

hour (25 mph) in waters not more restrictively designated; and

j. in the Intracoastal Waterway and adjacent waters from Redland Canal to the A1A Bridge (New Smyrna Beach), for a distance of approximately 5.3 km (3.3 miles) in length, slow speed, year-round, channel included.

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program (FWCC, 2003). In general, manatees primarily use the Halifax River as a travel corridor (Deutsch *et al.*, 1998 and Deutsch *et al.*, 2000); manatees use the downtown Daytona Beach area marinas as a source of drinking water and may calve there. The Tomoka River system is a known calving area, as evidenced by observations of calving manatees (McNerney 1982) and aerial observations of significant numbers of cow and calf pairs (FWCC 2000). Other activities observed throughout these systems include playing and/or engaging in sexual activity, feeding, and resting. Manatees are known to occur in these areas throughout the year (Deutsch *et al.*, 1998 and Deutsch *et al.*, 2000), although they are more abundant during the warmer months of the year (FWCC 2000).

Two hundred and eight manatee deaths occurred in Volusia County between 1974 and 2002 (FWCC: FMRI Manatee Mortality Database, 2003). This number includes 60 watercraft-related deaths. Of these, 30 carcasses attributed to watercraft were recovered in coastal Volusia County, (including 6 in the Tomoka River system and 16 in the Halifax River). Twenty of these carcasses were recovered over the past 10 years and seven of these over the past 2 years. Three of the watercraft-related carcasses were found in the Tomoka River in 2001. Carcass recovery sites for manatees known to have died as a result of watercraft collision include the lower Tomoka River and tributaries, the Halifax River in downtown Daytona Beach, areas to the south of Channel Marker "40" and the Dunlawton Bridge, and areas to the south of Ponce Inlet. Watercraft-related deaths occur between the months of March and October, with most occurring in May, June, and July.

The existing, State-designated manatee protection areas in coastal Volusia County were adopted by the State of Florida in 1994 (68C-22.012 FAC). These measures include slow and idle speed restrictions in the Tomoka River and associated waterbodies (except for in those areas upstream and downstream of Alligator Island), 91-meter (300-foot) shoreline buffers along

most of the Halifax River (with maximum speeds varying between 40 and 48 km per hour (25 and 30 mph) outside of the buffers), slow speeds in the downtown Daytona Beach area (except for a watersports area to the south of Seabreeze Bridge), and a complex of varying restrictions between the Dunlawton Bridge and New Smyrna Beach. The existing State measures include 10 different types of restrictions that are used to restrict 30 discrete areas within the area of the final refuge. Fifteen watercraft-related manatee carcasses were recovered within the area of the final refuge since the State protection areas were first adopted. Seven of these deaths occurred in 2001, and no watercraft-related deaths were known to have occurred in 2002.

We believe the measures in this regulation will improve manatee protection in the Halifax and Tomoka Rivers and will prevent the take of at least one manatee in this area through harassment, injury, and/or mortality by reducing boat speeds in areas used by manatees, and by improving the ability of the public to understand and, thus, comply with protection measures through simplification of restrictions.

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. The Office of Management and Budget makes the final determination under Executive Order 12866.

a. This rule will not have an annual economic impact of over \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A quantitative assessment of the costs and benefits is not required, nor is consideration of alternatives. It is not expected that any significant economic impacts would result from the establishment of three manatee refuges (approximately 141.6 river km (87.8 river miles)) in five counties in the State of Florida.

The purpose of this rule is to establish three manatee protection areas in Florida. The three areas are located in the Caloosahatchee River in Lee County, the St. Johns River in Duval, Clay and St. Johns Counties, and the Halifax River and Tomoka River in Volusia County. We are preventing take of manatees by controlling certain human activity in these three areas. For the three manatee refuges, the areas are year-round or seasonal slow speed, or speed limits of 40 km per hour (25 mph). Affected waterborne activities

include transiting, cruising, water skiing, fishing, and the use of all water vehicles. This rule will impact recreational boaters, commercial charter boats, and commercial fishermen, primarily in the form of restrictions on boat speeds in specific areas. We will experience increased administrative costs due to this rule. Conversely, the rule may also produce economic benefits for some parties as a result of increased manatee protection and decreased boat speeds in the manatee refuge areas.

Regulatory impact analysis requires the comparison of expected costs and benefits of the rule against a "baseline," which typically reflects the regulatory requirements in existence prior to the rulemaking. For purposes of this analysis, the baseline assumes that we take no additional regulatory actions to protect the manatee. In fact, even with no further activity by us, an extensive system of State-designated manatee protection areas is already in place in each of the manatee refuges. Thus, the rule will have only an incremental effect. As discussed below, the net economic impact is not expected to be significant, but cannot be monetized given available information.

The economic impacts of this rule would be due to the changes in speed zone restrictions in the manatee refuge areas. These speed zone changes are summarized below.

In Lee County, in the Caloosahatchee River area, the designation of the Caloosahatchee-San Carlos Bay Manatee Refuge results in the following changes:

- The portion of the channel from the Seaboard Coastline Railroad trestle at Beautiful Island, downstream to Channel Marker "25" changes from a 40 km per hour (25 mph) limit to seasonal slow speed in the marked navigation channel from November 15 to March 31, and not more than 40 kilometers (km) per hour (25 miles per hour (mph)) in the channel from April 1 to November 14.

- The portion of the channel 152 meters (500 feet) east and west of the Edison/ Caloosahatchee Bridge complex changes from 40 km per hour (25 mph) to slow speed year-round.

- Between the Edison/Caloosahatchee Bridge complex and Cape Coral Bridge, shoreline buffers approximate the existing shoreline protection configuration (*i.e.*, slow speed within 0.4 km (0.25 mile) but limits speeds between the buffers to not more than 40 km per hour (25 mph). However, this change also eliminates two unprotected shoreline areas along the north shore at and below the Edison/Caloosahatchee Bridge complex.