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## Comments on Manatee Management Plan

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Florida Marine Contractors Association is pleased to provide these comments on the draft Manatee Management Plan.

We are generally very supportive of the Plan. Therefore, the comments and criticisms below should be taken in context, and not be inferred as objections to the Plan as a whole.

### Page 27 Chapter 5 Permitting Framework

We oppose the elimination of exemptions. It is an economic hardship and it is a safety hazard. Indeed, this proposal appears to conflict directly with the initiative described on page 33, wherein the possibility of new hulls or propulsion systems, and the possible advantages of smaller, shallower-draft vessels are considered.

### Page 30 Chapter 6 Management Actions

Until the Commission has evaluated the effectiveness of speed zones, we disagree with statements that slow speed constitutes a “protection strategy.” As you’re aware, we believe substantial evidence exists to show that speed zones may actually reduce protection. We believe substantial evidence exists that many boat strike deaths and injuries occur between slow-moving, large vessels and manatees. And we strongly believe that the focus on slow speed, and the corollary focus on restricting permits for facilities that serve power boats (whether private dock, or public or private marinas), is over-emphasized in the Plan.

### Page 32, Criteria for Existing Rules

Criteria should be added:

- Existing zones that do not comply with State Law should be identified and realigned.

### Page 34, Table 4

What, precisely, is an “area”? The definition is far too vague and simply offers carte blanche for arbitrary enforcement at any location, for any reason. By extension, the same definition was all-too-often used as a criterion for establishing zones. We strongly urge that this practice be put to pasture.



## Page 34, Development of Permit Review Improvements

We challenge the notion that “hot spots” may be determined based on “higher than usual manatee deaths.” What, precisely, does “higher than normal” mean?

*These types of proposed activities can result in adverse impacts to manatees and their habitat. Direct impacts can include injuries or harassment to manatees from in-water work. Secondary and cumulative impacts to manatees include loss of habitat and potential injuries or harassment that may occur as a result of the ongoing activities authorized by the permit.*

Naturally, the manner in which permits are reviewed is of paramount importance to our industry. Not surprisingly, we are occasionally at odds with the Commission over its recommendations and requirements.

For example, the above citation strongly infers that in-water construction is a hazard. Yet, nowhere in Plan is there any documentation of manatee injuries or deaths resulting from in-water construction of docks, piers, marinas and seawalls, much less any estimate of the species survival risk posed by in-water construction.

I have tried to secure any information or statistics demonstrating that manatees have been killed or injured during in-water construction activity where the Army Corps Standard Manatee Conditions for In-Water Work (rev July 2005) or its predecessor Guidelines for Construction In Manatee Habitat were part of permit conditions.

In the absence of any information identifying risk to manatees during in-water construction, this Plan proposes yet another layer of permit requirement, beyond the Corps Conditions:

*The FWC will work with the state permitting agencies, the USFWS, and the USACOE to develop new approaches and additional efficiencies to the permitting process when possible and if resource protection is not diminished. We plan to further develop a manatee observer approval process and maintain a list of approved manatee observers.*

The Plan contends that an observer program “*should help applicants proceed with their projects more quickly.*” We contend the opposite is true. An observer requirement will complicate scheduling, increase costs, and provide no measurable benefit.

Indeed, the opposite outcome is more likely. As delays and costs mount, applicants will be even more likely to ignore the permitting process altogether. Our industry estimate is that 50% or more of in-water construction is performed without permits. The reasons are three-fold: delay, expense and frequently, no awareness that a permit is required. Moreover, FWC (and other environmental permitting agencies) have absolutely no capability to police its requirements.

A very relevant analogy is what happened once observers were required on US Fleet tuna

boats. Within a decade, the number of dolphins caught in US Fleet tuna nets dropped to zero. Of course, so did the number of boats in the US Tuna fleet. (There are two remaining US Flag tuna boats.)

We also disagree with the Plan's opposition to enhanced one-stop permitting.

If the Commission truly believes that management of in-water construction and the location and size of marine construction projects is a valuable manatee management tool, then the Commission should take all prudent steps to encourage builders/owners to apply for permits. It is pointless to evaluate the "adverse impact" of a single project that sits amid several other projects being built without permits. It is impossible to evaluate the "cumulative impact" of marine structures without accurate information on the number and characteristics of those structures.

In our opinion, the Commission Plan is concerned about "any risk" that may occur during construction, or as an aftermath of construction, when it should focus on assessing "acceptable risk."

An example of this conflict is occurring right now in Lee County and Palm Beach County, where the Commission has included permit conditions that forbid in-water construction between November-April.

In Lee County, the reason is that the project is in the Orange River, which is heavily used by manatees during winter months. The applicant asked for examples of "take" that have occurred during construction, but no examples were forthcoming. Nonetheless, he agreed to the condition.

However, he asked if he could, instead of using barges to remove existing docks, use a land-based crane. The answer was no. When he asked why – after all, the crane is not in water – he was reportedly advised that a piling being removed could possibly drop and strike a manatee.

Similarly, in Palm Beach County, the same permit conditions were attached to an application to repair/replank an existing small marina on the Earman Canal. According to the contractor, and his permitting specialist, the facility is not located in a manatee aggregation area.

"Any risk" versus "acceptable risk."

Not surprisingly, we disagree with the concept that proper building practices are insufficient. We also strongly encourage FWC, when it is considering new guidance, regulation, policy or interpretation that affects marine construction, to involve the Association in the consideration, discussion, development and evaluation of new or revised practices.

In addition, we propose that changes to rules, guidance, policy or interpretation must be communicated to the affected stakeholder public prior to implementation, and that applications that pre-date the implementation date may be, at the applicant's discretion,

reviewed using the pre-existing criteria.

As noted in previous discussions, page 37, paragraph 3, contains a sentence that belongs on page 27: *This plan does not recommend new exemptions; in fact, the federal manatee recovery plan recommends that some existing exemptions be repealed due to the potential negative impacts to manatees and their habitats.*

### ***SUMMARY***

We are opposed to the elimination of exemptions.

We propose amending the guidelines for rule changes to explicitly include a criterion that allows for out-of-date rules to be brought into compliance with current state law and FWC rule.

We dispute the viability of “hot spots” as an enforcement or management measurement tool.

We dispute the Plan’s assumption that in-water construction inherently creates “adverse impacts.”

We ask that any such risks be quantified and qualified.

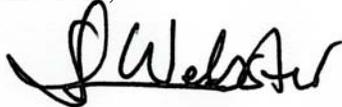
We oppose changes to existing practices regarding the observation of manatees during construction, in particular the creation of some sort of certified “observer.”

We strongly support the expansion of one-stop permitting, with a goal of greatly increasing the number of projects that are consequently properly permitted.

We strongly urge the Commission to utilize the expertise of the Association when in-water construction issues, concerns, policies, etc., are reviewed. Permit applicants should be notified of any changes before their implementation.

On behalf of the Association, our thanks to the team that assembled the Plan. We look forward to working closely with you during its implementation.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Webster", written over a horizontal line.

Steven Webster  
Executive Director