

## **Description of the FWC Manatee Protection Rule Development Process (2014)**

---

The Florida Fish and Wildlife Conservation Commission (FWC) is required to follow the requirements of Chapter 120, Florida Statutes (FS), when performing rule making for manatee protection purposes. The Manatee Sanctuary Act (§379.2431(2), FS) requires several steps in addition to the Chapter 120 process. Rules 68C-22.001 and 68C-22.002, Florida Administrative Code (FAC), provide additional requirements and guidance. The basic steps in the process are described below.

### **Step 1: Identify the need to consider rule making**

The request or direction to consider rule making can come from a wide variety of sources. Parties external to FWC, including organizations and individuals, can informally request rule making or formally petition under 120.54, FS. Rule making can be required by the legislature or the judiciary, the FWC Commissioners can direct staff to begin the process, or staff can independently identify the need to consider rule making and seek approval to proceed.

### **Step 2: Assimilate/Compile data and assess the need for rule making**

Staff determines what data are available and coordinates with other individuals (both internal and external) to compile data and make an initial assessment of the need to proceed further. This step can include formal or informal meetings with the general public, stakeholders, and/or local governments. If FWC determines the available data do not support the need to consider rule making, the process stops here and the party that requested rule making is notified. This step, which can include development of preliminary rule concepts for consideration, can take anywhere from several weeks to six months or more to complete.

### **Step 3: Notify the affected county government that a rule is being considered**

Before FWC can propose a manatee protection rule that would regulate the speed and operation of motorboats, FWC is required to notify the affected county (or counties) and the county then has 60 days to form a local rule review committee (LRRC). The make-up of the LRRC and its charge are governed by §379.2431(2)(f), FS.

### **Step 4: Publish a Notice of Rule Development (NORD)**

The Chapter 120 process requires FWC to publish a NORD in the Florida Administrative Register (FAR) before formally proposing to adopt or amend a rule through publication of a Notice of Proposed Rule. A NORD does not have to be published before the LRRC process can begin; it could be published any time after Step 3 (plus 60 days) and before Step 8 (publication of a Notice of Proposed Rule).

### **Step 5: Submit proposed rule and supporting data to LRRC**

FWC is required to submit the proposed rule and supporting data to the LRRC. The LRRC then has 60 days to review the proposed rule and submit a written report to FWC. The LRRC report must contain a majority opinion and may endorse the proposed rule or recommend changes. For any recommendations that are not unanimous, the LRRC report must also contain the minority opinion(s).

### **Step 6: Review LRRC report and prepare staff response**

FWC staff is required to review the LRRC report (including minority opinions if applicable) and provide a written response to the county and the FWC Commissioners. This step can require anywhere from two weeks to several months to complete, depending on the size and complexity of the LRRC report.

**Step 7: Authorization to publish a Notice of Proposed Rule**

FWC staff prepares a rule proposal and provides it to the FWC Commissioners for consideration, along with the LRRC report and the staff response to the report. The Commissioners are required to fully consider the LRRC report before authorizing publication of a Notice of Proposed Rule. The Commissioners make the decision to authorize publication of a proposal at a publicly noticed meeting. This typically occurs at one of the five regularly scheduled FWC meetings that are held each year. If the Commissioners do not authorize rule making, the process stops and the party that requested rule making is notified.

**Step 8: Publish a Notice of Proposed Rule**

Publication of this notice in the FAR begins the formal commenting period on the proposed rule. The notice must be published in the FAR at least 28 days before the rule is filed for adoption. FWC staff sends the notice (by mail or e-mail) to all parties who previously requested to be notified and also posts the notice and other information on the FWC website.

**Step 9: Accept public comments and conduct one or more public hearings**

A public hearing must be held if requested within 21 days after publication of the Notice of Proposed Rule. Final decisions on manatee protection rules are always made by the FWC Commissioners at a publicly noticed meeting, so at least one public hearing is always held, even if one is not requested. FWC staff typically conducts an initial public hearing in the affected area within a month after the Notice of Proposed Rule is published. The final public hearing is held by the FWC Commissioners, typically at one of the five regularly scheduled FWC meetings that are held each year. The comment period lasts for 21 days after publication of the notice or through the date of the final public hearing, whichever is longer. As a result, the formal comment period is often open between two and four months.

**Step 10: Review public comments and prepare final staff recommendations**

FWC staff reviews comments received during the public comment period and then develops final staff recommendations for consideration by the FWC Commissioners.

**Step 11: Authorization to adopt rule**

The FWC Commissioners decide whether to approve a proposed rule (with or without changes) at the final public hearing (see Step 9).

**Step 12: Publish a Notice of Change (NOC)**

If the FWC Commissioners approve a proposed rule with substantive changes, a NOC must be published in the FAR at least 21 days before the rule can be filed for adoption. FWC staff sends the notice (by mail or e-mail) to all parties who previously requested to be notified and also posts the notice on the FWC website.

**Step 13: File the rule for adoption**

Rules are considered "adopted" when they are filed with the Dept. of State and generally take effect 20 days after adoption. Zones become enforceable when regulatory markers are posted to notify boaters and others about the zone boundaries. Posting of zones can take anywhere from a few months to over a year to complete, depending on the scope and complexity of the zones.

**NOTE:** If areas for which the FWC adopts regulations are also regulated by other governments and/or for other purposes besides manatee protection, the most restrictive regulation applies and is what is posted.

The information provided above is only a summary of the basic rule making process. There are exceptions and alternatives to some of these steps. Chapter 120 and §379.2431(2), FS, should be consulted for a complete description of the required process. Also see Chapter 1-1, FAC, (for requirements related to publishing in the FAR and filing rules for adoption) and 28-102 and 28-103, FAC, (for processes required by the Uniform Rules of Procedure).