

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 1614

SPONSOR: Comprehensive Planning, Local and Military Affairs Committee; Natural Resources Committee and Senator Posey

SUBJECT: Protection of Manatees

DATE: March 12, 2002      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gee	Voigt	NR	Favorable/CS
2.	Bowman	Yeatman	CA	Favorable/CS
3.	_____	_____	AGG	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This bill provides for the creation of local rule-review committees in counties where manatee-protection zones or manatee speed zones may be imposed, at the option of the board of county commissioners. It provides that written reports submitted to the Fish and Wildlife Conservation Commission (FWCC) by local rule-review committees are part of the rulemaking record. This bill revises the circumstances under which boat speeds may be regulated and requires the FWCC, in consultation with the U.S. Fish and Wildlife Service to develop a measurable biological goal that defines manatee recovery, by February 15, 2003. Legislative intent is provided relating to the application of the act and its application to proposed rules currently under challenge.

The bill requires the FWCC to conduct studies, at least every three years, of the compliance rate of boaters with manatee protection rules. If compliance rates fall below 85%, the FWCC is required to prepare a strategic plan to bring compliance back to the 85% minimum rate.

The bill requires twenty one counties to prepare manatee protection plans, and encourages these counties to incorporate the manatee protection plan into the county's local government comprehensive plan.

This bill amends ss. 327.41, 370.12, and 372.02, of the Florida Statutes, (F.S.).

## II. Present Situation:

Manatees are marine mammals that can be found in Florida's coastal and riverine waters throughout the year. The Florida manatee is listed as an endangered species under both state and federal law. Protection of manatees in Florida has been legislatively mandated since 1892.

Current state efforts toward population recovery are guided by the Florida Manatee Sanctuary Act of 1978 and the federally-approved Florida Manatee Recovery Plan of 1995. The Florida Manatee Sanctuary Act declared the state to be a refuge and sanctuary for the manatee and subsequent amendments have given the FWCC a wide range of responsibilities. The Recovery Plan lists 126 separate tasks that need to be accomplished. Many of these tasks are addressed through a cooperative effort between federal, state, and local governments. Manatees face a variety of threats including deaths from human-related causes (collisions with watercraft, crushings in water control gates and locks, and entanglements in fishing gear), as well as destruction and degradation of their habitat. Manatees have also died as a result of exposure to harmful algal blooms, the effects of cold water, and natural disease.

Pursuant to s. 370.12(2), F.S., the FWCC is directed to adopt rules to protect manatees from harmful collisions with motorboats or from harassment, due to the expansion of existing, or the construction of new, marine facilities and mooring or docking slips, or by the addition or construction of five or more powerboat slips. The FWCC may regulate the operation and speed of motorboat traffic only where manatee sightings are frequent and it can be generally assumed, based on available scientific information, that they inhabit the areas on a regular or continuous basis. The statutes specify a number of areas in several counties where such rules are to be considered; under this authority the FWCC has adopted a number of rules establishing zones and areas where motorboat operation is prohibited, limited, or regulated for manatee protection. Rules have also been developed to regulate motorboat operation in the vicinity of power plants or other sources of warm water that attract concentrations of manatees.

Pursuant to s. 370.12(2)(j), F.S., the Legislature has provided its intent regarding the motorboat regulation allowed by the FWCC:

“... to post and regulate boat speeds only where manatee sightings are frequent and it can be generally assumed that they inhabit these areas on a regular or continuous basis. It is not the intent of the Legislature to permit the commission to post and regulate boat speeds generally in the above-described inlets, bay, rivers, creeks, thereby unduly interfering with the rights of fishers, boaters, and water skiers using the areas for recreational and commercial purposes. Limited lanes or corridors providing for reasonable motorboat speeds may be identified and designated within these areas.”

Aerial surveys conducted by the FWCC show that manatee populations have increased in recent years. In February, 1991, the aerial count was 1,462. In January, 1997, the aerial count was 2,229. In March, 1999, the aerial count was 2,353, and in January, 2001, 3,276 manatees were counted in surveys conducted throughout Florida. However, the number of manatee deaths from human-related incidents, such as collisions with boats and other watercraft, continues to be of concern. In 1990, 47 manatee deaths were attributed to collisions with watercraft. In 1995, there were 42 watercraft-related deaths, and in 2001, the FWCC reported 81 watercraft-related deaths. In 1997, Florida had 755,000 registered recreational vessels, and in 2000, Florida had almost 841,000 registered recreational vessels. Many more vessels visit annually from other areas.

In January, 2000, the Save the Manatee Club and others sued the Army Corps of Engineers (Corps) and the U.S. Fish & Wildlife Service of the Department of the Interior (DOI) for failure to protect manatees under the Marine Mammal Protection Act and the Endangered Species Act. The lawsuit claimed that by authorizing dredge and fill projects and the construction of boat marinas, the DOI and the Corps have adversely modified habitat critical to manatees. The lawsuit further claimed that by authorizing the construction of marinas and boat slips, the Corps was responsible for increased boat traffic which resulted in harm to manatees and caused an intentional “taking” of an endangered species, without requiring the projects to apply for an incidental take permit under the terms of the Marine Mammal Protection Act.

In January, 2001, the U.S. District Court ratified a settlement agreement between the Save the Manatee Club and the defendants. The settlement agreement established target dates for completion of manatee protection tasks, including a comprehensive review of current manatee protection areas throughout Florida, and the establishment of additional areas of protection where necessary, some of which duplicate the areas involved in the lawsuit against the state, which is discussed below.

However, in October, 2001, the plaintiffs in this case served the defendants with a formal notice that the terms of the settlement agreement had been breached by the DOI’s failure to adopt a comprehensive network of manatee refuges and sanctuaries as called for in the settlement. The notice further states that the interim management policy adopted by the DOI is more harmful than that which was agreed to because the federal government is still permitting marinas, docks, and boat slips but is not collecting an impact fee to be assessed against single-family and other dock permit applicants to pay for the implementation of manatee conservation measures.

In January, 2000, the Save the Manatee Club and others also sued Dr. Allan Egbert as Executive Director of the FWCC. The federal lawsuit charged the FWCC with violations of the Endangered Species Act and the Marine Mammal Protection Act for failure to provide adequate protection for manatees by allowing motorboats and other watercraft to travel at high speeds through manatee habitat. The Save the Manatee Club charged that the FWCC was authorizing the illegal taking of manatees due to the increasing numbers of manatees that were killed, injured, maimed or harassed by collisions with boats.

In November, 2001, the U.S. District Court entered a settlement agreement that called for protective measures very similar to those required in the settlement with the federal agencies. The FWCC is required to revise the Brevard County speed zone rules. Upon completion of the Brevard County rules, the FWCC will propose speed zone rules or changes to eight “hot spots” in the state where manatee mortality has been identified as a special problem. These areas include Lemon Bay and the Peace River in Charlotte County, the Alafia River in Hillsborough County, Terra Ceia Bay in Manatee County, portions of the Halifax River in Volusia County, the Jungle Trail Area in Indian River County, the Crossroads Area in Martin County, and the confluence of the Loxahatchee River and the Intracoastal Waterway in Palm Beach County.

While the “hot spot” rules are being developed, the FWCC will also prepare a rulemaking proposal to include eight areas as “safe havens” which can include limited entry or no access restrictions. The areas proposed for the safe havens include the Blue Waters in the Homosassa River in Citrus County, Warm Mineral Springs in Sarasota County, a portion of Turtle Bay in

Charlotte County, the Vero Beach Power Plant discharge areas in Indian River County, the Blue Lagoon and Sky Lakes in Dade County, DeLeon Springs in Volusia County, and Pansy Bayou in Sarasota County.

When rules for the eight hot spots and eight safe havens have been completed, the FWCC will prepare a rulemaking proposal for Tampa Bay, and a rulemaking proposal for six additional safe havens in Hillsborough, Marion, Putnam, St. Lucie and Palm Beach counties. Finally, under the settlement agreement, the FWCC will study boating and manatee conflicts in the Caloosahatchee River and Mullock Creek in Lee County, and evaluate existing rules for Lee County, the downtown portions of Duval County, and the Ten Thousand Islands in Collier County. The FWCC must provide enhanced law enforcement statewide, and must specifically increase law enforcement in the Caloosahatchee River.

Section 372.072, F.S., creates the “Florida Endangered and Threatened Species Act.” The act expresses legislative intent to conserve fish and wildlife resources that have been defined as being threatened or endangered by the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, or the United States Department of Interior, or successor agencies. The act states that it is the intent of the Legislature to provide for research and management to conserve and protect these species as a natural resource. Subsection (5) of s. 372.072, F.S., requires the director of the Fish and Wildlife Conservation Commission to transmit on a yearly basis, to the Governor and Cabinet and Legislature, a revised and updated plan for the management and conservation of endangered and threatened species which includes:

- Criteria for research and management priorities;
- A description of the educational program;
- Statewide policies pertaining to protection of endangered and threatened species;
- Additional legislation which may be required; and
- Recommended level of funding for the following year.

### **III. Effect of Proposed Changes:**

**Section 1.** This section amends s. 370.12(2), F.S., to revise requirements for the FWCC’s rulemaking to protect manatees from collisions with motorboats.

The bill requires that, all proposed rules, except for emergency rules, governing the speed and operation of motorboats for purposes of manatee protection, must be submitted to each county within which the proposed rule will take effect for review by a local rule-review committee.

No less than 60 days before filing a notice of rule development in the Florida Administrative Weekly, the FWCC must notify the counties for which a rule to regulate the speed and operation of motorboats for the protection of manatees is proposed. Each county that is notified may, at its option, establish a local rule-review committee, or several counties may combine local rule-review committees.

The board of county commissioners of each county in which such a proposed rule will take effect shall, at its option, designate the members of each local rule-review committee. If so designated, the membership must represent an equal balance of local waterway users, such as fishers,

boaters, water skiers, and other waterway users, as compared to the number of manatee and environmental advocates. A board of county commissioners may designate an existing advisory group as the local rule-review committee so long as the membership of the advisory group maintains an equal balance of waterway users as compared to the number of manatee and environmental advocates.

The county must also invite other state, federal, county, municipal, or local agency representatives to participate as nonvoting members of the local committee. The county will provide logistical and administrative staff support to the local committee appointed by that county, and may request technical assistance from the FWCC. The members of each local committee will elect a chair and recording secretary from among its voting members.

FWCC staff must submit the proposed rule and supporting data used to develop the rule to the local committees, which will have 60 days from receipt of the proposed rule to submit a written report to FWCC members and staff. The local committees may use supporting data supplied by the FWCC, as well as public testimony that may be collected by the committee, to develop the written report. The report may contain recommended changes to proposed manatee protection zones or speed zones, including a recommendation that no rule be adopted, if that is the finding of the committee.

Prior to filing a notice of proposed rulemaking in the Florida Administrative Weekly as provided in s. 120.54(3)(a), F.S., the FWCC staff must provide a written response to the local committee reports to the appropriate counties and to the commission members.

In conducting a review of the proposed manatee protection rule, the local committee may address such factors as whether the best available scientific information supports the proposed rule, whether seasonal zones are warranted, and such other factors as are reasonable to balance manatee protection and public access to and use of the waters being regulated under the proposed rule. The written reports submitted by the local rule-review committees must contain a majority opinion; if the majority opinion is not unanimous, a minority opinion must also be included.

The members of the FWCC must fully consider any timely submitted written reports by a local committee before authorizing commission staff to move forward with proposed rulemaking and must also fully consider any subsequent written reports before adoption of a final rule. Each local committee written report and the written response of the FWCC's staff will be part of the rulemaking record and may be submitted as evidence in any proceeding relating to a proposed or adopted rule.

The bill makes a number of other changes including:

- Deleting provisions requiring the FWCC to adopt rules relating to new or expanded marine facilities in order to protect manatees; instead, the FWCC is authorized to provide a permitting agency with its comments regarding such facilities.
- Specifying that the FWCC shall adopt rules under chapter 120 which regulate the operation and speed of motorboat traffic and adopt any manatee protection rule

only where manatee sightings are frequent and the best available scientific information as well as other available, relevant and reliable information, which may include, but is not limited to, manatee surveys, and available studies of food sources and water depths, supports the conclusion that manatees inhabit these areas on a regular or continuous basis.

- Provisions permitting the establishment of a limited lane or corridor providing for reasonable motorboat speeds within specified areas of the Indian River, the Loxahatchee River, and the Withlacoochee River and certain of its tributaries are deleted.
- Provisions permitting FWCC to post and regulate boat speeds where, based on best available scientific information, manatees inhabit areas on a seasonal basis. Language is clarified that it is not the intent of the Legislature to permit the commission to post and regulate boat speeds generally throughout the waters of the state, thereby interfering with rights of fishers, boaters and other users.
- The FWCC may identify and designate limited lanes or corridors providing for reasonable motorboat speeds within waters of the state whenever such lanes and corridors would be consistent with manatee protection and recovery goals.
- Provides that the commission may designate by rule other portions of state waters where manatees are frequently sighted and the best available scientific information supports the conclusion that manatees inhabit such waters periodically or continuously.
- Provisions authorizing a local government to regulate, except in the marked navigation channel of the Florida Intracoastal Waterway and the area within 100 feet of the channel, motorboat speed and operations on waters within its jurisdiction have been modified to authorize such ordinances where the best available scientific information, as well as other available, relevant, and reliable information including, but not limited to, manatee surveys, and available studies of food sources and water depths, supports the conclusion that manatees inhabit these areas on a regular or continuous basis.

Paragraph (r) is amended to require the FWCC to assess, at least every three years, the compliance of boaters with rules adopted under chapter 120 for the protection of manatees. Such assessment must use standardized and repeatable methodology and data collection should not be collected while a uniformed officer is present in the area where data is being collected. If compliance rates fall below 85 percent, the FWCC must develop and implement a strategic plan for law enforcement agencies and boater education that ensure a 85 percent compliance rate with manatee protection rules.

The strategic plan must address a description of methodology to be used, levels of staffing and equipment required, and a list of areas and the seasons of the year during which increased enforcement and educational activities will be focused. If staffing of the FWCC prevent effective

implementation of the strategic plan, the FWCC is to submit an appropriations request that is sufficient to reach and maintain the minimum 85-percent compliance rate.

Paragraph (t) is created to require the following counties to prepare manatee protection plans that are consistent with the Governor and Cabinet's policy directive of October 1989: Collier, Lee, Charlotte, Sarasota, Manatee, Hillsborough, Citrus, Monroe, Dade, Brevard, Palm Beach, Broward, Martin, Indian River, Volusia, Duval, Clay, St. Johns, St. Lucie, Glades, and Pinellas. The FWCC is required to assist these counties in the development of the manatee protection plans. These counties are encouraged to incorporate its manatee protection plan within the county's local government comprehensive plan.

**Section 2.** Section 327.41(2), F.S., is amended to correct a cross-reference.

**Section 3.** Legislative intent is provided that the provisions of this act may not be retroactively applied to manatee protection rules existing on the effective date of this act unless the FWCC proposes to amend or review such rules after this act takes effect. Proposed rules that are currently subject to an administrative challenge pending as of February 12, 2002, are not subject to the provisions of this act unless a court or administrative hearing officer finds the proposed rule to be invalid and all appeals have been exhausted. Once the rules become final, any changes to the rules are subject to the provisions of the bill.

**Section 4** amends s. 372.072, F.S., relating to the Florida Endangered and Threatened Species Act, to require the FWCC to develop a measurable biological goal that defines manatee recovery. The measurable biological goal shall be used by the commission in its development of management plans or work plans.

**Section 5** This act shall take effect July 1, 2002.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The bill requires that 21 counties prepare manatee protection plans. While these counties would incur expenses in preparing such plans, such expenses most likely would have an insignificant fiscal impact. Article VIII, Section 18(a) of the Florida Constitution provides that:

No county or municipality shall be bound by any general law requiring such County or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills important state interest and unless; funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the Legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989 ...the law requiring such

expenditure is approved by two-thirds of the membership of each house of the Legislature...

For purposes of legislative application of Article VII, Section 18 of the Florida Constitution, the term “insignificant” has been defined as a matter of legislative policy as an amount not greater than the average statewide population for the applicable fiscal year times ten cents. Because the planning requirements associated with water supply, educational facility planning and the adoption of interlocal service agreements are phased in over a period of time, the total fiscal impact of these changes is difficult to calculate. However, based on the 2000 census, a bill that would have a statewide fiscal impact on counties and municipalities in aggregate of in excess of \$1,598,238 would be characterized as a mandate. In this case, it is unlikely that the cost of the preparation of these manatee protection plans will exceed this figure.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

Although the FWCC generally has constitutional authority under Art. IV, s. 9. of the State Constitution to exercise the regulatory and executive powers of the state with respect to marine life, the Legislature’s ability to statutorily delegate manatee regulation to the FWCC is the subject of a lawsuit filed immediately after the merger of the Game & Fresh Water Fish Commission with the Marine Fisheries Commission in 1999. Although the Florida First District Court of Appeals ruled that the Legislature’s statutory delegation of authority over manatees to the FWCC was constitutional, that decision has been appealed to the Florida Supreme Court. The Supreme Court has not yet rendered a decision to hear arguments in the case, or confirm the District Court ruling. (*See Caribbean Conservation Corporation, Inc., and Save the Manatee Club, Inc. v FWCC – Trial Court No. 99-4188. FWCC, Appellant v CCC, Inc., et al, Appellees – Case No. 1D00-1389 & 1D00-1804*).

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

There is no direct impact, although the regulation of motorboat speed and operation can have fiscal consequences for those engaged in businesses relating to the use of such vessels.



**C. Government Sector Impact:**

The FWCC could experience expenses relating to the rule-development process, but these cannot be estimated at this time. County governments would also incur unknown expenses through the activities of the local committees. The FWCC estimate that it will cost a minimum of \$160,000 per year to conduct manatee speed regulation compliance rate surveys, once every three years, in each of the counties that have speed zones.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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