

created unregulated “pockets” that would have been difficult or impossible to regulate, and would have been of no practical use to boaters. While our stated intent in proposing a 1,000-foot shoreline buffer was, in part, to make the regulations in this area more understandable and enforceable, the proposed rule would have actually had the opposite effect by creating the unregulated “pockets” discussed above, thereby potentially compromising manatee protection instead of enhancing it. Additionally, the FWCC noted that manatee use data for this portion of Volusia County are limited and dated. We agree and further note that the limited available data do not support the need for a “slow-speed outside the channel” designation. We have, therefore, concluded that establishment of a 1,000-foot shoreline buffer is not prudent.

Subsequent to the publication of the proposed rule, we also examined possible alternatives for expanding the shoreline buffers to some other distance from shoreline. As stated previously, wider buffers are generally more protective, so expansion of the existing 300-foot buffer to some greater distance would arguably improve manatee protection. As indicated above, the widest possible buffer for the Halifax River would have been 1,000 feet (as proposed), or slow speed outside the channel for all practical purposes, which was determined to be unwarranted. Additionally, the quality of the available data is such that we cannot conclude that substantial evidence supports expansion of the shoreline buffer to some distance other than the currently designated 300 feet. In other words, we conclude that the selection of some other width for the shoreline buffer would be arbitrary. We support the FWCC’s ongoing efforts to collect additional data regarding manatee distribution and habitat use in this area, in order to provide for better informed decision-making.

*Comment 40:* With reference to the Tomoka River upstream of U.S. 1, peer review comments noted that manatee sightings occur throughout the river and sightings of manatee calves coupled with perinatal carcasses close to I-95 indicate the importance of this section as a nursery area. The continuation of the slow speed designation to I-95 is justified. Another peer reviewer noted that eliminating the 25-mph status in narrow waterways such as the Tomoka River and Spruce Creek is appropriate for areas where manatee activity is well documented because the entire waterway can function as a channel, with boats traveling at high speeds

along the entire width. Further, in-channel and out-of-channel designations in narrow waterways present a problem for law enforcement because it may be difficult to distinguish whether the vessel is in or out of the channel. There are also obvious human safety benefits to slowing watercraft down in narrow waterways. This peer reviewer also noted that, while there are differences in the established definitions of “idle” and “slow” speed zones, in the reviewer’s experience, there is little practical difference between boats traveling at idle versus slow speed. Such differences between the two designations are difficult to enforce and may not provide a significantly different level of protection for manatees. The reviewer recommends the designation of more enforceable, consistent slow speed zones throughout the length of this river. The FWCC noted that the Tomoka River and its tributaries are known calving and nursing areas for manatees, so it is appropriate to consider extra protection in this system. However, they recommended that we defer Federal designation pending completion of their reevaluation of the zones in Volusia County, and stated that their review would consider whether speed zone designations in this area should be seasonal. Another commentor noted that manatee carcasses have been discovered from the Tomoka River in every month except February.

*Response 40:* Given the narrow configuration of the river, documented high seasonal use by manatees, and demonstrated watercraft-related mortality in this river, we have concluded that it is appropriate to take Federal action at this time to eliminate the 25-mph zone between Alligator Island and the I-95 Bridge on a seasonal basis. We agree with the peer reviewer that a consistent designation throughout the length of the Tomoka River would be preferable. However, we do not have the authority to undo more restrictive existing regulations, such as the existing idle speed and year-round zones. Except for the portion of the Tomoka River where we are implementing a Federal seasonal slow speed zone, we believe the existing zones in the river to be adequate and possibly more restrictive than necessary given the seasonality of manatee use. We decided not to overlay the existing zones with Federal designations over most of the river in order to avoid hindering State efforts to revise these zones in the future. We have determined that seasonal designations are appropriate for this area. While manatee carcasses may have

been recovered throughout the year in the Tomoka River, it is important to note that no watercraft-related mortalities have been recorded during winter months. Carcasses found in winter months are more likely related to cold stress as there are no reliable warm water sources in the Tomoka River.

*Comment 41:* With reference to the Halifax River at the Granada Bridge, peer review comments indicated that, although manatees have been spotted in this area during aerial surveys, the sighting data do not justify the establishment of a year-round slow speed zone in this area for manatee protection. However, the proposed rule may be warranted based on other issues, such as constrained waterways and/or boater safety.

*Response 41:* We believe that the presence of causeways and pilings associated with many bridges (including the Granada Bridge) creates a funneling effect for both watercraft traffic and manatees. Therefore, we believe additional protection measures are warranted in the vicinity of such bridges and have finalized the rule as proposed in this portion of the Halifax River.

*Comment 42:* With reference to the Halifax River from the Granada Bridge to Seabreeze Bridge, peer reviewer comments noted that, although manatees have been sighted in this area, the abundance does not appear to be as great as in other regions. However, manatees moving from one higher-use area to another will likely move through this area as a travel corridor, justifying the need for some protection. Although no empirical data support the benefits of regulating watercraft speeds at 25 mph versus 30 mph; it is intuitive that watercraft traveling at higher speeds afford manatees less time to get out of the way, would impact a manatee with greater force, and would cause more harm than those at lower speeds. The available data support the proposed rule in this area. The FWCC commented that in its more recent rulemakings the agency has consistently used 25 mph as the “minimum planing speed” for most vessels.

*Response 42:* As noted above, a more detailed analysis of this area subsequent to publication of the proposed rule revealed that the proposed 1,000-foot slow speed shoreline buffers are not warranted. With reference to establishing a 25-mph speed limit outside the shoreline buffers, we believe that this action will enhance manatee protection by making the regulations more consistent throughout the area, thereby improving compliance by making the zones easier for boaters to understand.