

Statement of Estimated Regulatory Costs

November 2015 (Revised Final)

Proposed Amendments to Rule 68C-22.016, FAC **(Pinellas County manatee protection rule)**

Executive Summary

In December 2014, the Florida Fish and Wildlife Conservation Commission (FWC) proposed amendments to the Pinellas County manatee protection rule (68C-22.016, FAC) that would add new zones in portions of the western side of the county to improve protection and reduce risks to manatees. During the rule development process, the FWC collected and evaluated data to assess regulatory costs and other economic issues associated with the proposed amendments. 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 multiple chambers of commerce in Pinellas County, the Pinellas County Commission, and other local governments whose jurisdictions are adjacent or within close proximity to waterways affected by the proposed zones. A Statement of Estimated Regulatory Costs (SERC) was released in early June to present our findings. On June 24, 2015, the FWC approved a final rule that includes a few changes to the December 2014 proposed rule. On November 19, 2015, the FWC revised the approved zone in Indian Rocks Beach. This revised SERC presents our findings relative to the approved rule, including the changes that were made in June and November.

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 slower speeds are required. Boat operators who potentially could be affected include those who live in Pinellas County, those who live in neighboring counties and travel to Pinellas County to operate their boats, as well as those who visit the area from other parts of Florida and beyond. In 2014, there were 47,363 boats registered in Pinellas County. Not everyone who owns a boat in Pinellas County would be affected, but this total represents the maximum number of Pinellas County boat owners who could be affected. The number of potential boaters from outside of Pinellas 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 changes alter 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 Pinellas County as a result of the proposed rule given the scope of the proposed zones and the fact that discernable adverse impacts have not been evident in other counties as a result of more substantial rule actions.

While some individual boaters and 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.

Western Pinellas County is identified for review in the MMP primarily because of the substantial amount of manatee use and human use in this area and because available information suggests the risks to manatees have increased considerably in recent years as compared to the 1990s and earlier periods. Currently there are no manatee protection zones in western Pinellas County. There are existing local and state zones in various locations throughout the area, most of which are for boating safety purposes. The existing zones, which cover about 14% of the inshore water (Gulf of Mexico excluded), provide some incidental protection of manatees but the zones were not established with manatee protection in mind and are not necessarily in the locations where they are most needed from a manatee protection perspective. Prior to the current action, a comprehensive review of manatee protection needs had not previously been performed for the western portion of the county. No changes to the existing FWC manatee protection zones in the eastern portion of the county are proposed as part of this action.

II. Summary of Rule Amendments and Effect of Proposed Rule Changes

The proposed rule would establish manatee protection zones in portions of western Pinellas County that limit allowable motorboat speed to Slow Speed. Most zones would be in effect only between April and October, while some would be in effect year-round and one would be in effect only between November 15 and March 31. The zones would add 0.5 linear miles of new Slow Speed zone on the Intracoastal Waterway. In many locations the zones would have no impact on the water because of existing boating safety zones that are more restrictive. The proposed rule includes new descriptions of the existing zones in the eastern portion of the county but the zones in this area are not being substantively changed. Changes that were made to the rule in June or November 2015 were as follows: The southern boundary of the zone near 79th Street South was revised slightly; minor revisions were made to the descriptions of the zones near Johns Pass, Redington Shores, and Long Bayou; and,

provisions were added to the rule to allow net-setting permits to be issued to qualifying commercial fishers pursuant to Rule 68C-22.003, FAC.

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 of the rule; (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 of the rule; or (3) to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within five years after implementation of the rule.**

FWC has determined it is unlikely the proposed rule 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 proposed zones 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 slower speeds are required. Boat operators who potentially could be affected include those who live in Pinellas County, those who live in neighboring counties and travel to Pinellas County to operate their boats, as well as those who visit the area from other parts of Florida and beyond. In 2010, there were 47,363 boats registered in Pinellas County. Not everyone who owns a boat in Pinellas County would be affected, but this total represents the maximum number of Pinellas County boat owners who could be affected. The number of potential boaters from outside of Pinellas County is unknown.

Area businesses could be affected by the proposed zones directly if they involve boat operation on affected waterways, or indirectly if the zones alter 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 Pinellas County businesses in each of the categories described above was made using 2012 data from the U.S. Census (the most recent year available) and other supplemental data as discussed below.

Available data indicate there are approximately 498 commercial fishers in Pinellas County (based on Census data and the number of individuals who hold a current Saltwater Products License) and approximately 173 people or businesses with charter boat or charter captain licenses (includes guides, other charters, and water taxis). Many of these businesses likely operate partially or primarily in the Gulf of Mexico but would travel on inland waterways for at least a portion of their time in order to get offshore.

Census data indicate 35 marinas (North American Industry Classification System [NAICS] Code 713930), 52 boat dealers (NAICS 441222), and 14 boat builders (NAICS 336612) with one or more employees in Pinellas County in 2012. Personal watercraft dealers are not listed as a separate category but are instead included with motorcycle dealers (NAICS 441228); 30 such businesses with one or more employees are documented in the county. Boat rental businesses are included in recreational goods rentals (NAICS 532292), with 28 such businesses 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). The number of self-employed businesses in specific categories is not known.

Many boaters and businesses would be affected very little if at all by the proposed zones because the zones would affect a relatively small proportion of the county. 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. Potential impacts to commercial fishers would be further reduced by the availability of net-setting permits that would allow higher speeds in some areas while the net is being deployed. The FWC anticipates nominal adverse economic impacts on boaters or local businesses as a result of the proposed rule given the scope of the proposed zones and the fact that discernable adverse impacts have not been evident in other counties as a result of more substantial rule actions. While some individual boaters and 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 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 changes.

One-time costs for rule-making include such expenses as those related to data analysis and rule preparation, publishing notices in the *Florida Administrative Register*, 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 amendments and on what has been required to post markers in other areas, FWC estimates posting costs would not likely exceed \$200,000 to install or revise regulatory markers. Annual sign maintenance and repair costs would likely average about 10% of the installation costs (\$20,000 or less per year).

Law enforcement agencies would not likely incur any additional costs for enforcement as a result of the rule changes. Officers already operate on all waterways (to enforce existing zones, perform safety checks, etc.) so the amount of area being covered would not change. 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. There would be no cost for the commercial fishing net-setting permits. As discussed in the last section, neither Pinellas County nor any of the other local governments are expected to incur any significant costs as a result of the proposed rule changes.

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 scope of the proposed rule and the fact that discernable adverse impacts have not been evident in other counties as a result of more substantial rule actions.

Potential indirect impacts on area businesses has come up 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 establishment 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 2011, FWC staff performed a similar analysis again 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 Pinellas County, the number of marinas increased by 3% and the number of boat dealers increased by 5%.

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 study¹ 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 changes to boating patterns or use, it stands to reason that business impacts would be small if impacts on boating

¹ 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.

are small. Given all of this, there is no reason to expect the proposed rule to result in any significant impacts in Pinellas 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 Pinellas County at 930,109 in 2013, which places it well above the definition of a “small county.” There are 24 incorporated municipalities in Pinellas County, with many having populations that place them well above the definition of a “small city” based on U.S. Census Bureau estimates. Fourteen (14) cities appear to qualify as “small cities” based on 2013 population estimates (noted in parentheses): Belleair Town (3,933); Belleair Beach (1,587); Belleair Bluffs (2,062); Belleair Shore (111); Indian Rocks Beach (4,179); Indian Shores (1,441); Kenneth City (5,017); Madeira Beach (4,320); North Redington Beach (1,441); Redington Beach (1,447); Redington Shores (2,147); St. Pete Beach (9,471); South Pasadena (5,018) and Treasure Island (6,793). Most of these cities are adjacent or in close proximity to waterways affected by the proposed rule. However, as discussed in Section III. B. through D. above, the FWC does not expect the rule changes 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 amendments.