

**Lee County Board Of County Commissioners  
Agenda Item Summary**

**Blue Sheet No. 20041049**

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Recognize and accept the final report of the Local Rule Review Committee (LRRC) for manatee protection speed zones. Recognize the contribution of the LRRC members, and formally disband the committee.

**WHY ACTION IS NECESSARY:** The LRRC has completed its duties as required by Florida statute.

**WHAT ACTION ACCOMPLISHES:** Recognizes the LRRC members for their valued service to Lee County and acknowledges that their task has been successfully completed.

**2. DEPARTMENTAL CATEGORY:  
COMMISSION DISTRICT #:**

**C8D**

**3. MEETING DATE:**

**08-24-2004**


**4. AGENDA:**

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

**5. REQUIREMENT/PURPOSE:  
(Specify)**

- STATUTE 370.12(2)(f)
- ORDINANCE \_\_\_\_\_
- ADMIN. CODE \_\_\_\_\_
- OTHER \_\_\_\_\_

**6. REQUESTOR OF INFORMATION:**

- A. COMMISSIONER \_\_\_\_\_
- B. DEPARTMENT Public Works
- C. DIVISION Natural Resources
- BY: Roland Ottolini 

**7. BACKGROUND:**

On April 9, 2004 the Florida Fish and Wildlife Conservation Commission (FWC) informed Lee County of its intention to consider new or amended manatee protection rules in Lee County. Pursuant to Florida Statute 370.12 (2)(f), the BoCC established the Local Rule Review Committee (LRRC) to provide comment on the proposed rules.

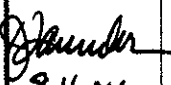
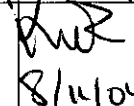
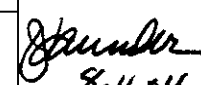
With the assistance of a professional facilitator and State and County staff, the LRRC met seven times over the sixty day review period allowed by statute. They worked diligently to complete a review of all waterways with proposed speed zones and to compile a final report that included majority and minority opinions for each area. The final report, *Recommendations for Manatee Protection Speed Zones for Lee County, Florida*, was transmitted to the Florida Fish and Wildlife Conservation Commission for their use and consideration in their rulemaking process. As such, the LRRC task has been completed.

The LRRC members should be commended for their outstanding service to Lee County and the State. It is recommended that the committee be formally disbanded by the Board.

Attachments: Final Report  
Letter from Valerie Tutor, Professional Facilitator

**8. MANAGEMENT RECOMMENDATIONS:**

**9. RECOMMENDED APPROVAL:**

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
					OA	OM	Risk	GC	
 8-11-04				 8/11/04	P.M. 8/11/04	JP 8/12/04	CS 8/11/04	P.M. 8/11/04	 8-11-04

**10. COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER

**Rec. by CoAtty**  
 Date: 8/11/04  
 Time: 11:15  
 Forwarded To: Co Atty  
8/11/04

**RECEIVED BY  
COUNTY ADMIN:**  
8/11/04  
3:50 PM  
 COUNTY ADMIN PR  
**FORWARDED TO:**  
8/12/04  
noon



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& associates, inc.**

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The Honorable John E. Albion, Chair  
Board of County Commissioners  
2120 Main Street  
Ft. Myers, Fl. 33901

August 6, 2004

Dear Chairman Albion:

I would like to personally express my sincere appreciation and admiration for the professionalism, consideration and diligence the members of the Lee County Local Rule Review Committee have demonstrated in their challenging assignment to review and make recommendations on the FWCC's current rule proposal for manatee protection speed zones in Lee County.

As a professional facilitator and public information professional, I have worked with hundreds of teams and committees across the state of Florida. Most of my teams are project related and do not involve the public, but I have had several opportunities to be involved with citizen groups, either as a facilitator or a subject matter resource.

In my experience, I have rarely seen a committee act as professionally and as gracious as this one. The members of the LRRRC worked hard to abide by the Rules of Civility that they set up at the first meeting and insisted that members of the public and anyone else in the meetings be held to that same standard. It was very infrequent that these rules were violated and then, only inadvertently.

The task set before them was arduous and a great challenge given the time frame of sixty (60) days as set by the state statute. I thought we all had our work cut out for us to achieve this goal. What a surprise and pleasure to find that these members approached the work at hand with focus and commitment and argued their points firmly, but with consideration for others. When votes were taken, those in the minority were disappointed, but accepted the outcome and moved on to the next item at hand. There was little to no "grandstanding" or sour grapes in evidence on this committee.

Lastly, I also want to commend the efforts of Lee County staff for their invaluable assistance and guidance to this committee. Justin McBride and Stephen Boutelle of the Department of Natural Resources, and David Owen and Kristie Kroslack of the County Attorney's Office did an outstanding job of working with the committee to answer their questions and provide appropriate information quickly and clearly. They really went the extra mile to assist the LRRRC in being successful. I am very impressed and would not hesitate to work with these individuals again. Thank you very much for the opportunity to be a part of this process!

Sincerely,

**Valerie Tutor**


Valerie J. Tutor

President, **valerie tutor & associates, inc.**

RECOMMENDATIONS FOR MANATEE PROTECTION SPEED ZONES  
FOR  
LEE COUNTY, FLORIDA

Submitted by the  
LEE COUNTY LOCAL RULE REVIEW COMMITTEE

Final Report  
August 2004

  
Steve Maxwell, Chair  
Lee County Local Rule Review Committee

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## **I. Acknowledgements**

The committee would like to acknowledge the following individuals who were present at the meetings at least once, if not more, and offered themselves and resources to the committee. They provided immeasurable assistance and valuable information that became critical to the successful completion of the task set before us. Thank you all very much.

These individuals are:

Valerie Tutor, Professional Facilitator  
Justin McBride, Lee County Div. of Natural Resources  
Stephen Boutelle, Lee County Div. of Natural Resources  
Denis Baylis, Lee County Div. of Natural Resources  
Kristie Kroslack, Lee County Attorney's Office  
David Owen, Lee County Attorney's Office  
Scott Calleson, Florida Fish and Wildlife Conservation Commission  
Kipp Frohlich, Florida Fish and Wildlife Conservation Commission  
Captain Denis Grealish, Florida Fish and Wildlife Conservation Commission  
Lt. Greg Stanley, Florida Fish and Wildlife Conservation Commission  
Deputy Jim Erb, Lee County Sheriff's Office  
Kalani Cairns, USFWS

### **Lee County Local Rule Review Committee Members:**

Matt Bixler  
Laura Combs  
Ernie Hendry  
John Kinney  
Alex Lambros  
Steve Maxwell  
Susan Scott  
Scott Trebatoski  
Doug Wilkinson  
Hans Wilson

## **II. Introduction**

On April 9, 2004 the Florida Fish and Wildlife Conservation Commission (FWC) informed Lee County of its intention to consider new or amended manatee protection rules (speed zones) in Lee County (Appendix A). Pursuant to Florida Statute 370.12 (2)(0), the FWC shall submit any new or amended proposed manatee protection rules to the counties in which the proposed rules will take effect. Each County will then appoint a local rule review committee to provide comment on the proposed rules.

The Lee County Local Rule Review Committee (LRRC) was created in accordance with statutory requirements outlined in F.S. 370.12 (2)(f) (Appendix B), and its members were appointed on various dates in May and June. The Lee County Board of County Commissioners elected to appoint a completely new committee instead of utilizing an already established committee. Members appointed were: Hans Wilson, Laura Combs, Alex Lambros, Scott Trebatowski, Susan Scott, Matt Bixler, Steve Maxwell, William Wilkinson, John Kinney, and Ernie Hendry II (See Appendix D). The LRRC was convened in June 2004 to evaluate and respond to the Manatee Protection Speed Zones proposed by the Florida Fish and Wildlife Conservation Commission. County staff was present for each meeting to assist with graphic materials and mapping of suggestions. A professional facilitator was also hired to assist in the administration of the committee.

The public was invited to provide input prior at each meeting, with an emphasis placed on public comment at the July 9<sup>th</sup> and July 30<sup>th</sup> meeting dates. A court reporter or County staff member was present to record each meeting and a full transcript of each meeting was provided to each committee member.

In a letter addressed to the LRRC members, Florida Fish and Wildlife Conservation Commission Director Kenneth Haddad asked the LRRC to not only examine the areas of Lee County where the FWC was proposing rules, but to comment on areas of the County where other agencies currently regulated vessel speeds in regards to manatee protection (Appendix C). As such, the LRRC examined the entire County (Figure 1). At the initial meeting, the committee divided the county into five areas for ease of discussion. These divisions are shown in Figure 2 in the order in which the committee examined them. In addition to this initial division, the committee for ease of discussion further divided some of the five areas. These divisions are discussed in Section IV - Detailed Discussion Highlights, outlined in the body of the committee's recommendations, and represented graphically in supporting figures.

The recommendations of the LRRC are those that were passed by a simple majority of the committee. Both the minority and majority viewpoints are included in section IV - Detailed Discussion Highlights. Additionally, the individual committee members provided comments that are provided in Appendix G.

Figure 1 - Lee County

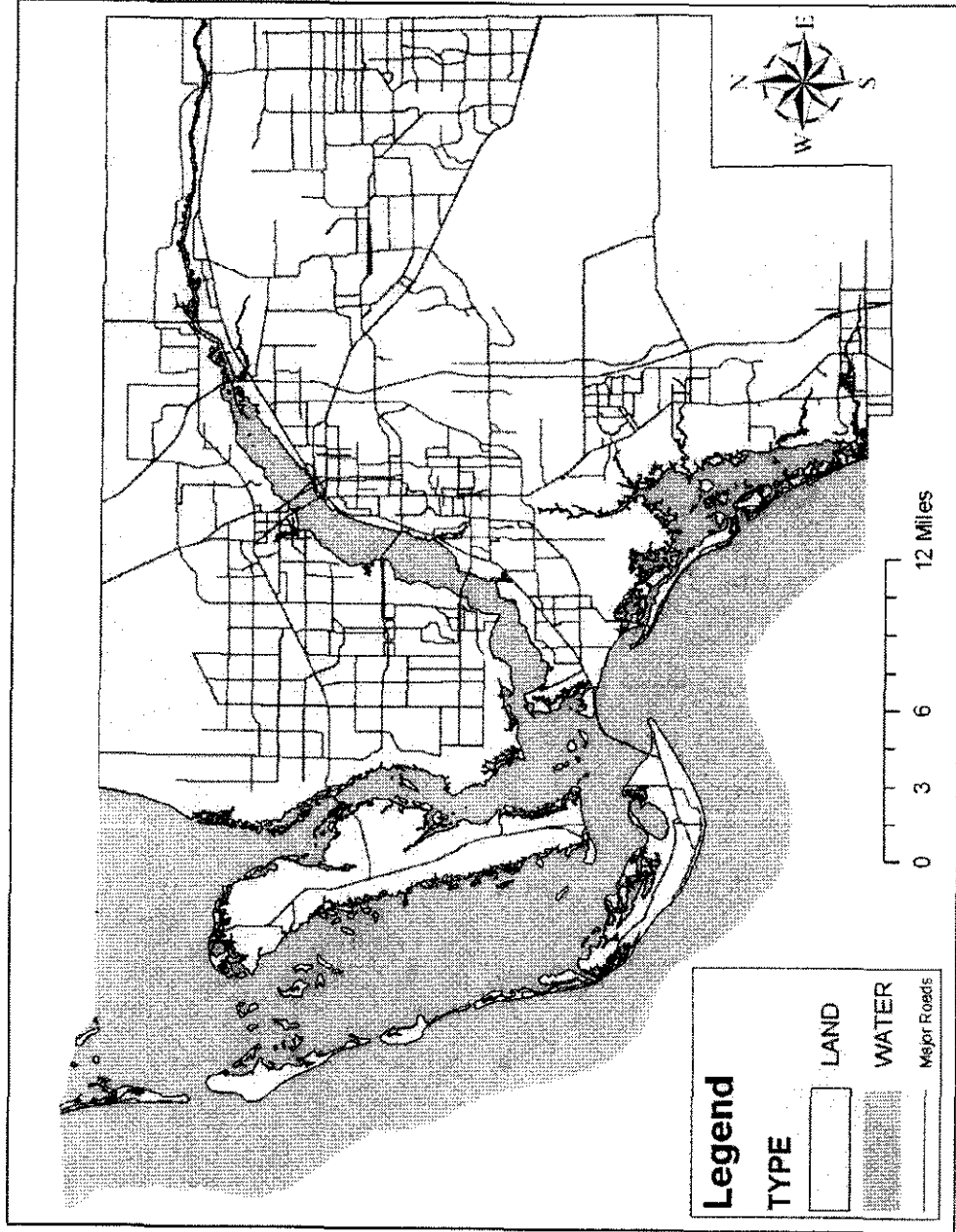
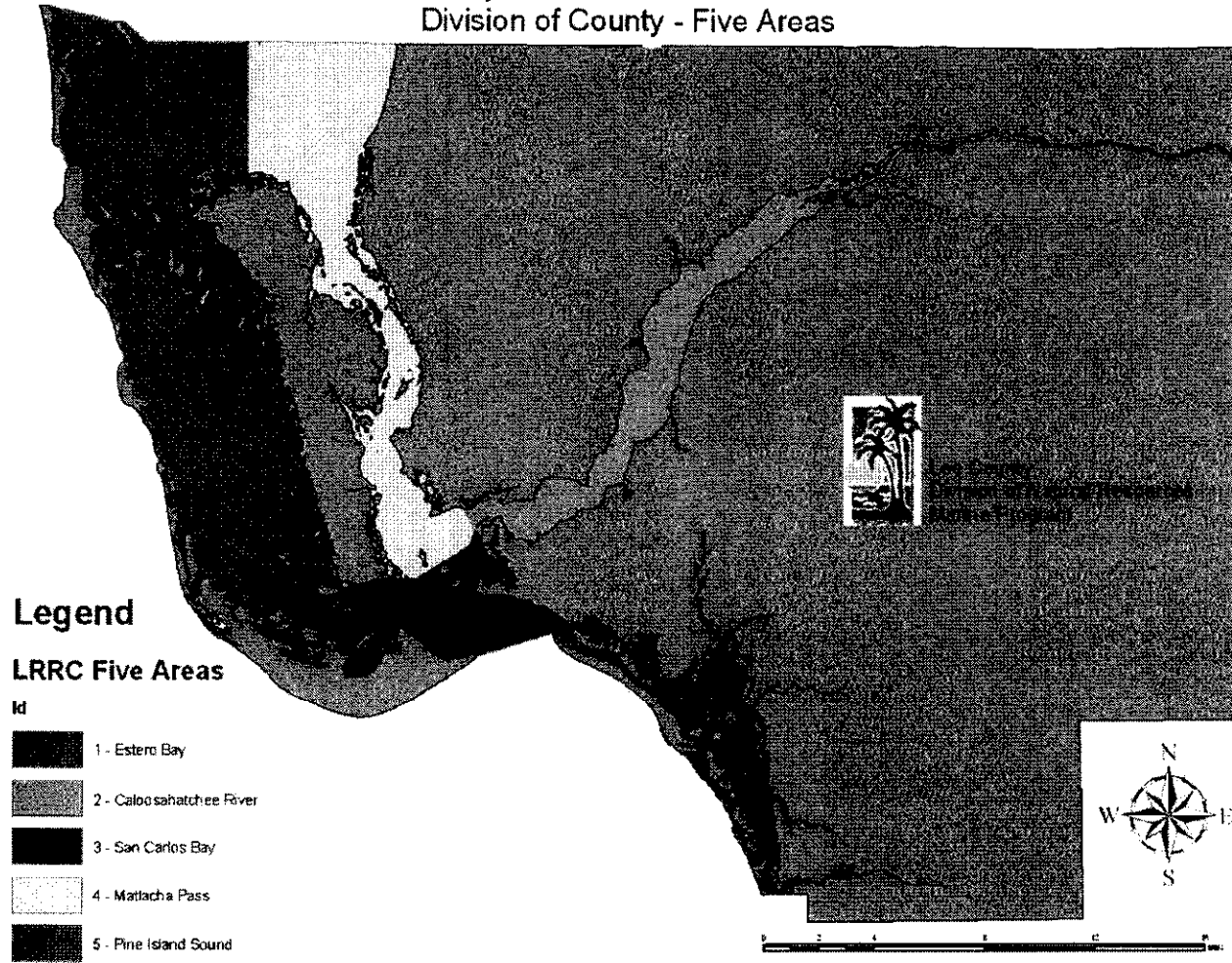


Figure 2 – Division of County into Five Areas

Lee County Local Rule Review Committee  
Division of County - Five Areas





### **III. SUMMARY OF LOCAL RULE REVIEW COMMITTEE RECOMMENDATIONS**

#### **A. ESTERO BAY RECOMMENDATIONS:**

Estero Bay was divided into ten areas for ease of discussion, see Figure 3 – Estero Bay Division.

##### Mullock Creek and Tenmile Canal

Recommendation to accept the current state rule proposal for both of these areas of Estero Bay. These are slow speed year round allowing for 25MPH in the depth dependent area between channel markers 18 and 47.

##### Spring Creek and Estero River

There are no state rules currently proposed for these areas at this time. Recommendation to accept these areas as is, with no state rule proposal. There is a county ordinance in this area of idle speed anytime there is maritime property within 500', which seems to be most of the area.

##### Hendry Creek

Recommendation to reject the current state rule proposal for Hendry Creek and remove the Seasonal Slow Speed zone from the mouth through the southern half of Hendry Creek and make it, along with the northern half of Hendry Creek, a year round 25 MPH speed zone.

##### Imperial River

Recommendation to accept the current state rule proposal for Imperial River of Slow Speed Year Round. It is noted that there is a local county ordinance requiring Idle Speed within 500' just as is in Estero River and Spring Creek.

##### Hell Peckney Bay

Recommendation to accept the current state rule proposal for the Matanzas Pass Channel portion of Slow Speed Year Round and reject the current state rule proposal of Seasonal Slow Speed/25 MPH remainder of the year from the southern portion and make it unregulated, as is the northern portion.

### Matanzas Pass

Recommendation to accept the current state rule proposal of Slow Speed Year Round in all of the Matanzas Pass area.

It is noted that the local county ordinance for most of the Pass is Idle Speed and Ft. Myers Beach has an ordinance that covers within a 1000' of the city limits (Idle Speed).

### Hurricane Bay

Recommendation to accept the current state rule proposal of Seasonal Slow Speed/25 MPH remainder of the year, with the marked channel regulated at 25 MPH year round.

### Estero Bay Main Body

Recommendation to accept the current state rule proposal of Seasonal Slow Speed/25 MPH remainder of the year for Estero Bay, with the marked channel regulated at 25 MPH year round.

See Figure 4 – Graphic Representation of Estero Bay Recommendations.

**Figure 3 – Estero Bay Division**

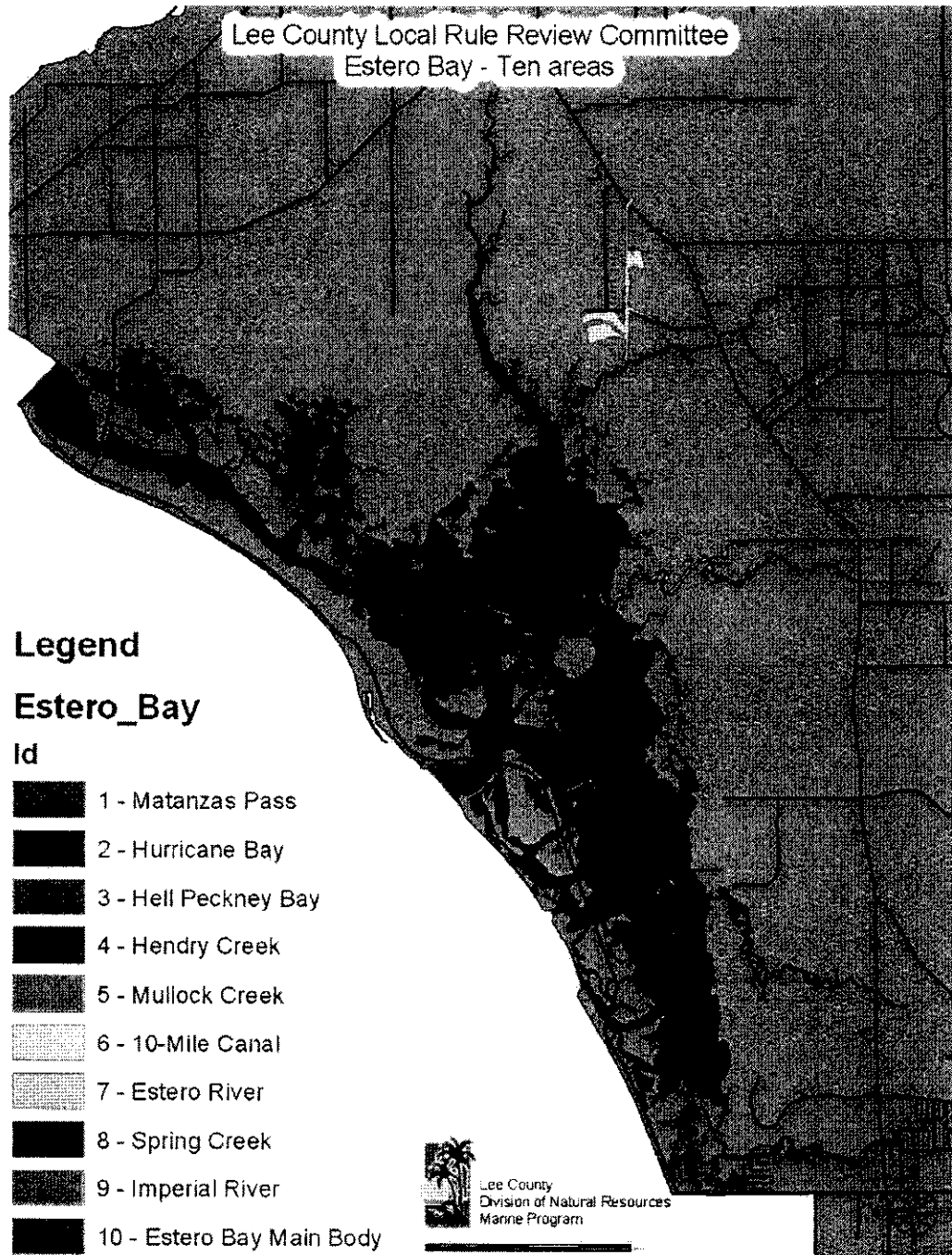
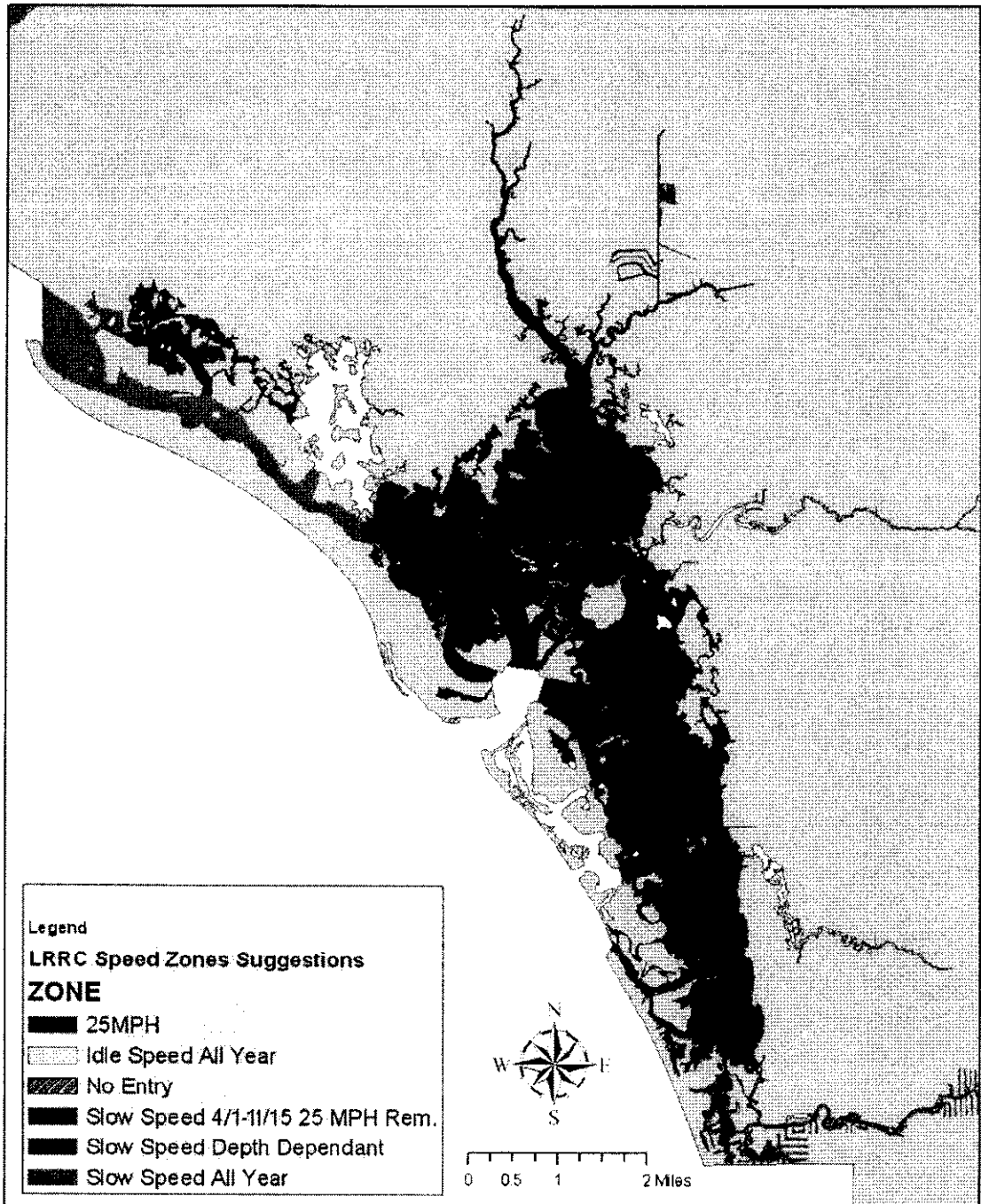


Figure 4 – Graphic Representation of Estero Bay Recommendations

Lee County LRRC Estero Bay Recommendations



## **B. CALOOSAHATCHEE RIVER RECOMMENDATIONS:**

### Marker 99 – Marker 93

Recommendation is that the state adopt a ¼ mile slow speed buffer on the Cape Coral side of the river and eliminate other slow speed zones to the ICW; keep the ICW regulated as a Slow Speed zone from 8:00 a.m. to 6:00 p.m. daily; add a 25 MPH regulatory speed zone from Big Shell – Little Shell Island north to the proposed ¼ mile slow speed buffer zone.

### Marker 93 to Old Cape Coral Bridge and continuing to the West Side of Twin US 41 Bridges

Recommendation to accept the current state rule proposal of a ¼ mile Slow Speed buffer zone along the perimeter of the shoreline of the Caloosahatchee River.

### West Side of Twin US 41 Bridges – East Side of US 41 Bridges (aka Edison Bridge)

Recommendation to accept the current state rule proposal of a ¼ mile Slow Speed buffer zone around the shoreline and unregulated everywhere else in the river in this area.

### East Side of US 41 Bridges (Edison Bridge) - Railroad Trestle

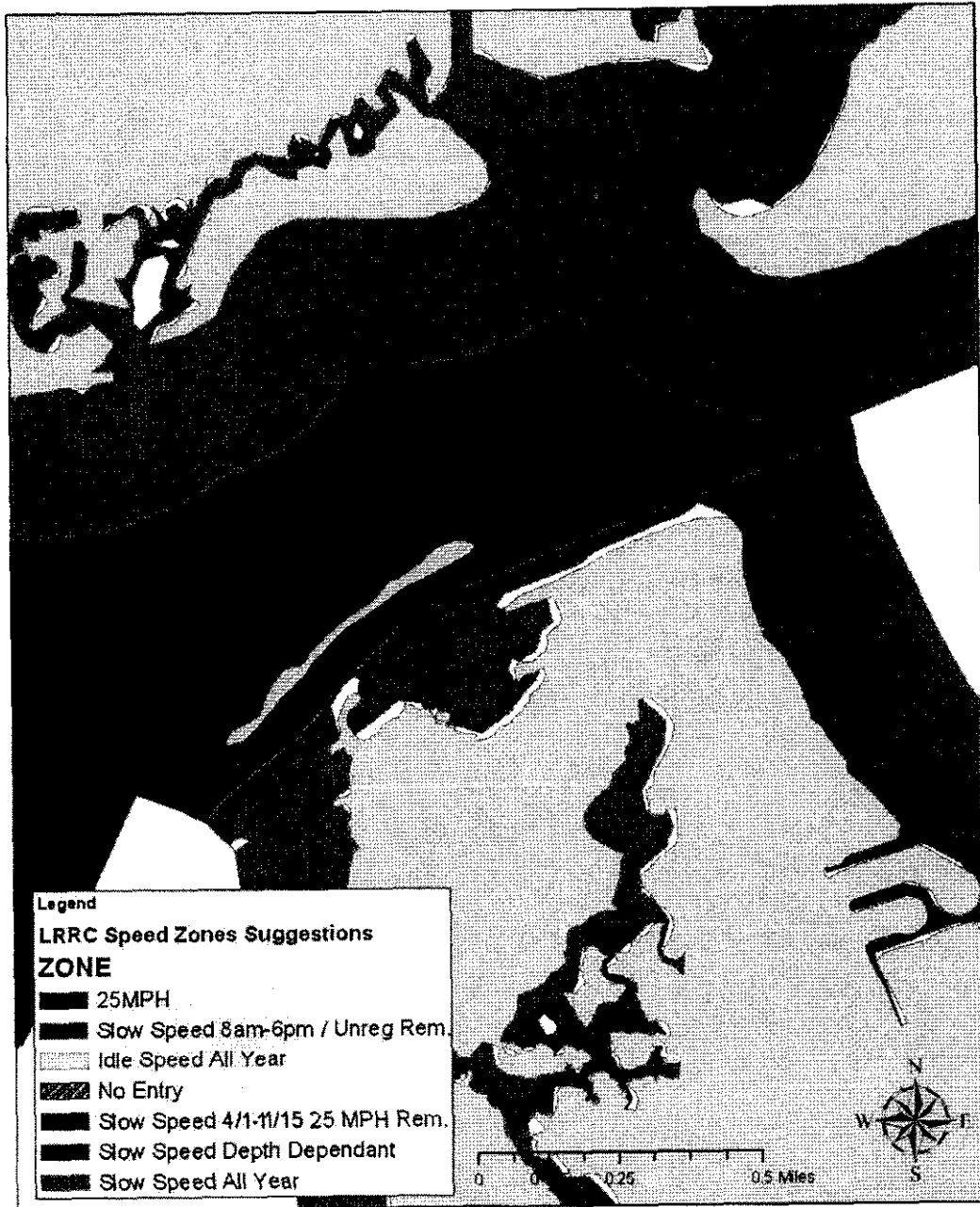
Recommendation to accept the current state rule proposal of Slow Speed Year Round with 25 MPH allowed in the channel.

### Railroad Trestle to County Line

Recommendation to accept the current state rule proposal from the trestle to the county line (agreeing that issues related to the warm water discharge by FP&L would not be addressed in the motion but discussed in general at a later time).

See Figures 5-7

Figure 5 – Graphic Representation of Channel Marker 93-99 (Caloosahatchee River Recommendations)



**Figure 6 – Graphic Representation of Caloosahatchee River West Recommendations**

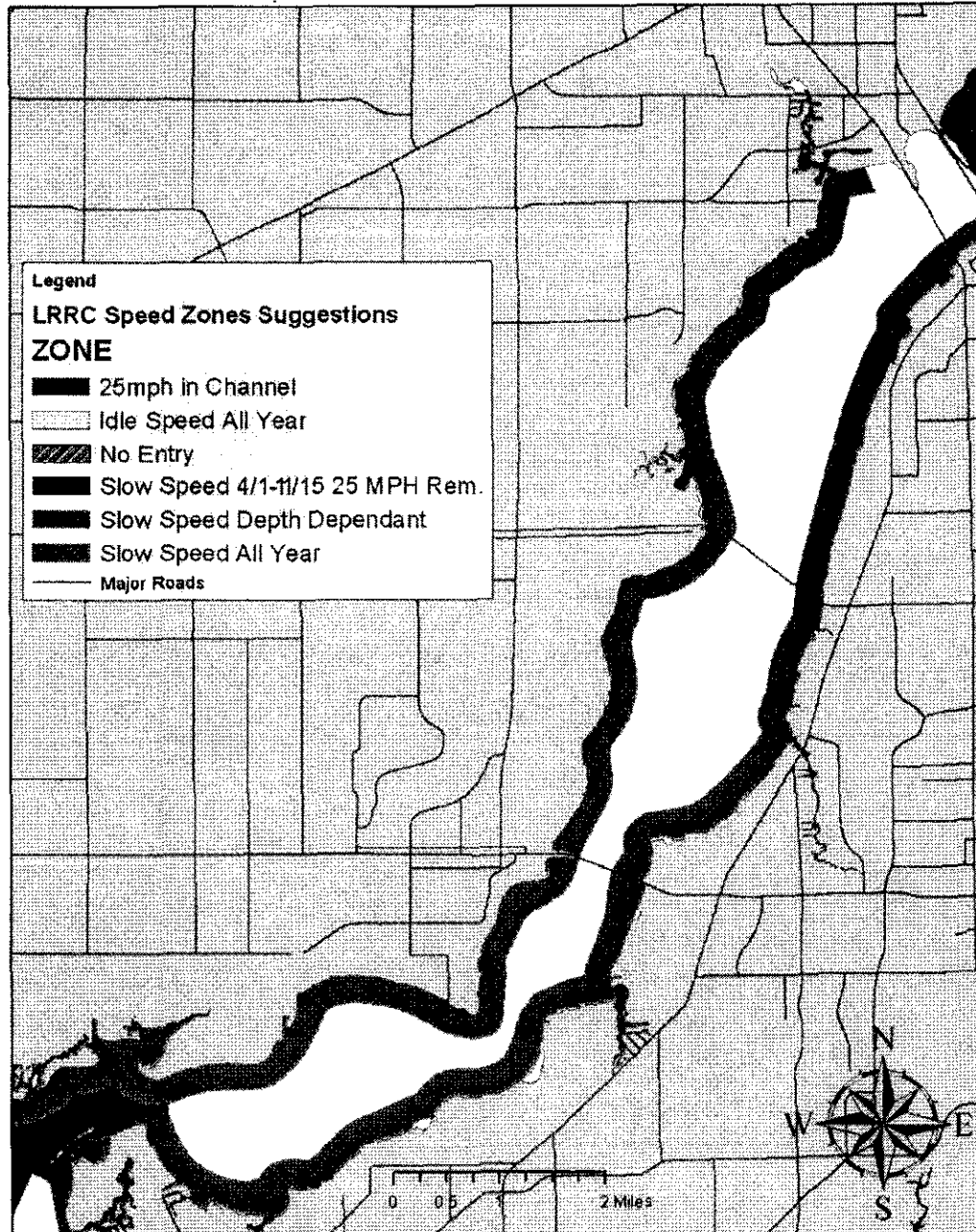
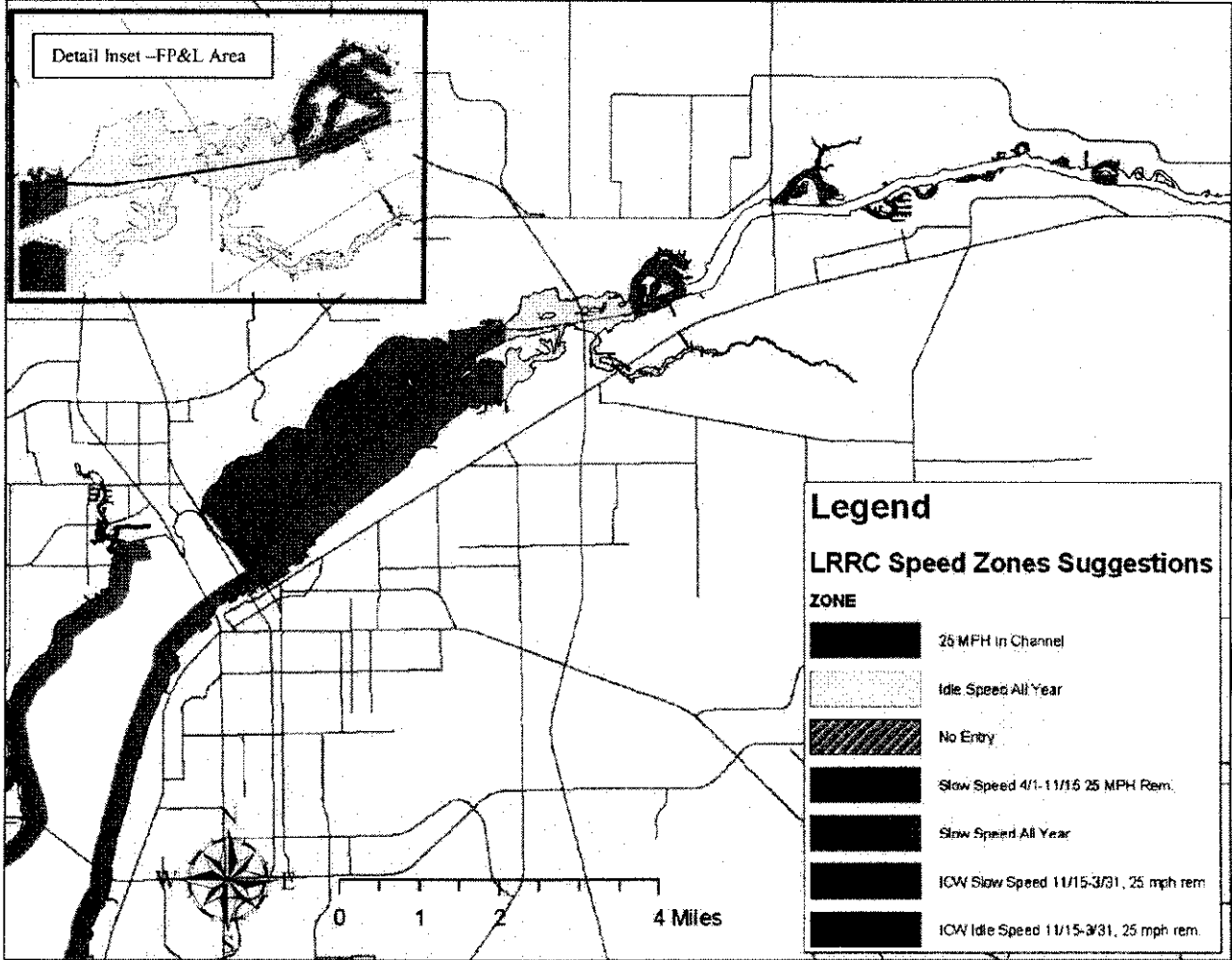


Figure 7 – Graphic Representation of Caloosahatchee River East Recommendations





## **C. SAN CARLOS BAY RECOMMENDATIONS:**

### San Carlos Bay

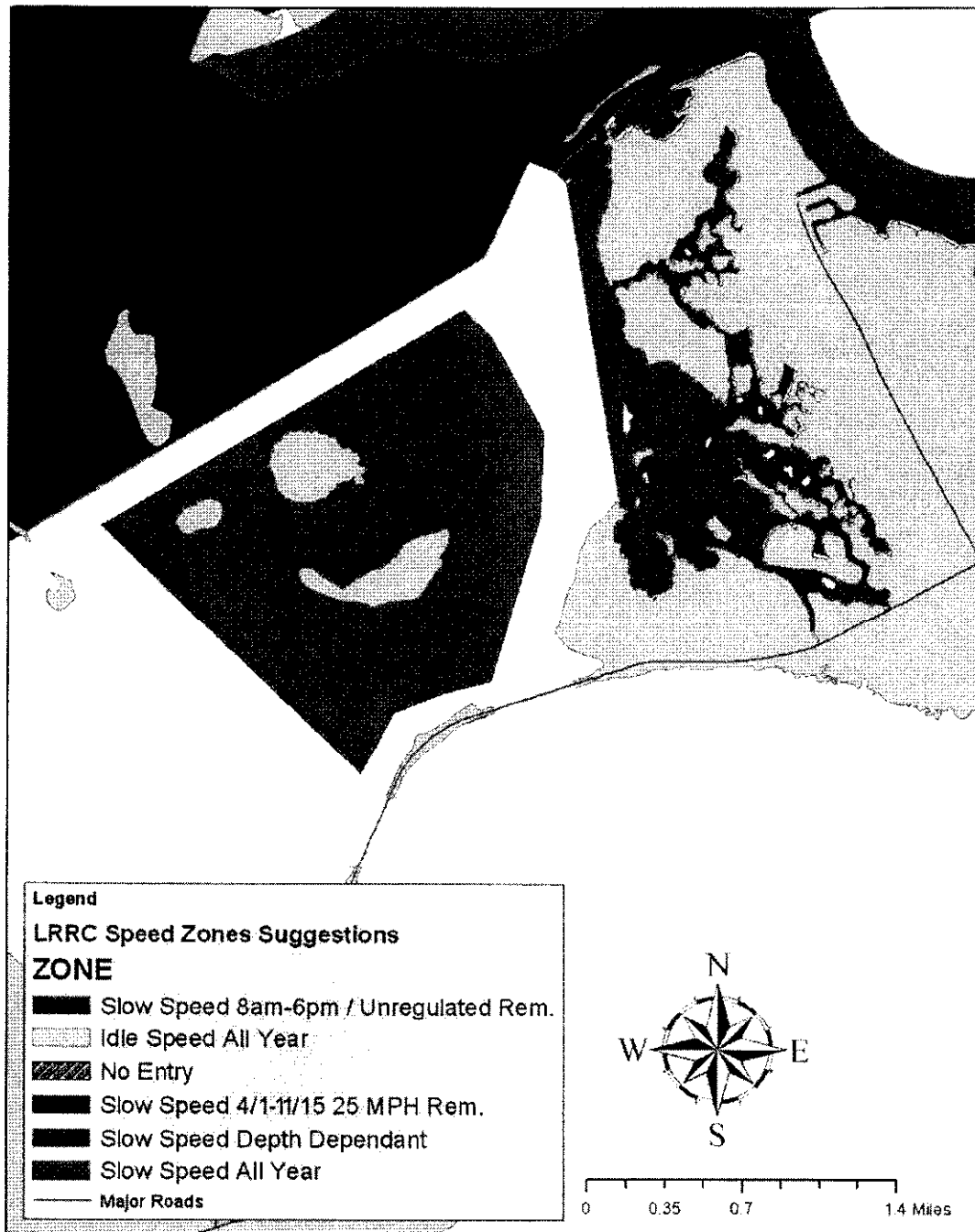
Recommendation to accept the state's current rule proposal as is in this area (unregulated in most places with Slow Speed Year Round in the Punta Rassa Cove, Shell Point, and Shell Creek areas).

Additionally, the committee recommends that the state adopt the federal speed zone in the San Carlos Bay (Fisherman's Key area), less an approximately 700' buffer area north of the Sanibel Causeway spoil islands as defined by the two Federal speed zone markers plus three additional buoys to be added by the state where denoted on the map by Lee County.

Finally, the committee recommends the state ask the federal government to eliminate their speed zone located to the west of the state zone (on east side of San Carlos Bay) and adopt the current state rule proposal regulations instead.

See Figure 8.

Figure 8 – Graphic Representation of San Carlos Bay Recommendations



## **D. MATLACHA PASS RECOMMENDATIONS:**

### **Matlacha Pass**

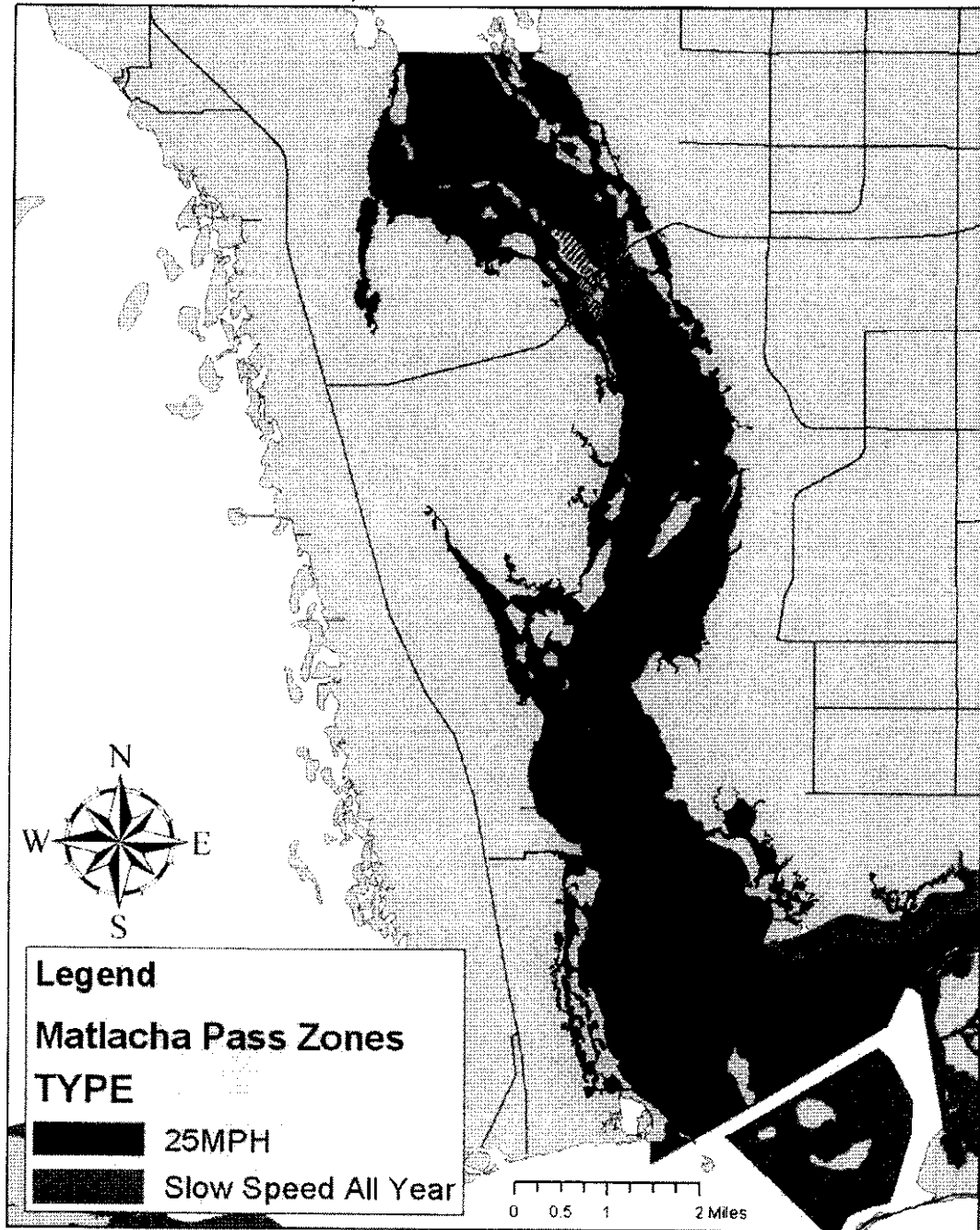
Recommendation to extend the ¼ mile Slow Speed buffer zone from the existing western limit of the Caloosahatchee north shoreline to Sword Point and then propose a 25 MPH speed zone, shoreline to shoreline, from Miserable Mile north to within ¼ mile of the Matlacha Bridge.

Secondly, the committee recommends modifying the current state rule proposal (Slow Speed/25MPH in channel year round) to 25 MPH shoreline to shoreline, with the southern boundary being ¼ mile north of the Matlacha Bridge and extending to the northern limit of the current state rule proposal (Marker 76).

Additionally, the committee's recommendation is to accept the state's current rule proposal (Slow Speed Year Round) from ¼ mile south to ¼ mile north of the Matlacha Bridge.

See Figure 9.

Figure 9 – Graphic Representation of Matlacha Pass Recommendations



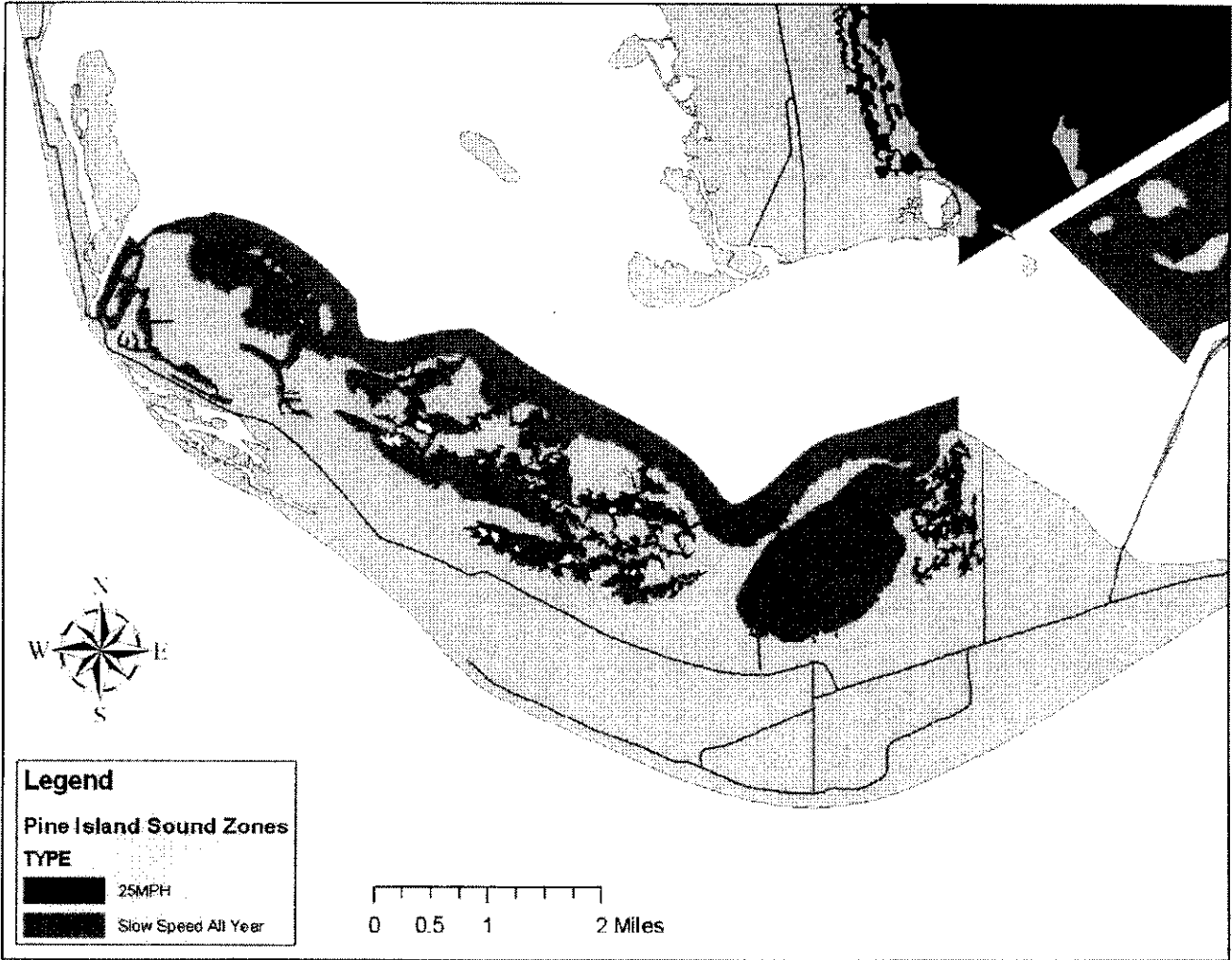
**E. PINE ISLAND SOUND RECOMMENDATIONS:**

Pine Island Sound

Recommendation that the Seasonal Slow Speed zone around the eastern shoreline of Sanibel Island be made Slow Speed Year Round, consistent with the city of Sanibel local ordinance.

See Figure 10.

Figure 10 – Graphic Representation of Pine Island Sound Recommendations



#### **IV. DETAILED DISCUSSION HIGHLIGHTS**

**APPROACH TO GEOGRAPHICAL AREAS TO DISCUSS:** The committee agreed to divide the county area into five (5) zones rather than take the whole county area at one time. The committee agreed to the following zones:

Pine Island Sound (West boundary San Carlos Bay including speed zones at Galt and York Islands to Boca Grande, the county line)

Matlacha Pass (ICW North including Bokeelia to the county line near Burnt Store)

San Carlos Bay (Channel Marker 99 to East St James City South to Point Ybel, East to Matanzas Pass)

Caloosahatchee (from Franklin Lock to Channel Marker 99 including all tributaries)

Estero Bay (including its tributaries)

Upon discussion, it was determined that the committee would start with Estero Bay, and work in ascending order of the zones as labeled in Figure 2.

#### **ESTERO BAY DISCUSSION/RECOMMENDATIONS:**

It was decided to break Estero Bay up into smaller areas to discuss and determine recommendations. An ancillary part of this discussion focused on the potential overlap of rules/zones regarding federal, state, county and city ordinances and adopted zones. Estero Bay was broken down into ten (10) areas for discussion. See Figure 2.

- 1- Matanzas Pass
- 2- Hurricane Bay Area
- 3- Hell Peckney Bay
- 4- Hendry Creek
- 5- Mullock Creek
- 6- Tenmile Canal
- 7- Estero River
- 8- Spring Creek
- 9- Intrepid Waters/Imperial River
- 10- Estero Bay Main Body

### Mullock Creek

**Recommendation to accept the current state rule proposal for this area of Slow Speed Year Round with the depth dependent zone.**

Motion made by Doug Wilkinson, seconded by Scott Trebatoski. Passed by a vote of 7-3.

#### Majority Viewpoint:

The majority discussion centered on water depths, geographical features of this area, use by manatees, and boater safety. Input given during the public comment period was considered.

The creek is shallow and most boats are not going to go too fast in this area anyway. While there is agreement that manatees do use this area, the Slow Speed Year Round zone as recommended by the state, with the portion that is depth dependent, is more than adequate for manatee protection.

#### Minority Viewpoint:

Those in the minority felt that the data showed that Mullock Creek is used significantly by manatees year round. Additionally, it connects to Tenmile Canal which contains a secondary warm water refuge at the Borrow Pit. The winding nature of the Creek makes it difficult for manatees to take evasive action as well as its shallow depth. Information found in a report based on a study done by FWC in 2002 on this specific area indicated that manatee deaths in all categories have increased at a faster rate in Mullock Creek and Tenmile Canal than in either southwest Florida or the state of Florida as a whole.

The issue of the depth dependent zone was of concern and some in the minority wanted wording in the recommendation that said if the area were dredged and boat safety improved, then the entire area be designated a slow speed zone (no depth dependent).

### Tenmile Canal

**Recommendation to accept the current state rule proposal for this area of Slow Speed Year Round.**

Motion made by Laura Combs, seconded by Hans Wilson. Passed unanimously (10-0).

Discussed along with Mullock Creek.



### Spring Creek and Estero River

**Recommendation to accept these areas as is, with no state rule proposal.**

Motion made by Hans Wilson and seconded by Doug Wilkinson. Passed unanimously (10-0).

There is a county ordinance in this area of idle speed anytime there is maritime property within 500', which seems to be most of it. There are no state rules proposed for these areas at this time.

### Hendry Creek

**Recommendation to reject the current state rule proposal for Hendry Creek and remove the Seasonal Slow Speed zone from the mouth through the southern half of Hendry Creek and make it, along with the northern half of Hendry Creek, a year round 25 MPH speed zone.**

Motion made by Ernie Hendry and seconded by Hans Wilson. Passed by a vote of 6 – 4.

Majority Viewpoint:

Water depth is a factor in the discussion of this area and it is somewhere around 4' – 5' for the most part. Committee members on the majority felt that aerial data show a small number of manatees using the area and a limited volume of boat traffic which does not justify a Seasonal Slow Speed zone. It was noted that a report on the adequacy of speed zones in Lee County by FWC says that, since the creek is a dead end, manatees did not use it as a travel corridor. Also, a lack of warm water attractants and the geography of the creek were factors in the recommendation.

Minority viewpoint:

Some of the committee members against the recommendation for this area preferred to regulate Hendry Creek at Slow Speed Year Round, both southern and northern half of the creek, because of evidence in aerial surveys that show manatees using both the southern and northern portions throughout the year. The manatee mortality data was also cited as illustrating manatee use; especially in the northern half of the creek. The geography of the creek, particularly in the upper half, makes it difficult for manatees to take evasive action when approached by boats. Manatee use and the location of docked boats in the upper half warrant Slow Speed Year Round. This minority view is that the recommendation will not provide adequate protection for manatees in this area.

A secondary minority view is that zones be made simple, easy to enforce and understandable for all. Therefore, one regulation in Hendry Creek would make more

sense than having one for the northern (upper) half and a different one for the southern (lower) half.

***Other Discussion Points:***

The county found data, as requested by the committee, which showed there were 54 vessels counted in Hendry Creek in a study done in 1999. These were moored boats and the counts were done mainly during the week rather than weekends. Another count showed approximately 300+ boats in Mullock Creek and Tenmile Canal.

This is currently proposed as Seasonal Slow Speed zone (Apr 1 – Nov 15)/25 MPH remainder of the year. Several different ideas were posited during this discussion:

- #1) Northern portion is not regulated; we should propose the rule cover both north and south portions and not split;
- #2) Suggestion to make this a year round slow speed zone throughout rather than seasonal;
- #3) Remove the seasonal slow speed/25 MPH remainder from the mouth of the creek, the southern portion and the northern portion and make it a year round 25 MPH speed zone.

**Imperial River**

**Recommendation to accept the current state rule proposal for this area of Slow Speed Year Round zone.**

Motion made by Scott Trebatoski and seconded by Matt Bixler. Passed unanimously (10-0).

County local ordinance requiring Idle Speed within 500' just as Estero River and Spring Creek. State rule proposal is for Slow Speed zone year round.

**Majority Viewpoint:**

Some discussion took place regarding jurisdictions, reasons for differences, how this affects our recommendations, etc. It was determined that the committee would focus on the state rule proposals and not let the local ordinances confuse the issue. It was generally agreed that the current state rule proposal was adequate for this area given manatee data, boat traffic and geography.

No minority viewpoint.

**Hell Peckney Bay**

**Recommendation to accept the current state rule proposal for the Matanzas Pass Channel portion of Slow Speed Year Round and reject the current state rule**

**proposal of Seasonal Slow Speed/25 MPH remainder of the year from the southern portion and make it unregulated, as is the northern portion.**

Motion made by Ernie Hendry and seconded by Doug Wilkinson. Passed by a vote of 7 – 3.

As proposed by the State, Matanzas Pass Channel section is Slow Speed Year Round; southern Hell Peckney Bay is Seasonal Slow Speed/25 MPH remainder of the year; and the northern Bay does not have a state proposed rule.

This area generated a great deal of discussion back and forth regarding manatee sightings, mortality rates, boat use, depths, and other information between committee members, more so than the other previous areas.

**Majority Viewpoint:**

Telemetry, aerial observations and mortality numbers indicate that there are a high number of manatees and boaters in the Matanzas Pass Channel area. However, due to the shallow nature of the waters north of the channel and the number of oyster bars, as well as the lack of boating activity in the bay, and what appears to be low manatee use of the bay area itself, committee members voting in the majority felt the bay area north of the channel should all be left unregulated. Most boats navigating this area are shallow draft boats with operators who possess extensive knowledge of the area.

**Minority Viewpoint:**

A few members of the committee preferred the recommendation that all of Hell Peckney Bay, including the northern portion, be a state regulated Slow Speed Year Round zone. This area is shallow and used by manatees who would find it difficult to take evasive action due to the depth. Also, there is one watercraft-related death at the mouth of the bay and three watercraft-related deaths in Matanzas Pass in the immediate vicinity of Hell Peckney Bay.

Another minority view was that the state rule proposal (Slow Speed Year Round in the channel, Seasonal Slow Speed for southern portion and unregulated in the northern portion) was appropriate for manatee protection in Hell Peckney Bay due to aerial survey data. (DELETED: SYNOPTIC SURVEY)

**Matanzas Pass**

**Recommendation to accept the current state rule proposal of a Slow Speed Year Round zone in all of the Matanzas Pass area.**

Motion made by Alex Lambros and seconded by Ernie Hendry and Hans Wilson. Motion passed unanimously (10-0).

There are several ordinances in this area that include the current state rule proposal of year round Slow Speed zone. The local county ordinance for most of the Pass is Idle Speed and Ft. Myers Beach has an ordinance that covers within a 1000' of the city limits (Idle Speed).

The prevailing view was that the Slow Speed Year Round was adequate for manatee protection in the Pass that appears to have both relatively high manatee and high boater use.

#### Hurricane Bay

**Recommendation to accept the current state rule proposal of Seasonal Slow Speed/25 MPH remainder of the year (with the marked channels regulated at 25 MPH).**

Motion made by Scott Trebatoski and seconded by Matt Bixler. Passed by a vote of 8 – 2.

#### Majority Viewpoint:

There was quite a bit of discussion once again regarding manatee sightings, mortality rates, injuries, boater use, etc. Telemetry and aerial observations as well as boater data classify this area as one that has high boat use and medium use by manatees. Other discussion focused on whether to make this a Slow Speed Year Round zone or perhaps an unregulated zone consistent with Hell Peckney Bay. It was felt that the current state rule proposal was appropriate for manatee protection in Hurricane Bay.

#### Minority Viewpoint:

Some committee members feel that the FWC did not adequately assess the boating activities in this area and it should be regulated as a 25 MPH year-round. While they realize the need for manatee protection based on telemetry, aerial observations, migratory patterns and the development in this area, the feeling is that the seasonal zones would unduly interfere with the rights of boaters. This area is shallow and seems to have very little watercraft-related mortality, so it should be regulated less stringently than proposed.

#### Estero Bay Main Body

**Recommendation to accept the current state rule proposal of Seasonal Slow Speed/25 MPH remainder of the year for the Estero Bay area with a regulatory speed limit of 25 MPH in the marked channel.**

Motion made by Susan Scott and seconded by John Kinney. Passed by a vote of 6 – 4.

**Majority Viewpoint:**

Discussion ensued about manatee counts, mortality, boater safety with kayakers, kayak trails, use by boats and reasons for, water depth in the bay, etc. It was determined that this is an area that can be characterized as high use by boats and at least medium use by manatees, so seasonal zones were deemed appropriate based on available data by the committee. The arguments for this can be found in the appendix section of the report. The use by kayakers was a secondary concern in regards to safety. Some of the areas around the bay are also covered by local ordinances.

**Minority Viewpoint:**

Some of those in the minority believe the current proposal is too restrictive and preferred to see a recommendation that accepts the current state rule proposal of Seasonal Slow Speed zone/25 MPH remainder of the year for the area in the Matanzas Pass Channel area and reject the current state rule proposal for the rest of the bay NE of Matanzas Pass Channel and make it either 25 MPH Year Round or unregulated.

These members feel that FWC has not accurately assessed the boating activities in this area. The shallow nature of the Bay, the lack of boating activity outside of the Channel and the lack of a boating mortality are reasons why they feel the current proposal is too harsh.

**Other Discussion Points:**

A committee member that did vote on the majority side of this recommendation felt it did not go far enough and that this area should be a Slow Speed Year Round. While they were on the majority side of this vote, they did additionally feel that Slow speed zones outside of the channels are warranted due to manatee and boating use of areas outside of the channels. They cited what they say is a vast amount of seagrass propeller scarring in Estero Bay as evidence of the heavy boat use. The arguments for this can be found in the appendix section of the report.

**Recommendation was made that prior to discussion of each waterway, County Staff provide the Committee with a brief presentation of the data.**

Motion made by Laura Combs, seconded by Matt Bixler. Passed unanimously by a vote of 10-0.

The motion, which was made after the discussions and recommendations for the Estero Bay area, was for the county staff to provide the committee with a brief overview of manatee aerial survey, mortality, telemetry, seagrass, and boating data before any

discussion or motions are made. This was done so that the committee members were all working from the same data set throughout the rest of the discussions.

#### **CALOOSAHATCHEE RIVER DISCUSSION/RECOMMENDATIONS:**

After discussion by the committee, it was decided to divide the river in sections, as was done for Estero Bay. There were additional items of concern that the committee may address as they relate to a river section or they may be addressed in general in a later part of the report. These are notated by the asterisks.

- 1) 99 – 93
  - 2) 93 - Old Cape Coral Bridge
  - 3) Old Cape Coral Bridge – West Side of Twin 41 Bridges
  - 4) W. Side of Twin 41 Bridges – East Side of 41 Bridges
  - 5) East Side of 41 Bridges – RR Trestle
  - 6) RR Trestle – County Line
- 
- \* Shell Island Issue (addressed in #1)
  - \* Federal Speed Zone Issues (addressed in #1 – 4)
  - \* FP&L Warm Water Discharge
  - \* Signage Safety and Lighting

#### 99 -93

**The recommendation is that, from marker 99 to 93, the state keep the ¼ mile slow speed buffer on the Cape Coral side of the river and eliminate other slow speed zones to the ICW; keep the ICW regulated at slow speed from 8:00 a.m. to 6:00 p.m. daily; add a 25 MPH zone from Big Shell – Little Shell Island north to the proposed ¼ mile slow speed buffer zone.**

Original motion was made by Alex Lambros and seconded by John Kinney. An amendment was made to the motion by Ernie Hendry and seconded by Scott Trebatowski. Motion to accept the amendment passed 8 –1. The motion to accept the original motion with the amendment passed 8 – 1. One committee member was not present.

#### Majority Viewpoint:

There was considerable discussion on this area (see discussion section below) that included the public, local and state officials and committee members. The dominant theme was to provide a means to alleviate the overcrowding of large and small boats in the Intracoastal Channel while still providing adequate manatee protection. The majority opinion relied on manatee numbers and boating traffic patterns as well as the input from

the public. The creation of an alternative route that would relieve the traffic in the channel considered a safer option for both boaters and manatees.

**Minority Viewpoint:**

The minority view held that the USFWS have taken a dim view in the past of adequate manatee protection on the river. There was also a concern that data shows manatees use this area and feed here as well. Mortality data indicates there have been (5) deaths in the channel between 1980 and 2001. This area has been identified in an FWC report (2002) as have watercraft-related mortality rates that have increased faster than southwest Florida or the state of Florida as a whole. There is a high amount of boat use in the lower Caloosahatchee River and several areas in the lower river are heavily used by manatees. The number of boats using the river is increasing dramatically and much of the boating public that uses this river are new and inexperienced. The waterfront property development is also increasing quickly in Cape Coral, Ft. Myers and Lee County. There is also an enforcement issue for this area if State speed zones differ from Federal regulatory zones in the same area.

***Discussion Points:***

Discussion around why there were federal regulations in this area where boaters feel it is unnecessary; also discussed the backside of Shell Island and its shallowness and potential use by small boats. Some committee members are in agreement with the ¼ mile buffer along the Cape Coral shoreline, similar to other parts of the river. Others, while in agreement, expressed a hope that this area would be strictly managed with some type of marking. There was discussion on the issue of Shell Island and the “wishbone” proposal being an alternate route that would separate large and small boats, making this a safer area. Additional concerns center on the consistency of what we recommend as far as how it works with the next segment and keeping it simple.

**Marker 93 to Old Cape Coral Bridge**

**Recommendation to accept the current state rule proposal of a ¼ mile slow speed buffer around the perimeter of the shoreline and no regulation anywhere else in this area.**

Motion made by Alex Lambros and seconded by John Kinney. Motion passed by a vote of 5 – 3.

Two committee members were not present.

**Majority Viewpoint:**

The original motion contained language requesting that the Federal slow speed zone at Redfish Point be eliminated, but the motion was withdrawn after discussion. Other majority discussion keyed on the number of boats that use, or are moored, in the Caloosahatchee River, which appears to be 28,000 as per 1999 data. Additionally, there

was discussion around some reports of upwards of 50 manatee deaths related to Red Tide. Some committee members urged the committee as a whole to keep in mind the rights of boaters, water skiers, and other recreational boaters in balance with the rights of manatees. One suggestion was to have the channel speed limit raised from 25 MPH to 30 MPH. A primary perspective put forth by some of the members is to try and keep the zones simple and easily understandable and with some type of logical continuity.

A committee member referenced a FWC report that indicated the majority of the manatees travel around the shoreline in that area that is regulated with the ¼ slow speed buffer zone. So, the ¼ mile buffer zone just makes sense and 25 MPH in the remaining part of the river is a burden on boaters and too slow. Additionally, one of the committee members stated that there currently is no conclusive study that indicates reducing boat speeds also reduces manatee mortality rates.

Other relevant discussion focused on enforcement and compliance and the input of enforcement officers that work this river. They agree that it is sometimes hard for the larger boats, especially, to get on plane safely at 25 MPH and that 30 MPH is better from a safety standpoint. There has been good compliance over all in the river and most offenders are either the small minority who just don't care, or they are tourists, who just do not know.

#### Minority Viewpoint:

Overlapping jurisdiction rules that differ are a problem. It would be confusing for the state and federal regulations to be different (i.e. no regulations as per state and 25 MPH as per USFWS) in the river. State, local and federal rules need to be tightly coordinated so one uniform rule applies and in this case, it would be the federal 25 MPH regulatory speed zone. Additionally, both state and federal agencies seem to believe that the manatee population in the southwest Florida area is declining. The Caloosahatchee has shown to be dangerous for manatees and recommending that the middle of the river be unregulated will just exacerbate the problem. The flight path for aerial survey data does not seem to allow for effective opportunities to count manatees in the main portion of the river – so it is hard to tell what the true situation is throughout the Caloosahatchee. The water is murky and hard to see in the main river area.

Some committee members felt that just because manatees are not found dead in the middle of the river does not mean they were not hit there. Often, they will seek shelter in quieter areas such as the shoreline, when struck and injured. Lastly, the number of boats using the Caloosahatchee River is increasing dramatically along with development of waterfront property in Cape Coral, Ft. Myers, and Lee County. The area of Redfish Point is a known crossing for manatees using the river, so this area in particular should have some type of regulatory speed zone recommended by the state, ideally, the same as the federal rule already in place for the sake of consistency.

Some committee members would have liked to add an overlay to the recommendation above, that would have the state adopt the Federal regulation of a 25 MPH speed zone in



the remaining portion of the river, including the ICW and Redfish Point. Additionally, there were a few members that agreed there should be regulation in the middle of the river, but wanted to see the speed limit recommended at 35 MPH due to the discussion about boats being able to plane safely at slightly higher limits than 25 MPH (see discussion points below).

***Other Discussion Points:***

After some research by the Lee County Attorney's office, it was determined that the county ordinance regarding idle speed does not include the Old Cape Coral bridge structure itself and neither does the state's proposed rule. It was suggested that the city of Cape Coral, who expressed concern about this issue, bring it up to the county commissioners as something needing attention. This would be a good time to do so as the county is currently looking at some of these issues to come up with modifications. Controlling boat speed around these extremely important structures was important to several members of the committee.

There was some discussion among the committee that the barge was primarily responsible for watercraft related manatee mortality in the river, however, it has been reported that there have been 12 boat related deaths in the river since the barge quit running regularly in 2001. So, while the barge may certainly have contributed to manatee mortality in this area, it is still an issue even without the barge.

**Marker 93 all the way to West Side of Twin US 41 Bridges**

*Note: This area did not include the areas immediately adjacent to the bridges covered by the current USFWS zones. Discussion of those areas is included in the next section.*

**Recommendation made to keep the current state proposed rule as is in this area, which is a ¼ mile slow speed buffer zone along the perimeter of the shoreline of the Caloosahatchee River.**

This area was expanded from the previous discussion and it was determined to talk about this area as a whole.

Motion made by Scott Trebatoski and seconded by John Kinney. Motion passed unanimously by a vote of 8 – 0. Two (2) members not present.

**Majority Viewpoint:**

Much of this is a continuation of the previous section's discussion. The majority felt that the existing zones have been in place for some time and have good boater

compliance. The FWC commented on previous reports that the best available data showed that manatees travel relatively close to the shoreline in the river. There is little support by the majority on this committee for the current federal regulatory speed zone of 25 MPH in this part of the river. It is too restrictive and does not seem to be based on adequate science.

**Minority Viewpoint:**

None as the vote was unanimous. See discussion points for concerns presented.

***Other Discussion Points:***

Some wondered if there are really that many watercraft related deaths in this area of the river. The Federal slow speed zone at Redfish Point was arrived at based on data provided from state research. The committee members wondered then why did the state not propose the slow speed zone in this area? There were comments in reports by FWC in responding to the federal speed zones for the river and the Cape Coral Bridge, that there is not clear reasoning regarding why the federal zones were put in place as they are. The state felt that there was no evidence that manatees are at an increased risk of harmful collisions with boaters in this bridge area.

It was suggested by some members that they would like to see some type of speed regulation in the main part of the river, which the state has currently proposed for no regulation. The Federal speed limit of 25 MPH may be too slow, though, and maybe a 35 MPH speed zone would be appropriate instead. That would cover all sizes of boats pretty much to ensure that they could get on plane safely. Others discussed the need to move ahead and given that the zones are the same in most of these areas, it may be acceptable to talk about the area from Marker 93 all the way to the twin bridges (West US 41 Bridges) rather than just to Old Cape Coral Bridge.

Subsequently a recommendation was made that the state keep the proposed ¼ mile slow speed buffer as is and adopt a 35 MPH speed limit in the remaining body of the Caloosahatchee River, from Marker 93 all the way to the West US 41 Bridges, but this was rejected by the majority of the committee at this time. Some of the members were concerned about the 35 MPH speed limit as there are current studies showing that the Caloosahatchee River has the fastest growing watercraft related manatee mortality rates in southwest Florida.

Some of the committee felt that the Redfish Point area is one of the “hot buttons” in the river and creates a lot of controversy and emotion. Much of the public input was critical of the federal zones at the Redfish Point area and the hardships and confusion it places on boaters. It is confusing and dangerous and the signage is not adequate. It is not well marked and a boater going down the river all of a sudden find themselves in a slow speed zone that they may or may not know is there.

An additional recommendation to have the state adopt the Federal regulations of slow speed, channel included, at the Redfish Point area was rejected by a majority of the committee members present. Some committee members cautioned that these zones are about protecting manatees, not just from death, but protection in general.

West Side of Twin US 41 Bridges – East Side of US 41 Bridges (aka Edison Bridge)

Including the areas covered by the current federal speed zones adjacent to the bridges and in the ¼ mile buffer on the north shore, west of the bridges.

**Recommendation to accept the current state rule proposal, which is ¼ mile slow speed buffer zone around the shoreline and unregulated everywhere else in the river in this area.**

Motion made by Ernie Hendry and seconded by John Kinney. Motion passed by a vote of 7 – 1 with two members not present.

Majority Viewpoint:

Again, much of the earlier discussion relates to this area as well. The only other discussion on this was asked why the north side of the West US 41 Bridges is unregulated. The committee was told that the state intended to leave this as a recreational area for water skiers, tubing, etc. The federal regulations say otherwise. The federal zone has created a slow speed zone in this area and has unduly interfered with the rights of boaters and waterskiing activities in this area.

Minority Viewpoint:

The recommendation will not provide enough protection for the manatees because of the proposed unregulated recreational area to the north as well as the remaining unregulated portion outside the proposed ¼ mile Slow Speed buffer. Watercraft-related manatee mortality rates have increased at a faster rate in this river than in all of southwest Florida or the state of Florida as a whole. The manatees also significantly use Hancock Creek and the area immediately north of it and the number of boats in the river is increasing dramatically as more and more property is developed.

East Side of US 41 Bridges (Edison Bridge) - Railroad Trestle

**Recommendation to accept the current state rule proposal of Slow Speed Year Round with 25 MPH allowed in the channel.**

Motion made by John Kinney and seconded by Scott Trebatoski. Motion passed unanimously 8 – 0, with two members not present.

**Majority Viewpoint:**

Very little discussion about this area.

The Federal rules here make the channel slow speed seasonally (Nov 15 – Apr 1) from Marker 25 to the Railroad Trestle. There have been 8 manatee deaths in this area predominantly in the winter months. There has been one since the barge stopped in May 2001.

**Minority Viewpoint:**

None as the vote was unanimous. However, there was a brief discussion on possibly recommending that the state adopt the Federal seasonal slow speed zone in the channel from Marker 25 to the Railroad Trestle. Those that offered this were in the minority and the recommendation was not considered by the committee.

Railroad Trestle to County Line

**Recommendation to accept the current state rule proposal from the trestle to the county line (agreeing that issues related to the warm water discharge by FP&L would not be addressed in the motion but discussed in general at a later time).**

Motion made by Doug Wilkinson and seconded by Scott Trebatoski. Motion passed by a vote of 9-0 unanimous, with one member not present.

**Majority Viewpoint:**

Felt the current state rule proposal was adequate for the protection of manatees. Brief discussion on this area and what the proposed regulations are and what the federal regulations are.

**Minority Viewpoint:**

None as vote was unanimous.

***Discussion Points:***

There is a concern by some that the unregulated area should be at least a 25 MPH zone or something due to the manatee use in this area.

**SAN CARLOS BAY DISCUSSION/RECOMMENDATIONS:**

## **San Carlos Bay**

**Recommendation to accept the current state rule proposal as is in this area (unregulated in most places with a Slow Speed Year Round zone in the Punta Rassa Cove, Shell Point, and Shell Creek areas).**

Motion made by Laura Combs and seconded by Ernie Hendry. Motion passed unanimously 8 – 0. Two members not present.

**Further recommendation that the state adopt the federal speed zone in the San Carlos Bay (Fisherman’s Key area), less an approximately 700’ buffer area north of the Sanibel Causeway spoil island as defined by the two Federal speed zone markers plus three additional buoys to be added by the state where denoted on the map by Lee County.**

Motion made by John Kinney and seconded by Alex Lambros. Motion passed by a vote of 7 – 1. Two members not present.

**Additionally, the committee recommended that the state ask the federal government to eliminate their speed zone located just west of the state speed zone (east side of San Carlos Bay) and adopt the current state rule proposal regulations instead.**

Motion made by Ernie Hendry and seconded by John Kinney. Motion passed by a vote of 6 – 2. Two members not present.

### **Majority Viewpoint:**

Mortality data seemed to show there was only one manatee death since the barge quit running. The death was not in the barge route area anyway.

The committee discussed the Federal speed zone area and the need to possibly create some type of “channel” or route for boaters for getting around from the northwest (coming from Matlacha, Sanibel area) going to the Punta Rassa boat ramp.

It was noted that the small “sliver” of the Federal speed zone that abuts the state zone adds signage to the area and makes that area double signed by the state and by the USFWS about 200 yards apart from each other. This is very confusing. Also, the south side of the ICW is not well marked at all for the Federal zone. Some of the committee would like to get rid of this “sliver” and also shrink the Federal zone some and put some type of buoy system or something around the Fisherman Key triplex and the oyster bars, etc. Discussion continued to center around giving people a way to get from Punta Rassa boat ramp towards Sanibel and other areas past the Causeway.

The committee looked at telemetry data, talked about the safety issues, what the compliance was in this area and other topics to help determine what would be suitable. Signage was a huge issue as well. Remember that the Federal zones are permanent designations right now and not in state control, although this committee is free and is

encouraged to make recommendations regarding these zones. It was felt that this committee has the local knowledge to “tweak” the Federal area and make it workable for everyone.

There was the thought offered by some committee members that the idea of a path by the spoil islands vs. the ¼ mile buffer around the Fisherman’s Key triplex may be better suited for a recommendation that will be taken seriously.

After some research by the county, it was determined that the 700’ area between the two Federal regulation signs and the Causeway spoil island is large enough for boaters to navigate traveling on the north side of the Causeway. A suggestion was made that there would need to be a few more markers between the two Federal signs in order to delineate this navigable area.

There was a concern by a few members about confusing the issue by adding speed zones in the “channel” area that is a part of the above suggestion. The state’s rule proposal does not include any zones in this area at the present time.

#### Minority Viewpoint:

Those committee members voting against the second noted that almost 2/3 of the area adjacent to the causeway island was not surveyed and the course of the flight path in this area made it very difficult to obtain any meaningful manatee counts. The unregulated offset from the causeway island is unnecessary and could put manatees at increased risk. There are two other viable alternatives when leaving the Punta Rassa boat ramp which have little or no impact on travel time. Those are: traveling the south side of the causeway in unregulated waters; or traveling in the channel north and then heading east through Miserable Mile. There were conflicting opinions given about boating use of the unregulated portion area from law enforcement. There is a high boating use of the area from boats launching at the Punta Rassa ramp and those traveling to and from the Caloosahatchee River. It is increasing with time. Additionally, this area around the causeway island is shallow and used by wading fisherman and sailboarders, so it will create a safety issue with them as well as with the manatee.

Those voting against the third recommendation would have liked to have seen a recommendation that was more the opposite, which was to have the state adopt the federal speed zone in this east area of the bay. This would afford additional protection for the manatees and also eliminate confusing signage.

#### ***Additional Discussion Points:***

The state’s current rule proposal leaves the bay largely unregulated with the exception of the Punta Rassa Cove, Shell Point and Shell Creek area, which is regulated as a slow speed zone year round. The Federal regulations also have slow speed zone in a large area surrounding Fisherman’s Key and the other small islands around it, extending to the

south side of the ICW and going down to the spoil islands at the Sanibel Causeway. They also have another “sliver” of a slow speed zone that parallels the west side of the state’s slow speed zone and is a little bit further out than the state’s.

Law enforcement officers described what they see on the water in this area as far as violations and compliance, particularly in the “Miserable Mile” area. Officers reported that the majority of the traffic is in the channels as this area has lots of shallow spots and is not suitable for running elsewhere due to the shallow depths and the Federal speed zone which has pretty much eliminated the ability to run behind the Causeway – this is a bit of an inconvenience in the event of sudden storms or an emergency as it is a quicker way to get back to the east side and particularly the boat ramp. Most of the boaters in this area are fishing rather than plainly recreational. Scott Calleson, of FWC, did note that there are provisions in the Florida Manatee Sanctuary Act that allow boaters to exceed posted speed limits in the event of an emergency.

The committee discussed several ideas regarding recommendations for this area. Boundaries and such around the islands, the north side of the causeway/spoil islands, etc. The city of Cape Coral representative provided input on some of the initial discussions with the USFWS about this area. It seems their concern was also protecting the sea grasses in the area and there were a lot of negotiations with the USFWS about the slow speed zone and what would be put in place. It was felt that the USFWS were pretty hard line about this and will not go along with many adjustments.

Among other modifications explored and subsequently rejected by a majority of the committee for this area was the recommendation that the state adopt the federally regulated speed zone just west of the existing state speed zone (east side of San Carlos Bay).

It was felt that there may not be enough room for boaters to navigate properly in this area if we were to ask the state to adopt the federal speed zone in this area. It would move the state speed zone out too far. Other committee members did not see this as an issue, but the recommendation did not pass.

## **MATLACHA PASS DISCUSSION/RECOMMENDATIONS:**

### **Matlacha Pass**

**Recommendation to extend the ¼ mile slow speed buffer zone from the existing western limit of the Caloosahatchee north shoreline to Sword Point and then propose a 25 MPH speed zone, shoreline to shoreline, from Miserable Mile north to within ¼ mile of the Matlacha Bridge.**

Motion made by Ernie Hendry and seconded by John Kinney. Motion passed by a vote of 5 – 3.

Two members not present.

**Recommendation to modify the current state rule proposal (Slow Speed/25MPH in channel year round) to 25 MPH shoreline to shoreline, with the southern boundary being ¼ mile north of the Matlacha Bridge and extending to the northern limit of the current state rule proposal (Marker 76).**

Motion made by Ernie Hendry and seconded by Doug Wilkinson. Motion passed by a vote of 5 – 3. Two members not present.

**Recommendation to accept the current state rule proposal (Slow Speed Year Round) from ¼ mile south to ¼ mile north of the Matlacha Bridge.**

Motion made by Laura Combs and seconded by Matt Bixler. Motion passed unanimously by a vote of 8 – 0. Two members not present.

**Majority Viewpoint:**

It is clear that the canal system of Matlacha Isles is an important wintering site for manatees due to the warm water discharge in this area. The sea grasses in this area are also an important food source for them. However, when the data is combined with the boating traffic patterns in Matlacha Pass and the small number of boat-related manatee deaths in this area, it was felt that the state's current proposal unduly interferes with the rights of boaters. The state did not accurately assess the boat traffic patterns in this area. Matlacha Pass is primarily a fishing destination and does not have a great deal of boat traffic. It is not a travel corridor and has little development in the area. The majority of the manatee deaths, as pointed out by some committee members, seem to have been north of the Matlacha Bridge and the rest of the area is so shallow there is not going to be a lot of traffic there anyway. The manatees are in the marked channel where the boaters are as well, so slow speed regulations outside the channels may actually be more dangerous because it concentrates the boats in the same area of known manatee travel corridors.

Additionally, the majority feel that folks going slow all up through here are tearing up the sea grasses worse as they try and navigate the shallow areas. Law enforcement was asked about how easy it would be to enforce the above recommendation and they report it would be pretty easy.

**Minority Viewpoint:**

Matlacha Isles is a very significant secondary manatee warm water refuge in Lee County and the second largest aggregation site. It has been a deadly area for manatee in recent years. There is data to show there have been several watercraft related manatee deaths in this area. Two of those deaths occurred this year. There has been a lot of data collected and most of the watercraft related mortalities have been since 1999. The state's position has been that there were a lot of manatees found in Matlacha Pass, with the number of aerial survey sightings being more than double that of any other area outside of the



Caloosahatchee River. They are definitely congregating in Matlacha and feeding on the sea grasses here particularly in the colder months.

The FWC sees this area as much more than just a travel route. Those in the minority on this committee concurred with that position. They preferred to recommend adopting the current state rule proposal (Slow Speed/25 MPH in the channel) for the Matlacha Pass area.

The minority commented that manatees up on the flats have little opportunity to get out of the way of boats going across there because there is no place for them to dive. All the more reason to have some regulation in this area. There is also a concern about the data that deaths seem to be north of the bridge because that does not necessarily mean they were injured there. Additionally, the zones are not designed to just protect manatees, but their habitat and the sea grasses they eat as well.

***Other Discussion Points:***

The canals along the Pass, both west and east side, would be covered by the county ordinance of Idle Speed within 500' of docks, etc.

Lastly, the north end of Matlacha Pass from Marker 76 north currently has no speed zone proposed by the state. It is considered unregulated. The USFWS, however, has designated this area an "area of inadequate protection" but they have not proposed any regulations at this time either.

While some committee members felt that there needed to be some type of speed zone in this area due to the need to protect the manatees in the Pass and the growing population on Pine Island, others did not. Subsequently, a recommendation to request the state add a slow speed zone from Marker 76, following westerly of the channel, all the way to the northern limits of the pass, was rejected by a majority of the committee.

Some of the committee did wonder if there was anything that could be done or recommended to encourage the USFWS to remove the "area of inadequate protection" designation. Education? More enforcement? It was noted by a few members that the way to encourage USFWS to remove that designation would be to put in some speed zones as was done in the Caloosahatchee when they lifted it there. Discussion ended with no action.

**PINE ISLAND SOUND DISCUSSION/RECOMMENDATIONS:**

Pine Island Sound

**Recommendation that the Seasonal Slow Speed zone around the eastern shoreline of Sanibel Island be made Slow Speed Year Round, consistent with the city of Sanibel local ordinance.**

Motion made by Scott Trebatoski and seconded by Ernie Hendry. Motion passed unanimously, 8 – 0. Two members not present.

**Majority Viewpoint:**

The committee acknowledged that this recommendation would add some logic and consistency to the proposed zones given the local ordinances and the data that show manatee in the area.

The info regarding manatee mortality figures (watercraft related) shows death in 2004 (2), 2003 (2), 2002 (3), 2001 (4). Most of these deaths have been occurring south of Marker 42, in the southern part of the Sound.

It was noted again, by a committee member, that there is no study that conclusively shows that implementing manatee protection speed zones reduces manatee deaths. As far as that goes, it seems that since speed zones were implemented, manatee deaths are increasing. However, most committee members are at least reluctantly willing to support the recommendation above.

There was some discussion and suggestions regarding a friendly amendment to the motion to add Captiva, Upper Captiva and Caya Costa. Ultimately, it was felt by the majority that the seasonal Slow Speed zone proposed for these areas was sufficient.

***Other Discussion Points:***

Other discussion and modifications explored and subsequently rejected by a majority of the committee for this area included:

- due to the watercraft related manatee deaths in recent years, minority members would have liked a recommendation that would have regulated the Pine Island Sound area south of Marker 42, not already covered by the current state rule proposal, as a 25 MPH speed zone all the way to the southern limits of the Sound. There have been 25 watercraft-related deaths in this area since 1974. A 25 MPH speed zone would increase protection of the manatees without placing undue burden on the boating public.

- a recommendation that Mail Boat channel and a short cut corridor west of St. James City be unregulated while the rest of the state's current rule proposal be accepted. Some of the committee would have liked to see the area where the Mail Boat Channel was originally located reinstated. They felt it should be marked and designated as a boat channel and unregulated in speed. Those in favor of Mail Boat Channel asserted that this corridor would allow small boats to transverse this area without being forced into the

narrow navigational channel to the west with the larger boats, while still providing adequate manatee protection for this area.

- a recommendation that the area around St. James City be made year round slow speed instead of seasonal. Manatee mortality data show that 18 manatee died in the area from November through March. The southern Pine Island area is a high risk area for manatees due to the high amount of transient boat traffic traveling to and from the restaurants in St. James City.

- a recommendation to accept the current state rule proposal for the rest of Pine Island Sound. This was felt to be unnecessary by most of the committee and was rejected with little comment.

There was some concern about the St. James City short cut being hard to enforce and confusing to boaters. Additionally, others on the committee were not sure how this could be marked properly. Mail Boat channel was considered a bit more seriously, but in the interest of keeping things simple, some of the committee felt it was not worth changing in a recommendation at this time.

It was also acknowledged that there certainly are manatees there. The FWC representative did report that there was a lot of discussion by FWC about this area due to some of the very things the committee has brought up. There were also a lot of site visits. Heavy sea grasses, growing manatee populations and sightings complicated matters as they sought to try and find a different route or short cut that would be easier; but it was not pursued because of the difficulty of marking it, the shallow water depth, and concerns about the manatees in this area.

#### **OTHER AREAS OF CONCERN AND COMMENT:**

The committee looked at some general areas of concern that they felt strongly they wanted to comment on for the record in this report. Those areas included:

- Signage concerns and their safety, particularly the lighting of the signs at night
- The warm water discharge site at the FP&L Plant
- The overlapping jurisdictions and resulting confusion of regulations and marking thereof

#### Signage

Many of the members felt that the signs marking manatee areas are hard to see and read, are poorly made and do not do the job. They are also dangerous because those boating at night may or may not be able to see them in the dark. These signs usually are not lit and the reflective tape is poor. It is a great concern to the committee. There was some

discussion regarding recommending that the state pursue new technology such as soft markers and buoys to adequately mark the area rather than the old ways currently used.

Ultimately, the following statement was recommended to be included in this report as an official position of this committee:

*“All efforts should be made that signage related to manatees and others be made so it can be seen at a great distance and/or be lit where it is visible from a boater’s light. In addition, there is a concern of the committee addressed to local, state and federal agencies regarding the quality and quantity of manatee signs.”*

Motion was made by Doug Wilkinson and seconded by John Kinney. The motion passed unanimously by a vote of 9-0. One member was not present.

#### Warm Water Discharge – FP&L

This topic generated a great deal of discussion regarding the artificial environment created and the lack of vegetation and other food sources for the manatees as well as the poor living conditions to which they are subjected by coming up to this area. There are those on the committee that felt we are attracting manatees up a river to an area they may not naturally come to in the wild.

One of the committee is a volunteer at Manatee Park and has been very involved in this issue for some time. He reported that the conditions of the permit that FP&L got mandated that they continue the warm water discharge so as not to “cut off” the manatees from this environment where they go when the weather turns cold. The county has spent a great deal of money on the park and promoting it as a manatee viewing area. The county feels it is a great educational tool and that tens of thousands of people visit the park during the season and learn about manatees and the need for their survival.

Some committee members wondered if this was the best policy for the long term survival and growth of the manatee population. What if we could replace this with similar manatee educational opportunities?

Another committee member reported that he had understood that the ability to redirect the FP&L warm water discharge would require more land than currently available.

There is little sea grasses in this area so they have to go down the river looking for food. Better management of grasses and forage for this system must be considered. Having the manatees up in this area with little food increases their travel up and down the river which increases the chances of a collision with boats. It is understood that we just can not turn the switch off as we are responsible for creating this situation.

There is a generalized concern that more research and attention be turned to this issue by the agencies and organizations involved. This discharge site contributes to the factors of

why speed zones are at issue – it has attracted manatees and is a major factor in the collisions with boats in the river and manatee deaths.

Lee County Dept of Natural Resources reported that there is a Warm Water Task Force comprised of state and federal folks who are looking into this issue. It is relatively recent and there has not been a lot of information coming from the task force yet.

One of the statements suggested, but rejected by a majority of the committee would be something to the effect that this committee supports the efforts of this task force. They are looking into the issue as everyone knows that as technology advances, the warm water discharge points will go away and we must have a plan in place to prevent this from harming the manatee population.

There was a concern that we do not know what FP&L can do or not do, depending on technology and their permits, etc

Ultimately a recommendation was made that the committee add a statement in their report requesting that the state and federal government provide a mechanism to determine a methodology for removing the warm water discharge area at the FP&L power plant.

Some on the committee asked if something could be added regarding providing for the continued health of the manatee population in order for everyone to be comfortable with the recommendation. It was agreed to make a “friendly” amendment to the motion to add the following wording, “...FP&L power plant and still provide for the continuing health of the manatee population. “

The following statement was recommended to be included in this report as an official position of this committee:

*“The committee requests that the state and federal government provide a mechanism to determine a methodology for removing or deactivating the warm water discharge area at the FP&L power plant and still provide for the continuing health of the manatee population.”*

Motion made by John Kinney and seconded by Alex Lambros. Motion passes unanimously by a vote of 8 – 0. Two members were not present.

### Overlapping Jurisdictions

While no recommendation or statement was made by this committee, there was discussion at several points in the meetings regarding the confusion created by all the jurisdictions involved; the conflicts between state and federal regulations; the close

proximity of a myriad of signs, buoys and other markings that denote different jurisdictions all operating in the same area; and the lack of some coverage or local ordinances regarding man made structures.

The committee stated several times that this was a big concern that should be addressed at some point by the state and other jurisdictions. The public input also indicated this is of interest and concern to the general public.

## Appendix A. Florida Fish and Wildlife Conservation Commission Informing Lee County of its Intentions to Propose new Manatee Protection Rules

### FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION



RODNEY BARRETO  
Miami

SANDRA T. KAUPE  
Palm Beach

B.L. "BERRY" HUFFMAN  
Enterprise

DAVID K. MEEHAN  
St. Petersburg

JOHN D. ROOP  
Jacksonville

RICHARD A. CORRETTI  
Tampa

BRIAN J. MARLONSD  
Tallahassee

KENNETH D. RADDAD, Executive Director  
VICTOR J. HELLER, Assistant Executive Director

OFFICE OF THE EXECUTIVE DIRECTOR  
78504487 3796 TDC 1850488-9542

April 9, 2004

The Honorable John E. Albion, Chair  
Lee County Board of County Commissioners  
2120 Main Street  
Fort Myers, FL 33901

Dear Chairman Albion:

The Florida Fish and Wildlife Conservation Commission (FWC) is considering amending its manatee protection rule for Lee County (68C-22.005, Florida Administrative Code) Section 370.12(2)(f), Florida Statutes, requires that the FWC notify an affected county of its intention to consider new or amended manatee protection rules so that the county can form a Local Rule Review Committee (LRRC) to review the FWC proposal. The statute further specifies that such notification must occur at least 60 days before the FWC submits a Notice of Rule Development to the Florida Administrative Weekly (FAW). Please consider this letter as official notice that the FWC intends to submit a Notice of Rule Development for publication in the FAW and therefore, Lee County needs to form an LRRC.

As you are already aware, a recent Lee County Court ruling determined that some of the existing zones in the FWC rule for Lee County are invalid and cannot be enforced. Although we do not agree with the court ruling, our attempts to have the ruling reviewed on its merits were unsuccessful. Because of this ruling, the U.S. Fish and Wildlife Service (USFWS) is not issuing favorable biological opinions for the construction of docks in certain areas in the county. Further, the Service recently established emergency federal speed zones in these areas. The emergency federal zones will be in place for 120 days. It is our understanding that the Service has begun to draft permanent federal rules to implement at the end of the 120 days. We are working closely with the USFWS to make sure that we remain coordinated due to the parallel rulemaking of our agencies.

It is our position that the regulation of boat speeds for the purpose of protecting manatees is best accomplished by the state or local governments, acting under the authority of 370.12 Florida Statutes. Therefore, we intend to re-promulgate rules in these areas providing manatee protection through state rules. The USFWS has indicated that if adequate protection can be provided either by the state rule or through county ordinance, they will not adopt the permanent rules.

500 South Mendocino Street • Tallahassee, FL • 32304-3000  
352-227-7000 • www.fwc.com

The Honorable John E. Albion  
Page Two  
April 9, 2004

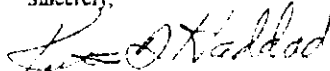
Unfortunately, we believe it will be very difficult, if not impossible to meet our state requirements of the rule making process and successfully promulgating a rule within the next 120 days. If we are unable to complete the process within the next 120 days, it will likely result in the establishment of the permanent federal zones. However, if the state and the county work together we may be able to provide an acceptable level of protection that would make federal zones unnecessary. The process established by state law for counties to regulate boat speeds in order to protect manatees can generally be completed faster than the state rule making process. For that reason I encourage you to consider establishment of a local ordinance that would assure a continuation of protection past the 120 day duration of the federal emergency rule.

While we hope you will give serious consideration to adopting a local ordinance, regardless of your decision on this matter, we are requesting your most expeditious assistance in fulfilling the obligations for state rule making. Please let us know as soon as a LRRC is selected and we will forward a rule proposal to them for review. If you have any questions about the process, or if we can assist you in any way, please contact Scott Calleson on my staff (850 922-4330).

Mr. Chairman, the events of the last several months regarding manatee protection and the associated issues in Lee County have certainly been trying for all those involved. I have no doubt that the frustration level is high. Nevertheless the hard work and cooperation shown by Lee County staff, in particular in assisting with enforcement issues and sign posting, has been outstanding. I want to assure you that it is our goal to take the necessary actions to return manatee management and conservation to the state and local level, where we believe that citizen input and involvement is best realized, and where ultimately the greatest protection for the resource will be achieved.

We look forward to continuing to working with you

Sincerely,



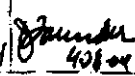


Kenneth D. Haddad  
Executive Director

Cc Sam Hamilton, USFWS  
Rodney Barreto, FWC Chairman  
John Rood, FWC Commissioner



## Appendix B. Lee County Resolution Creating the LRRC

Lee County Board Of County Commissioners		Agenda Item Summary	Blue Sheet No. 20040538
<b>1. REQUESTED MOTION:</b>			
<b>ACTION REQUESTED:</b> Adopt by resolution, the creation of a Local Rule Review Committee for the purpose of reviewing manatee speed zones as proposed by the Florida Fish and Wildlife Conservation Commission.			
<b>WHY ACTION IS NECESSARY:</b> Action required by Florida Statute 370.12 (2)(f).			
<b>WHAT ACTION ACCOMPLISHES:</b> Provides local input to Florida Fish and Wildlife Conservation Commission on proposed manatee speed zones.			
<b>2. DEPARTMENTAL CATEGORY:</b> COMMISSION DISTRICT #: CW		C 8 B	<b>3. MEETING DATE:</b> 05-11-2004
<b>4. AGENDA:</b>		<b>5. REQUIREMENT/PURPOSE:</b> (Specify)	
<input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADMINISTRATIVE <input type="checkbox"/> APPEALS <input type="checkbox"/> PUBLIC <input type="checkbox"/> WALK ON <input type="checkbox"/> TIME REQUIRED:		<input checked="" type="checkbox"/> STATUTE 370.12(2)(f) <input type="checkbox"/> ORDINANCE <input type="checkbox"/> ADMIN. CODE <input type="checkbox"/> OTHER	
		<b>6. REQUESTOR OF INFORMATION:</b>	
		A. COMMISSIONER B. DEPARTMENT Public Works C. DIVISION Natural Resources BY: Roland Ottalini	
<b>7. BACKGROUND:</b>			
<p>On April 9, 2004 the Florida Fish and Wildlife Conservation Commission (FWC) informed Lee County of its intention to consider new or amended manatee protection rules in Lee County. Pursuant to Florida Statute 370.12 (2)(f), the FWC shall submit any new or amended proposed manatee protection rules to the counties in which the proposed rules will take effect. Each County will then appoint a local rule review committee to provide comment on the proposed rules. The resolution outlines the creation, make-up, duties, and goals of the review committee as set forth in Florida Statute 370.12 (2)(f). Staff intends to hire a professional facilitator using existing funding.</p> <p>The pending creation of permanent Federal manatee protection areas makes committee creation and appointment of members time critical.</p>			
<b>8. MANAGEMENT RECOMMENDATIONS:</b>			
<b>9. RECOMMENDED APPROVAL:</b>			
A Department Director	B Purchasing or Contracts	C Human Resources	D Other
E County Attorney	F System Services Director		G County Manager
 4/29/04	N/A	N/A	 4/29/04
OA 4/29/04 OM 4/29/04 OS 4/29/04 GC 4/29/04		 4/29/04	
<b>10. COMMISSION ACTION:</b>			
<input type="checkbox"/> APPROVED <input type="checkbox"/> DENIED <input type="checkbox"/> DEFERRED <input type="checkbox"/> OTHER			

Rec. by CoAtty  
 Date: 4/29/04  
 Time: 9am  
 Forwarded To:  
 Co. Admin. 4/29/04

RECEIVED BY  
 COUNTY ADMIN. OM  
 DATE: 4/29/04  
 TIME: 3:24 PM  
 COUNTY ADMIN  
 FORWARDED TO: 4/29/04  
 3pm

LEE COUNTY RESOLUTION NO. ~~04-06-01~~

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, REQUIRING CERTAIN LEE COUNTY ADVISORY BOARDS/COMMITTEES AND THEIR MEMBERS TO FILE STATEMENTS OF FINANCIAL INTERESTS AND OTHER RELATED DISCLOSURE FORMS PER FLORIDA STATUTES SECTION 112.3145; AMENDING LEE COUNTY RESOLUTION 01-02-54, 02-04-25, 02-10-33, AND 03-01-07 BY ADDING TWO (2) ADDITIONAL BOARDS/COMMITTEES AND THEIR MEMBERS FOR LOCAL OPTION DESIGNATION; RELATING TO THE LOCAL RULE REVIEW COMMITTEE - MANATEE SPEED ZONES AND THE BLASTING AD HOC ADVISORY COMMITTEE AND LOBBYING ORDINANCE BLUE RIBBON COMMITTEE; PROVIDING FOR TRANSMITTAL OF THE AMENDING DESIGNATION RESOLUTION TO THE STATE COMMISSION ON ETHICS; PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, Florida Statutes Section 112.3145 authorizes and allows Lee County by "Local Option" designation to require or to continue to require any appointed member of a Lee County Advisory Board/Committee to be subject to the requirements of said section, to include filing Financial Interest and related disclosure forms, even though they may be exempt from said law by Board/Committee function; and

**WHEREAS**, Lee County on February 27, 2001 adopted Lee County Resolution No. 01-02-54; on April 16, 2002 adopted Lee County Resolution No. 02-04-25; on October 29, 2002 adopted Lee County Resolution 02-10-33; and on January 7, 2003 adopted Lee County Resolution No. 03-01-07, noting which Lee County Advisory Board/Committee members would be subject to the Florida Statutes Section 112.3145 filing and disclosure requirements as Reporting Individuals (Form 1 and related disclosure forms, gifts); and

MO #1  
6-01-04

-1-

**COPY**

**WHEREAS**, said Resolutions need to be updated and amended to add other Advisory Boards/Committees and their members, to include the Local Rule Review Committee - Manatee Speed Zones and the Blasting Ad Hoc Advisory Committee and to delete the disbanded Lobbying Ordinance Blue Ribbon Committee.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA THAT:**

SECTION 1. Lee County hereby exercises its Local Option as set forth in Florida Statutes at Section 112.3145(2)(g).

SECTION 2. The Lee County appointed Board/Committee designation as set forth in Section 3 of Lee County Resolution 01-02-54, 02-04-25, 02-10-33, and 03-01-07 is hereby further amended to add the following Boards and their respective members to such designation with the additions being duly noted by underlining. The deletion of the Lobbying Ordinance Blue Ribbon Committee is noted by strike through. Said Advisory Boards and their members, as amended, shall be subject to Florida Statutes Section 112.3145 and be required to file a statement of Financial Interests (Form 1) and related forms and shall by this Resolution be designated and considered "Local Officers" for the purposes of said Florida Statutes Section 112.3145 and related statutory provisions as Reporting Individuals for Gifts per Florida Statutes Section 112.3148.

SECTION 3. Section 3 of Lee County Resolution 01-02-54, 02-04-25, 02-10-33, and 03-01-07 is amended to read as follows:

Local Planning Agency  
Construction Board of Adjustment and Appeals  
Construction Licensing Board  
Mechanical Board of Adjustment and Appeals  
Plumbing Board of Adjustment and Appeals  
Nuisance Abatement Board

Tourist Development Council  
Coastal Advisory Council  
Conservation Land Acquisition and Stewardship Committee  
Disaster Advisory Council  
Local Neighborhood District Committee  
Smart Growth Advisory Committee  
Historic Preservation Board  
Equal Opportunity Review Board  
Affordable Housing Committee  
Community Sector Planning Committees  
Community Action Agency/Neighborhood District Committee  
~~Lobbying Ordinance Blue Ribbon Committee~~  
Industrial Development Authority  
Housing Finance Authority  
Animal Care Trust Fund Oversight Committee  
Suncoast Estates Local Neighborhood District Committee  
Palmona Park Local Neighborhood District Committee  
Local Rule Review Committee - Manatee Speed Zones  
Blasting Ad Hoc Advisory Committee

SECTION 4. Lee County Resolutions 01-02-54, 02-04-25, 02-10-33, and 03-01-07 are duly amended by the adoption hereof and shall remain in full force and effect. This Resolution as an Amending Resolution contains a restatement compilation of all such designated Boards and their members previously designated by Resolutions noted, with the addition thereto as underlined herein and the deletion as further noted above.

SECTION 5. This Resolution shall be provided to the State of Florida Commission on Ethics as Lee County's amended designation of appointed board/committee members subject to Florida Statutes Section 112.3145 disclosure of interests requirement per the authority of Florida Statutes Section 112.3145(2)(g).

SECTION 6. This Resolution shall be come effective upon its adoption b a majority vote of the Board of County Commissioners sitting at a regularly scheduled Board meeting.

The foregoing Resolution was adopted by the Lee County Board of County Commissioners upon a motion by Commissioner Judah and seconded by Commissioner Coy, and upon being put to a vote, the result was as follows:

Robert P. Janes	Aye
Douglas R. St. Cerny	Aye
Ray Judah	Aye
Andrew W. Coy	Aye
John E. Albion	Aye

DULY PASSED AND ADOPTED this 1st day of June, 2004.

ATTEST:  
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: Michael G. Cooper  
Deputy Clerk

By: [Signature]  
Chairman



APPROVED AS TO FORM:

By: [Signature]  
County Attorney

## Appendix C. Kenneth Haddad's Letter to Lee County LRRC Members

### FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION



RODNEY BARRETO  
Miami

SANDRA T. KAUF  
Palm Beach

ELA THERRY HUFFMAN  
Enterprise

DAVID K. MEEHAN  
St. Petersburg

JOHN D. ROOD  
Jacksonville

RICHARD A. CORBETT  
Tampa

BRIAN S. YABLONSK  
Tallahassee

KENNETH D. HADDAK, Executive Director  
VICTOR D. HELLER, Assistant Executive Director

OFFICE OF THE EXECUTIVE DIRECTOR  
(850)487-8790 TDD (850)488-9547

June 4, 2004

#### Committee Members Lee County Local Rule Review Committee

Thank you for agreeing to serve on the Local Rule Review Committee (LRRC) that was formed by Lee County at the request of the Florida Fish and Wildlife Conservation Committee (FWC). Pursuant to §370.12(2)(f), Florida Statutes, the FWC is required to initiate the LRRC process whenever we consider new or amended rules that would regulate the speed and operation of motorboats for the purpose of manatee protection. On April 9, 2004, we notified Lee County by letter of our intent to consider rulemaking. A copy of this letter is attached.

The LRRC process requires that FWC staff supply a rule proposal and supporting data used to develop the rule. Some of the information that we are providing is in printed form, however, most of it is electronic data that can be displayed, queried, and analyzed using a geographic information system. A summary of the data that we are providing has been included. A single CD-ROM containing the electronic data has been given to the County since the County is responsible for providing logistical and administrative support to the LRRC. Copies of the CD-ROM can be provided to any LRRC member who would like his own copy.

The rule proposal is the rule that currently appears in the Florida Administrative Code as Rule 68C-22.005. The FWC adopted this rule in 1999 and amended it in 2001. We ask that the LRRC use this rule proposal as the starting point for its discussions, and we welcome any input the LRRC wishes to provide. We would like to receive recommendations from the LRRC regarding whether the existing zones should stay the same or if changes should be made to either increase or decrease protection in specific areas. We would also like input on whether the rule should be amended to include areas that are currently not addressed in the rule or are addressed by other levels of government.

There are several issues related to the FWC rule that the LRRC may want to consider during its deliberations. As was referenced in the letter we sent to the County on April 9, a Lee County Court ruling has called into question the validity of some of the existing zones. As a result, in April 2004 the U.S. Fish and Wildlife Service (USFWS) adopted emergency federal rules that re-establish the affected zones on a temporary (120-day) basis. The USFWS has indicated that it will propose making the emergency designations permanent, with a final decision likely being made in July or August 2004. The USFWS has further indicated that it will consider not making

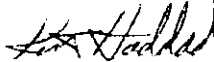
Lee County Local Rule Review Committee  
June 4, 2004  
Page 2

the emergency rules permanent if adequate protection can be provided at either the state or local level. Independent of the Lee County Court ruling and the USFWS emergency zones, the USFWS is currently not issuing favorable biological opinions for the construction of docks in the Bokeelia area at the northern end of Pine Island because of its determination that there is not adequate manatee protection in the area.

Whether FWC staff recommends re-promulgating the existing zones or proposing some adjustments (to decrease or increase protection in specific areas), it is our goal to ensure that protection is provided where it is needed, while at the same time ensuring that unnecessary restrictions are not imposed. Regardless of the specific zone configuration that is pursued, we believe that it is in the best interest of all parties to have manatee protection provided at the state or local level. Because local law enforcement agencies do not have the authority to enforce federal zones, the establishment of FWC or local zones has an added benefit of allowing local law enforcement agencies to assist with enforcement, thereby helping to ensure that the zones have their intended effect. The use of FWC or local zones has another benefit in that enforcement of the zones can be handled outside of the federal system, which allows officers the discretion to issue warnings when it is appropriate to do so.

In closing, I want to again thank you for agreeing to serve on the Lee County L.R.R.C. As you no doubt already know, manatee protection is a very complicated and controversial issue with very few clear-cut answers. The FWC greatly appreciates the work that you will perform. I can assure you that FWC staff and the Commissioners will give very careful and deliberate consideration to the recommendations that the L.R.R.C. provides. We look forward to working with you.

Sincerely,



Kenneth D. Haddad  
Executive Director

Attachment

**Appendix D. List of Local Rule Review Committee Members**

**MANATEE RULES REVIEW COMMITTEE**  
**Steve Boutelle, Justin McBride, Lee County Staff Liaison**

ENVIRONMENTALISTS

BOATERS

Environmentalist Appointed by: Commissioner Coy	Boater Appointed by: Commissioner Coy
Steve Maxwell (teacher) - Elected Chairman	John Kinney Vice President, Standing Watch
Environmentalist Appointed by: Commissioner Judah	Boater Appointed by: Commissioner Judah
Laura Combs, Southwest Regional Coordinator, Save the Manatee Club	Hans Wilson Elected Vice-Chair Hans Wilson & Associates Inc.
Environmentalist Appointed by: Commissioner Janes	Boater Appointed by: Commissioner Janes
Matt Bixler Conservancy of South West Florida	Dr. Robert E. (Ernie) Hendry II Past-Chairman, Coastal Conservation Association of Florida
Environmentalist Appointed by: Commissioner St. Cerny	Boater Appointed by: Commissioner St. Cerny
Susan Scott, Elected Secretary Planning Technician for City of Cape Coral	William Doug Wilkinson Member of Save Our Waterways
Environmentalist Appointed by: Commissioner Albion	Boater Appointed by: Commissioner Albion
Scott Trebatoski, Director Lee County Animal Services	Alex S. Lambros

**Appendix E. List of Scheduled LRRC Meetings**

June 17, 2004	2pm-5pm
June 29, 2004	3pm-6pm
July 9, 2004	6pm-9pm
July 16, 2004	1pm-5pm
July 23, 2004	1pm-5pm
July 30, 2004	6pm-9pm
August 6, 2004	3pm-5pm



**Appendix F. Public Notices filed for each meeting.**

**NOTICE OF MEETINGS  
The Lee County Manatee Speed Zone  
Local Rules Review Committee**

will be meeting on Thursday, June 17, 2004 at 2:00 p.m. and  
Tuesday, June 29, 2004 at 3:00 p.m. in the  
Lee County Community Development / Public Works Building  
1500 Monroe Street, First Floor, Conference Room 1B, Ft. Myers, Florida  
Interested members of the general public are invited to attend all meetings. For  
additional information, please contact the Lee County Division of Natural  
Resources, Phone # 239.479.8109

Please include the Lee County logo and a border around the notice, and publish  
in the local section ASAP. [REDACTED]

Send invoice and affidavits of publication to:  
Denise L. Bayliss,  
Administrative Assistant  
Lee County Division of Natural Resources  
1500 Monroe St., Third Floor  
Fort Myers, FL 33901  
[REDACTED]

*J. McBride*

**PUBLIC NOTICE**

The Lee County Manatee Speed Zone Local Rules Review Committee announces its next public meeting to which all interested persons are invited to attend.

**DATE AND TIME:** Tuesday, June 29, 2004  
Beginning at 3:00 p.m.

**PLACE:** Community Development/Public Works Building  
1500 Monroe Street, Fort Myers, Florida 33901  
Conference Room 1B

**PROPOSED AGENDA**

- (1) Call to Order (Chairman)
- (2) Review of Public Notice (County Attorney's Office)
- (3) Public Comment
- (4) Estero Bay Discussion - Areas 1-10 - "Estero Bay" shall include all waters of Estero Bay from Bowditch Point southward to the Lee County, Collier County line. To include, but not be limited to the areas of Hurricane Bay, Hell Peckney Bay, Estero River, Spring Creek, Intrepid Waters, Ten Mile Canal, Hendry Creek, Mullock Creek, and the Imperial River
- (5) Caloosahatchee River Discussion - "Caloosahatchee River" shall include all waters of the Caloosahatchee River between the Lee County, Hendry County line down river to Channel Marker 99. This shall include all tributaries
- (6) Closing - Adjournment
- (7) **Next Scheduled Meeting - Friday, July 9, 2004, 6:00 p.m.**

**THE PUBLIC IS INVITED TO ATTEND AND ENCOURAGED TO PARTICIPATE DURING THE PUBLIC COMMENT PORTION OF THE MEETING.**

S:\GIS\DMO\NOTICE\AD FOR MANATEE RULES COMM M/TG 29 JUNE 2004

If you have a disability that will require special assistance or accommodations for your attendance at the public hearing, please call the Lee County Division of Public Resources at 335-2269 for information.

Although these Committee meetings are recorded, affected persons are advised that it may be necessary for them to make their own arrangements if a verbatim record of the meeting is needed, including testimony and evidence upon which any appeal is to be based.

The times designated are approximate. This proposed Agenda is not all-inclusive and may be revised. The Committee may discuss other related issues in lieu of or in addition to the above matters at the suggestion or request of the Chairman or Committee members prior to or during the meeting.

PLEASE GOVERN YOURSELF ACCORDINGLY.

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: \_\_\_\_\_  
Charlie Green, Ex-Officio Clerk  
to the Board of County Commissioners  
of Lee County, Florida

APPROVED AS TO FORM:

By:  \_\_\_\_\_  
Office of the County Attorney

Ad Size: 2 x 5

Publishing Dates: 6/24/04

**PUBLIC NOTICE**

The Lee County Manatee Speed Zone Local Rules Review Committee announces its next public meeting to which all interested persons are invited to attend.

**DATE AND TIME:** Friday, July 9, 2004  
Beginning at 6:00 p.m. to 9:00 p.m.

**PLACE:** Community Development/Public Works Building  
1500 Monroe Street, Fort Myers, Florida 33901  
Conference Room 1B

**PROPOSED AGENDA**

- (1) Call to Order (Chairman)
- (2) Review of Public Notice (County Attorney's Office)
- (3) Public Comment
- (4) Brief Update by County Staff
- (5) Caloosahatchee River Discussion - "Caloosahatchee River" shall include all waters of the Caloosahatchee River between the Lee County, Hendry County line down river to Channel Marker 99. This shall include all tributaries
- (6) San Carlos Bay Discussion
- (7) Closing - Adjournment
- (8) **Next Scheduled Meeting - Friday, July 16, 2004, 2:00 p.m.**

**THE PUBLIC IS INVITED TO ATTEND AND ENCOURAGED TO PARTICIPATE DURING THE PUBLIC COMMENT PORTION OF THE MEETING.**

Public Notice - Caloosahatchee River Discussion - July 9, 2004

If you have a disability that will require special assistance or accommodations for your attendance at the public hearing, please call the Lee County Division of Public Resources at 335-2269 for information.

Although these Committee meetings are recorded, affected persons are advised that it may be necessary for them to make their own arrangements if a verbatim record of the meeting is needed, including testimony and evidence upon which any appeal is to be based.

The times designated are approximate. This proposed Agenda is not all-inclusive and may be revised. The Committee may discuss other related issues in lieu of or in addition to the above matters at the suggestion or request of the Chairman or Committee members prior to or during the meeting.

PLEASE GOVERN YOURSELF ACCORDINGLY.

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: \_\_\_\_\_  
Charlie Green, Ex-Officio Clerk  
to the Board of County Commissioners  
of Lee County, Florida

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Office of the County Attorney

Ad Size: 2 x 5

Publishing Dates: 7/05/04

2004/07/05 10:00 AM

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**PUBLIC NOTICE**

The Lee County Manatee Speed Zone Local Rules Review Committee announces its next public meeting to which all interested persons are invited to attend.

**DATE AND TIME:** Friday, July 16, 2004  
Beginning at 1:00 p.m. to 5:00 p.m.

**PLACE:** Community Development/Public Works Building  
1500 Monroe Street, Fort Myers, Florida 33901  
Conference Room 1B

**PROPOSED AGENDA**

- (1) Call to Order (Chairman)
- (2) Review of Public Notice (County Attorney's Office)
- (3) Continuation of Caloosahatchee River Discussion -  
"Caloosahatchee River" shall include all waters of the Caloosahatchee River between the Lee County, Hendry County line down river to Channel Marker 99. This shall include all tributaries
- (4) Public Comment
- (5) San Carlos Bay Discussion
- (6) Closing - Adjournment
- (7) **Next Scheduled Meeting - Friday, July 30, 2004, 6:00 p.m.**

**THE PUBLIC IS INVITED TO ATTEND AND ENCOURAGED TO PARTICIPATE DURING THE PUBLIC COMMENT PORTION OF THE MEETING.**

Lee County Manatee Speed Zone Local Rules Review Committee  
1500 Monroe Street, Fort Myers, Florida 33901  
717

If you have a disability that will require special assistance or accommodations for your attendance at the public hearing, please call the Lee County Division of Public Resources at 335-2269 for information.

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PLEASE GOVERN YOURSELF ACCORDINGLY.

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: \_\_\_\_\_  
Charlie Green, Ex-Officio Clerk  
to the Board of County Commissioners  
of Lee County, Florida

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Office of the County Attorney

Ad Size: 2 x 5

Publishing Dates: 7/14/04

Lee County, Florida  
Office of the County Attorney  
72

**PUBLIC NOTICE**

The Lee County (Manatee Speed Zone) Local Rules Review Committee announces its next public meeting to which all interested persons are invited to attend.

**DATE AND TIME:** Friday, July 23, 2004  
Beginning at 1:00 p.m. to 5:00 p.m.

**PLACE:** Community Development/Public Works Building  
1500 Monroe Street, Fort Myers, Florida 33901  
Hearing Examiners Room - 2<sup>nd</sup> Floor

**PROPOSED AGENDA**

- (1) Call to Order (Chairman)
- (2) Review of Public Notice (County Attorney's Office)
- (3) Approve minutes of prior meetings June 29, July 9, and July 16, 2004.
- (4) Continuation of San Carlos Bay Discussion
- (5) Public Comment
- (6) Matacha Pass Discussion
- (7) Pine Island Sound Discussion
- (8) Closing - Adjournment
- (9) **Next Scheduled Meeting - Friday, July 30, 2004, 6:00 p.m.**

**THE PUBLIC IS INVITED TO ATTEND AND ENCOURAGED TO PARTICIPATE DURING THE PUBLIC COMMENT PORTION OF THE MEETING.**

Lee County Clerk of Court  
1500 Monroe Street, Fort Myers, Florida 33901



If you have a disability that will require special assistance or accommodations for your attendance at the public hearing, please call the Lee County Division of Public Resources at 335-2269 for information.

Although these Committee meetings are recorded, affected persons are advised that it may be necessary for them to make their own arrangements if a verbatim record of the meeting is needed, including testimony and evidence upon which any appeal is to be based.

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PLEASE GOVERN YOURSELF ACCORDINGLY.

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: \_\_\_\_\_  
Charlie Green, Ex-Officio Clerk  
to the Board of County Commissioners  
of Lee County, Florida

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Office of the County Attorney

Ad Size: 2 x 5

Publishing Dates: 7/21/04

2004-07-21 10:00 AM

27

**PUBLIC NOTICE**

The Lee County (Manatee Speed Zone) Local Rules Review Committee announces its next public meeting to which all interested persons are invited to attend.

**DATE AND TIME:** Friday, July 30, 2004  
Beginning at 6:00 p.m. to 9:00 p.m.

**PLACE:** Community Development/Public Works Building  
1500 Monroe Street, Fort Myers, Florida 33901  
Conference Room 1B

**PROPOSED AGENDA**

- (1) Call to Order (Chairman)
- (2) Review of Public Notice (County Attorney's Office)
- (3) Approve minutes and working notes of prior meetings June 29, July 9, July 16, and July 23, 2004.
- (4) Public Comment
- (5) Review of maps and committee decisions for each area previously considered and discuss any remaining issues.
- (6) Set Final Meeting
- (7) Closing - Adjournment

**THE PUBLIC IS INVITED TO ATTEND AND ENCOURAGED TO PARTICIPATE DURING THE PUBLIC COMMENT PORTION OF THE MEETING.**

The Lee County Clerk's Office  
1500 Monroe Street, Fort Myers, Florida 33901  
Tel: 941.336.2200

If you have a disability that will require special assistance or accommodations for your attendance at the public meeting, please call the Lee County Division of Public Resources at 335-2269 for information.

Although these Committee meetings are recorded, affected persons are advised that it may be necessary for them to make their own arrangements if a verbatim record of the meeting is needed, including testimony and evidence upon which any appeal is to be based.

The times designated are approximate. This proposed Agenda is not all-inclusive and may be revised. The Committee may discuss other related issues in lieu of or in addition to the above matters at the suggestion or request of the Chairman or Committee members prior to or during the meeting.

PLEASE GOVERN YOURSELF ACCORDINGLY.

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: \_\_\_\_\_  
Charlie Green, Ex-Officio Clerk  
to the Board of County Commissioners  
of Lee County, Florida

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Office of the County Attorney

Ad Size: 2 x 5

Publishing Dates: 7/29/04

Lee County, Florida  
Department of Public Resources

27

**PUBLIC NOTICE**

The Lee County (Manatee Speed Zone) Local Rules Review Committee announces its next public meeting to which all interested persons are invited to attend.

**DATE AND TIME:** Friday, August 6, 2004  
Beginning at 3:00 p.m. to 5:00 p.m.

**PLACE:** Community Development/Public Works Building  
1500 Monroe Street, Fort Myers, Florida 33901  
Hearing Examiner's Room, 2<sup>nd</sup> Floor

**PROPOSED AGENDA**

- (1) Call to Order (Chairman)
- (2) Review of Public Notice (County Attorney's Office)
- (3) Approve minutes and working notes of July 30, 2004
- (4) Public Input
- (5) Review Draft Report
- (6) Closing - Adjournment

**THE PUBLIC IS INVITED TO ATTEND AND ENCOURAGED TO PARTICIPATE DURING THE PUBLIC COMMENT PORTION OF THE MEETING.**

Lee County  
Manatee Speed Zone

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If you have a disability that will require special assistance or accommodations for your attendance at the public meeting, please call the Lee County Division of Public Resources at 335-2269 for information.

Although these Committee meetings are recorded, affected persons are advised that it may be necessary for them to make their own arrangements if a verbatim record of the meeting is needed, including testimony and evidence upon which any appeal is to be based.

The times designated are approximate. This proposed Agenda is not all-inclusive and may be revised. The Committee may discuss other related issues in lieu of or in addition to the above matters at the suggestion or request of the Chairman or Committee members prior to or during the meeting.

PLEASE GOVERN YOURSELF ACCORDINGLY.

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: \_\_\_\_\_  
Charlie Green, Ex-Officio Clerk  
to the Board of County Commissioners  
of Lee County, Florida

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Office of the County Attorney

Ad Size: 2 x 5

Publishing Dates: 8/5/04

2004-08-05 10:00 AM  
Lee County Board of Commissioners

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G. Individual Committee Member Comments

**COMMENTS TO AREA RECOMMENDATIONS**  
**Ernie Hendry, II**

June 29, 2004, pages 3-4, Hendry Creek, majority opinion:

Recommendation to make 25 MPH year-round based on several factors derived from the provided data. While the aerial data shows a small number of manatees using this area, the limited volume of boating traffic does not justify a seasonal slow speed. The FWCC in a report on the adequacy of speed zones in Lee County states that "Another factor in the decision not to propose zones in the Creek was that the Creek is a dead end. Manatees, therefore, do not use the area as a travel corridor between other areas." The lack of any warm water attractants in this area along with the geography of the Creek further reduce the attraction of manatees to this area. We recognize the need for some type of manatee protection for Hendry Creek, and based on the provided data, we feel that a 25 MPH year-round speed zone would provide sound manatee protection while affording ample boating opportunities.

June 29, 2004, pages 4-5, Hell Peckney Bay, majority opinion:

The committee recognizes the need for the existing state zone in the Matanzas Pass Channel area- telemetry, aerial observations and mortality numbers indicate that there are a high number of manatees and boaters in the channel area. However, due to the extremely shallow nature of the waters north of the channel with numerous oyster bars, and the lack of boating activities in this area, we feel that the area north of Matanzas Channel should be left unregulated. The few boats that travel out of the channel are primarily shallow draft, john- boat type that are navigated by boaters possessing extensive local knowledge of the area.

June 29, 2004, page 5, Hurricane Bay, minority opinion:

We feel that the FWCC did not adequately assess the boating activities in this area, and that this area should be regulated as a 25 MPH year-round. We realize the need for some manatee protection based on telemetry, aerial observations, migrational patterns, and the human development in this area, but we feel that the seasonal closure unduly interferes with the rights of boaters. This area has the same geographical consistencies with the other areas of Estero Bay (shallow water, very little boating mortality) and should be regulated with a less stringent type of manatee zone than the current configuration.

June 29, 2004, pages 5-6, Estero Bay Body, minority opinion:

We agree with the need for the existing regulations in the Matanzas Pass Channel area. The majority of manatee numbers and boating activities are concentrated in this area. However, we feel that the FWCC has unduly interfered with the rights of boaters in

this area NE of Matanzas Pass Channel, and that FWCC has exceeded its rulemaking authority by not accurately assessing the boating activities in this area. The recent Schoonover Ruling discusses this in detail. The shallow nature of the Bay, the lack of boating activities outside of the channel, and most importantly, the lack of boating mortality in this area (0 since 1974) demonstrate that the current regulations are too harsh. In fact, several boaters who addressed the Lee County Manatee Rule Committee spoke about the hardships that the current rules have caused. While recognizing that the aerial observations and telemetry show that manatees use this part of the Bay, the past history of no boating related mortality indicate that a 25 MPH year-round manatee zone would provide sound manatee protection and provide relief for the shallow-draft boaters with local knowledge of Estero Bay.

July 9, 2004, pages 4-5, 99-93, majority opinion:

Recommendation to create a 25 MPH corridor between the spoil islands (Big Shell, Little Shell) south to a newly created ¼ mile shoreline buffer to the north between Markers 99-93, and to regulate the Intracoastal Channel at slow speed between 8:00 AM-6:00 PM from Markers 99-93 was passed after considerable discussion from the public, local and state officials, and committee members. The dominant theme was to provide a means to alleviate the overcrowding of boats in the Intracoastal Channel while still providing adequate manatee protection in the area. Utilizing the provided data regarding manatee numbers and boating traffic patterns, the committee passed this recommendation by an 8-1 margin.

July 16, 2004, pages 1-4, 93-West US 41 Bridges, majority opinion:

Recommend that we keep the current state's current regulation of a ¼ slow speed buffer along the shorelines. These existing zones have been established for some time, they have good boater compliance, and these zones are effective for manatee protection (according to the FWC comments on the proposed federal manatee protection zones "the best available data indicates that manatees travel relatively close to the shoreline when transiting the Caloosahatchee River"). Additionally, the majority of the committee does not support the current federal zones in this part of the river. The feeling is that they are too restrictive and that they are not based on adequate science. An FWC report on the adequacy of speed zones in Lee County in 2003 concluded "that the existing state speed zones within the Caloosahatchee River are adequate and modification of the rules are not required", and this was before the implementation of the new federal zones. The report further states that "the new federal zones would create sign posting and law enforcement concerns."

There was opposition to the federal zones around the Cape Coral Bridge based on the lack of science or data to support it. Nor does the FWC support the existing zone. In their comments on the proposed federal manatee protection zones the FWC states that "we do not feel that the service adequately explained their reasoning for creating slow speed around this bridge. The river is not significantly restricted at this point. We have found no evidence to indicate that manatees are at an increased risk of harmful collisions with motorboats at this bridge."

There was also opposition to the federal zones at Redfish Point by the majority of the committee, along with most of the speakers offering public input at the meeting. The lack of boating compliance as a result of the public not buying into the need for a zone in this area was one of the factors. Most spoke of the hardships and confusion caused by this new federal zone, and a few mentioned an increased human danger element this zone has created. While telemetry numbers may suggest that manatees cross the river in this area, there seems to be little physical data (sightings, mortality) to corroborate the need for a slow speed zone in this area.

The issue of a speed in the area between the buffers was discussed. Many felt, along with Capt. Denis Grealish of the Lee County FWC, that 25 MPH is too slow in this area for safety reasons. The physical dynamics of some boats will not allow them to plane at this speed which forces the boat to run in a bow up position, which in turn, significantly reduces ones' vision. Secondly, the group felt that by raising the speed limit to 30 or 35 MPH, we would improve boater compliance with the speed zone and reduce the number "cigarette type" of boats from racing up and down the river. A Mote study on boater compliance supports this notion by saying that nearly all boats using this waterway are traveling in a 25-35MPH range. Unfortunately, the group could not reach a consensus on a particular speed limit, and by default, the recommendation would be unregulated between the ¼ mile buffers.

July 16, 2004, page 5, west side US 41 Bridge-east side Edison Bridge, majority opinion:

The recommendation was accept the current state regulations in this area and oppose the new federal zones. The federal zone has created a slow speed on the north side of the river in this area which has unduly interfered with the rights of boaters and waterskiing activities in this area. The state zone leaves a part of the river unregulated so that boaters can utilize this protected area for their waterskiing and tubing activities as they have done in the past.

July 23, 2004, pages 3, east side of San Carlos Bay, majority opinion:

The request for the state to ask the federal government to move their manatee zone to coincide with the state zone on the east side of San Carlos Bay was done for several reasons. The first is to eliminate the duplication of signs in this area by having both a state and federal zone. In addition to the extra set of signs constituting an eyesore, they are extremely dangerous to navigational travel in low light conditions. Secondly, the location of the federal zones forces the smaller boats in to the channel with the larger boats in this area. This is extremely dangerous, especially on busy weekend with heavy boat traffic, because all boats are forced into one narrow channel similar to the Miserable Mile. The current state regulations allow for some travel outside of the channel to the east, while still providing adequate manatee and sea grass protection.

July 23, 2004, pages 3-5, Matlacha Pass, majority opinion:

The recommendation to establish a 25 MPH shoreline-shoreline zone in Matlacha Pass to ¼ mile south of the Matlacha Pass Bridge was done after careful consideration of



the voluminous data the committee was provided. It is clear that the canal system of Matlacha Isles is an important wintering site for manatees because of the warm water discharge in this area. We also noted the importance of the sea grasses in this area as a food source for manatees. However, when this data is combined with the boating traffic patterns in Matlacha Pass and what very little boat related manatee mortality (one between 1974-2000) has occurred in this area, we felt that the current state regulations unduly interfere with the rights of boaters and that the state exceeded it's rulemaking authority in this area by not accurately assessing the boating traffic patterns in this area. This also happens to be one of the areas affected by Judge Schoonovers's decision. Matlacha Pass is primarily a fishing destination with very little boating traffic. It is not a travel corridor and does not have the heavy boat traffic that the Caloosahatchee River and other travel corridor areas have. There is also very little development in this area so the future threat of increased boat traffic is minimal. The majority of the committee felt that the current configuration of the area with a 25 MPH in the channel is actually more harmful to manatees because it concentrates what boats you have in this area with known manatee travel corridors.

The committee unanimously passed a slow speed zone in the area between ¼ mile north and south of the Matlacha Pass Bridge. There was no dispute in the need for aggressive manatee regulation in this area.

The recommendation from the committee was to create a 25 MPH shoreline-shoreline manatee zone from ¼ mile north of the Matlacha Pass Bridge to Marker 76. The reasoning was the same here as for the area south of the Matlacha Pass Bridge.

There was some discussion regarding adding additional regulations north of Marker 76 in the Bokelia area, however, the majority of the group felt that based on the data provided, there was no reason to add any additional regulations. Furthermore, the FWC in their discussion of adequacy of speed zones in Lee County stated that "while the data suggest there is a small area of relatively higher manatee use here, staff does not conclude that additional speed zones are required. We do not believe boat volume is particularly high in this area nor does it appear that the traffic patterns direct many boats over the higher use area. For these reasons staff, does not recommend additional state rules in this area at this time."

July 23, 2004, page 6, Mail Boat Channel in Pine Island Sound, split vote:

Judge Schoonover ruled that the current zone configuration did not take into account the boaters rights in this area. While we agree with the need for some type of manatee protection in the Galt Island area, we feel that the area currently regulated by the state is excessive and arbitrarily prevents boaters from running on-plane in certain areas. The Mail Boat Channel is one of those areas, and a corridor here would allow small boats to traverse through this area without being forced in to the narrow navigational channel to the west with the larger boats, while still providing adequate manatee protection.

## Comments from Scott Trebatowski

### Minority Opinion on Local Ordinance Review

**Issue:**

**Recommend the center portion of Caloosahatchee River remains unregulated by State & recommend the federal 25 mph speed limit be lifted.**

*Dissenting Opinion:*

Overlapping jurisdiction rules that differ are a problem. They create confusion, extra signage, and too many layers. I believe the State, Local and Federal rules need to be tightly coordinated so one uniform rule applies everyone can agree to. In this case I believe the Federal 25 mph speed zone is appropriate and the State should adopt it for uniformity.

### Minority Opinion on Local Ordinance Review

**Issue:**

**Recommend removing slow speed zone from the mouth of southern half of Hendry Creek and make it along with the northern half a year round 25 mph speed zone.**

*Dissenting Opinion:*

It is in everyone's best interest to make zones simple, easy to enforce, and understandable to all; therefore I support having one regulation in Hendry Creek instead of a northern and southern zone rule. The rule however that currently exists in the southern portion - a slow speed zone - should be expanded to the north instead of the opposite.

### Minority Opinion on Local Ordinance Review

**Issue:**

**Recommend the state ask the federal government to eliminate their speed zone just west of the state zone (east side of San Carlos Bay) and adopt the current state rules.**

*Dissenting Opinion:*

Overlapping jurisdiction rules that differ are a problem. They create confusion, extra signage, and too many layers. I believe the State, Local and Federal rules need to be tightly coordinated so one uniform rule applies everyone can agree to. In this case I believe the Federal zone should be adopted as it enhances protection in the area.



From the Desk of Hans Wilson

July 30, 2004

To: Local Rule Review Committee  
From: Hans Wilson  
RE: Position Paper - Minority/Majority

Generally I have been in the majority vote for the duration of this committee's activities. There have been a number of split votes that went to denial in which I voted on the for side. So to simplify, I will provide a general position regarding our recommendations on the proposed state speed zones. I have struggled on many of these votes, primarily because there is not real clear, concise method or formula to arrive at whether a site needs manatee protection measures. There are factual details that are missing, out of date, or incomplete. The following is information that appears to be critical to our assessments.

Known with a high level of certainty:

Boating demographics for a specific point in time  
Bathymetry for Lee County  
Manatee congregation locations that are predictable  
Synoptic survey counts  
Distribution surveys for specific locations  
Manatee carcass recovery locations

Know with a reasonable level of certainty

Boating travel patterns and utilization of waterways  
Boater Compliance  
How manatees died  
Locations of Seagrasses

Known with low level of certainty

Manatee population and demographics  
Manatee death point of origin  
Manatee travel patterns

From this pattern of information I believe that the Local Rules Review Committee (LRRC) has done an admirable job of evaluating the proposed rules. To support that this process has been the opposite of "arbitrary and capricious" I would tender the following observations.

In areas that have relatively low boating populations and low use by manatees the committee has elected not to recommend speed zones (Hell Peckney bay, Estero Bay tributaries, Pine Island Sound).

In areas that could be classified as medium use by boats and medium use by manatees the committee has voted for speed limitations at 25 mph. (Hendry Creek, Matlacha Pass).

Areas that could be classified as high use by boats but medium use by manatees have typically been recommended for slow speed seasonal with 25 mph channel exemptions (Estero Bay, Hurricane Bay, portions of Pine Island Sound, upper reaches of Caloosahatchee River west of the power plant).

And finally, areas that have high boat use and/or high manatee use (inhabited on a regular or continuous basis) have been recommended for slow or idle speed zones (Orange River, Caloosahatchee River around the power plant, Caloosahatchee 1/4 mile buffer zone, Mullock Creek/10 Mile Canal complex).

The only anomaly or inconsistency regarding this process, in which I was on the "for" side of a tie vote that went to denial, was the Caloosahatchee River. It is my opinion that the area within the Caloosahatchee River that is not regulated by the 1/4 mile slow speed buffer should be limited to 35 mph, with the exemptions afforded to businesses (boat dealers) that need to go faster. This would tend to make the actions of the committee consistent in thought and actions given the information at hand.

Regarding the 35 mph versus 25 mph, there is on record from committee members that there are no studies that support slower boat speeds result in reduced manatee deaths. We have received testimony from law enforcement, both professional and personal, that 25 mph is too slow for many boats, and in fact, represents a potential safety hazard for some vessels. We also have on record committee members that believe 25 mph is too fast for certain locations. It is my belief that 35 mph should be the maximum speed for the Caloosahatchee River, and should be re-considered for other areas that we currently have recommended a 25 mph limitation. This is for enforcement purposes, and in some cases for large areas like Estero Bay where operation outside of the channel is limited to slow speed.

It is also my opinion that operating a vessel between 25 mph and 35 mph gives the operator more time to avoid a manatee in the path of a vessel than if they were traveling faster. This also applies to vessels that are traveling in shallow waters. The distance a vessels runs aground into a seagrass meadow is less if traveling at a slower speed. This lessens the damage to the seagrasses. Similarly operating at planing speeds over seagrasses creates less damage that prop dredging through them, although a conscientious boater should either stop their motor and manually remove their vessel from the seagrasses, or at least trim their motor up to avoid this damage.

Until we can develop a better understanding of manatee travel patterns (for example where exactly they cross the Caloosahatchee River on a regular or continuous basis) and also understand the exact status of the manatee population, we are limited to a common sense approach to manatee protection that has been exercised in this process. Optimally a method or calculation of boat density combined with manatee density contrasted with waterway conditions (shallow seagrass versus deep water) would be preferred as an assessment tool. However, it appears that we are not equipped at this point to exercise this type of methodology. So reverting to using the best data available, applying good common sense, and utilizing local knowledge, I believe that we have completed the task in a specific and very un-capricious manner, consistent with the provisions of Chapter 68C-22.005 of the Florida Manatee Sanctuary Act.

*Howe Wilson*

**Matt Bixler**

The process of forming local rule review committees is one that has some benefits to the issue of manatee protection zones, the most important one being increasing local input into the process. I do hope, however, that the creation of an LRRC does not take away from the remainder of comments that the Florida Fish and Wildlife Commission receives from members of the public. It is important that all stakeholders are listened to in the rule making process.

I believe the Committee made some good recommendations through this process that will both protect the endangered manatee population and allow for safe boating in the same area. I do however believe that the Committee missed some opportunities to adequately protect the endangered manatees and simplify the boating regulations throughout Lee County. A common point throughout the meetings was that signage needs to be reduced and that boat regulations should be clear and easy to follow. In several areas this was not accomplished. These areas include portions of the Caloosahatchee and San Carlos Bay.

Below is my minority report, outlining my concerns with motions where I was in the minority.

June 29 LRRC Meeting

**Mullock Creek**

Based upon manatee data in the area, I feel that there should be language in our recommendation that if the area is dredged and boater safety is improved, that the entire area then be designated a slow speed zone to protect manatees that utilize the area. Mullock Creek is an important area for manatees as they traverse the river on their way to 10-mile canal.

**Hendry Creek**

In my opinion this area should be regulated at slow speed year round. There is evidence from aerial surveys of manatees using this area throughout the year. Removing protections from the south portion of the creek and only putting a 25mph limit on the north portion will not provide adequate protection for the manatee.

**Hell Peckney Bay**

I disagreed with both motions on this area. I believe that the Matanzas Pass channel should remain slow speed year round. I believe that the southern portion of the Bay should retain its 25mph/slow speed designation, while the northern portion should remain unregulated, based on the data (aerial surveys, synoptic surveys) that we were provided and input that was given by the committee members.

July 16 LRRC Meeting

**Marker 93 to Old Cape Coral Bridge**

The data that we have does not support removing regulations from the middle of the Caloosahatchee in this area. The Caloosahatchee has been shown to be a dangerous area

for manatees and removing all regulations from this area will exacerbate the problem. Also, it has been a theme of this committee to keep the regulations simple for boaters to understand. Making this area unregulated is in direct contrast to the Federal rule of 25mph. I believe we moved in the wrong direction with this action.

There was some talk about the lack of manatee sightings in the area during the aerial surveys. This does not surprise me when we see that the plane made just one pass of this area. The Caloosahatchee is a very wide river in this area and cannot be adequately surveyed with one pass.

There was also discussion about the dead manatees being found along the shoreline, not in the middle of the river. Manatees, when struck and are injured, often seek shelter in quieter areas. The fact that manatees are found along the banks does not mean that they were hit in this area. It is very likely that the manatees were hit in a different area, perhaps the center of the river, then moved to the shoreline.

#### **Marker 93 all the way to the West US 41 Bridges**

The recommendation here was to keep the ¼ slow speed buffer and adopt a 35mph speed limit in the channel. I believe the 25mph speed limit in the channel is the best policy for this area. My opinion was reinforced by the FWCC officers who were in attendance. They stated that they typically do not pull over people for going 10-15 miles over the limit. Therefore, a 35mph speed zone is not truly enforced until 50mph. This type of speed zone will not protect manatees in the area. Boaters will not have time to avoid a manatee once they see one, and manatees will not have time to dive away from boats once they sense their presence. At the very least there should be a 25mph speed limit in the channel in this area.

#### **Redfish Point area**

It was explained that this was an area where manatees pass from the Cape Coral side to the canals on the Fort Myers side of the river. This is one of only a few places where manatees regularly traverse the river from one side to the other, making this an important area that warrants protection. I also believe that in the effort of consistency it makes sense to ensure that the State rule and the Federal rule are the same.

#### July 23 LRRC Meeting

##### **San Carlos Bay**

The recommendation was that the state adopt the federally regulated speed zone just west of the existing state speed zone (east side of San Carlos Bay). This was a small strip of land. I am not sure why this area was left out of the State speed zone in the first place. If left the way it is this will be a very confusing area for boaters. There will be 3 different speed zones in very close proximity. Adopting this zone would have been consistent with the committee's call for consistency of signs for boater safety, it also would increase protections for the manatee. These protections are warranted by the data.

**Matlacha Pass**

The current State proposal of Slow Speed/25 MPH in the channel (both north and south of the bridge) is supported by the data that was provided to us, especially aerial surveys. There have already been 2 deaths in the southern area this year. That makes this one of the deadliest areas in the County right now. The motion that passed, that includes, a 25 MPH speed zone, shoreline to shoreline, from Miserable Mile north to within ¼ mile of the Matlacha Bridge is not adequate based on the data. Manatees are prevalent in this area year-round, and they must be protected. The 25mph designation in the channel would allow boaters to move through the area at a safe speed while still protecting our manatee population.

**Matlacha Pass from Marker 76 north**

This area is unregulated and there are no proposed zones for this area. Data that was provided to use shows manatee usage similar to what is in the rest of Matlacha Pass. Therefore, I believe this area should be regulated with a slow speed zone, similar to what I feel is needed for the rest of Matlacha Pass.

**Southern Pine Island Sound**

This area, from Marker 42 South to the end of the Sound has been proven to be a popular place for manatees. There are two destinations for manatees in this area, Tarpon Bay and southwest of St. James City. A 25mph zone will increase protections for manatees without placing an undue burden on the boating public. I also voted against the motion to unregulated Mailboat Channel, for similar reasons.



**MINORITY REPORT – LEE COUNTY LOCAL REVIEW COMMITTEE**

**Pine Island Sound – Mail Boat Channel**

Because of the Schoonover decision, I believe the area where the Mail Boat Channel was originally located should be re-instituted. It should be marked and designated as a boat channel and unregulated in speed.

Respectfully Submitted,

John Kinney

LEE COUNTY LOCAL RULE REVIEW COMMITTEE MINORITY OPINION

Laura Combs, Save the Manatee Club

July 29, 2004

The Lee County Local Rule Review Committee has voted to substantially weaken the speed zone rule proposed by the Florida Fish and Wildlife Conservation Commission (FWCC) without any significant consideration of the manatee data and the growing threats to manatees caused by a growing boating population. Boater's rights have been the dominant rationale when the committee's majority has voted to weaken the FWCC's proposal. A boater's rights rationale does not meet the intent of the Manatee Sanctuary Act, which states: "The 'Florida Manatee Sanctuary Act' was adopted to protect the West Indian (Florida) manatee or sea cow (*Trichechus manatus*) in the waters of the State of Florida from disturbance, harassment, injury or harm in part by regulating... motorboat speeds and vessel operation in the critical areas of manatee concentration." Any recommendations to weaken the FWCC's proposal should be rejected by the FWCC because the manatee and boating data do not support weakening the proposal.

Mullock Creek – The committee recommended that Mullock Creek be regulated as proposed by the FWCC: Slow Speed with the depth dependent zone. I voted against this proposal because:

- Mullock Creek is used significantly by manatees year-round,
- Mullock Creek connects to Tenmile Canal, which contains the secondary warm water refuge at the Borrow Pits,
- Mullock Creek is a shallow and winding waterbody, making it difficult for manatees to take evasive action when approached by boats at speeds faster than Slow Speed,
- boaters traveled through the shallow areas under the FWCC's original Slow Speed zone, which did not contain a high speed depth dependent zone, for two years, and
- the FWCC's "A Special Study of Manatees in Mullock Creek and the Caloosahatchee River Eastward to the Edison Bridge" (2002) found that "Over this 13 year period [1989 - 2001], manatee deaths (all categories) have increased at a faster rate in Mullock Creek and Ten-Mile Canal than in either southwest Florida or the State as a whole."

Hendry Creek – The committee recommended that the FWCC remove the Slow Speed zone in Hendry Creek and replace it with 25 MPH throughout the Creek. I voted against this proposal because:

- Hendry Creek is used significantly by manatees year-round, with aerial survey data illustrating manatee use in the lower half of the creek and mortality data illustrating manatee use in the upper half of the creek

- the upper half of the creek is narrow and winding, making it difficult for manatees to take evasive action when approached by boats at speeds faster than Slow Speed, and
- based on manatee use and the location of docked boats being the upper half of Hendry Creek, Slow Speed is warranted throughout the Creek, not the 25 MPH proposed by the committee or the Slow Speed/25 MPH combination proposed by the FWCC

Hell Peckney Bay – The committee recommended to remove manatee protection regulations from Hell Peckney Bay. I voted against this proposal because:

- Hell Peckney Bay is a shallow area used by manatees, making it difficult for manatees to take evasive action when approached by boats at speeds faster than Slow Speed, and
- there is one watercraft-related manatee death at the mouth of Hell Peckney Bay (1999) and three watercraft-related manatee deaths in Matanzas Pass in the immediate vicinity of Hell Peckney Bay.

Caloosahatchee River, Markers “99” – “93” – The committee voted to replace the FWCC 25 MPH in channel, Slow Speed outside channel proposal with a ¼ mile Slow Speed buffer on the Cape Coral side of the river, 25 MPH between the ¼ mile buffer and Big Shell Island, and Slow Speed in the ICW from 8:00 a.m. to 6:00 p.m. daily. I voted against this proposal because:

- the FWCC’s “A Special Study of Manatees in Mullock Creek and the Caloosahatchee River Eastward to the Edison Bridge” (2002) found that “Over the past 13 years, watercraft-related manatee mortality has increased at a faster rate in the Caloosahatchee River than in either southwest Florida or the State as a whole..”.
- five watercraft-related manatee deaths have been documented in the area, with four in the federal channel and one north of Shell Island,
- the area between Shell Island and southern shore is heavily used by manatees and boats and is dangerous for manatees and boats when boats are operating faster than Slow Speed. Gorzelany (2002) and Sidman and Flamm (2001) documented the high amount of boat use in the lower Caloosahatchee River. The FWCC originally proposed that the area be Slow Speed for manatee protection but then modified the proposal due to pressure from the Marine Industries Association. The FWCC then considered making the area Slow Speed in 2002 for boating safety but did not proceed due to the implementation of the U.S. Fish and Wildlife Service’s (USFWS) manatee protection zone,
- the number of boats using the Caloosahatchee River is increasing dramatically along with the development of waterfront property in Cape Coral, Fort Myers, and Lee County,
- the area between Shell Island and Cape Coral is shallow and used by manatees, making it difficult for manatees to take evasive action when approached by boats at speeds faster than Slow Speed, and

- A Lee County deputy raised concerns about the ease of enforcement if the area between Shell Island and Cape Coral was no longer all Slow Speed during a site visit I made with him. Implementation of the FWCC's proposal of all Slow Speed will make it is easy to see from a distance if a boater on plane is violating the zone. With a ¼ mile Slow Speed buffer it will be difficult to tell if a planing boat is in or out of the zone

Caloosahatchee River Marker "93" to the Old Cape Coral Bridge The committee recommended the FWCC adopt the proposed ¼ mile Slow Speed buffer with no regulation outside of the buffer. I voted against this recommendation because:

- it will not provide enough protection for manatees,
- the FWCC's "A Special Study of Manatees in Mullock Creek and the Caloosahatchee River Eastward to the Edison Bridge" (2002) found that "Over the past 13 years, watercraft-related manatee mortality has increased at a faster rate in the Caloosahatchee River than in either southwest Florida or the State as a whole...",
- the FWCC's "A Special Study of Manatees in Mullock Creek and the Caloosahatchee River Eastward to the Edison Bridge" (2002) documents significant manatee use in the Redfish Point area, warranting Slow Speed protections as implemented by the U.S. Fish and Wildlife Service, and
- the number of boats using the Caloosahatchee River is increasing dramatically along with the development of waterfront property in Cape Coral, Fort Myers, and Lee County.

Another committee proposal for this area and the area from the old Cape Coral Bridge to the U.S. 41 Bridge was for the waters outside of the FWCC proposed Slow Speed buffer to be regulated as 35 MPH to accommodate water skiing and boats that plane better at 35 MPH rather than 25 MPH as regulated by the USFWS. This proposal failed due to a tie vote. This is an absurd proposal that would have offered manatees almost no protection and should have failed by a larger margin. Colonel Julie Jones, head of FWCC law enforcement, and the U.S. Coast Guard consider 25 MPH a safe boating speed for the vast majority of boats, undermining the committee's boating safety argument. For those few boats that are unable to plane safely at 25 MPH, they must follow safe boating procedures and proceed at Slow Speed so as to not create excessive wake or a high bow.

Caloosahatchee River Redfish Point Area – I made a motion that the state adopt the federal Slow Speed zone in the Redfish Point area. This motion failed. The Slow Speed zone is warranted because:

- the FWCC's "A Special Study of Manatees in Mullock Creek and the Caloosahatchee River Eastward to the Edison Bridge" (2002) found that "Over the past 13 years, watercraft-related manatee mortality has increased at a faster rate in the Caloosahatchee River than in either southwest Florida or the State as a whole...",

- the FWCC's "A Special Study of Manatees in Mullock Creek and the Caloosahatchee River Eastward to the Edison Bridge" (2002) documents significant manatee use in the Redfish Point area, warranting Slow Speed protections as implemented by the U.S. Fish and Wildlife Service, and
- the number of boats using the Caloosahatchee River is increasing dramatically along with the development of waterfront property in Cape Coral, Fort Myers, and Lee County.

Caloosahatchee River, West Side of U.S. 41 to East Side of 41 Bridges – The committee recommended that the FWCC adopt its proposal of ¼ mile Slow Speed buffer with an unregulated area for watersports. I voted against this recommendation because:

- it will not provide enough protection for manatees because of the proposed unregulated portion along the northern shoreline between the 41 bridges and west of the 41 bridges and the remaining unregulated portion outside of the proposed ¼ mile Slow Speed buffer,
- the FWCC's "A Special Study of Manatees in Mullock Creek and the Caloosahatchee River Eastward to the Edison Bridge" (2002) found that "Over the past 13 years, watercraft-related manatee mortality has increased at a faster rate in the Caloosahatchee River than in either southwest Florida or the State as a whole...,"
- manatees significantly use Hancock Creek and the area immediately north of Hancock Creek, and
- the number of boats using the Caloosahatchee River is increasing dramatically along with the development of waterfront property in Cape Coral, Fort Myers, and Lee County.

#### San Carlos Bay

The committee recommended that the FWCC adopt the USFWS Slow Speed zone west of the channel, with the exception of an unregulated 700' offset from the causeway island. I voted against this recommendation because:

- the unregulated offset from the causeway island is unnecessary and could put manatees at increased risk,
- my site visit revealed that there are two viable alternatives when leaving the Punta Rassa boat ramp that will have no or minimal impact on travel time: 1) traveling on the south side of the causeway in unregulated waters, and 2) traveling in the channel north and then heading east through Miserable Mile,
- conflicting opinions on boating use of the unregulated portion were given by two Lee County sheriff's deputies,
- there is high boating use of the area from the boats launching at the Punta Rassa ramp and those traveling to and from the Caloosahatchee River, and the amount of boat use is increasing,

- manatee use along the causeway island is underrepresented due to the flight path and difficulty of surveying during the plane's approach to the area, and not all of the causeway island area was surveyed,
- the area is shallow and used heavily by wading fisherpersons and sailboarders. Allowing higher speeds will create a safety issue for them as well as for manatees that need to quickly avoid boats, and
- part of the committee's rationale for unregulating the area is that it will decrease the number of boaters violating the rest of the Slow Speed zone because they will have another high speed access area. Breaking the law is a ridiculous reason for changing the law.

The committee also recommended that the FWCC ask the USFWS to eliminate the federal zone east of the north/south channel in favor of the state zone. I voted against this recommendation because manatees use the entire area including the channel and there are no manatee data supporting the weakening of the zone. Threats to manatees are going to increase due to increasing boating traffic and the federal Slow Speed zone and an additional Slow Speed zone in the channel as originally proposed by the USFWS are supported by the manatee data.

Matlacha Pass – The committee recommended that the FWCC make all of Matlacha Pass 25 MPH, with the exception of the Pine Island Bridge area. I voted against this recommendation because:

- it is not supported by the manatee aerial survey, mortality, telemetry and warm water refuge data,
- Matlacha Isles is a very significant secondary manatee warm water refuge in Lee County and the second largest aggregation site,
- Matlacha Pass has been a deadly area for manatees in recent years, with the following watercraft-related manatee deaths documented:

1987 – 1  
 1996 – 3  
 1999 – 1  
 2001 – 3  
 2003 – 1  
 2004 – 2

- the FWCC reports in its report "Adequacy of Speed Zones in Lee County" (2003) that the number of aerial survey manatee sightings in Matlacha Pass is more than double that of any other area outside of the Caloosahatchee River,
- the number of boats using Lee County's waterways is increasing, which is in turn increasing the threats to manatees, and
- the FWCC's proposal of 25 MPH in channel, Slow Speed outside of the channel should be implemented.

Matlacha Pass north of the FWCC proposal -- I made a motion that the waters north of the FWCC's proposed zone, west of the navigation channel and east of a north/south line from Stringfellow Road be Slow Speed. This motion was defeated by a 3-5 vote. This Slow Speed motion is supported by the following data:

- 1999, 2001, and 2004 watercraft-related manatee deaths in the area
- FWCC aerial survey, telemetry and mortality data showing significant manatee use of the area, and
- the number of boats using Lee County's waterways is increasing, which is in turn increasing the threats to manatees.

It was my intent to make a motion that the area west of Stringfellow Road and south of the channel be recommended for Slow Speed regulation for the reasons listed above, but the motion was not made due to its certain defeat. There are three recent watercraft-related manatee deaths in that area (two in 1996 and one in 1999).

The USFWS recognizes the need to protect manatees in the Bokeelia area and considers it an area of inadequate protection due to the lack of speed zones. Recent watercraft-related manatee deaths (as recent as 2004) in the Bokeelia, northern Pine Island Sound, and Matlacha Pass, in combination with manatee aerial survey and telemetry data clearly support Slow Speed in the Bokeelia area.

#### Pine Island Sound south of Marker "42"

I made a motion that the committee recommend that the FWCC regulate the area south of Marker "42" as 25 MPH, excluding the existing FWCC seasonal Slow Speed zones. The motion failed. This 25 MPH motion is supported by a high recent rise in watercraft-related manatee deaths. There have been 25 watercraft-related manatee deaths since 1974, with 14 of those deaths since 1999 (2 in 1999, 4 in 2001, 3 in 2002, 2 in 2003, and 3 in 2004). At least nine of the 14 deaths have been documented south of Marker "42". This motion was made, however, before the information on a July 2004 watercraft-related manatee death at Captiva was available, further strengthening the need for additional protection measures.

#### Southern Pine Island/St. James City Area

A motion was made that the committee recommend that the FWCC implement the FWCC's seasonal Slow Speed proposal. Another motion was that the FWCC implement its proposal, with the exception of an unregulated area at Mailboat Cut. Both motions failed in a tie vote. The FWCC's proposal and the committee's weaker version with the unregulated Mailboat Cut area are inadequate based on a review of manatee mortality and aerial survey data.

Manatee mortality data show that 18 manatees died in the area from November through March. Aerial survey data document manatee use in all months of the year with very significant use in March. The southern Pine Island area is a high risk area for manatees.

due to the high amount of transient boat traffic traveling to and from the restaurants in St. James City. The area should be regulated as Slow Speed year round.

Estero Bay - Majority Opinion Comment

The committee voted that the FWCC adopt FWCC's proposal of Seasonal Slow Speed/25 MPH for Estero Bay and I voted with the majority. While I voted with the majority, Save the Manatee Club believes that year-round and not seasonal slow speed zones are justified by the manatee data.

The FWCC's 1997 aerial survey data (map enclosed) do not agree with the FWCC's speed zone rationale provided to the committee. This rationale states that manatee use of the Estero Bay system during the winter months is primarily centered around warm water sources. The enclosed map of FWCC data clearly shows that significant numbers of manatees are distributed throughout Estero Bay during the colder months. In fact, manatees are distributed throughout all of Lee County in significant numbers during the colder months. The FWCC also relies on watercraft-related mortality data to show seasonality of use. Using the FWCC's data, 14 of 23 watercraft-related manatee deaths occurred between April 1 and November 15, or 61 percent over a 7.5 month period (62.5 percent of the year). Nine of 23 occurred from November 16 through March 31, or 39 percent over a 4.5 month period (37.5 percent of the year). This information shows that in fact during the colder months the amount of watercraft-related manatee mortality is slightly higher on a month-per-month basis than during the warmer months.

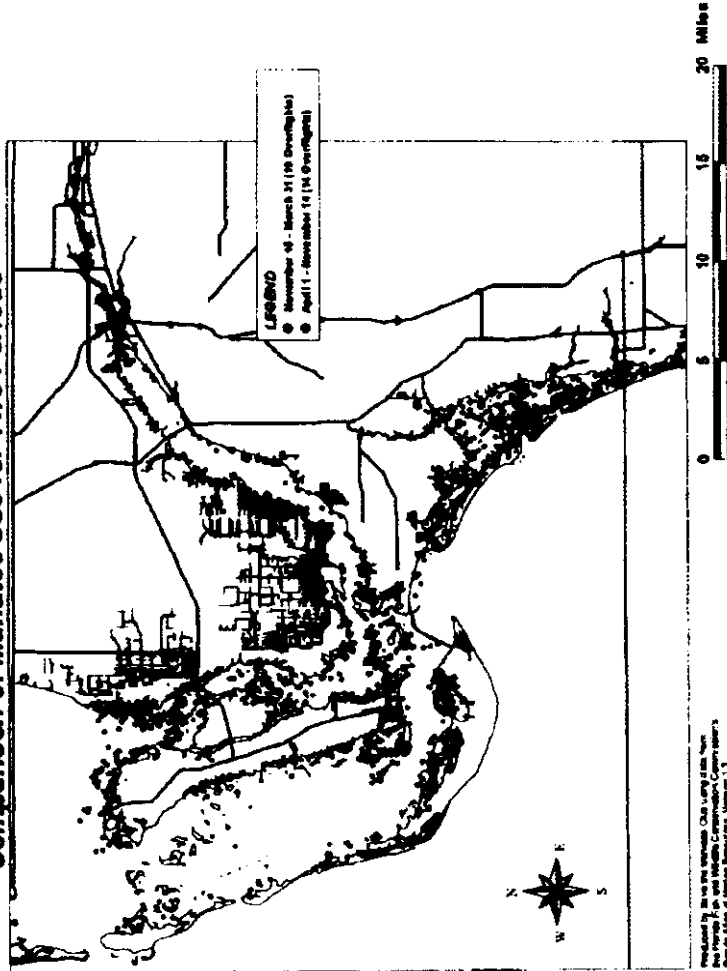
When looking at all of the mortality data, the case for year-round zones is strengthened. For the period of November 16 through March 31 (4.5 months) 63 manatee deaths (43 percent) have been documented. From April through November 15 (7.5 months) 85 manatee deaths have been documented. The data show that 43 percent of the manatee deaths were documented during the shorter portion of the year regulated at a higher speed of 25 MPH (37.5 percent of the year).

Manatees are dying at a higher rate on a month-per-month basis during the colder months of the year. The carcass recovery locations are distributed throughout Estero Bay and Lee County, further illustrating that manatees use Estero Bay and all of Lee County in significant numbers year-round, not seasonally. Please see the enclosed map that displays the November 15 through March carcass recovery locations in yellow.

Based on the FWCC's data and increasing threats to manatees due to an increasing boating population, the FWCC should regulate Estero Bay year-round, not seasonally.



**Lee County Aerial Survey Data  
Comparison of Manatee Use for Two Periods**



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July 30, 2004

Fr: Susan Scott, Secretary

Re: Lee County Manatee Local Rules Review Committee

Comments re recommendations made at two meetings I was unable to attend and vote on.

July 16<sup>th</sup> meeting:

Re: Caloosahatchee River

Concerned about no regulations across the river at Redfish Point. This is a known crossing for manatees utilizing the Caloosahatchee River. This where they often cross from one side to the other. I would recommend that in order for the boating community to continue having areas of no regulations that known corridors of manatee usage be afforded protection.

I would also recommend that bridges be afforded some type of protection throughout the area, much as some communities already have with at least a minimum 100 foot buffer.

Controlling boat speed around these extremely important structures provides safety for people as well as manatees.

July 23<sup>rd</sup> meeting:

Re: San Carlos Bay

I concur with recommendation made by Scott Trebatoski that the state adopt the federally regulated speed zone just west of the existing state speed zone (east side of San Carlos Bay)

Re: Matlacha Pass: I concur with the current state rule proposal (Slow Speed/25 in the channel) motion made by Laura Combs and seconded by Matt Bixler. Matlacha Pass needs protection for manatees and seagrass beds. To assume that boaters will avoid shallow areas is disputed by the very fact that our seagrass beds are being destroyed by prop scarring. The pass is more than a travel corridor for manatees and the area provides access to warm water refugia during colder winter months. Anything less than the current state proposal is inadequate not only for manatees but for the health of our estuary upon which our economy depends.

I also concur with the recommendation made by Laura Combs to request a slow speed zone from marker 76 following westerly of the channel all the way to the northern limit of the Matlacha Pass Area.

Re: Pine Island Sound:

No comments