



September 9, 2009

Florida Fish and Wildlife Conservation Commission

The Honorable Chuck Nelson, Chair
Brevard County Commission
2575 North Courtenay Parkway
Merritt Island, FL 32953

Dear Commissioner Nelson:

- Commissioners
Rodney Barreto
Chair
Miami
Kathy Barco
Vice-Chair
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Ronald M. Borgerson
Fort Lauderdale
Richard A. Corbett
Tampa
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As you may be aware, the Florida Fish and Wildlife Conservation Commission (FWC) approved a Manatee Management Plan (MMP) in December 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 tasks proposed in the MMP is to revise the rules dealing with permits that exempt certain individuals engaged in commercial fishing and professional guiding from manatee protection zones. The enclosed document provides additional information about these permits and the changes that are being considered. Brevard County is one of the counties where commercial fishing or professional fishing guide permits currently can be issued.

- Executive Staff
Kenneth D. Haddad
Executive Director
Nick Wiloy
Assistant Executive Director
Karen Ventimiglia
Deputy Chief of Staff

FWC staff has discussed the potential rule changes with various stakeholders who have been involved with this issue in the past. We are also in the process of notifying all current permit holders and setting up multiple public meetings to give permit holders and other interested parties an opportunity to provide comment or ask questions. The public meetings will likely be held in September or October of this year. Our current plan is to present staff recommendations to the FWC Commissioners at the December 2009 FWC meeting in Clewiston. If the FWC Commissioners give their approval, we will publish proposed rule amendments in the Florida Administrative Weekly in early 2010, which will begin the formal rule making and public review process required by Chapter 120, Florida Statutes (FS).

- Imperiled Species Management Section
Kipp Frohlich
Section Leader
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Whenever the FWC proposes new or amended rules to govern the speed and operation of motorboats for purpose of manatee protection, the Manatee Sanctuary Act (§ 379.2431(2), FS) requires the affected county to form a Local Rule Review Committee (LRRC) to review such proposed rule changes. Although we do not believe the LRRC requirement applies to the above-described proposed changes to Rule 68C-22.003, we nonetheless want to give Brevard County (and all other potentially affected counties) an opportunity to provide comment at this preliminary stage of rule development.

Please let us know if you have any questions or wish to provide comments on the potential rule changes. Also please let us know if there is a specific County employee or employees with whom we should work at a staff-to-staff level as this process moves forward. Please direct all comments or inquiries to Mr. Scott Calleson of my staff. We look forward to working with you.

Sincerely,

[Handwritten signature of R. Kipp Frohlich]

R. Kipp Frohlich
Section Leader
Imperiled Species Management Section

Enclosure

Managing fish and wildlife resources for their long term well-being and the benefit of people.

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District 2
County Commission

**Potential Changes to Commercial Fishing and Professional Fishing Guide Permits
Applicable to FWC Manatee Protection Zones
September 2009**

Background Information

The Florida Fish and Wildlife Conservation Commission (FWC) is authorized to issue permits that allow recipients to perform activities that are otherwise prohibited by the FWC manatee protection rules. The permit process and criteria are set forth in Rule 68C-22.003, Florida Administrative Code (FAC) – applicable sections attached. The permits do not authorize taking or harming manatees in any way and apply only to FWC manatee protection zones.

One type of exemption permit issued pursuant to 68C-22.003 allows qualified commercial fishers or professional fishing guides to operate at speeds up to 20 MPH in some Slow Speed zones while engaging in commercial fishing or guiding activities. (Guiding permits allow higher speed travel only when paying customers are onboard while commercial fishing permits can allow for a variety of activities including searching for fish, setting nets, and/or running crab traps; none of these permits applies on weekends or holidays.) These permits can only be issued for activities and zones identified as eligible in the rules that establish the specific manatee protection zones. Currently these permits are available in portions of the following counties: Brevard, Citrus, Collier, Indian River, Lee, Manatee, Martin, St. Lucie, Sarasota, and Volusia. In recent rule actions (Manatee County in 2004 and Lee County in 2005), the FWC narrowed the permit to only allow higher speeds for commercial fishers while setting nets to encircle fish, with no permits available for any other commercial fishing activity or any guiding activities. Using the same rationale as these recent rule actions, the Manatee Management Plan (MMP) approved by the FWC in December 2007 recommends amending the rules to eliminate all commercial fishing and professional guiding permits except for commercial fishing permits that allow higher speeds while setting nets.

Elimination of all or some of the permits for commercial fishers and guides would directly reduce the risks faced by manatees by requiring the affected activities to be performed at slower speeds. It would also indirectly enhance protection by increasing overall compliance and removing a common source of confusion and contention. Enforcement of manatee zones in areas where exemption permits are issued can be more difficult because some boaters choose to disregard the posted regulations when they see permitted vessels traveling at faster speeds. In most cases, boaters with permits cannot be visibly distinguished from other boaters and this can easily result in other boaters believing that higher speeds are allowed. This is especially true for guiding since the vessels used by guides are often identical to recreational vessels being operated in the same areas for the same purpose. Multiple boating studies have noted that boaters seem to be more likely to violate a zone if they see other boaters operating at higher speeds (i.e., non-compliance breeds more non-compliance). The United States Fish and Wildlife Service does not support commercial fishing or guiding permits and federal manatee regulations do not allow similar authorizations. Therefore, no permits can be used in locations that have both state and federal manatee protection zones, such as in most of Lee County. Some stakeholders have said FWC should continue to issue these permits because the permits reduce the impacts of the zones on people who make a living on the water and because they believe the increased risks to manatees are small. On the other hand, other stakeholders (including some guides who benefit from the permits) have supported the elimination of these permits, with the reasoning being mostly an issue of fairness (i.e., where there are zones, they should apply equally to all boaters).

Historically, more permits were issued for commercial fishing than for professional guiding; however, the numbers starting shifting after passage of the 1994 constitutional amendment limiting the use of nets. After passage of the amendment, requests for guiding permits as well as commercial fishing permits for crabbing increased. Table 1 shows the breakdown of active permits as of December 2008: there were 176 permits statewide, held by 129 permittees (permits are county-specific and some permit holders have a permit in more than one county). Seventy-seven (77) of the permits were for professional guiding exclusively while 96 were for commercial fishing only (3 covered a combination of guiding and commercial fishing activities). Of the commercial fishing permits, 21 were for only crabbing activities, 27 were for a combination of crabbing and other commercial fishing activities (e.g., net-setting, looking for fish, etc.), and 48 covered only commercial fishing activities other than crabbing.

Table 1: Summary of permits by county (December 2008)

<u>County</u>	<u>Total</u>	<u>Guiding</u>	<u>Comm. Fishing</u>	<u>Both</u>
Brevard	54	27	26	1
Citrus	0	0	0	0
Collier	37	31	5	1
Indian River	8	0	8	0
Lee	0	0	0	0
Manatee	18	0	18	0
Martin	4	0	4	0
Sarasota	11	1	10	0
St. Lucie	7	1	6	0
Volusia	37	17	19	1
Total	176	77	96	3

Alternatives

The alternative recommended in the MMP (“Alternative 1”) is to eliminate all commercial fishing and professional guiding permits except for commercial fishing net-setting permits. The rationale for continuing to allow net-setting permits is that setting a net to encircle fish is often not possible at Slow Speed, whereas all other currently permitted activities can be performed at Slow Speed – they just take longer to complete.

A second alternative would be to eliminate only professional guiding permits. This would avoid impacts on commercial fishers while still addressing the most prevalent source of contention and confusion since it is guiding vessels that are the most difficult to distinguish from typical recreational vessels. The downside is it would do less than the MMP-recommended option at reducing the negative consequences of permits in general. A slightly more restrictive variation (“Alternative 3”) would be to eliminate guiding permits and the general commercial fishing permits but still allow permits for crabbing as well as net-setting. The rationale for continuing permits for running between crab traps (but not between trap lines) is that crabbing vessels are normally only operated at relatively low speeds (but faster than Slow Speed) for short distances between traps, plus most crabbing vessels can be easily distinguished from typical recreational vessels.

A fourth alternative would be to eliminate all commercial fishing and guiding permits. This would increase the impact of the change by also eliminating net-setting permits but it would do more than the MMP-recommended option at reducing the negative consequences of permits in general. The biggest downside is it would mean most net-setting activities would only be able to be performed outside of Slow Speed zones, but this impact might not be too significant given that only 78 active permits cover net-setting activities. Additional investigations would be needed to determine how much impact this change might have. For instance, we would need information on how much non-permitted net-setting is currently taking place, either outside of existing Slow Speed zones (which is allowed) or within the zones but without a permit (which is not allowed).

Implementing a Change

Because components of the permit process are set forth in Rule 68C-22.003, FAC, as well as in the individual rules that establish zones in specific counties, multiple rules will need to be amended to fully implement any changes. The current plan is to amend 68C-22.003 first, with changes made to individual county rules as each rule is reviewed following the process laid out in the MMP. Because the permit language in each of the affected individual county rules refers back to the procedures in 68C-22.003, changes to the permit process could be implemented as soon as this rule is amended; changes to the county rules would be essentially after-the-fact housekeeping measures to conform each rule to the changes already made to 68C-22.003. All permits in effect at the time Rule 68C-22.003 is amended would remain in effect through the expiration date given in the individual permits; any permits issued or amended after the rule is amended would have to conform to the amended rule.

68C-22.003 Regulated Activities. [selected portions only]

(1) General Guidelines and Application Procedures: This rule sets forth criteria pertaining to the regulation of the speed and operation of vessel traffic and other activities which are otherwise prohibited by Chapter 68C-22, F.A.C. Permits for such regulated activities shall be issued only as provided hereunder. Permits shall be issued only upon a finding by the Commission that activities as described in this section will not pose a serious threat to manatees, and that such activities are justified. Determinations of justification of need will be made based on the criteria given under each specific subsection. Permits shall not be granted for activities within "Motorboats Prohibited" or "No Entry" zones, except as explicitly provided for in this section.

(a) In considering applications for permits under this section, a "serious threat to manatees" exists if, due to the nature, location, or frequency of the activity proposed, its conduct can be reasonably expected to result in either (1) injury or death to manatees, (2) a significant disruption of the manatee's normal use, behavior or migratory patterns, or (3) disturbance which would lead to or cause destruction of essential manatee habitat. In making its determination, the Commission's examination will include an evaluation of the following factors:

1. Patterns of manatee use of the area, both seasonal and year-round;
2. The number of manatees known or assumed to occur in or seasonally use the area;
3. The manatee mortality trends within the area;
4. The existence of features within the area which are essential to the survival of, or are known to attract, manatees, such as seagrasses or other food sources, favorable water depths, and fresh or warm water sources;
5. The cumulative effect of the requested activities in light of other permits previously granted or currently being considered by the Commission and known vessel traffic patterns and densities in the area; and
6. The characteristics of the waterway and of the vessel(s)/motor(s) which would be operated by the applicant.

(b) Applications for permits to conduct activities described in this section should be submitted as far in advance of the requested activities as possible and must be submitted to the Chief of the Office of Environmental Services, Florida Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, FL 32399. Information which must be submitted is described in each specific subsection. If an application does not contain sufficient information to enable the Office to evaluate the request, the Office shall request any needed information within 30 days of receipt of the request. The Office shall respond by letter (issuing a permit or denying the request) as quickly as is practical and must respond within 90 days of receipt of all necessary information.

(c) When issuing a permit, the Commission may place conditions on the permit as necessary to protect manatees. Examples of types of conditions which may be specified include seasonal constraints, use of screens or barriers, restrictions on types of permitted activities, restrictions relative to time of day, day of week, or weather conditions when permits are in effect, use of specialized equipment (e.g., propeller guards or jet drives, speedometers) when feasible and such use would not defeat the purpose of the requested activity, additional water quality precautions, sea grass protection or protection of associated marine life or vegetation, temporary marking or permit display, limitations on intensity of activity, pre-activity monitoring, use of manatee observers, and after-activity reports. The specific conditions, if any, that are placed on a permit will be dependent on the specifics of the request. Acceptance of the permit shall constitute evidence that the recipient agrees to comply with the conditions set forth in the permit.

(d) The Commission retains the right to modify or rescind a permit should information become available indicating that the permitted activity is likely to create a serious threat to manatees or that the permit (in its current form) is not needed by the recipient. Before a permit is modified or rescinded, the permit holder shall be given an opportunity to discuss with the Commission the reasons for the modification or rescission. Unless an immediate threat to manatees is likely, the Commission shall wait at least 30 days after notifying the permit holder before taking action on the permit. If a single manatee is struck or killed by a vessel operating pursuant to a permit under these provisions, the permit shall be immediately re-evaluated by the Commission to determine if the permit needs to be modified or rescinded.

(e) Receipt of a permit does not release a holder from the duty to comply with all federal, state, and local regulations (other than Chapter 68C-22, F.A.C.) governing the operation of vessels on navigable waterways or pertaining to protection of the West Indian (Florida) manatee. Permit issuance does not constitute authorization for the recipient to kill, injure, or harass a manatee while operating under a permit.

(f) Failure to comply with the permit or associated conditions, or any finding of fraudulent use or application for said permit, shall be cause for the immediate revocation of the permit.

(2) – (5) NOT SHOWN

(6) Commercial Fishing and Professional Guiding: The following provisions pertain to qualifying commercial fishermen and professional fishing guides. In those speed zones wherein such intent was provided and specified at the time of zone establishment and as provided in subsection (1), permits shall be issued by the Commission only upon both a showing of a justification of need by the applicant and a determination of an absence of serious threat to manatees in association with the requested activity.

(a) In considering applications for permits under this subsection, a justification of need will be based on a finding of hardship. A hardship will be found to exist if an applicant can demonstrate the following:

1. Commercial fishing or professional guiding, as appropriate, is either:

- a. The applicant's principal occupation, in that a majority of the applicant's work week is spent in pursuit of that occupation; or
- b. A significant source of income for the applicant, in that a minimum of 25% of the applicant's gross annual income is attributable to revenue derived from that occupation;

2. The applicant's customary fishing or guiding practices would be significantly curtailed as a result of the restrictions for which a permit is sought in that at least 25% of the applicant's gross annual income would be lost if a permit is not granted because sufficient alternative sites or methods for carrying out the activity in question are not available to the applicant; and

3. The applicant's compliance with the restrictions for which a permit is sought will result in a significant economic or physical burden being borne by the applicant.

(b) Upon a determination by the Office of Environmental Services that such a permit will not result in serious threats to manatees and that a hardship exists as a result of the speed restrictions imposed, commercial fishermen fulfilling the following requirements shall be granted a permit:

1. Possession of a current Saltwater Products License issued pursuant to Section 370.06, F.S., or of an equivalent freshwater license issued pursuant to Section 372.65, F.S., (if only freshwater species are taken), a current commercial vessel registration, and any other license(s) as may be required of commercial fishermen to operate within the particular county in which a permit is sought; and;

2. Completion of the permit application referenced in paragraph (6)(d) hereunder, including submittal of copies of all documents required in paragraph (b) 1., above.

(c) Upon a determination by the Office of Environmental Services that such a permit will not result in serious threats to manatees and that a hardship exists as a result of the speed restrictions imposed, professional fishing guides fulfilling the following requirements shall be granted a permit:

1. Possession of a current commercial vessel registration;

2. Possession of a current license from the U.S. Coast Guard authorizing the carriage of passengers for hire on the waters for which the permit is sought;

3. Possession of a current saltwater fishing license in accordance with Section 370.0605, F.S., for vessels carrying customers wherein a fee is paid directly or indirectly (if saltwater species are taken);

4. Possession of other current occupational license(s) as may be required of professional fishing guides to operate within the particular county in which the permit is sought; and

5. Completion of the permit application referenced in paragraph (6)(d) hereunder, including submittal of copies of all documents required in paragraphs (c) 1. through (c) 4., above.

(d) A permit application form ("Application for Permit, Manatee Protection Zones"), Form No. FW/C 68C-22.003-6 (6/96), which is hereby incorporated by reference, may be obtained from the Fish and Wildlife Conservation Commission, Office of Environmental Services, 620 South Meridian Street, Tallahassee, FL 32399, or from the Division of Law Enforcement office as designated under specific manatee protection zone rule provisions. The form shall include items for completion by commercial fishermen and professional fishing guides, imparting information necessary: (1) to show a justification of need by the applicant; and (2) for the Commission to make a determination as to the potential impacts of allowing the requested activities within specified regulated areas.

(e) Acceptance of a permit shall constitute evidence that the recipient agrees to maintain speeds of 20 mph or less at all times while operating under a permit within the restricted area and to comply with any and all conditions set forth within the permit. (Examples of other types of conditions which may be specified to promote manatee protection are described in subsection 68C-22.003(1), F.A.C.)

(f) Permits granted under the provisions of this section shall be effective only for the time period specified in the permit, and only in the areas specified in the notice. Permits may only be utilized by the fisherman or guide in whose name it is issued, only while aboard the vessel identified on the permit, and only when engaged in their

customary fishing or guiding practices, as applicable. For guides, permits apply only when paying customers are aboard.

(7) – (9) NOT SHOWN

Specific Authority 370.12(2)(i)-(j), (k), (l), (o) FS, Law Implemented 370.12(2)(d), (i)-(k), (m), (n), (o) FS, History–New 3-19-79, Formerly 16N-22.03, Amended 12-30-86, 8-28-90, 12-23-91, 6-16-93, Formerly 16N-22.003, Amended 6-25-96, 5-12-98, Formerly 62N-22.003.