



 **Final proposed manatee protection rule
for Flagler County**
May 3, 2012
Florida Fish and Wildlife Conservation Commission
Division of Habitat and Species Conservation

Last November at the Commission meeting in Key Largo, staff presented recommendations for a proposed manatee protection rule for Flagler County. At that time, the Commission directed staff to advertize a proposed rule, conduct a public hearing, and prepare a Statement of Estimated Regulatory Costs (SERC).

The purpose of this item is to summarize the results of the public hearing, comment period, and SERC; and, to provide the Commission with staff recommendations for final action on the proposed rule.

Background information

- The proposed rule is consistent with the Commission-approved statewide Manatee Management Plan
- Zones currently exist only in the very southern section of Flagler Co. as part of the Volusia Co. rule (1991)
- New manatee and boating data were collected specifically for this review (2005 – 2009)
- Development of the proposed rule took over 18 months. FWC worked with a Local Rule Review Committee, Flagler County, USFWS, and other stakeholders (including Sea Ray).
- The proposed rule represents a compromise position that is supported by Flagler County and USFWS.



In December 2007, the Commission approved a Manatee Management Plan to guide the FWC's activities to conserve and manage manatees throughout Florida. Many actions are identified in the Plan, including reviewing existing manatee protection zones and evaluating other areas that currently have limited or no protections in place. Since the Plan was approved, existing rules in Sarasota County and Broward County have been reviewed and modified. Flagler County is the first new area to be reviewed under the Plan.

Flagler County (along with coastal St. Johns County) was identified for review primarily because the area experienced significant growth and development in the last 10+ years and there are very limited protections in place. This, combined with an increasing trend in risks to manatees, resulted in issues at the federal and state level regarding the permitting of new or expanded boating facilities. In 2006, federal permits for multiple projects involving hundreds of boat slips in Flagler County were denied due to concerns over increased risks to manatees and the lack of existing manatee protection measures.

Between 2005 and 2009, FWC coordinated the collection of new manatee distribution and boating data so that decisions about improved protection could be based on new data. After reviewing the information in 2009-10, FWC staff worked with a Local Rule Review Committee (LRRC) in 2010. This was followed by extensive coordination with Flagler County, USFWS, and other stakeholders (including Sea Ray) in late 2010 through November 2011. The proposed rule represents a compromise position that is supported by Flagler County and USFWS.

Soliciting public comment

- The Manatee Forum was notified about the proposed rule
- The proposed rule was mailed to all individuals who have asked to be notified. The proposal also has been available on the FWC web site since early February. Other information related to the rule has been maintained on the web site as the process has progressed.
- Notice of Proposed Rule was published in the *Florida Administrative Weekly* on 2/3/12
- A public hearing was held on 2/29/12 in Bunnell
- Maps of the proposed zones were shown to the public at the hearing and staff described the proposed rule and how the rule was developed.



The proposed rule was provided to the Manatee Forum, which is a manatee stakeholder group of individuals representing many different organizations.

Based on the direction given at the November 2011 FWC Commission meeting, a Notice of Proposed Rule was published in the Florida Administrative Weekly on February 3, 2012.

At the public hearing on February 29, 2012, staff made a PowerPoint presentation, showed maps of each area, and discussed the proposed rule. In addition, staff answered questions from those in attendance before, during, and after the hearing.

Comments on proposed rule

- **Public hearing**
 - 17 speakers at the public hearing in Bunnell
 - 8 people opposed the rule while 4 others supported portions of the rule but opposed others.
 - 5 supported the proposed rule or requested additional changes to add more Slow Speed area
- **Written comments**
 - 13 people submitted written comments as of 3/16/12
 - 6 support the proposed rule, 3 support manatee protection in general, 2 commented without supporting or opposing the rule, and 2 oppose the rule.
 - **Comments from local governments**
 - Flagler County Commission supports the proposed rule
 - No formal positions from other local governments



FWC staff conducted a public hearing on February 29, 2012, in Bunnell. Not including FWC and County staff, 32 people signed in at the hearing and 17 attendees provided verbal testimony. Eight speakers were opposed to all proposed zones, while four others supported portions of the proposal and opposed others. Two attendees expressed support for the rule as proposed, while three others supported the current proposal but would prefer a more protective zone configuration.

Since the comment period began on 2/3/12 (through 3/16/12), 13 people have submitted written comments. Six support the proposed rule and three others support manatee protection in general. Two submitted general comments without supporting or opposing the proposed rule and two people oppose the rule. The Flagler County Commission supports the proposed rule. None of the other local governments has indicated if it has a position.

Statement of Estimated Regulatory Costs

- Information was collected from multiple sources, including the U.S. Census Bureau and the Department of Labor.
- Information also requested from local governments, the chamber of commerce, and others. No information was provided by these entities.
- No significant adverse economic impacts are expected.
- Sea Ray has stated the zones will have a minimal impact on its operations.



As required by statute and following guidance from the FWC Office of General Counsel, staff prepared a Statement of Estimated Regulatory Costs (SERC). The SERC was included in the background documents for this item and also posted on the FWC web site.

Staff collected and evaluated data to assess regulatory costs and other economic issues associated with the proposed rule and also requested information 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 zones. No information was provided by any of these other entities.

Staff did not find any substantial evidence or data to suggest there will be significant or measurable adverse economic impacts on boaters, local businesses, or the overall economy of Flagler County as a result of the proposed rule. Past experience has shown that in other counties where much more substantial restrictions have been established, there has been little demonstrable economic impact. Given the relatively small scope of the proposed zones and the seasonal duration of the zones, no significant economic impacts are expected. Sea Ray stated that an earlier version of the proposed zones would have a minimal impact on its operations. Since that time the zones were further reduced, likely eliminating any impacts on Sea Ray's operations.

Effect of proposed rule

- The proposed rule would reduce risks to manatees while limiting zones to the most critical times and areas
 - On average, 11 manatees seen per survey during the summer months.
 - Nine manatee deaths from boats recovered since 2002. Five were recovered between 1974 and 2001.
 - Zones would affect 15% of the ICW in Flagler County
 - 4 month duration (May – September 7)
 - Transit time through county would increase by about 15 minutes
- Addition of zones should facilitate some federal and state permitting of future boat access facilities



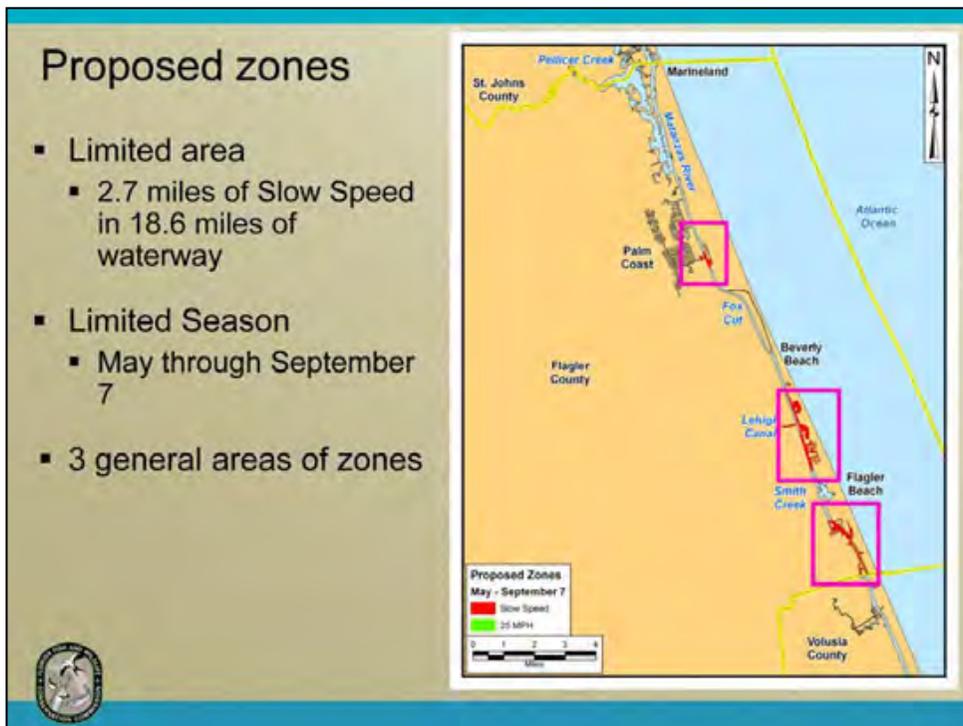
The proposed rule would reduce risks to manatees, while limiting the zones to the most critical time and areas. As many as 27 manatees were seen on a single survey during the recent aerial surveys, with an average of about 11 manatees seen per survey during the months when the proposed zones would be in effect. Manatee use was the highest in the southern section of Flagler County, where most of the proposed zones are located. The areas where zones are proposed constitute less than 20% of the water area in coastal Flagler County (15% of the ICW) but included close to half of all manatee sightings in the county.

Nine manatee deaths from boat collisions have been recovered in coastal Flagler County since 2002, as compared to five in the preceding 28 years (1974 – 2001). Collisions that result in non-lethal injuries likely occur much more frequently than those that result in deaths but they are very rarely documented so no estimates of frequency exist. All of the boat-related deaths since 2002 have been recovered in the southern section of the county.

During the four months of the year the zones would be in effect, the zones would increase the time to transit the county, from county-line to county-line, by about 15 minutes.

The zones should facilitate some federal and state permitting because they would help to offset some of the risks from new or bigger marinas.

Information on time estimates: There is an existing year-round Slow Speed boating safety zone in the vicinity of SR 100, which would supersede the proposed manatee protection zone in this roughly 0.3 mile stretch of ICW. The travel time estimates were based on the following assumptions: Slow Speed = 8.5 minutes per mile (7 MPH) and 25 MPH = 2.4 minutes per mile. Speeds in unregulated areas were assumed to be 25 MPH



The total length of the Intracoastal Waterway (ICW) in Flagler County is 18.6 linear miles. A total of 2.7 miles would be included in the Slow Speed zones, which is about 15% of the ICW in the county. Most zones are in the southern section of Flagler County because this is where manatee use was the highest and also where all of the recent boat-related deaths have been recovered.

All zones would be in effect only during the 4-month warm season of May through Sept. 7th (to include Labor Day).

The magenta boxes on the map highlight the three general areas where zones were proposed. From north to south, the first zone is near Palm Coast's southernmost residential canal, the next area is around Lehigh Canal and State Road 100, and the last area is near Gamble Rogers State Recreation Area to the Volusia County Line.

Proposed zones

- Add zone in vicinity of Hammock Dunes Parkway
- About 0.6 miles long
- Slow Speed
- Warm season only (May through September 7)



The only proposed zone in the northern part of the county is a warm season Slow Speed zone that would cover 0.6 miles of ICW in the vicinity of Hammock Dunes Parkway in Palm Coast (2,700 feet north of the Hammock Dunes Parkway Bridge to 300 feet south of the bridge and east of the Palm Harbor Parkway Bridge).

Proposed zones

- Add zone in and near Lehigh Canal and near Moody Blvd. (State Road 100)
- Slow Speed
- Warm season only (May through September 7)
- Zone Description
 - ~1.5 miles east of channel
 - Lehigh Canal
 - ~1.2 miles of shore-to-shore



This zone would be a warm season Slow Speed zone that includes Lehigh Canal and a roughly 1.5 mile long area to the east of the ICW from Marker "6" to just south of Marker "13." The ICW channel and the area to the west of the channel would be unregulated. The last part of this zone would be a roughly 1.2 mile long, shore-to-shore zone starting just south of Marker "13" and going to just south of the Moody Blvd Bridge. The southern 1/3 of a mile of this zone is already regulated year-round at Slow Speed by a boating safety zone.



This is the southernmost of the proposed zones. The zone would be a roughly 2.1 mile long warm season Slow Speed zone that starts at Marker "20" (near the 23rd Street South Canal) and runs south to the Volusia County line. Speeds up to 25 MPH would be allowed in the ICW channel in the roughly 1.2 miles of channel from just south of Mirror Lake to the Volusia County line. Currently, the 0.7 mile section just south of Gamble Rogers to the Volusia County line is regulated year-round under the rule for Volusia County, but with this proposal, the year-round zone would be removed from the Volusia County rule and the new zone would be in effect only during the 4-month warm season like the rest of the zones in Flagler County.

Recommended final rule

- Staff recommends adoption of Rule 68C-22.028 and the amendments to Rule 68C-22.012, as published in the Notice of Proposed Rule



Questions?



[Maps]

Relatively few comments have been submitted during the comment period. All of the comments that have come in during the comment period have raised issues that were also previously raised before the proposed changes were approved for publication in November 2011. As such, no new information has come in that leads staff to believe changes to the proposal are needed. Therefore, staff recommends approving the rule for Flagler County and amendments to the rule for Volusia County as proposed in the Notice of Proposed Rule.