

The 2003 Florida Statutes

[Title XXVIII](#)
NATURAL RESOURCES; CONSERVATION,
RECLAMATION, AND USE

[Chapter 370](#)
SALTWATER
FISHERIES

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370.12 Marine animals; regulation.--

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¹(2) PROTECTION OF MANATEES OR SEA COWS.--

(a) This subsection shall be known and may be cited as the "Florida Manatee Sanctuary Act."

(b) The State of Florida is hereby declared to be a refuge and sanctuary for the manatee, the "Florida state marine mammal." The protections extended to and authorized on behalf of the manatee by this act are independent of, and therefore are not contingent upon, its status as a state or federal listed species.

(c) Whenever the Fish and Wildlife Conservation Commission is satisfied that the interest of science will be subserved, and that the application for a permit to possess a manatee or sea cow (*Trichechus manatus*) is for a scientific or propagational purpose and should be granted, and after concurrence by the United States Department of the Interior, the commission may grant to any person making such application a special permit to possess a manatee or sea cow, which permit shall specify the exact number which shall be maintained in captivity.

(d) Except as may be authorized by the terms of a valid state permit issued pursuant to paragraph (c) or by the terms of a valid federal permit, it is unlawful for any person at any time, by any means, or in any manner intentionally or negligently to annoy, molest, harass, or disturb or attempt to molest, harass, or disturb any manatee; injure or harm or attempt to injure or harm any manatee; capture or collect or attempt to capture or collect any manatee; pursue, hunt, wound, or kill or attempt to pursue, hunt, wound, or kill any manatee; or possess, literally or constructively, any manatee or any part of any manatee.

(e) Any gun, net, trap, spear, harpoon, boat of any kind, aircraft, automobile of any kind, other motorized vehicle, chemical, explosive, electrical equipment, scuba or other subaquatic gear, or other instrument, device, or apparatus of any kind or description used in violation of any provision of paragraph (d) may be forfeited upon conviction. The foregoing provisions relating to seizure and forfeiture of vehicles, vessels, equipment, or supplies do not apply when such vehicles, vessels, equipment, or supplies are owned by, or titled in the name of, innocent parties; and such provisions shall not vitiate any valid lien, retain title contract, or chattel mortgage on such vehicles, vessels, equipment, or supplies if such lien, retain title contract, or chattel mortgage is property of public record at the time of the seizure.

(f)1. Except for emergency rules adopted under s. [120.54](#), all proposed rules of the commission for which a notice of intended agency action is filed proposing to govern the speed and operation of motorboats for purposes of manatee protection shall be submitted to the counties in which the proposed rules will take effect for review by local rule review committees.

2. No less than 60 days prior to filing a notice of rule development in the Florida Administrative Weekly, as provided in s. [120.54\(3\)\(a\)](#), the commission shall notify the counties for which a rule to regulate the speed and operation of motorboats for the protection of manatees is proposed. A county so notified shall establish a rule review committee or several counties may combine rule review committees.

3. The county commission of each county in which a rule to regulate the speed and operation of motorboats for the protection of manatees is proposed shall designate a rule review committee. The designated voting membership of the rule review committee must be comprised of waterway users, such as fishers, boaters, water skiers, other waterway users, as compared to the number of manatee and other environmental advocates. A county commission may designate an existing advisory group as the rule review committee. With regard to each committee, fifty percent of the voting members shall be manatee advocates and other environmental advocates, and fifty percent of the voting members shall be waterway users.

4. The county shall invite other state, federal, county, municipal, or local agency representatives to participate as nonvoting members of the local rule review committee.

5. The county shall provide logistical and administrative staff support to the local rule review committee and may request technical assistance from commission staff.

6. Each local rule review committee shall elect a chair and recording secretary from among its voting members.

7. Commission staff shall submit the proposed rule and supporting data used to develop the rule to the local rule review committees.

8. The local rule review committees shall have 60 days from the date of receipt of the proposed rule to submit a written report to commission members and staff. The local rule review committees may use supporting data supplied by the commission, as well as public testimony which may be collected by the committee, to develop the written report. The report may contain recommended changes to proposed manatee protection zones or speed zones, including a recommendation that no rule be adopted, if that is the decision of the committee.

9. Prior to filing a notice of proposed rulemaking in the Florida Administrative Weekly as provided in s. [120.54\(3\)\(a\)](#), the commission staff shall provide a written response to the local rule review committee reports to the appropriate counties, to the commission members, and to the public upon request.

10. In conducting a review of the proposed manatee protection rule, the local rule review committees may address such factors as whether the best available scientific information supports the proposed rule, whether seasonal zones are warranted, and such other factors as may be necessary to balance manatee protection and public access to and use of the waters being regulated under the proposed rule.

11. The written reports submitted by the local rule review committees shall contain a

majority opinion. If the majority opinion is not unanimous, a minority opinion shall also be included.

12. The members of the commission shall fully consider any timely submitted written report submitted by a local rule review committee prior to authorizing commission staff to move forward with proposed rulemaking and shall fully consider any timely submitted subsequent reports of the committee prior to adoption of a final rule. The written reports of the local rule review committees and the written responses of the commission staff shall be part of the rulemaking record and may be submitted as evidence regarding the committee's recommendations in any proceeding relating to a rule proposed or adopted pursuant to this subsection.

13. The commission is relieved of any obligations regarding the local rule review committee process created in this paragraph if a timely noticed county commission fails to timely designate the required rule review committee.

(g) In order to protect manatees or sea cows from harmful collisions with motorboats or from harassment, the Fish and Wildlife Conservation Commission is authorized, in addition to all other authority, to provide a permitting agency with comments regarding the expansion of existing, or the construction of new, marine facilities and mooring or docking slips, by the addition or construction of five or more powerboat slips. The commission shall adopt rules under chapter 120 regulating the operation and speed of motorboat traffic only where manatee sightings are frequent and the best available scientific information, as well as other available, relevant, and reliable information, which may include but is not limited to, manatee surveys, observations, available studies of food sources, and water depths, supports the conclusions that manatees inhabit these areas on a regular basis:

1. In Lee County: the entire Orange River, including the Tice Florida Power and Light Corporation discharge canal and adjoining waters of the Caloosahatchee River within 1 mile of the confluence of the Orange and Caloosahatchee Rivers.
2. In Brevard County: those portions of the Indian River within three-fourths of a mile of the Orlando Utilities Commission Delespine power plant effluent and the Florida Power and Light Frontenac power plant effluents.
3. In Indian River County: the discharge canals of the Vero Beach Municipal Power Plant and connecting waters within $1\frac{1}{4}$ miles thereof.
4. In St. Lucie County: the discharge of the Henry D. King Municipal Electric Station and connecting waters within 1 mile thereof.
5. In Palm Beach County: the discharges of the Florida Power and Light Riviera Beach power plant and connecting waters within $1\frac{1}{2}$ miles thereof.
6. In Broward County: the discharge canal of the Florida Power and Light Port Everglades power plant and connecting waters within $1\frac{1}{2}$ miles thereof and the discharge canal of the Florida Power and Light Fort Lauderdale power plant and connecting waters within 2 miles thereof. For purposes of ensuring the physical safety of boaters in a sometimes turbulent area, the area from the easternmost edge of the authorized navigation project of the intracoastal waterway east through the Port Everglades Inlet is excluded from this regulatory zone.
7. In Citrus County: headwaters of the Crystal River, commonly referred to as King's

Bay, and the Homosassa River.

8. In Volusia County: Blue Springs Run and connecting waters of the St. Johns River within 1 mile of the confluence of Blue Springs and the St. Johns River; and Thompson Creek, Strickland Creek, Dodson Creek, and the Tomoka River.

9. In Hillsborough County: that portion of the Alafia River from the main shipping channel in Tampa Bay to U.S. Highway 41.

10. In Sarasota County: the Venice Inlet and connecting waters within 1 mile thereof, including Lyons Bay, Donna Bay, Roberts Bay, and Hatchett Creek, excluding the waters of the intracoastal waterway and the right-of-way bordering the centerline of the intracoastal waterway.

11. In Collier County: within the Port of Islands, within section 9, township 52 south, range 28 east, and certain unsurveyed lands, all east-west canals and the north-south canals to the southerly extent of the intersecting east-west canals which lie southerly of the centerline of U.S. Highway 41.

12. In Manatee County: that portion of the Manatee River east of the west line of section 17, range 19 east, township 34 south; the Braden River south of the north line and east of the west line of section 29, range 18 east, township 34 south; Terra Ceia Bay and River, east of the west line of sections 26 and 35 of range 17 east, township 33 south, and east of the west line of section 2, range 17 east, township 34 south; and Bishop Harbor east of the west line of section 13, range 17 east, township 33 south.

13. In Miami-Dade County: those portions of Black Creek lying south and east of the water control dam, including all boat basins and connecting canals within 1 mile of the dam.

(h) The Fish and Wildlife Conservation Commission shall adopt rules pursuant to chapter 120 regulating the operation and speed of motorboat traffic only where manatee sightings are frequent and the best available scientific information, as well as other available, relevant, and reliable information, which may include but is not limited to, manatee surveys, observations, available studies of food sources, and water depths, supports the conclusion that manatees inhabit these areas on a regular basis within that portion of the Indian River between the St. Lucie Inlet in Martin County and the Jupiter Inlet in Palm Beach County and within the Loxahatchee River in Palm Beach and Martin Counties, including the north and southwest forks thereof.

(i) The commission shall adopt rules pursuant to chapter 120 regulating the operation and speed of motorboat traffic only where manatee sightings are frequent and the best available scientific information, as well as other available, relevant, and reliable information, which may include but is not limited to, manatee surveys, observations, available studies of food sources, and water depths, supports the conclusion that manatees inhabit these areas on a regular basis within the Withlacoochee River and its tributaries in Citrus and Levy Counties. The specific areas to be regulated include the Withlacoochee River and the U.S. 19 bridge westward to a line between U.S. Coast Guard markers number 33 and number 34 at the mouth of the river, including all side channels and coves along that portion of the river; Bennets' Creek from its beginning to its confluence with the Withlacoochee River; Bird's Creek from its beginning to its confluence with the Withlacoochee River; and the two dredged canal systems on the north side of the Withlacoochee River southwest of Yankeetown.

(j) If any new power plant is constructed or other source of warm water discharge is discovered within the state which attracts a concentration of manatees or sea cows, the commission is directed to adopt rules pursuant to chapter 120 regulating the operation and speed of motorboat traffic within the area of such discharge. Such rules shall designate a zone which is sufficient in size, and which shall remain in effect for a sufficient period of time, to protect the manatees or sea cows.

(k) It is the intent of the Legislature to allow the Fish and Wildlife Conservation Commission to post and regulate boat speeds only where the best available scientific information, as well as other available, relevant, and reliable information, which may include but is not limited to, manatee surveys, observations, available studies of food sources, and water depth, supports the conclusion that manatees inhabit these areas on a periodic basis. It is not the intent of the Legislature to permit the commission to post and regulate boat speeds generally throughout the waters of the state, thereby unduly interfering with the rights of fishers, boaters, and water skiers using the areas for recreational and commercial purposes. The Legislature further intends that the commission may identify and designate limited lanes or corridors providing for reasonable motorboat speeds within waters of the state whenever such lanes and corridors are consistent with manatee protection.

(l) The commission shall adopt rules pursuant to chapter 120 regulating the operation and speed of motorboat traffic all year around within Turkey Creek and its tributaries and within Manatee Cove in Brevard County. The specific areas to be regulated consist of:

1. A body of water which starts at Melbourne-Tillman Drainage District structure MS-1, section 35, township 28 south, range 37 east, running east to include all natural waters and tributaries of Turkey Creek, section 26, township 28 south, range 37 east, to the confluence of Turkey Creek and the Indian River, section 24, township 28 south, range 37 east, including all lagoon waters of the Indian River bordered on the west by Palm Bay Point, the north by Castaway Point, the east by the four immediate spoil islands, and the south by Cape Malabar, thence northward along the shoreline of the Indian River to Palm Bay Point.

2. A triangle-shaped body of water forming a cove (commonly referred to as Manatee Cove) on the east side of the Banana River, with northern boundaries beginning and running parallel to the east-west cement bulkhead located 870 feet south of SR 520 Relief Bridge in Cocoa Beach and with western boundaries running in line with the City of Cocoa Beach channel markers 121 and 127 and all waters east of these boundaries in section 34, township 24 south, range 37 east; the center coordinates of this cove are 28°20'14" north, 80°35'17" west.

(m) The commission shall promulgate regulations pursuant to chapter 120 relating to the operation and speed of motor boat traffic in port waters with due regard to the safety requirements of such traffic and the navigational hazards related to the movement of commercial vessels.

(n) The commission may designate by rule adopted pursuant to chapter 120 other portions of state waters where manatees are frequently sighted and the best available scientific information, as well as other available, relevant, and reliable information, which may include but is not limited to, manatee surveys, observations, available studies of food sources, and water depths, supports the conclusion that manatees inhabit such waters periodically. Upon designation of such waters, the commission shall adopt rules

pursuant to chapter 120 to regulate motorboat speed and operation which are necessary to protect manatees from harmful collisions with motorboats and from harassment. The commission may adopt rules pursuant to chapter 120 to protect manatee habitat, such as seagrass beds, within such waters from destruction by boats or other human activity. Such rules shall not protect noxious aquatic plants subject to control under s. [369.20](#).

(o) The commission may designate, by rule adopted pursuant to chapter 120, limited areas as a safe haven for manatees to rest, feed, reproduce, give birth, or nurse undisturbed by human activity. Access by motor boat to private residences, boat houses, and boat docks through these areas by residents, and their authorized guests, who must cross one of these areas to have water access to their property is permitted when the motorboat is operated at idle speed, no wake.

(p) Except in the marked navigation channel of the Florida Intracoastal Waterway as defined in s. [327.02](#) and the area within 100 feet of such channel, a local government may regulate, by ordinance, motorboat speed and operation on waters within its jurisdiction where the best available scientific information, as well as other available, relevant, and reliable information, which may include but is not limited to, manatee surveys, observations, available studies of food sources, and water depths, supports the conclusion that manatees inhabit these areas on a regular basis. However, such an ordinance may not take effect until it has been reviewed and approved by the commission. If the commission and a local government disagree on the provisions of an ordinance, a local manatee protection committee must be formed to review the technical data of the commission and the United States Fish and Wildlife Service, and to resolve conflicts regarding the ordinance. The manatee protection committee must be comprised of:

1. A representative of the commission;
2. A representative of the county;
3. A representative of the United States Fish and Wildlife Service;
4. A representative of a local marine-related business;
5. A representative of the Save the Manatee Club;
6. A local fisher;
7. An affected property owner; and
8. A representative of the Florida Marine Patrol.

If local and state regulations are established for the same area, the more restrictive regulation shall prevail.

(q) The commission shall evaluate the need for use of fenders to prevent crushing of manatees between vessels (100' or larger) and bulkheads or wharves in counties where manatees have been crushed by such vessels. For areas in counties where evidence indicates that manatees have been crushed between vessels and bulkheads or wharves, the commission shall:

1. Adopt rules pursuant to chapter 120 requiring use of fenders for construction of future bulkheads or wharves; and

2. Implement a plan and time schedule to require retrofitting of existing bulkheads or wharves consistent with port bulkhead or wharf repair or replacement schedules.

The fenders shall provide sufficient standoff from the bulkhead or wharf under maximum operational compression to ensure that manatees cannot be crushed between the vessel and the bulkhead or wharf.

(r) Any violation of a restricted area established by this subsection, or established by rule pursuant to chapter 120 or ordinance pursuant to this subsection, shall be considered a violation of the boating laws of this state and shall be charged on a uniform boating citation as provided in s. [327.74](#), except as otherwise provided in paragraph (s). Any person who refuses to post a bond or accept and sign a uniform boating citation shall, as provided in s. [327.73\(3\)](#), be guilty of a misdemeanor of the second degree, punishable as provided in s. [775.082](#) or s. [775.083](#).

(s) Except as otherwise provided in this paragraph, any person violating the provisions of this subsection or any rule or ordinance adopted pursuant to this subsection shall be guilty of a misdemeanor, punishable as provided in s. [370.021\(1\)\(a\)](#) or (b).

1. Any person operating a vessel in excess of a posted speed limit shall be guilty of a civil infraction, punishable as provided in s. [327.73](#), except as provided in subparagraph 2.

2. This paragraph does not apply to persons violating restrictions governing "No Entry" zones or "Motorboat Prohibited" zones, who, if convicted, shall be guilty of a misdemeanor, punishable as provided in s. [370.021\(1\)\(a\)](#) or (b), or, if such violation demonstrates blatant or willful action, may be found guilty of harassment as described in paragraph (d).

(t)1. In order to protect manatees and manatee habitat, the counties identified in the Governor and Cabinet's October 1989 Policy Directive shall develop manatee protection plans consistent with commission criteria based upon "Schedule K" of the directive, and shall submit such protection plans for review and approval by the commission. Any manatee protection plans not submitted by July 1, 2004, and any plans not subsequently approved by the commission shall be addressed pursuant to subparagraph 2.

2. No later than January 1, 2005, the Fish and Wildlife Conservation Commission shall designate any county it has identified as a substantial risk county for manatee mortality as a county that must complete a manatee protection plan by July 1, 2006. The commission is authorized to adopt rules pursuant to s. [120.54](#) for identifying substantial risk counties and establishing criteria for approval of manatee protection plans for counties so identified. Manatee protection plans shall include the following elements at a minimum: education about manatees and manatee habitat; boater education; an assessment of the need for new or revised manatee protection speed zones; local law enforcement; and a boat facility siting plan to address expansion of existing and the development of new marinas, boat ramps, and other multislip boating facilities.

3. Counties required to adopt manatee protection plans under this paragraph shall incorporate the boating facility siting element of those protection plans within their respective comprehensive plans.

4. Counties that have already adopted approved manatee protection plans, or that adopt subsequently approved manatee protection plans by the effective date of this act, are in compliance with the provisions of this paragraph so long as they incorporate their

approved boat facility siting plan into the appropriate element of their local comprehensive plan no later than July 1, 2003.

(3) PROTECTION OF MAMMALIAN DOLPHINS (PORPOISES).--It is unlawful to catch, attempt to catch, molest, injure, kill, or annoy, or otherwise interfere with the normal activity and well-being of, mammalian dolphins (porpoises), except as may be authorized by a federal permit.

(4) ANNUAL FUNDING OF PROGRAMS FOR MARINE ANIMALS.--

(a) Each fiscal year the Save the Manatee Trust Fund shall be available to fund an impartial scientific benchmark census of the manatee population in the state. Weather permitting, the study shall be conducted annually by the Fish and Wildlife Conservation Commission and the results shall be made available to the President of the Senate, the Speaker of the House of Representatives, and the Governor and Cabinet for use in the evaluation and development of manatee protection measures. In addition, the Save the Manatee Trust Fund shall be available for annual funding of activities of public and private organizations and those of the commission intended to provide manatee and marine mammal protection and recovery effort; manufacture and erection of informational and regulatory signs; production, publication, and distribution of educational materials; participation in manatee and marine mammal research programs, including carcass salvage and other programs; programs intended to assist the recovery of the manatee as an endangered species, assist the recovery of the endangered or threatened marine mammals, and prevent the endangerment of other species of marine mammals; and other similar programs intended to protect and enhance the recovery of the manatee and other species of marine mammals.

(b) By December 1 each year, the Fish and Wildlife Conservation Commission shall provide the President of the Senate and the Speaker of the House of Representatives a written report, enumerating the amounts and purposes for which all proceeds in the Save the Manatee Trust Fund for the previous fiscal year are expended, in a manner consistent with those recovery tasks enumerated within the manatee recovery plan as required by the Endangered Species Act.

(c) When the federal and state governments remove the manatee from status as an endangered or threatened species, the annual allocation may be reduced.

History.--s. 2, ch. 28145, 1953; ss. 1, 2, ch. 57-771; s. 1, ch. 59-483; s. 1, ch. 67-2198; ss. 25, 35, ch. 69-106; s. 1, ch. 70-48; s. 1, ch. 70-357; s. 1, ch. 71-120; s. 289, ch. 71-136; ss. 1, 1A, ch. 71-145; s. 1, ch. 74-20; s. 1, ch. 77-174; s. 1, ch. 78-252; s. 79, ch. 79-164; s. 6, ch. 81-228; ss. 1, 2, ch. 82-170; s. 1, ch. 83-81; s. 68, ch. 84-338; s. 10, ch. 85-234; s. 7, ch. 89-168; s. 1, ch. 89-314; s. 5, ch. 90-219; s. 3, ch. 91-199; s. 2, ch. 91-215; s. 1, ch. 93-83; s. 1, ch. 93-254; s. 226, ch. 94-356; s. 991, ch. 95-148; s. 1, ch. 95-248; s. 31, ch. 96-321; s. 3, ch. 97-272; s. 2, ch. 98-200; ss. 7, 17, ch. 98-227; s. 154, ch. 99-13; s. 45, ch. 99-245; s. 35, ch. 99-289; s. 2, ch. 2000-153; s. 36, ch. 2000-197; s. 5, ch. 2001-62; s. 16, ch. 2002-264; s. 1, ch. 2003-59; s. 3, ch. 2003-111; s. 1, ch. 2003-156.

¹**Note.**--Section 20, ch. 2002-264, provides that "[t]he Legislature intends that the provisions of this act may not be retroactively applied to manatee protection rules existing or in the process of being adopted on the effective date of this act unless the Fish and Wildlife Conservation Commission proposes to amend or revise such rules after this act takes effect. Proposed rules that are currently subject to an administrative challenge pending as of February 12, 2002, are not subject to the provisions of this act unless a court or administrative hearing officer finds such proposed rule to be invalid and all appeals have been exhausted. Once such rules become final, any revisions or amendments of such rules shall be conducted pursuant to the provisions of this act."