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Re: Save the Manatee Club, et al. v. Lt. General Joe N. Ballard, et al.
Case No. 1:00CV00076 EGS/JMF
Proposed Stipulated Order

Dear Counsel:

The Board of Commissioners of Lee County, Florida have followed with interest the recent contempt proceedings arising out of the above captioned matter. Although Lee County is neither a party nor intervenor, the additional regulations contained in the recent proposed Stipulated Order will have far reaching effects in our area. We feel that essential information may have been overlooked by the parties to the proposed settlement, and seek an appropriate method to raise our concerns with the parties and the Court. We enlist your support for a public notice and comment period which would enable Lee County and other affected governments to present their concerns prior to approval of the proposed settlement.

Geographically, Lee County, Florida, includes the mouth and significant portion of the Caloosahatchee River. Tourism is the major industry of Lee County. We have successfully marketed our area as an unspoiled natural environment, and opportunities for fishing and other water-related activities are very important aspects of the quality

of life which we enjoy and promote. Consequently, the additional regulations restricting access and use of our local waterways will have substantial far-reaching adverse economic affects. Moreover, these proposed regulations will have the immediate adverse affect of undermining and negating recent efforts undertaken by Lee County to educate the boating public of existing Manatee Speed Zones. We feel that the need for these far-ranging regulations are unsupported by the best available data concerning manatee population and mortality.

Lee County has the following specific concerns:

1. The proposed expansion of speed zones in the Proposed Stipulated Order is contrary to the goals set forth in the Florida Manatee Recovery Plan (FMRP), 3rd Edition, approved by the U.S. Fish and Wildlife Service (FWS), on October 30, 2001. That document was designed to represent official FWS policy on actions necessary to recover the species.

The FMRP generally recognizes the State of Florida as the lead agency in speed zone development. Expansion of refuges (speed zones) might be appropriate in certain areas if supported by an objective scientific basis. In this regard, virtually all scientific data related to manatees in the Caloosahatchee River comes from the Florida Fish and Wildlife Conservation Commission (FWC). FWC completed a comprehensive review of the Caloosahatchee in November 2002 and determined:

- there was no immediate benefit to manatees from initiating a speed zone change at this time;
- any rules should be considered on a larger geographic scale if possible;
- it is too soon to make changes at this time because recent positive efforts have not had time to be evaluated.

2. Under the terms of the settlement agreement between Save the Manatee Club et al. and FWC, the State of Florida has agreed to complete a report on the effectiveness of speed zones throughout Lee County by Fall 2003. The Proposed Order has the unfortunate result of forcing federal and state agencies into competing roles. The increased regulation via court order will be counter-productive to achieving the goals of the original settlement. At a minimum, it will put the FWC into a position where they may not be able to comply with the terms of the original settlement or present any meaningful analysis of the speed zone effectiveness.
3. During the past six months, numerous positive steps have been undertaken locally relating to enforcement, education and compliance with existing speed

zones. All these actions are consistent with the priority recommendations of the FMRP. A special emphasis has been placed on the Caloosahatchee River, particularly in the area of enforcement. Underscoring the effectiveness of these efforts is the fact that there have been no watercraft mortalities recovered in the Caloosahatchee since August 9, 2002 and only two (2) since February 3, 2002.

4. Lee County fears that superimposing a federal refuge over existing state and local speed zones will hurt understanding, compliance and enforcement. Compliance is essential because existing enforcement cannot completely cover the entire existing area of regulation. Educational efforts already undertaken, such as the Boaters Guide and the new boat ramp signs, will be rendered inaccurate and obsolete, and the resources expended to no avail.

Efforts currently under development will need to be aborted. Local funding may not be sufficient to restart those projects to address new speed zones. Regulatory sign posting will be incorrect and confusing to boaters. Local enforcement may not be able to write tickets on the new federal zones. The only apparent recognition of this problem is a FWS commitment to increase their enforcement task force operations to include 50 operations during 2003 at targeted areas throughout the state.

5. The zones as drafted will have a major socio-economic impact and in no way consider the needs of the boating public. A typical small recreational vessel transiting the Caloosahatchee to the Gulf of Mexico via the federally designated Intracoastal Waterway would have over an hour added to their travel time each direction in the winter. Businesses that depend on water access or transportation, such as ferry vessels, commercial fishing, waterfront restaurants, fishing guides, etc., would be severely impacted and may no longer be commercially viable.

The proposed zones, by virtue of not allowing vessels even a designated channel in which to travel at planing speed will cause a significant shift in the boating patterns in some areas. This may have the unintended consequence of shifting vessel traffic out of appropriate waterways and into areas with potentially greater risks to manatees and boaters.

6. The expansion of speed zones as proposed does not appear to coordinate with the best available scientific data, and, as such, may do nothing to reduce manatee mortality. The Proposed Order states that the best data was used. The FWS should be required to present that data, their analysis and conclusions in a forum where public input can be considered prior to specific zones being stipulated.
7. Additionally, expanded speed zones must be linked to Marine Mammal Protection Act (MMPA) rules, Area of Inadequate Protection (AIP) designations and permits. Designation of new refuges should remove the AIP designation

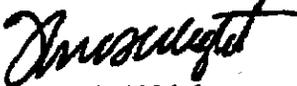
currently being imposed under the Final Interim Strategy. All single family dock permits should be processed accordingly. This additional mitigation must also be considered in the MMPA incidental take EIS and factored into any proposed MMPA rules. It is imperative that this linkage be acknowledged by the parties to the lawsuit prior to any stipulation for speed zone expansion because it may not be considered adequately after the fact.

8 It appears based on the content of the order and the comments from officials with the Department of Interior that the additional speed zones will not ease the current permitting burden. The Proposed Order acknowledges the Interim Guidance that created the AIP and caused the current permit moratorium areas. In that discussion it is not stated or even implied that the AIP designation would be changed.

The Proposed Order stipulates that the FWS will be required to write formalized Biological Opinions (BO) for all water access facility permits in peninsular Florida that "may affect" manatees. Preparation of a BO is a detailed and lengthy process. This will take considerably more time and resources than the prior concurrence letters and will have the result of slowing the FWS review process to a crawl. Because permits cannot be acted on until the BO is complete, even projects in areas where manatees are adequately protected will be greatly delayed.

We request that you consider our concerns, and present them to the Court, together with our suggestion that an appropriate public notice and comment period be allowed to expand on these issues prior to approval of the negotiated proposed Stipulated Order. Such an opportunity for public comment is not unknown in stipulated settlements of litigation when initiated by the Department. We suggest it would be useful and instructive in this matter in which the Department is the defendant. Such an opportunity is especially important in this matter, inasmuch as many affected governmental units who are not parties to the pending lawsuit will be substantially affected by the proposed settlement.

Sincerely,


Thomas L. Wright
Assistant County Attorney

TLW