed rule to result in any significant impacts in Flagler County.

Section 120.52, FS, defines “small cities” as “...any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census” and “small counties” as “... any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.”

The U.S. Census Bureau estimates the population of Flagler County at 95,696 in 2010, which places it above the definition of a “small county.” There are five incorporated municipalities in Flagler County, with four having populations that place them within the definition of a “small city” based on U.S. Census estimates for 2010. The four cities or towns that qualify as “small cities” are (2010 population estimates noted in parentheses): Beverly Beach (338); Bunnell (2,676); Flagler Beach (4,484); and Marineland (16). Two of the “small cities” (Beverly Beach and Flagler Beach) are adjacent or in close proximity to waterways affected by the proposed zones. However, as discussed in Section III. B. through D. above, the FWC does not expect the rule to have any significant impact on any local governments.

**F. Any additional information that the agency determines may be useful.**

None.

**G. In the statement or revised statement, whichever applies, a description of any regulatory alternatives submitted under paragraph (1)(a) and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.**

The FWC did not receive any written Lower Cost Regulatory Alternatives regarding the proposed rule.