

**Local Rule Review Committee (LRRC)
Meeting May 26, 2010
Minutes**

MEMBERS PRESENT: Ed Caroe, Chris Herrera, Lauren Kornel, Stan Ksyniak, Richard McCleery, Jim Netherton, Jon Netts, Linda Provencher, Virginia Tee and Chris Vorndran

MEMBERS ABSENT: None.

STAFF PRESENT: Tim Telfer, Environmental Planner and Staff Liaison, Christie Mayer, Administrative Assistant.

OTHERS PRESENT: Christopher Boland (FFWCC), Scott Calleson (FFWCC), John Milio (USFWS), and interested citizens.

1. Call to Order – Chair Netts called the meeting to order at 1:00 p.m.
2. Pledge of Allegiance – Was led by Chair Netts.
3. Roll Call – A quorum was obtained with eight members present.

Chair Netts asked all committee members and others at the table to introduce themselves. Mr. Milo is a representative from the Jacksonville office of the US Fish & Wildlife Service. This agency has the authority for manatee protection and recovery in this geographic area. Mr. Boland and Calleson are with the Florida Fish & Wildlife Conservation Commission.

Chair Netts began the meeting by reading from Marine Mammal Regulations, which notes:

“All proposed rules shall be submitted to the county’s in which the proposed rules shall take effect for review by the Local Rule Review Committee. The Local Rule Review Committee shall have 60 days from date of receipt to submit a written report to the commission members and staff. The Local Rule Review Committee may use supporting data supplied by the commission as well as public testimony which may be collected by the committee to develop the written report.

“In conducting review of the proposed manatee protection rules, the Local Rule Review Committee may address such factors as to whether the best scientific data supports the proposed rule, whether seasonal zones are warranted, and such other factors as may be necessary to balance manatee protection and public access to and use of the waters being regulated under the proposed rule.”

4. Approval of Minutes of May 13, 2010 Meeting – Motion to accept the minutes as presented was made by Ed Caroe and seconded by Linda Provencher. The motion was then unanimously carried.

Mr. Ksyniak and Mr. Vorndran joined the meeting.

5. Discussion of Florida Fish and Wildlife Conservation Commission Report – A copy of the proposal, dated May 24, 2010, was distributed to the committee that same afternoon via email. After the committee members carry out their discussion today, Chair Netts noted they will open the meeting up for public comment, which is part of the responsibilities of this committee.

Chair Netts then turned the meeting over to Mr. Boland who began by reviewing the data set portion of the report (pages 1 through 4).

- Everything in this document reflects a preliminary review and not their final proposal.
- Data sources used: (1) relied mostly on the manatee aerial survey collected by the FFW Research Institute from 2005 to 2007; the flights were made twice a month over the entire span of the county; (2) MOTE Marine Lab flew boat aerial surveys from 2007 to 2009, with the data split into five seasons with five flights per season, two on weekdays and two on weekend days; and (3) manatee mortality data from 1974 to the present day was used for their analysis.
- The three basic data sets were then used to create a GIS density cover, spreading out the points for both the manatee and boating point sets. This was then divided by the number of flights during the period. Both sets are then combined to compile the coincidence cover, which is a standard cover showing the potential impact between boats and manatees in the area. They also consider “fast boats” in making the coincidence density.

(All of the data sets used in preparation of the report was provided to staff on a CD at the end of the meeting and subsequently posted on the county website.)

Clarification was made that a “slow speed minimum wake” boat is not a plowing boat.

Mr. Calleson noted that they use the data available on manatee mortality, where the manatees are seen, what they are doing in the county, how often they are seen, etc., to get an indication of the areas that potentially overlap with boats. This data is used to focus in on areas where speed zone regulations may be needed.

Ms. Tee inquired as to the methodology used to determine the mortality rate of the manatees. In some cases the causes were not defined. Mr. Boland explained that the Marine Mammal Lab collects all carcasses and determines the cause of death. Those listed as “undetermined causes” are usually due to the decomposition of the carcass. “Perinatal” refers to mammals who are less than or equal to 150cm in length who have died of what appears to be natural causes. Mr. Calleson noted that the carcasses are identified in the data as to location where they are first found, not at the location where

they are pulled out of the water. There are nine causes of death noted in the report (water control structures, human causes, hunting, perinatal, cold stress, undetermined cause, watercraft, etc.).

“Idle speed” versus “slow speed” is not defined in a numerical way. Slow speed is recognized as a boat that is completely off plane; not plowing nor creating an excessive wake. Typically, idle speed is 3-4 mph, with slow speed being 5-9 mph before waking. Chair Netts commented that there could be an overlap between speed and sailboats due to displacement of the haul of a sailboat.

Mortality collection data goes back to 1974 but the first manatee death in Flagler County due to watercraft was in 1990. All data was considered for this report.

The coincidence data does not mean that a boat and manatee were seen at the same location at the same time. It means that a boat and a manatee were seen at the same location at different times.

Mr. McCleery inquired if the population trends and boat traffic have been correlated during the seasons; i.e., number of boats that were going through the county to another destination versus local boaters. Also, as the population of the area grew did the data show an increase in the manatee mortalities? Mr. Calleson noted that the boat data was taken from a plane so the registration of the boat was not available.

Mr. Netherton noted that 1974 to 1990 reflects the boat parade north to south and could be considered the base line. More recently, it could be more due to the increase in boat usage in the county. Mr. Calleson noted that the population and number of boats registered are available should the committee wish to get that data. Whether it is a direct cause and effect, there does not appear to be any correlation. There has not been a point study done to document registration information on vessels in Flagler County but it has been done in other areas.

Mr. Boland then began to review the five areas where the FFWCC made preliminary rule proposals (pages 4 through 8). Discussion on each section is noted below.

- a) Marineland and Matanzas River: There was a public request for review of the area around Marineland by Mayor Netherton. This request was based on residents being in a possible public safety situation where the resident inquired if the no wake zone could be reestablished. Mayor Netherton noted that due to erosion, public safety and the manatees who reside in the area, they would be interested in having a no wake zone established. He also noted that there are plans to redevelop the marina so the boat traffic will most likely increase in that area. Mr. Boland acknowledged that with the human safety and manatee safety issues being brought forth by the Town of Marineland, they included it on the report.

Chair Netts asked if a boating incident death is distinguished between propeller damage and impact damage. Mr. Calleson noted that if there is evidence of propeller, then it is noted on the report.

Recommendation: FFWCC staff has not identified this as an area where a zone may be warranted, but they are requesting input from the LRRC.

- b) Palm Coast: Overall, the region included in this section is basically where the Matanzas River narrows into the ICW to the Hammock Dunes Bridge.

When the data was summarized, the area where the Matanzas River narrows to the first northern most Palm Coast canal was considered, but was not included in the proposal. It is still open to the LRRC for their input.

The next segment (B1) is the northern most lip of the central canal in Palm Coast to approximately 300' past the Palm Coast Parkway Bridge. Chair Netts clarified that this would roughly be from Rhodes Marine to below the Hammock Dunes Bridge.

Recommendation: FFWCC staff has suggested a warm season zone of slow speed minimum wake (for approximately 1.5 miles) for area B1.

- c) Fox Cut: Recommendation: Currently FFWCC staff has not identified this as an area where a zone may be warranted, but they are requesting input from the LRRC.
- d) Smith Creek North of SR 100: The area extends from the southernmost point of Hershel King Park to SR 100 Bridge. Chair Netts noted that there is already a slow speed minimum wake zone around the SR 100 bridge. The reason for the separation in the two areas is due to the supporting data varying slightly.

Recommendations: Area D1 is being proposed as a warm season slow speed minimum wake zone (for approximately 1.2 miles). Area D2 is being proposed as a warm season slow speed minimum wake zone (for approximately 1.5 miles).

- e) Smith Creek South of SR 100: From SR 100 Bridge to the Volusia County line.

Recommendations: Area E1 is being proposed as a warm season slow speed minimum wake zone (for approximately 1.8 miles). A change to the existing zone for area E2 is being proposed as a warm season slow speed minimum wake zone (for approximately 0.7 miles) and to amend the Volusia County rule to remove the portion of the existing zone that is located within Flagler County.

Chair Netts then opened the floor back up to the committee members for questions and/or comments.

Mr. Caroe noted the FFWCC has not made any recommendations differentiating between in-channel and out-of-channel zones, when they have done this in other counties. Mr. Boland explained this was not done for Flagler County because of the narrowness of the channel in the County. For the most part, the ICW in Flagler County is in the channel, with little option to make a notation otherwise. Mr. Calleson noted that the committee can make the reference to in-channel and/or out-of-channel in their comments, if they so wish.

Mr. Calleson again noted that with a carcass recovery, it is difficult to know exactly where the animal was hit versus where it was recovered. Therefore, the lack of a carcass recovery in a specific area does not have much impact on their recommendations, when the overlay shows the potential is there. The committee can put as much or as little emphasis on that data as they would like.

Mr. Caroe feels there is a big gap between 6 and 20 mph; consideration might be made for areas where boats could be on plane but not speeding. Most boats can get up to plane at 25 mph. More boats are plowing if it is below 25 mph because the haul of the boat is higher, which also hinders the view of the water immediately in front of the vessel.

Jim Netherton asked if they have any information on studies that lead them to feel how easily manatees are recognized from planing boats. Mr. Calleson personally feels it is difficult to see manatees even in the best situation. There are basically three reasons for slower speeds: (1) manatees have more time to react; (2) the boat operator has more time to react; and (3) in the event of a collision, the trauma is much less to the mammal.

Stan Ksnyiak expressed two reactions. First, as a resident, he feels the proposals would limit boats to slow or no wake speeds, which may limit his boating career due to the lack of ability to go faster and get to the destination quicker. Second, as a professional (with Sea Ray Boats) it would limit the ability of the company to perform the testing process necessary in the manufacturing of their boats. This will have a direct impact on their ability to stay in business due to the requirements to show performance data for each vessel constructed. This will cause additional time to get a vessel to a location where the planing performance data can be gathered. Most of their vessels require ten hours of water testing, with five of those hours being performance testing at higher speeds. There are contractual requirements for data at certain speeds, at certain haul angles, fuel consumption levels, etc. He noted that Sea Ray Boats has an in-house program that tracks manatees and they train their captains to spot manatees.

Chris Vorndran asked if there is an exception to the rule available to companies such as Sea Ray. Mr. Ksnyiak noted that he believes there have been exceptions granted. Mr. Calleson also agreed that there is a permit process available to vessel manufacturers.

Mr. Calleson reiterated that if there are particular issues in specific zones, it should be part of the committee's report. It is just as important for FFWCC to know the impact on operations and public use of the waterway as it is to know the impact on manatees. It is a balancing act but important in the overall decision for each zone.

Mr. Netts mentioned establishing two speed zones (in-channel and out-of-channel) north of the Flagler Beach bridge. This might be a good compromise to protect both the boaters and manatees.

Ms. Tee inquired if the manatee behavior in the area is primarily due to migratory, resting, calving, etc. Mr. Boland noted that our area is thought to be more transient with the Palm Coast area being used for calving grounds and resting. There is no real sea grass areas in Flagler County for nourishment; therefore, it is also felt that the animals go elsewhere for food sources. Mr. Calleson noted that manatees are repetitive animals, doing the

same thing over and over again; i.e., feeding in the same areas, and calving in the same areas.

Mr. Vorndran inquired if “Caution Manatee Area” signs have had any affect as it may be a compromise to setting slower speed limits. Mr. Calleson stated that there are no regulatory consequences attached to those signs but the committee is free to recommend this as an alternative to establishing speed zones.

The recommendations available to the committee might include:

- No recommendation
- Slow speed minimal wake at certain time of year
- Out-of-channel speed
- In-channel speed
- Caution Manatee Area signs

Chair Netts asked Tim to compile a north to south map showing the recommendations of the FFWCC as well as the current regulations.

Mr. Netherton asked if there is a difference between jet skis and boats when it comes to the report. Mr. Boland noted that jet skis are considered boats. There is a distinction in some of the data between personal watercraft and boats, but not in the recommendations.

6. Citizen Comments – Chair Netts then asked if any members of the public wished to speak. (The below named individuals also provided backgrounds on themselves and/or their interest in this subject. All guests at this meeting did not speak before the committee.)
 - a) Diane Cocchiola – Read from a prepared statement and spoke to three main issues (see Attachment 1). She feels the educational approach may be the best way to start because these zones will affect 6.5 miles and all of Palm Coast.
 - b) Richard Garling – He has not been on the ICW in the Palm Coast area where, if you see a manatee, there are not boats around almost escorting them. If boats present a greater problem, why is it that these mammals are found feeding around marinas and off the haul of boats? As to the Marineland request, it seems that the installation of a safe zone along with developing a marina may be counterproductive.
 - c) J. NeJames – He has picked up manatee carcasses along Tomoka State Park area over the last few years, where all of that area is a no wake area. If boating is the number 1 cause of manatee deaths, Mr. NeJames inquired as to what is being done for cause number 2 through number 9, especially the reduction in habitat. Fertilizers are being pumped into the water that is killing off the habitat. Other questions: Do the flights mentioned include any night time flights? Were there flights between 1974 and 1990? He also asked for clarification on the 2007 to 2009 flights. Mr. Boland responded that there were five flights per season, as outlined by MOTE Marine Lab in their studies. Mr. NeJames also asked if any of the deaths between 1974 and 1990 can be attributed to the increase in the number of manatee sightings? He agreed with the need for the public safety issue at Marineland to be addressed. Also, tug boats

“suck” water from the shoreline and then anything along the shoreline, including mammals, are sucked into the wake of the tug. He is concerned about some of the data because the number of the manatees is increasing.

- d) Linda Hanson – Inquired how this study got started. Was it by local complaints of manatee deaths? State regulations? This is a boating community. She feels we lose more boaters than manatees. Why are we trying to cut off something we enjoy doing that is the same as a highway? She can appreciate the concern about boaters going fast. She feels people are looking for excuses to put up a speed zone. Why is her tax dollars being spent to even put up signs?
- e) Debbie Hogan – She feels a more simple solution can be found for this problem. Mentioned the study done several years ago as a result of boat races through the ICW. The final result was that signage was installed but most are now rotted out or gone. Does not know how hard it is to change speeds once established. Suggested started small and then increase the restrictions if there are more manatee deaths. Asked how the restrictions would be enforced. Would like to see county parks be an area where slow speeds are enforced for public safety, mentioning Hershel King and Bing’s Landing. She would like to see the Hammock Dunes Bridge and the fuel dock at the Palm Coast Marina as slow speed areas. When asked if there is a problem with wakes at the fuel dock, Ms. Hogan responded in the affirmative.
- f) Dr. Katie Tripp – It is good for the committee to separate the boating concerns as well as the manatee concerns. Referencing Marineland, she feels that if the marina is developed there would automatically be a safety zone stipulated for the marina area. She feels that the maps are important tools that the FFWCC has not always had available. It is important to pay attention to the coincidence data because she has seen injured manatees travel for days away from the initial impact area. Also, she feels slow speeds are one of the best tools to protect manatees. Also, she asked the committee to consider the fact that almost all manatees have been hit more than once so the overall issue is about more than those who are killed. The effects of the strikes on the overall health, longevity, reproduction, etc., of the manatee may also be affected by the multiple strikes. Manatees travelling surfaces more frequently to breathe so the potential for strikes increases. Whereas when they are resting, they surface to breathe less often. The waterway should be considered the same as a highway, and regulated for property protection, human safety, manatee safety, etc.
- g) Dennis Bayer – When this process started in 2006, Sea Ray Boats prepared a report, which he offered to share with this committee if desired, relative to the area and other information that is needed for the boat performance testing. As this process is important economically to the county as well as to their company, he feels that any exception that could be afforded Sea Ray Boats would be appreciated. Mr. Bayer is also the attorney for the Town of Marineland and spoke to the difficulty Marineland has experienced in getting speed zones established for public safety purposes. He inquired as to whether the water quality at waste water sites along the ICW is having any bearing on the perinatal deaths. He believes the permitting data from these waste water sites show high toxicity. Some of this information could possibly be used to clean up some of the inlets.

- h) Paul Wilhelmsen – He asked if there is a way to get more educational materials to the children on manatees and boating safety. In this way, he feels the information would also get to the adults. Additional signs at the landings could also help to educate everyone about manatees.
- i) Jane Culpepper – She has not heard anyone today speaking on behalf of manatees. She thought half of the committee membership was to be manatee advocates; yet most of the speakers have been more concerned about being able to run their boats fast. She would like to see more concern for the manatees. You can see many cuts on most of the manatees in the area. If there is a meeting to discuss protecting the manatees, she would like to be invited.
- j) Kevin Peck – Spoke on behalf of improving the public's education on manatees and boating safety. He feels the smaller boats are the problem because of what he has experienced in performing his job in the waterways.

Mr. Vorndran departed the meeting at 2:50 p.m.

- k) Russell Jones – What he is seeing here today is that manatee protection and boating are mutually exclusive in the ICW. He does not see how both can happen together. If you slow the boat traffic for six miles, you have essentially closed the waterway. Are we still going to have to pay taxes to maintain the ICW if it is shut down?
- l) Michael Duggins – Some of the people want to know why this is being attempted. He feels it goes back to 2006 when the USF&WC felt there were too many dock permits being requested. The USF&WC stopped issuing dock permits at that time until a manatee plan was established for the county. He feels the USF&WC are again concerned with the ICW docks that are waiting for permits for construction by large developers.

Mr. Caroe asked for Mr. Milio's comments. To summarize his comments: He represents the federal interests. The USF&WC does have a vested interest in manatee protection and conservation, which is their duty, responsibility and authority. They manage this through attempts to recover the species and through the regulatory process. He noted that this agency is not responsible for issuing dock permits, as mentioned by a previous speaker. They engage in consultation with federal agencies for potential impact. Docks are permitted through the US Army Corps of Engineers. His agency did express a concern a few years ago about watercraft related manatee mortalities in the most recent decade because it had not been seen in past decades and their concern that this could relate to the increase in dock permit requests. This concern still remains. They have committed to work with other state agencies to find reasonable approaches to protect manatees in Flagler County in a way that does not eliminate the watercraft activities. This is to create a balance between the two issues.

Chair Netts offered the committee an opportunity to review the data, get with staff to produce a map of the area with landmarks, and have that at the next meeting. He reminded committee members that they have only 60 days to prepare the recommendations. During the 60-day period, time will need to be set aside for the response to be drafted and then presented back to the committee for review and

finalization. Mr. Caroe asked for the map to be prepared and presented to the committee a few days prior to the meeting. Mr. Telfer agreed this could be done in a few days time. The map will show the relative width of the ICW, the landmarks, the areas of recommendation, etc. Larger display maps will also be available at the next meeting.

7. Dates of Future Meetings – There was a suggestion that prior to the finalization of the committee’s report at least one meeting be held in the evening to allow more public input. Another suggestion was to hold the meetings at the Palm Coast Community Center; however, Chair Netts noted that this is a county committee and should, therefore, be held at a county facility. After further discussion, it was the consensus that the next meeting of the committee would be Wednesday, June 9 at 1:00 p.m. in the GSB. The exact room location will be identified and provided to all interested parties.
8. Adjournment – Upon motion, seconded, the meeting was adjourned at 3:05 p.m.

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