

**LEE COUNTY MANATEE SPEED ZONE
LOCAL RULES REVIEW COMMITTEE**

Lee County Community Development / Public Works Center
1500 Monroe St., First Floor Conference Rooms 1A & 1B
Fort Myers, Florida

Tuesday, June 29, 2004
3:00 p.m.

Transcript of Meeting

Facilitator: Valerie Tutor

Committee

Members: Steve Maxwell, Chairman
Hans Wilson, Vice-Chairman
Susan Scott, Secretary
Matt Bixler
Laura Combs
Ernie Hendry
John Kinney
Alex Lambros
Scott Trebatoski
Doug Wilkinson

Guests:

Kalani Cairns, U.S. Fish & Wildlife Service
Scott Calleson, Florida Fish & Wildlife Conservation Commission
Kipp Frohlich, Florida Fish & Wildlife Conservation Commission

Lee County

Staff: Steve Boutelle, Division of Natural Resources
Chris Koepfer, Division of Natural Resources
Kristie Kroslack, Assistant County Attorney
Justin McBride, Division of Natural Resources
Denise Bayliss, Division of Natural Resources

Speakers from

the Public: Leo Amos
Hal Stevens
Dave Turner

CHAIRMAN MAXWELL: We're going to call the meeting to order. It is now 3:05. In deference to those that arrived late, we'll be able to recognize them and move on. We are at the 29 June 04 meeting relative to the Manatee Local Rule Committee, gathering in relationship to state statutes to allow us to, as a local body, to come up with solutions for the benefit of both parties, whether its the environment or the human. And what we are going to do is I'm going to turn my portion over now to the facilitator [Valerie Tutor]. You can introduce yourself. For those people who were not here last week, this will give you the opportunity to be introduced. Then we will go through a brief summary by her, our facilitator. Then we will talk about what we are going to do today in relationship to the agenda. As we left last week...hopefully everybody has read the notes that were provided by our facilitator...and she's going to give you a brief synopsis of that for those who were not here last week.

I received public participation forms from the following people: Dave Turner, Hal Stevens, Leo Amos. Those people that are here for the first time and wish to speak, we'll talk about that as we recap what happened at our first meeting of last week. Looking at the number of members here, it assumes that we do have a quorum. Would you say so, Assistant Attorney Owen?

MS. KROSLACK: David Owen isn't here today. I'm Kristie Kroslack.

CHAIRMAN MAXWELL: Hi, Kristie. Thank you. And also for the benefit of running the meeting and so that there is no interpretations and otherwise, I found a jewel in the Noah's Ark – the Robert's Rules of Order. And it specifically...supposedly at that time, I think 1963 by the smell and the price, it was the first and only addition in paperback. So, we have that and if there's any issues in terms of clarification...It was almost like a godsend there. I said oh, boom, bingo, I can find it. The big thick red binder, it's four times as much. So, that's here for us to participate in looking at and getting clarification. So nothing will be arbitrary or capricious in terms of how we run the meeting. So with that underway, we want to also make clear for the record that the County Attorney will now speak in relationship to the public notice that was put to form in the newspaper. If you would, please ma'am.

MS. KROSLACK: I have reviewed the affidavit of publication published in the News-Press on June 24th and find that it is legally sufficient for conducting this public hearing.

CHAIRMAN MAXWELL: Thank you, ma'am. And the second question would be as to quorum. Do we meet the number as present?

MS. KROSLACK: Yes, you do.

CHAIRMAN MAXWELL: Thank you, ma'am. OK, you may begin.

MS. TUTOR: Thank you. My name is Valerie Tutor. For those of you who do not know me, I am the meeting facilitator. My job is mainly to assist the chairman and the vice-chairman in helping us move along, get what you are supposed to be doing done, get the

task done and in the time frame done in. I will consider it a success if we do that. Part of my job will also be to assist in helping you go over the things that we agreed on from the first meeting as far as in our housekeeping. And keeping a set of working notes. We do have Denise Bayliss here who will be keeping our minutes, our official minutes. The working notes become a part of the minutes. But hers are the official minutes because they are tape recorded. You will see some microphones situated around. Please make sure also when you do speak that you say your name so that you can help Miss Denise out. Again, my name is Valerie. And before I actually go over, just a real quick recap, and I do have Justin running off a copy of my working notes in case anybody doesn't have them. HE will have them. I would like to ask everyone to go around, for the record, because we do have some people here who were not here at the first meeting, to introduce themselves. And we will start with the committee because that will help Miss Denise, and then we'll ask staff to introduce themselves because we do have some more here.

My name is ERNIE HENDRY. I'm SCOTT TREBATOSKI. JOHN KINNEY, ALEX LAMBROS, MATT BIXLER, SUSAN SCOTT, LAURA COMBS, HANS WILSON, STEVE MAXWELL.

MS. TUTOR: Great, OK, and the members of staff . Kristie, would you like to introduce yourself?

MS. KROSLACK: Kristie Kroslack with the County Attorney's Office.

MS. TUTOR: And we have Justin [McBride]. Pretend he's there.

SCOTT CALLESON from the Fish & Wildlife Commission. KIPP FROHLICH, Fish & Wildlife Commission. KALANI CAIRNS of the U.S. Fish & Wildlife Service. STEVE BOUTELLE, also with the County Natural Resources Division.

MS. TUTOR: Do we have any other members of staff present? OK. Again, my name is Valerie Tutor. I also have copies of the agenda. If anybody wants a copy of the agenda, or members of the public, Miss Denise ran off extra copies. So, if you need those please wave or let us know.

At the first meeting we established a lot about the housekeeping and the general rules. The one thing I would like to call your attention to, because we are going to adhere to them throughout, and I know that Mr. Maxwell will keep us on track with that, if not, I will be assisting on that also, is our Rules of Civility. We agreed that everyone in the room, the commission, the committee rather, the staff, and members of the public, will adhere to the Rules of Civility. Those are the Golden Rule: being polite, being respectful to each other, maintaining focus, sticking to the agenda, not interrupting each other, focusing on the issues and not personality, minding our manners, and that everyone in the room must abide by those rules. So, those were agreed on and voted on by the members here. I see that Mr. Doug [Wilkinson] is not present, but I'm sure he will be along shortly, so we'll recognize him at that time.

So OK, the other thing that we discussed at the meeting was going over the working notes at the moment. We also talked about, besides housekeeping, is that Steve Maxwell is Chairman, Hans Wilson was elected Vice-Chair, Susan Scott is the Secretary. Then we had some general review from the staff about the different materials that you received. We also got some more materials from Doug [Wilkinson] and Susan [Scott] also provided some materials to the committee. And we also looked at some of the maps and decided then on how we were going to proceed as far as areas. Now I know Mr. Alex [Lambros] wasn't here and you all may decide you want to recap a little bit of that for him or see what his feelings are on it. But the group that was here at the first meeting [June 17, 2004] did decide on how they wanted to proceed through the different areas in the county and the map that was presented to them.

The object of this committee is to look at the proposed rule that has been set about for the manatee protection speed zones throughout Lee County, in the different waters of Lee County and to make a recommendation. A majority recommendation, number one, on the various areas of whether you like it the way it is, or what you would like it to look like, as if it wasn't even there., what you would like it to look like. The different speed zones. Or if there should be any from zero and all the different entities of that. And then if there is a minority opinion, we also want to include that in the recommendation to the state staff. So we'll have our majority opinion. And again, my job will be to keep a set of informal working notes so you have something to look at. As we proceed through here, we look at what we're doing. I'm going to also then ask if we have a vote, and we get a majority, I'm going to ask you to give me the why and anybody there can sum that up. What the why would be that we would put in our report. Whether it's because you agree with that data, or agree with somebody else's data. And in the minority opinion, you want to be able to state what that is, so we can have a coherent report.

The area that we decided to look at first, in looking at all the areas, we decided to take the Estero Bay area first, and we divided that into ten areas. Justin, did everybody get copies within the last week of all the different maps, and the smaller scale versions of these maps? You should have those. If you don't, you want to let Justin know. Justin, you have some additional materials too that people have requested?

MR. McBRIDE: I have a bunch of additional materials. Do you want me to pass those out?

MS. TUTOR: Mr. Chairman, would you like him to pass those out?

CHAIRMAN MAXWELL: Not right yet. I don't want anyone to get befuddled with information.

MS. TUTOR: Would you let Justin know when you would like that material passed out?

CHAIRMAN MAXWELL: Certainly.

MS. TUTOR: Thank you very much. So right now we are working on, as soon as I turn this back over to Mr. Chairman, you are going to start looking at the Estero Bay and the ten areas that you came up with. They are numbered one through ten. You should have a copy of this. We have a blank map that anybody can come up here and take one of my pens and draw on as you determine what you want to do. We have some other maps. The next one, if we get to it, would be the Caloosahatchee.

Again, the objective is to vote on these different areas, decide what we're going to do with them, what recommendation we're going to make and what the minority, if any, recommendation would be to put our report together. That's how we decided to proceed. We picked some other meeting dates, which are in your working notes. We probably still want to also look at some additional dates, if we can, today to see if we are going to need any additional dates. We left a few out there hanging to see what we wanted to do, based on vacations. That may be something we don't want to forget today, is to see if there are any additional meetings that we need to call and look at our calendars on that.

So with that, I'm going to sit up here and write and Mr. Chairman I'll turn it back over to you.

CHAIRMAN MAXWELL: Thank you, ma'am. So that we can proceed systematically, if we can, and sequentially. Obviously we've had the Call to Order. We have found that we have a quorum. What I'd like to do in the first question presenting to the board is, if in fact, did everyone receive a copy of the working notes by the facilitator? Is there anyone who had not? You have not? OK (copy given to Ernie Hendry).

The facilitator gave us a brief summary of how we went through the first meeting. Is there any discussion from anyone of the board in relationship to the working notes that you would like as point of clarification or need to reiterate an understanding? Yes?

MR. KINNEY: I have a point of clarification. This is the letter from Ken Haddad [Executive Director, Florida Fish & Wildlife Conservation Commission] that was dated June 4th. It says, "There are several issues related to..."

CHAIRMAN MAXWELL: Excuse me, John. Where is that in the working notes? Is that in the working notes?

MR. KINNEY: No, it's not. But I think it may be really relative.

CHAIRMAN MAXWELL: OK, go ahead.

MR. KINNEY: "There are several issues related to the FWC rules that the LRRC may want to consider during its deliberations. As we referred in the letter we sent to the county on April 9th, the Lee County court ruling has called into question the validity of some of the existing zones. As a result, in April 2004 the U.S. Fish & Wildlife Service adopted emergency federal rules that reestablished the effective zones on a temporary 120-day basis. The U.S. Fish & Wildlife Service has indicated that it will propose making

the emergency designations permanent, with the final decision likely being made in July or August 2004. The U.S. Fish & Wildlife Service has further indicated it will not consider making the emergency rules permanent if adequate protection can be provided at either the state or local level.”

My concerns are, if this time frame... and I emailed Justin asking for clarification on that... July is next time we meet, and if the federal government puts in a permanent regulations on the Schoonover areas, then there's a lot of areas that we won't even have to bother to discuss. Justin said that he had heard that U.S. Fish & Wildlife Service had delayed that decision until December. My question is, I would like to have that in writing for this panel before we proceed. Because I was under the impression that this local review committee was set up initially to discuss the Schoonover areas, and then go forward.

CHAIRMAN MAXWELL: OK, hold that thought. If we could, let's asterisks in terms of ...see we're having what's called jurisdictional conflict. We're having, from an administrative standpoint, you said, I believe, Fish & Wildlife will not make a decision until December in relationship to the letter...

MR. KINNEY: The letter said July or August. December is what Justin had said he had heard, that the U.S. Fish & Wildlife Service has delayed their final permit rule making on the Schoonover areas until December. My thing is, this panel needs something in writing to say that they have agreed to do that while we are trying to work our way through this thing.

MS. TUTOR: OK. So we're looking for - is it July or December? Which is it and can we get something in writing.

MR. KINNEY: Yes.

MR. CAIRNS: Kalani Cairns from the Fish & Wildlife Service. Point of clarification. The current emergency rule that is in effect was published in the Federal Register on April 7th. And I believe it terminates, or will expire, August 5th. The intent during this 120-day period was for the Fish & Wildlife Service to draft a proposed rule to go out for public comment, to be published in the Federal Register with public comments, to have a public comment period as well as public hearings held here in Fort Myers. That rule is currently being reviewed in Washington right now. So the agency is faced with a lapse in coverage, potentially on August 5th, that we may not get this proposed rule out for people to review and provide any feedback on. So we're contemplating coming up with a second separate emergency designation that would come into effect on August 6th and would terminate in December.

That does a couple of things. First of all, that gives us the time to complete drafting and review the proposed rules so we can publish it in the Federal Register. And, also provide the Local Rule Review Committee time to continue to process the issues before them, which I understand has a 60-day time frame. So I can't get you anything in writing,

because it is currently being reviewed right now and developed, the language, for a second emergency rule. But I will say that on August 5th, in all likelihood, we are going to come out with an announcement that the first rule is terminated and then we designate a second rule.

MS. TUTOR: But that would not be a permanent rule.

MR. CAIRNS: No. That will be temporary, also for 120 days. Bottom line is the federal agency, Fish & Wildlife Service, won't make any permanent action on these zones until, and if, early December.

CHAIRMAN MAXWELL: Is that good with you John? Is there anything else you want to add?

MR. KINNEY: Personally, I'd like to have something in writing stating the fact that that's the way the U.S. Fish & Wildlife Service is leaning. Because...

MR. CAIRNS: ... regulations when we develop rule policy. We can't arbitrarily come in... These are specified dates...

MR. KINNEY: My concern is, Kalani, is the fact that if we don't put the Schoonover areas first and then this rule making comes out to be permanent in August, for whatever reason, because we're going to consider the whole county and not take the Schoonover areas, then we're between a rock and a hard place.

MR. CAIRNS: I can pretty much assure you that the rule is not going to come out in August, proposed rule that's going to make...or a final rule...to make these permanent. Because, first of all, we haven't had three dates in public on a 60-day period of what they can provide us feedback on what the proposed rule should look like or shouldn't look like. We haven't had the public hearing either. Those two things are going to have to happen first.

MS. TUTOR: OK, Mr. Cairns, what I heard is that the temporary emergency designation that we have now is expiring August 5th. So what will probably occur is another temporary designation that starts August 6th. Correct?

MR. CAIRNS: Correct.

MS. TUTOR: That would be 120 days. I guess one of the committee members Mr. Kinney's concern is, and what you said was, no permanent action could occur until at least December. I guess that's the part that you're asking for, that you would like to see some sort of assurance in print somewhere, that no permanent action... Is that possible?

MR. CAIRNS: I don't know. I've made a note. I'll find out.

CHAIRMAN MAXWELL: OK does that satisfy you, John?

MR. KINNEY: Yes

CHAIRMAN MAXWELL: Is there anything else? OK. Anyone else on the panel have anything they would like to bring to the table in relationship to the working notes that have been provided? Ernie did you have a chance to peruse? Anything you would like to point out?

MR. HENDRY: I do have a question. One of which was what John alluded to and I appreciate you answering that question. Two was...

CHAIRMAN MAXWELL: Where in the working notes? Or is this outside the working notes?

MR. HENDRY: It was just a question of the 120 days that you talked about. The second one was something that was mentioned at the start of the meeting, is the scope of what this committee is addressing. I've seen different things. I've heard different things. Even after reading several of the handouts we have, I still have a little bit of a grey area of understanding of what specifically...because initially I thought we were just dealing with the areas affected by the Schoonover zone, which I realize now is not the case. Valerie mentioned that we are addressing manatee zones in the entire county. And I don't know if that's actually the right verbiage for that. And then I see the letter from Ken Haddad, which was the initial letter that we all received, and that was "the rule proposal that currently appears in the Florida Administrative Code as 68c.22005 is what we are specifically dealing with." And I guess my question is to Kipp [Frohlich] or Scott [Calleson]. Is that the scope of what this group is ...or is this staff's recommendation for what this group should be addressing?

MS. TUTOR: Could you clarify for him what the scope is.

MR. CALLESON: The proposed rule that the commission provided is the ??? rule. So, that what you see there, that's what we're saying is the proposal and what feedback on that proposal. That proposal is intended as a countywide manatee protection proposal. So, if the committee sees fit and they want to suggest other areas that aren't included in that proposal, the commission would like that input. You're certainly not required to do that, but the proposal is... what's on the books right now, as far as what the commission's looking for, is a countywide review. So it's up to the committee to provide input on whatever they want to.

MR. HENDRY: Then the proposal is just the county rules of 1999 with the flexibility that this committee may address state manatee regulations for all of Lee County.

MR. CALLESON: There are existing federal refuges now - not the emergency ones - the existing permanent refuges. One thing the Commission would like to get feedback on is should the state rule incorporate, or otherwise address the federal zones, or not. San

Carlos Bay is an important example of that. We've got areas not covered by the state rule but is covered by the federal rule.

MS. TUTOR: And is it on the map?

MR. CALLESON: It's not on the proposal. It's not part of the state rule.

CHAIRMAN MAXWELL: Ernie, anything else?

MR. HENDRY: No.

CHAIRMAN MAXWELL: If I can, I think what we're going to do is we proceed, we'll help clear the focus up in terms of scope. The important thing we need to look at is we have the asterisks on the preceding page that talks about conflicting jurisdictions. And of course, if the scope was only centered toward the Schoonover ruling, then we wouldn't all be here. It would just be a microcosm, if you will. So this is going to give this board the opportunity to have the leadership, I would feel, through the state in order to show that not only are we going to deal with overlapping jurisdictions, but I think we are going to be able to reach consensus with those overlapping jurisdictions by give and take. That's something that hopefully, Kalani, you will be able to interject at some point in time. Because if we see, for example, conflicting jurisdiction that could be impeding whatever end that we are trying to meet, you will be able to speak up. OK? Does that allay a lot of issues in terms of jurisdiction at this point? And when they come up, we will be able to center on those issues.

MS. TUTOR: Mr. Maxwell, I heard you say this may give us an opportunity then to address those conflicting jurisdictions.

CHAIRMAN MAXWELL: Exactly. And I think, as we proceed today... anyone else have anything to add in terms of the... yes, Susan?

MS. SCOTT: Did everyone have a chance to download or to look at the document Justin provided on what they did in Tampa Bay in their local rules review committee and how they interacted and what they came up with? And then the comments from Fish & Wildlife Commission on their recommendations. And many of their recommendations were accepted, by the way. And I thought that after reading that I had great hope for us actually. I thought that the conclusions they came to were quite good because they had some other local ordinances already in place that were in effect doing what the proposed rule would do. Or they had additional things that we may not have here in Lee County that sounded very good that offered protection for other things that were viable to all sides. And I thought that what they did was an example of what we should be doing here. And I hope everyone had a chance to look at that.

CHAIRMAN MAXWELL: OK, super. Anyone else? Laura.

MS. COMBS: Nothing.

CHAIRMAN MAXWELL: I did want to add, and I noticed it had not been mentioned, I believe it was in the local paper or someone also had called me over the wire in terms of the governor is supposedly going to be doing his call for manatee counts. Didn't that come out last week? I believe he's looking at having a new directive to look at having the appropriate agencies do a manatee...

MR. McBRIDE: I think you are talking about Senate Bill 540.

CHAIRMAN MAXWELL: Yeah, what happened there? Tell us about it.

MR. McBRIDE: I'll just pass these out.

CHAIRMAN MAXWELL: This is also another issue where we are having overlapping conflicting jurisdictional points adding to the time frame.

MR. FROHLICH: The County Attorney's Office is included in the bill and also the brief synopsis.

CHAIRMAN MAXWELL: If you guys will look at the brief synopsis, I need to be excused for a second to uh...

MR. FROHLICH: Mr. Chairman, just a point of order on this is the fact that this really doesn't take effect, I don't believe, until after this committee is ...

CHAIRMAN MAXWELL: Correct. And my concern is we at least need to have it in the calculus, if you will, or in the formula, because let's say we go to the mat in creating something, it might be undone. Could that not happen in the legislature?

MR. FROHLICH: Certainly the legislature can change. This is assigned to the legislative bill, Bill 540. There are certain provisions that I don't...I'm not understanding the nexus, Steve, that...

CHAIRMAN MAXWELL: There's not a nexus intended. Its in terms of correlation, of process. Because we're in the throes of putting something together, but you have countervailing intrusions as to ... the word intrusion is not...but, interceptor, if you will. If an interceptor in the context that you're coming together with your process with the U.S. Fish & Wildlife, we're trying to meet our local jurisdictional need, and then we may be... our idea is to connect the dots, I believe. That's what my whole focus is.

MR. FROHLICH: As Scott [Calleon] said before, I think the track record of one local rule review committee process so far would be that our commissioners, fish and wildlife commission, certainly pay great heed to the recommendations. They didn't rubber stamp them. There were some minor differences, which is perfectly allowable. But they...it was a very important part of their consideration. So the main body that you are influential with is not the legislature in this case, but is our commissioners. So when they consider

what types of rules they will propagate for Lee County, that's where your recommendations will be very important.

CHAIRMAN MAXWELL: OK Then I guess that leads me to the next question. With the Tampa experience, did they talk about the jurisdictional conflicts and did they come to resolution and how did they come to resolution? We want to look at that as a strategy and approach. Right?

MR. FROHLICH: Uh, jurisdictional conflict?

CHAIRMAN MAXWELL: Well, overlapping, or we can create a... whatever words you'd like.

MR. FROHLICH: For instance, the committee could recommend for our commission to defer to local ordinance, local ordinances. And in some cases in Tampa Bay that was a recommendation, although not all. In some cases in Tampa Bay they actually recommended that the commission adopt the Manatee County ordinance. So you have a very open and free hand in what you recommend and you can address those jurisdictional issues. If you think manatee protection and Lee County would be better served in a local ordinance, that's certainly a valid recommendation.

MS. SCOTT: If everyone on their own time would take a look at that. It was provided to the committee. It will ...I got a lot out of reading that because they did come to consensus, number one. The Fish and Wildlife Commission did seriously take into consideration and accepted many, most I would say, of the recommendations. Because they made sense. As we will see in the Estero Bay areas and in the ten areas there are existing local regulations that create the same effect, so to speak. And it just is a good template, I think, for this committee to use. Please take time to read that. I think it will give you the positive feeling that I got from it, that we can move forward, make recommendations that will seriously be considered and put into effect. That's what we're supposed to be doing.

CHAIRMAN MAXWELL: First, quickly Laura, before I go to...we want to recognize Doug [Wilkinson]. Thanks for coming, Doug, and getting through the rain.

MR. WILKINSON: I apologize for being late.

CHAIRMAN MAXWELL: We appreciate you being here. Just to bring you up to speed quickly. We're going through the working notes and putting into capsulization as to jurisdictional issues. We talked about whether the scope is only relegated to the Schoonover decision. We found that it's broader than that so that's where we're at, at this time. And if there's anything that you want to add after getting up to speed then. Laura?

MS. COMBS: Laura Combs. Just for what it's worth. And Kipp or Scott, correct me if I'm wrong, but the Senate Bill 540 really doesn't come into play here in Southwest Florida regarding the creation of manatee protection speed zones because measurable

biological goals in Southwest Florida are not being achieved. So that it really is a non-factor at this point. Is that not correct, Kipp or Scott?

MR. CALLESON: Well, when our commission addresses speed zones in this area, they will get briefed at that time on biological goals as was our policy before 540 and we'll certainly clarify them on the analysis so that whatever the best science on biological goals are at that time period, whether that's next fall, or next winter, whenever we get through to the commission meeting, that will be one of the things our commissioners will consider will be biological goals as well as this committees work and public input on that as well.

CHAIRMAN MAXWELL: Quickly, we want to move to the document that we were provided in terms of the good graces of Doug is the Schoonover Decision. Did everyone have the opportunity to review that? Are there any questions from that that jump out? Susan?

MS. SCOTT: Only that I did not know who the expert was for the defendants. The biologist with the manatee background. I just wondered if anyone could provide the credentials of McWilliams, Ross McWilliams?

MR. WILKINSON: I can get them for you.

MS. SCOTT: I just didn't know what they were. Who he worked for. What kind of background he had. That's all. The other comment I have to make is I did read the transcript and that was very hard to follow. I never read one of those before. Like, OK. But again, my feeling is that what we're here... what this committee's purpose is to look at all of Lee County. That was my understanding of why I'm here. To look at all the speed zones throughout the county, to come up with a consensus recommendation if possible to the commission. And that that is our job. Irrespective of any litigation that's out there. And that's what we need to focus on. That's just where I'm coming from.

CHAIRMAN MAXWELL: Thank you, Susan. Anyone else?

MR. LAMBROS: Yeah, I have a comment.

CHAIRMAN MAXWELL: Yes, Alex?

MS. TUTOR: Wait. Wait one second. One second. I just want to make sure, for the good of the order, so I've got the notes. What did you need background on? Who? The marine biologist?

MS. SCOTT: Is it Ross or Russ McWilliams?

MS. TUTOR: And what was his role?

MS. SCOTT: As a biologist for the defendants in the Schoonover case. What his credentials are, who he works for. That's all.

MS. TUTOR: OK, I got that part. That's all I needed, the biologist for the defense. I'm sorry Mr. Chairman, go on.

MR. WILKINSON: Do you want the credentials for FWC's experts too, or do you have all those?

MS. SCOTT: I have access to those, I don't know where to find them for this gentleman, that's all. But I can easily find the access to the experts names.

[Chairman Maxwell left the room.]

MS. TUTOR: [Speaking to Vice-Chairman, Hans Wilson.] Are you going to take over the floor?

MR. WILSON: Yeah, sure.

MS. TUTOR: Thank you.

MR. LAMBROS: Concerning the final judgment, and I think it has a direct bearing on what we're doing here, especially with the zones that we all initiated. You may have felt that we're here to do all of Lee County and that's apparently what the feeling is right now. But I think originally this was on the disputed zones in the Schoonover ruling. That is my interpretation of why we were assembled originally. However, be that as it may, I think that has a bearing on what we're doing here because, if I'm not wrong, this has been in court for several years and has expert testimony on both sides of the case with data presented over a several-year period of time. We're here to meet within a sixty-day period of time with limited data and, quite frankly, obsolete data from Mote Marine.

It's my opinion that the court made a decision based on a whole heck of a lot of evidence and a whole heck of a lot of testimony, which I think is going to be very difficult for us to recreate or to replicate. So I think that this has got a tremendous impact because the defendants did go through a legal process, they challenged the rule, a judge did make a decision in, you know, in a court of law. We're to assume that the decision was a correct decision. So, in so far as these zones are concerned, I think this is a tremendous amount of weight on evidence that we simply are not going to have time to get here. And we certainly aren't going to have the time to have expert witnesses. So I disagree with you that this may not be relative to this proceeding.

[Chairman Maxwell returned during Mr. Lambros' speech]

CHAIRMAN MAXWELL: OK, does anyone else have a thought before we leave?

MS. COMBS: Laura Combs, for the record. I'd like to disagree again. This ruling, unfortunately, was not tested in a higher court. I sure as heck wish it would have been because I feel that there would not have been a need for a local rule review committee if it had gone to a higher court. Unfortunately, the entire transcript is not provided. There was a whole lot more evidence provided in this ruling that I think ...or there was a whole lot more evidence provided during the testimony that I think would have been very informative for this committee to consider. I think that the ruling should not play a factor in this. I think if the same zones were adopted today and eventually tested and gone through the administrative block process in a higher court that they would be upheld. So I would urge the committee to look at the data from its own eyes and move forward making the decision in conjunction, or as guided by, the existing Florida laws.

MS. TUTOR: Also put this in perspective: you all have a lot of data to look at. And how you choose to make your rulings and recommendations really, each one of you has that personal choice, and then you'll come together and speak on that. And you will come from whichever perspective you want to, and whichever pieces of data you have been provided, and you choose to use to make that point. Some of you may have data in your heads from being here, from living here all the time, that that's how you're going to vote. You're going to vote from in here, or you're going to vote from that ruling and the data like Mr. Alex's is saying there that really he likes that and he's looking at that data, that's important to him. So that's OK to each one of you to have that. That's great. You've got lots of data, so that's a positive in the sense that you have lots of data to go on as you make your rulings and your version.

CHAIRMAN MAXWELL: OK, John.

MR. KINNEY: I have one thing that I want to introduce, too, as far as its adequacy of speed zones in Lee County. And this is dated November 2003. It's from the Florida Fish and Wildlife Conservation Commission. The thing is, is that we have received a lot of information from Mote Marine and Florida Marine Research Institute that goes back to 1999 and 2000. Yet this report was done in November of 2003 and it says that the speed zones in Lee County are adequate. And this was done by Florida Fish and Wildlife Commission. Yet it wasn't presented to us on the 17th of June. There's no acknowledgements in here as to how they obtained this information, but I know it to be factual because it was received at Duck Key at the...when they had their Florida Fish and Wildlife Commission meeting down there.

MS. TUTOR: What's it called again?

MR. KINNEY: It's called "The Adequacy of Speed Zones in Lee County."

MR. McBRIDE: I believe that was in the packet of information that went out.

MR. KINNEY: It was? I didn't see it there.

CHAIRMAN MAXWELL: That's OK. Point of emphasis?

MR. KINNEY: Well, my point of emphasis is the fact that some of the information, and I may have mentioned this last time, is a lot of the information we have goes back quite a while. We talked about the different types as far as the synoptic survey, and then the other one, I keep on getting the terminology, as far as how the information is collected. And it's eight to ten years old. Yet the Florida Fish and Wildlife Commission says that this...the evidence that was presented must be good enough to hand to us, and yet they used it in this Adequacy of Lee County Speed Zones. And I want to make sure that's on record. That they used that information as far as, you know, this paper goes. And in fact I would request, because we had received acknowledgements of, you know, where they got the information as to where this information has come from for them to formulate this report.

CHAIRMAN MAXWELL: OK, good. Alright, anyone else, before we can get moving along here?

MR. TREBATOSKI: Just one point, I don't have that report either.

MS. TUTOR: When was that report handed out? Justin?

MR. McBRIDE: It should be on the CD.

MR. KINNEY: Well, I had printed off enough for everybody to have here, because I didn't see it on the CD. And we're being so inundated with information that... [Ms. Tutor distributed the copies.]

CHAIRMAN MAXWELL: And that's where we're going to kind of jump in a moment, OK? And that's our responsibility to hopefully get us, as they would say on the ranch, get them doggies corralled. So we're going to get the doggies corralled in a minute in terms of our understanding. And, of course, in relationship to the Schoonover Ruling with the attorneys here we know **it's not victa** so that's not going to be the operational drive, if you will. OK?

OK, in relationship to the agenda, we are going to go to public input. That's the next item on the agenda. And I have the public forum slips here and what I would ask is that we maybe also, looking at this form, make a suggestion. In looking at the analysis of the form, we need a subject, so we're not just out there. So if you could, those people that I have their public participation form, if you could 1. introduce yourself for the record and the board and give us the subject in relationship to your focus, and then if you can't, just go ahead and give it to us.

MS. TUTOR: Mr. Chairman, before they start, I would like to remind them what we agreed on as far as the time limit and also ask you all, since I'm here to help you with the working notes, whether you want me to try to take some notes for the public, or we're going to let that stay just in the official minutes recorded? You tell me want you want me to do. Talk to me.

CHAIRMAN MAXWELL: Anyone from the committee?

MR. HENDRY: I'm going to make a motion that we do, as she says, have the court reporter take notes and if we need support for clarification, we can do that.

MS. TUTOR: OK, yes, just holler at me.

CHAIRMAN MAXWELL: Second?

MR. KINNEY: Yes

CHAIRMAN MAXWELL: Discussion? All those in favor?

COMMITTEE MEMBERS: Aye

CHAIRMAN MAXWELL: All those opposed? It's unanimous.

MS. TUTOR: Just say, "Valerie, would you please put that down," and I'll stand over here by the flip chart and get that down for you.

CHAIRMAN MAXWELL: And the way that I will do the public forum, in terms of those people that end up on the pile, will be alphabetically and then there's no issue as to...and then I'll change, at the next meeting we'll go from the back of the alphabet up, instead of from A to Z. Alright, now, with that in mind, those people that also have documents they would like to submit for the record, you need to identify the document, if you would. That's important for our court reporter so that we'll facilitate her work in getting the information recorded. Is everyone good with that? OK. Leo Amos? OK, sir, you're on the air.

MR. AMOS: OK, I have one document...

CHAIRMAN MAXWELL: State your name for the record.

MR. AMOS: Leo Amos. I thought you did that for me. Leo Amos. I live in Matlacha. I have one document here. It was an unpublished document by Kipp Frohlich on an undocumented report done in 1984-1985. There are copies enough here for everyone. And it deals with population back in 84-85 based on a fly-over. Anyway, you can look at the numbers. That's what it was in 1984-85. There's two flights done for the year and that is the basis for the manatee count. And it's strange now that we've come up with a lot more manatees from what we had in 1984-85, but yet we're still minus 1.1.

The other thing I'd like to talk about is the scope of this committee. I've seen a lot of the scope addressed as all the waters of Lee County. You know, we're here together because of a state statute. It's not something that the County Commissioners put together at the last minute so we're going to have a manatee committee. And there's rules along with

that particular rule. Then if you go to Florida State Statute 370.12-2 you will find in there what this committee is charged with. This is actually called a rule review committee. There is nothing in there about making new rules for the Fish and Wildlife Commission to address for you, or look at. It's to basically look at the rules that they have given you to look at. According to Mr. Haddad's letter, he said the proposed rules is the old rules that Judge Schoonover turned over. That's all you're charged with doing, folks. If you do the extra over here, you have went beyond and above what the state statute's for. It's not in here. You can't do that. You're not charged with that. And for the Fish and Wildlife Commission to present you with this particular problem, it should not be allowed. You have to go back to your state statutes again, then maybe I'm boring a lot of people because I keep going back saying "well, here's your state laws." But folks, it says here that "all proposed ???????? notice of intent of agency action is ?????? proposed to be governed the speed of operation of motor boats ????? of manatee protection shall be submitted to the counties in which the proposed rules will take effect for review by the local review committee." That's you. They have proposed a rule, you are here to look over their proposed rule, not to make new ones. It doesn't say that.

CHAIRMAN MAXWELL: Hold the phone. So, point of interest is that you're saying we're not here to make recommendations, we're not here to even promulgate any ideas to seek the approval of one advising and consenting or adding something new. You're just saying we're just here to just act as a...

MR. AMOS: No, you're supposed to do all of those things that you just stated to the proposed rules that you got from Mr. Haddad. That's what you're supposed to be doing. Not looking at other areas within Lee County to maybe put more manatee zones in. That's not what this organization has been charged with.

CHAIRMAN MAXWELL: I don't think that's our intentions. So your point of emphasis is...?

MR. AMOS: The point I'm trying to bring out is, that all of Pine Island Sound is not open for negotiations. It's not part of ...

CHAIRMAN MAXWELL: OK, when we get to Pine Island Sound or any zone that you wish to bring into concern, we'll look at it.

MR. AMOS: Well, I'm just suggesting you go over the proposed rules as they are and then determine how they fit...

CHAIRMAN MAXWELL: We're going to go there. That's good. Thank you, sir. Alright, any questions to Leo from anyone on the panel? OK, we need to move to Hal Stevens, if you would sir, and if you didn't have anything you wanted to provide written sir? OK, thank you sir.

MS. TUTOR: State your name.

MR. STEVENS: My name is Hal Stevens. I'm an attorney here in Lee County. I represented Save Our Waters and the individual defendants in the manatee decision that resulted in the Schoonover decision. One of the first things I'd like to tell you is those of you who want to see any of the record, I have the entire record of the trial. And if you will let me or Mr. Wilkinson know what you want to look at I'll try to find it and make it available to you. That trial had so much evidence. There is a whole room in the courthouse now that holds all the evidence that was submitted to the judge during the trial. And he looked at it all. It may be that we can retrieve some of that, if you feel that you need to look at it. But, I'm sure that the state has copies of everything that was actually put into evidence in the trial.

What I'd like to talk to you about today is arbitrary and capricious. Why the judge ruled what he ruled. That in simple layman's terms. And give you my recommendations on the Estero portion of the rule that you are going to address, and maybe even the river. One of the things...

CHAIRMAN MAXWELL: I'm sorry to interrupt you, Hal, but how long would it take you? Seven and a half minutes before the Florida Supreme Court or how much time do you think you need in order to address what you just asked?

MR. STEVENS: To address what?

CHAIRMAN MAXWELL: What you just said that you were going to provide us?

MR. STEVENS: I'm going to try to do it in about four minutes.

CHAIRMAN MAXWELL: That's good. OK. That's a lot of information, I was just wondering how you were going to collapse it. Go ahead.

MR. STEVENS: The first aspect of the arbitrary and capricious finding is that manatees, we all know, or a creature of a certain size, they like shallow water but they don't like real shallow water. And at some point the water is too shallow for manatees but still capable of use by shallow-water boats. Specifically, the judge found that manatees prefer water that's about three feet or greater in depth. The regulation as you can see...you can't tell by looking at that map...but much of the water in Estero Bay is less than three feet at some point during the tide. And that was the problem that the judge found, was that there were great areas where manatees occasionally could be spotted by looking at 20 years worth of data but that, in general, the areas where they concentrated in were not the areas that the rules selected.

In Estero Bay in particular, the judge found that the mortality data suggested that most of the manatee carcasses ended up along the intercoastal waterway. That suggested that they weren't being hurt way back in the flats. And that was part of his concern. The manatee mortality is limited, the rule is not limited.

There was another problem, too. And that is this. The expert testimony and most of the experts agreed that when manatees travel they travel up and down the edges of the channels. Coincidentally, the rule requires anybody who wants to travel on a plane has to be in this exact same area. So there's an irrational conflict there that's going to be a problem. As your task relates to Estero, I would suggest that you try to identify the intercoastal waterway, which bisects in a general way Estero Bay into an eastern portion and a western portion.

The western portion is very small and it was found that a lot of the manatee mortality was related to that smaller western portion. The eastern portion is very broad and very shallow. And that was the problem. That was going to be a dividing line for the judge's ruling. In other words, the western portion had to be changed in order to avoid being arbitrary and capricious. I don't see any reason you can't raise the minimum speed from 25 to perhaps 30 or 35. That was not something that was addressed by Judge Schoonover per se, but it's one of my recommendations as you comment on the rule that the state has tasked.

As regards to the river, I would say this. The judge found a problem with what we call the short cut. Traditionally, small boat traffic in Lee County has been able to go around Little Shell Island. It was nice because it keeps the small boats away from the big boats. It's not a marked channel. It was a channel which was used only by locals and it just made a lot of sense from a lot of different reasons. It's good to scatter the boats around. It's not good to concentrate the boats in the area - the channels, particularly - because that's where the manatees are going back and forth.

The other thing that I would urge you to try to get some scientific information on, I know I went to all the public meetings, everybody in the public was telling the federal government, the state government, anybody who would listen, that manatee mortality, the big problem in Lee County was the barge going to FP & L. And that was something that a lot of people have spoken about. I still haven't seen the data. I know the mortality has gone way, way down in the Caloosahatchee River ever since that barge quit going up and down the river. And that again relates to the fact that barge is in the channel, the manatees are in the channel, and that's where the problem is. When you have regulations that encourage people to go elsewhere, that's a good thing.

Once again, if anybody has any information they want me to retrieve, just let me know.

CHAIRMAN MAXWELL: Thank you, Hal. Any questions to Hal?

MR. TURNER: My name is Dave Turner. I live in South Fort Myers in the Island Park subdivision. I live on a canal. And I want to talk about Ten Mile Canal, Mullock Creek, and Estero Bay.

My canal goes out into Ten Mile Canal. Traditionally, Ten Mile Canal historically as far as I can remember, I've been there 20 years come December, has been idle speed. I

would recommend keeping it that way. It's very shallow, there's rocks in there. I don't see anything to change that myself.

Mullock Creek, I would also leave that like it is. I'm not real crazy about it, but it's dangerous for humans as well as anything else. It's very winding. And if you can help us possibly. Kipp and I marked the channel at this crazy depth that we came up with. I think Steve was there too. But basically, Mullock Creek is slow speed all year unless, and this is on those big signs that you're in your boat and you're driving and you're supposed to figure out what it means, it says ...slow speed all year unless at the controlling depth is two feet or less you can go at 25 mph. So that's on this big sign. Then there's another vertical sign below it that's hooked onto the marker and it's got your footage marker. It's got 5-foot, 4 ½, 4 and it goes down to 3. Two-foot's our number. You can't see anything below 3, it's all barnacled over, both sides of it. Consequently, nobody's paying attention. So, it's kind of a dangerous situation. We could use some help there.

As far as Estero Bay goes, I started this back in '99 with a group from our community and I figured out that if I'm going to try with these commissioners, I've got to try to figure a way to convince them to see my point of view. So I've assembled a lot of information, spent a whole weekend going over it. First thing I did was I read the statutes so I would know what the rule was, so I would know what I had to prove from my standpoint.

Secondly, I decided to use the flight data. So, I got the flight data, this is from '94 and '95. and it basically is a verbiage type. So I would read each flight. And I got a map of Estero Bay with the channels like that one. That's the important part. OK. And I would read it. It would say May 1st, the flight time 12:45 to 1:30, eight manatees spotted, one at Mound Key, one at Coconut, one here, one in the channel, whatever. So I would plot it and I did that for all 24 flights each year. And when I put the information together, I looked at it and to me what I saw was a pattern that the manatees, the frequent sightings that you see are in the channels or near the channels. They are not in the flats of the bay. So basically that's the same thing that Ross McWilliams said in the Schoonover Ruling. And the same thing that was said by Judge Rego in '96. You know. So basically that's my recommendation. Is to the eastern part of the bay should not have to be regulated by speed.

CHAIRMAN MAXWELL: OK, super. Anything else, sir?

MR. HENDRY: I have a question.

CHAIRMAN MAXWELL: Go ahead, Ernie.

MR. HENDRY: It's been a while since I've been in Mullock Creek, but that marker you're talking about, that's not for the entire Mullock Creek, is that? There used to be a shallow area, is that where ...?

MR. TURNER: Well, it's at what we call the crossover. That's the reason for it. That the crossover is that, I think it's marker 45, that's pretty much the shallowest part of the creek. So we were on the water back in December of '99 - 2000 with Kipp and Scott and we measured it and said once that area there is at 2 feet that's what we want the marker to say around the corner, basically. So when you approach that corner, that's when you see that sign. If that water's two feet, you can continue the whole creek out. By the same token, there's another marker coming into Mullock Creek just past the confluence of Hendry Creek and it's got the same thing and same information. So if that's two-foot or less you can crank it up and go. If it's not, you've got to go slow speed.

MR. HENDRY: What's that distance between the two markers roughly?

MR. TURNER: A mile maybe. Almost a mile.

CHAIRMAN MAXWELL: OK super. Any other questions? Yes, John.

MR. KINNEY: I know that there was an area down there that I believe the state was supposed to dredge, that Vance had told me about, to make it easier for the boaters to get in and out.

MR. TURNER: Actually, I talked about that with Steve. There was a couple of special projects, programs available that we were going to look into, but it never came to fruition.

MR. KINNEY: I believe you talked to Kipp or Scott about it one time of getting that area down near there dredged and...you remember?

MR. BOUTELLE: Yeah. Steve Boutelle. Its been discussed a number of times, but there's never been any steps taken formally to make application or an actual procedure for the physical work.

MS. TUTOR: Who would do that, Stephen?

MR. BOUTELLE: Typically, in that kind of situation, the property owners would do that through a self-imposed taxing district with the assistance of county staff and Public Resources.

MR. TURNER: That's state-owned land, though, that we're talking about.

MR. BOUTELLE: The bottom, that's correct. But, that's typical of natural water bodies. And for dredging projects, riparian owners typically initiate those kind of projects.

MS. TUTOR: So they would request it then and do something to initiate it and work with you to make that happen.

MR. BOUTELLE: Work with our Public Resources Department.

MR. KINNEY: I guess my question is, would that somehow make it easier to get in and out as to where you didn't have to have this controversy as far as...

MR. TURNER: Oh, yeah, you wouldn't have to have the sign at all if that were dredged throughout. That would solve the problem right there.

CHAIRMAN MAXWELL: OK. Were going to take a five minute break and come back, it's 4:05, and reconvene and move along. If we have any other questions. I'm going to put us into a grid, if you will, and we'll go ahead and get started today so we leave here and hopefully we get done in an hour. I think we can. So, we'll be back.

[Five minute break]

CHAIRMAN MAXWELL: OK, we're going to reconvene the local rule committee. And we had just left off with the public input, and seeing if there are any other people here for public input that have not been recognized either by a form, and if not we're going to move on. Just one little point of information, if we can get the subject on the form that way we'll be able to focus right in. And then we'll also look at making sure that we stick to three minutes each, but this being our first meeting, we went over a little bit, but that's part of learning the process.

MS. TUTOR: I don't want to be the bad guy, but I will if I have to.

CHAIRMAN MAXWELL: That's good. What we're going to do if we could, Justin if you could come front and center for us, if you would please sir, and act as our resource person from Marine Services. What Justin's going to do for us, and we appreciate him 1. putting this information together. Specifically, what we're going to look at first is the countywide aerials. Then we're going to look at this Estero Bay ten areas. And we've taken some public comment today, so what I'm thinking, with your pleasure board members, and feel free to interject, raise hand, etc., in terms of your thoughts as well, what we want to do is look at this countywide aerial survey, which Justin is going to pass out and he's going to explain what he's brought to us today, so that we look at this as our benchmark focus. I think this is the way that we'll be able to 1. calibrate what we're going to do and put that in, I would say, correlation to the ten areas. So, go ahead, sir.

MR. McBRIDE: What we've got here are some maps that several committee members asked me to produce. The aerials surveys are from the '97 flights, these are the monthly flights that we talked about. Each dot represented is a different survey, and count is for the different month. And each number on the dot on the map are the number of manatees per siting. Does everyone understand that. There are two tiers. Color is the month, number is the number of animals. Additionally...if everyone will just pass one and take one around...these are the color photographs from the **Borzellini** Study that had the boating representation. Ms. Combs asked me to print this out for everybody. It's a little easier to read than the black and white. Also, our...it's 68C [Chapter 68C-22, FAC, The Florida Manatee Sanctuary Act] these are the scope and purpose of the rules.

CHAIRMAN MAXWELL: If we have extras for the public, we'll let you guys get a hold of them.

MR. McBRIDE: And one last one is additional...OK, you got these in your packet. These are the ten areas we designated last time. They are color coded. This is a large representation of the one I just handed out. The survey showing...the monthly survey. You also got this map included in there in the packet, which are the current zones. The red are the channels. They are faded out in your copies so you can see the zone behind them. Now that was a lot of stuff.

CHAIRMAN MAXWELL: The first thing I think we need to do is just look at two sheets of paper. A lot of times, as you know, if we're trying to make sure we get an instructional focus, we only look at two sheets of paper. So the first sheet would be the manatee sightings and then let's take a look at our legend. Or we can look at it up there, which ever. This gives you a closer view. But, we're going to focus on two documents right off the bat. If we can, on the board there let's do two squares, if we can, two squares, Estero Bay ten areas, and then the countywide aerial survey spread.

MS. TUTOR: Do you want me to do it like this: Estero Bay ten areas, and then the other one will be the countywide aerial survey relating to Estero Bay.

CHAIRMAN MAXWELL: We're going to have to go back and forth, if you will. And I think the best way that we can do this, since we already have what is known today through public input, maybe we'll just look at those knowns right off the bat because we have somebody from the public. And then we can just kind of jump in with feet first, if you will, is that we had comment on Ten Mile Canal, we had comment on Mullock Creek. Let's just zone in right there and see if there's any bones of contention or there's issues that we can resolve. Right now we know there are knowns as to speed limits.

MS. TUTOR: Then you want number 5 and number 6, you want to start with? [5 – Mullock Creek, 6 – Ten Mile Canal]

CHAIRMAN MAXWELL: Correct. Let's go 5 and 6. Since you're here, sir, you provided us with some good historical, and you obviously provided a recommendation. In your mind and view as being a boater, you boated there for 20 years, you made that claim. Correct? So, let's open it up to the board. Any comments, concerns, do we have issues that need to be specifically focused in on and addressed, or do we see it as good the way it is? Do you think it's good other than we need to clean up that yardstick? Right? De-barnacle the yardstick?

MR. TURNER: I've got a better idea. Basically, this is just one place in the creek that's very shallow, we need to jump over.

MS. TUTOR: And Mr. Chairman, I've turned the page to this map so that you all can see. This map is also in your notes, but that way you can look at this. You have the aerial

survey in front of you and then we have the map here. So if you want to refer to what the current zones are there. Although, this is also in your working notes.

MR. McBRIDE: This is a point of clarification, the map that you have of Estero Bay in your packet, the smaller map, the legend is more accurate than the large one. The large one, I was having trouble getting the correct one printed out. So if you have a question as to the legend not matching, look at the handout you got. That is more accurate than the large map.

MR. WILKINSON: I still think we need to get everybody to address you, Mr. Chairman, before they start talking since you get interrupted here. Meanwhile to get us off the dime, my recommendation is that we adopt Mr. Turner's recommendations on both of those areas. Just to get us off the dime.

CHAIRMAN MAXWELL: Certainly. OK, I've got a motion on the floor. Do I have a second?

MR. TREBATOSKI: I second the motion.

CHAIRMAN MAXWELL: OK, second with Scott. Do we have some discussion? Anyone have any discussion related to this two areas?

MS. SCOTT: That motion again, for clarification, was to leave the speed zones as they are by local ordinance. Is that correct?

MR. WILKINSON: That's correct.

CHAIRMAN MAXWELL: Is that correct, Doug?

MR. TURNER: I don't know if it's local ordinance.

MR. WILKINSON: Well, whoever put the zones in.

CHAIRMAN MAXWELL: Whatever the jurisdiction. That's the question. State jurisdiction.

MS. TUTOR: State rules, Mr. Turner, they are already there in effect. It was on here that that's what you asked. Mr. Wilkinson, your motion was to adopt his recommendation.

MR. WILKINSON: That's correct.

CHAIRMAN MAXWELL: OK we have a second. Any discussion? Yes, Henry...Ernie, I'm sorry.

MR. HENDRY: I've been called worse. I need some clarification with that. Again, I think the data there should suggest that if an area that's heavily traveled by manatees, and

with the boat traffic, with the logistics of that, there's some human safety factors, it's been a while since I've been back there, but there are some safety concerns in that area. The one thing, the clarification that I want is the aerials...I was trying to address that on the chart earlier...was that area at the mouth of Mullock Creek and I'm trying to address how large a scope of area that is, or if what's there is an existing state area that allows you guys for a short period of time to jump this, circumvent this bar in order to egress or ingress, into and out of, Mullock Creek. That's my question.

CHAIRMAN MAXWELL: OK. What point, at the entry or the egress you're talking about?

MR. HENDRY: Well it would be in the mouth.

CHAIRMAN MAXWELL: The egress?

MR. HENDRY: The crossover area, is that a true state zone now? Is this a local thing that ??? is now Kipp or Justin or Steve or anybody that can help me out ?

MR. CALLESON: It's a state zone. We're going to point out where the

CHAIRMAN MAXWELL: Thanks Scott.

MR. CALLESON: Ten Mile Canal is supposed to be year-round, by state ordinance, slow speed in Lee County was done by state rule. Mullock Creek is supposed to be year-round to marker 47, which I think is right there. And down near the mouth is marker 18 which is somewhere out here. Between those two markers is where that depth dependent zone is. In the zone there are a couple of shallow sections in here. That's where most of those were. That's the depth dependent zone that Dave Turner was talking about, it's in this section of Mullock Creek. The rest of it is slow speed year-round.

MS. TUTOR: It's slow speed year-round. Is that 5 and 6, the Mullock Creek and the Ten Mile Canal?

MR. CALLESON: The depth dependent zone is only on a portion of Mullock Creek.

MS. TUTOR: I mean the slow speed.

MR. CALLESON: Slow speed is...yes.

CHAIRMAN MAXWELL: OK, any other board member have any questions?

MS. COMBS: I have. Laura Combs for the record. I wish, Scott if you could explain the original proposal before it went to the depth dependent zone and why the state felt that all slow speed was justified prior to the depth dependent zone.

MR. CALLESON: That whole area of Mullock Creek and Ten Mile Canal was essentially treated as a unit. Ten Mile Canal has a good bit of winter time use where we could tie in the rest of Estero Bay as a whole. It was originally proposed as year-round slow speed, but issues came up about access for residents to be able to get in there. Particularly during the winter months the water up above there was lower. So, [REDACTED] we looked at where those shallow spots are, where the shoaling occurred. Most of that shoaling occurred between those two markers. We saw deeper spots in between, but that's where most of the more significant shoaling was. So then the rule was amended a couple of years after in 2001, I think that was when it was adopted. To put in a depth dependent zone for that section.

MS. COMBS: So folks traveled for two years at slow speed through that area.

MR. CALLESON: That's what the rule required.

MS. COMBS: OK. And obviously they made it in and out.

MR. WILSON: Mr. Chairman, what I don't see in the language of the proposed rule is the exception for the jump over spot.

CHAIRMAN MAXWELL: OK. So what would you like to...?

MR. WILSON: The state is now proposing, it's proposing slow speed in the proposed rule for the entirety of Mullock Creek. There's no language in here that accepts a jump over spot 25 mph depth limited, unless I don't see it.

MR. CALLESON: It's in there.

MR. WILSON: You sure it's there. I can't find it. It doesn't show up in the map that we've got, I can't find it on...

MR. CALLESON: It's on two different things. First was the big notebook that was provided inside of everybody's packet. The 1999 briefing packet. It also included a copy of the little [REDACTED] right now, which is a separate handout.

MR. WILSON: So this is the text for the current proposal?

MR. CALLESON: The current proposal is the rule I was working on, what we included in that booklet is what our commissioners saw as their main agenda packet of 1999. So that what you see right there is this notebook was not included in [REDACTED]

MS. TUTOR: I think the question is, is that what they're supposed to be ruling on now?

MR. McBRIDE: It probably should have been included in the first packet you received.

MS. TUTOR: So it was in the big second packet, Justin?

MR. McBRIDE: No, it was in the first big packet.

MS. TUTOR: And what did it look like so I can ...OK. I don't remember seeing any of that stuff. Did anybody see anything that looked like that. OK. There you go. That's a copy.

MR. WILSON: I don't have a problem with that. I just want...I mean...we are adhering to what the proposed rule is and reviewing the proposed rule, if it is not included in the proposed rule then we are proposing additions to the rule that we just need to make sure...

CHAIRMAN MAXWELL: What is that addition then?

MR. WILSON: Well, now I think that it is included in here.

MS. TUTOR: And I just want to make sure, for the record, that it is in there because if you all are going to refer to all this underlined text, you want to make sure you have everything there. You know, if you're going to start making motions and recommendations. You did see it?

MR. WILSON: It's like marker 18 to 47 depth dependent zones, slow speed. OK.

CHAIRMAN MAXWELL: And that hooks on to what you were talking about, Laura?

MS. COMBS: Right. It's how people had to use that area for two years without a depth dependent zone.

CHAIRMAN MAXWELL: OK, we have a motion on the floor. Is there anything that we need to discuss further?

MS. SCOTT: Just a quick question. Perhaps someone from this can answer. Should those local residents be able to get proper permitting to solve that problem, would there be a mechanism to then correct between markers 18 and 47 to keep it slow speed zone year-round without any caveat. In other words, if there's no need for the plane jumping, then ...

MR. FROHLICH: The mechanism would be to revise the rule and we would notify Lee County of our intentions to revise the rule and they would form another local rule review committee to address that amendment.

MS. SCOTT: OK, but it could be revised to...

MR. FROHLICH: But it would have to be through a rule review process that ???? occurred and there was no longer a need for the access issue to go past DEP.

MS. COMBS: Mr. Chairman, Laura Combs. We could as a committee, I believe, also put in some language at this point saying in the advent that channel depths do change such that the two foot thing is no longer warranted then the entire Mullock Creek will revert to slow speed. We could do that at this point, put that provision in ????

MS. SCOTT: Could we not?

CHAIRMAN MAXWELL: Well, hold on. First we have to deal with the motion that's on the floor, then we're having to deal with the issue of amending the motion to incorporate that. So, the question is, I go back to the original motion provider, Mr. Wilkinson, is there any comment you wish to make in relationship to the amendment? Do you see merit to it? Do you wish for it to be added?

MR. WILKINSON: Let it stand as it is.

MS. TUTOR: The motion stands to accept the current rule proposal for Estero.

CHAIRMAN MAXWELL: Those that, uh, anymore discussion related to the matter?

MR. LAMBROS: Will we be able to bring that...I was just trying to think if there's a way to tack that on afterwards, but I guess if the motion goes through, that will be the end of that issue. I agree with Laura's comment that if situations change we should be able to change the zones that are out there based on those conditions. So, based on that, I would have to vote against the current motion on the table.

CHAIRMAN MAXWELL: OK, now we need to proceed. Any other discussion? Good.

MS. TUTOR: I would like to point out we still have the opportunity for a minority opinion. So for those of you who do, if that is the reason that would be, and I would ask that if you vote on any recommendations, and this is our first one, and I need to be clear on what I'm doing for you all, that once you vote on this and whoever makes the motion, in this case Mr. Wilkinson, that I write it correctly for you, that your motion is to accept. I want you all to review this with me. And once you do, that if there's any language that you want included in that, particularly for the good of our report, you let me know that. And then the same thing with the minority. OK? Thank you. Go ahead, Mr. Chairman.

CHAIRMAN MAXWELL: Yes, Alex.

MR. LAMBROS: I just feel that that's not our responsibility at this point in time. That if it is indeed dredged in the future, that's up to the county, Mr. Boutelle, and everybody else at that point in time to form whatever committees or take whatever action.

CHAIRMAN MAXWELL: That's a speculative issue. So the question then, with the amendment on the floor, I have a second, I had two seconds, now when we have to do what it says in Robert's Rules, all those that are in favor of the amendment being added

say “aye” or raise your hand, those that are opposed raise your hand. So, all those in favor raise your hands. Of the amendment.

MS. COMBS: I can’t amend unless it gets accepted, right?

CHAIRMAN MAXWELL: That’s correct. You offered the amendment, as a body we have to at least deal with it.

MS. TUTOR: So we are not voting on this. We are voting on do you want to amend the motion.

CHAIRMAN MAXWELL: Do you want to amend the motion? We have to make that formal announcement. All those in favor of amending the motion as presented, raise your hand. All those that are opposed, raise your hand. [Three votes in favor; seven opposed.] OK With that in mind, this does not prevent you from having it telegraphed onto the minority opinion. OK? So with that in mind we have a motion. If we could read the motion into the record, Mr. Wilkinson. And we’ve had a second. So if you would read your motion, please, and we’ve had discussion on it.

MR. WILKINSON: I think it’s basically as to what Mr. Turner basically gave testimony to, and that’s to accept the zones as they currently are in place by the rule.

CHAIRMAN MAXWELL: Is that correct? OK. So all those in favor raise your hand, OK, so that she can see. We’ve got how many?

MS. TUTOR: One, two, three, four, five, six, seven, Mr. Chairman.

CHAIRMAN MAXWELL: OK, all opposed? OK. Alright.

MS. TUTOR: Part of what I’ve heard, just so I can make a note to myself and for you all to review, is that was also based on Mr. Turner’s input as well as your own review. OK?

MR. WILKINSON: It follows the rule.

CHAIRMAN MAXWELL; OK. Let’s move quickly then to Ten Mile Canal. Do I have a motion on Ten Mile Canal?

MS. COMBS: I make the motion to leave it as it is.

CHAIRMAN MAXWELL: OK. We have a motion on the floor by Laura Combs to ...

MR. WILSON: I second.

CHAIRMAN MAXWELL: We got a second. Discussion? No discussion. All those in favor?

MEMBERS: Aye.

CHAIRMAN MAXWELL: All those opposed?

MS. TUTOR: OK, how many? Wait? Leave your hands up. OK, it's unanimous.

MS. BAYLISS: Excuse me. Who seconded the motion?

MR. WILSON: I did.

CHAIRMAN MAXWELL: Hans did. OK. Alright. With that out of the way, let's move on to the paths of least resistance, if you will. Let's move to Spring Creek.

MS. TUTOR: And again, I would ask the minority that if any notes you were, things you want to jot down for the minority opinion, please let me know so we can get it on the board. OK. So where are we moving to?

CHAIRMAN MAXWELL: Spring Creek.

MS. TUTOR: Spring Creek, number 8.

CHAIRMAN MAXWELL: Justin, could you, uh, throw the light on Spring Creek.

MR. McBRIDE: In Spring Creek there are no state zones. They are county ordinance.

CHAIRMAN MAXWELL: OK, that's what I want to know. That's why we're rolling through.

MS. TUTOR: OK That's down here.

CHAIRMAN MAXWELL: OK. County ordinance. What is county ordinance? How...what's... what have we got?

MR. McBRIDE: It's idle speed any time there is maritime property, i.e., boat, dock, seawall, within 500 feet.

MS. TUTOR: So that's idle zone, is that idle speed?

MR. McBRIDE: Correct.

MS. TUTOR: At any time there is maritime, what do you call it?

CHAIRMAN MAXWELL: Activity.

MS. TUTOR: ...maritime property. OK, this is a quiz. Is he right?

CHAIRMAN MAXWELL: Counselor, do we have a...?

MS. KROSLACK: Sounds good.

MS. TUTOR: The county ordinance is idle speed anytime there is maritime property.

MR. McBRIDE: within 500 feet.

MS. TUTOR: Within 500 feet of maritime property. And nothing the rest of the time?

MR. McBRIDE: There is not, not if there is not any other ???

MR. WILKINSON: Mr. Chairman, I thought that we were going to save all these that had to do with any of the county or municipal ordinances and save those all for later on...

CHAIRMAN MAXWELL: Is that what we want to do?

MR. WILKINSON: ...and not have to deal with it right now.

CHAIRMAN MAXWELL: I was just hoping to get through all of them.

MS. TUTOR: OK, we'll table that.

CHAIRMAN MAXWELL: Alright, what other state issues are there then on there in terms of Estero Bay?

MR. WILSON: I'll move that we accept Estero and Spring Creek as currently proposed, which is basically no speed zones.

CHAIRMAN MAXWELL: Estero River you're talking about?

MR. WILSON: Estero River and Spring Creek.

MS. TUTOR: So, 7 and 8.

MR. WILKINSON: I'll second that.

CHAIRMAN MAXWELL: Alright, so we've got a motion on the floor to accept Spring Creek and Estero River. Is that correct, Hans?

MR. WILSON: Uh, huh.

CHAIRMAN MAXWELL: And a second by Mr. Wilkinson. Any discussion?

MS. COMBS: I have. Laura Combs. I'd like to just hear from FWC staff, if they have any more recent data on the Estero River area and Springs Creek. Because the aerial survey data really don't cover that area. Or if they know of any additional information.

MR. CALLESON: The information we provided in our packet includes...the distributional aerial survey data that talked about it includes additional data. I don't have it in front of me right now so I can't tell you exactly what's there, but you might want to take a look at it.

MS. COMBS: OK. I guess you can forgive me for not being aware of that straight off. Thanks.

MS. TUTOR: My question, Mr. Chairman, is there...I just want to make sure again that I heard, there's the motion to accept them as they are, that is 7 and 8, Estero River and Spring Creek. And right now "as they are" is no state proposal, no state rule there, for 7 and 8?

MR. CALLESON: where?

MS. TUTOR: Spring Creek and Estero River. Estero River does have, Spring Creek does not.

MR. CALLESEON: No, I'm sorry. Back up. My mistake.

MS. TUTOR: Strike that.

MR. CALLESON: Estero River and Spring Creek - no state regulations.

MS. TUTOR: So, that's the motion. Hans you made that motion, correct? To accept that, that there's no state rule right now? We're fine with that. We're going to accept that.

CHAIRMAN MAXWELL: And the second by Doug. Any discussion? Yes, Susan?

MS. SCOTT: As a point of reference, information I have shows that most of Estero River and Spring Creek are regulated at idle speed by local ordinance by virtue of those maritime activities and that makes it a moot point, I thought.

CHAIRMAN MAXWELL: OK, so...but we're just going to kind of move on so we can ...

MR. TREBATOSKI: Just a question, I guess the jurisdiction and an enforcement question on that. If there's no state zones and it's only county, the county is the only one responsible for enforcement...this is where we have that crossover jurisdiction issue...if we're to want the state to have the ability to enforce the local ordinance, we would have to duplicate the local in the state.

MR. FROHLICH: Kipp Frohlich, and I don't see Denis Grealish here [Captain Denis Grealish, Florida Marine Patrol, District 3B, FWC Law Enforcement, Southwest Region, Fort Myers.] He might be able to handle this. The FWC officers have the authority to enforce county ordinances. As a practical matter, I think, in our limited staffing we tend to emphasize patrol duties that emphasize state rules and state laws that are a different authority matter. There's no needed authority. Often it's posted and then we make a case on a local ordinance that's permitted. Any of the ordinances have to be permitted through the state, and for the signs, so there's not an authority problem.

MS. TUTOR: Stephen, did you have anything to add to that? You're nodding back there.

MR. BOUTELLE: No.

MS. TUTOR: What he said.

CHAIRMAN MAXWELL: OK, anyone else have anything they wish to add, based on the motion on the floor? OK, seeing none, can we read the motion into the record and we're going to go ahead and vote.

MS. TUTOR: Hans, what's your motion?

MR. WILSON: To accept Estero River and Spring Creek as currently proposed by the state rule.

MS. TUTOR: OK. Show of hands.

CHAIRMAN MAXWELL: OK, all those in favor signify by raising your hand. All those opposed? OK, another 10-0. I like it. We're moving right along.

OK. Let's look at, if we can, again, in deference to what you said, Doug, we're going to go through the numbers here to find out what the jurisdiction is. Hurricane...no, let's see, Spring Creek we've done...Hendry Creek.

MS. TUTOR: We've done 5 through 8.

CHAIRMAN MAXWELL: OK Hendry Creek. Do we have any issues on ...who's jurisdiction is it?

MS. TUTOR: Justin, what is the jurisdiction on Hendry Creek, please? Or Kipp.

It's in the state zone.

Slow speed

Is that on the map?

MS. TUTOR: It's up here.

CHAIRMAN MAXWELL: There it is, way up.

MS. TUTOR: So this is state right there, where it's green? Which is what? Slow speed April 1st through November 15th, according to your legend, 25 mph the remainder of the year. So that's there. And then from there up it's nothing. This is nothing up here, right? It's nothing up here?

Right

MS. TUTOR: OK, so that part of Hendry Creek is state regulated.

CHAIRMAN MAXWELL: OK.

MR. WILSON: I have a question.

CHAIRMAN MAXWELL: Go ahead, Hans.

MR. WILSON: When you look at the manatee sightings county-wide aerial surveys, it doesn't really seem like there's any particular reason why you would split the creek in half, as proposed on that map. Why is that, is the question. I guess that's a question for conservation staff.

MS. TUTOR: As to why they split it as far as no regulation and then regulation? OK Who wants to take that over there?

MR. FROHLICH: ?????

CHAIRMAN MAXWELL: So we're going to go to the notebook and the tab - Hendry Creek.

MS. TUTOR: When you find what you are looking for, Scott, would you please reference that so the committee can...

MR. CALLESON: Go to the second tab in the Rule Rationale on page 9, about half way down.

MS. SCOTT: Mr. Chairman, would it be beneficial for all here concerned, including the public, to perhaps... it's a very short paragraph... to read what the commission said there? Would that be beneficial to everybody, out loud?

CHAIRMAN MAXWELL: Certainly

MS. TUTOR: Go ahead, Scott, read it.

MR. CALLESON: "No zones were proposed for the upper portion of Hendry Creek because most of the manatee sightings have been in the southern portion. The threats to manatees in the northern section are not believed to be substantial enough to warrant a Slow Speed zone and there is no marked channel that would enable a 25 mph corridor to be considered. A shore-to-shore 25 mph zone was not proposed because the characteristics of the creek (narrow with numerous curves and shoals) naturally limit the speed at which a boat can be safely operated. Another factor in the decision is not to propose zones in this part of the creek was that the creek is a dead end. Manatees therefore do not use the area as a travel corridor between other areas."

MS. TUTOR: So that's the rationale.

CHAIRMAN MAXWELL: OK is there any question with respect to that. Yes, sir. I can't see your card. I'm sorry. Thanks.

MR. BIXLER: Along with the aerial surveys we just got out today in the packet, the aerial summer distribution that was from the 80s and 90s, it also shows manatees in the upper portion of the creek, too. So, I wonder why it was split as well. It looks like it wouldn't harm the creek having the upper portion be the same, the same designation. It just seems like it would be beneficial for the reasons mentioned there. I don't see a harm for keeping the creek as one through this portion.

CHAIRMAN MAXWELL: So, you're saying to unify the speed or add...

MR. BIXLER: That would make sense to me.

CHAIRMAN MAXWELL: OK, so, you feel compelled by that? Do you want to propose a motion? Do we have another motion on the floor?

MS. COMBS: Actually, can we have a little more discussion?

CHAIRMAN MAXWELL: Certainly, absolutely.

MS. COMBS: I agree with Matt and in pointing out that the data may not be as much as the southern portion but they're significant up there. And I'd like to throw into the mix a consideration of making the zone year-round. There is winter sightings...there are winter sightings up there. There is a water craft related manatee death up there. We've been given so much material, I don't know where to...actually, yeah, there's one. I don't have the date on that mortality. And we've been given some telemetry data, talking about an animal traversing that area between Ten Mile Canal and Hendry Creek. And further, the rationale that Hendry Creek is a dead end and not a travel corridor, making it a reason to not regulate it, doesn't really make sense, given that Ten Mile Canal is a dead end. Imperial River is a dead end. Dead ends aren't a reason, based on other zones, to not regulate an area. So, I would like to consider it for discussion, making it a year-round zone in the entire creek.

MS. TUTOR: Mr. Chairman, we have two bullet points that I have. We have a proposal to make the slow speed throughout, not split the north and south. That's one issue / item for discussion. And then the other one would be to make the slow speed zone a year-round. Those are the two.

CHAIRMAN MAXWELL: Let's go with Ernie in relationship to the two bullets. Go.

MR. HENDRY: I'd like a third, if we can do it. One of the things I'd like to see done in that area is remove this seasonal 25 mph zone at the mouth of Hendry Creek. And make that area from the mouth of Hendry Creek to it's end point a year-round 25 mph zone, thereby adding a manatee zone for the entire section of regulating that speed to a 25 mph zone year-round.

MR. BIXLER: From north to south?

CHAIRMAN MAXWELL: North to south, 25 mph.

MS. TUTOR: So remove the seasonal 25 mph from the mouth of the creek. Which is the southern half? OK

MR. HENDRY: And make that, along with the northern half, a year-round 25 mph zone.

MS. TUTOR: Just for my clarification here. I've got Laura saying year-round slow speed zones for the whole thing.

CHAIRMAN MAXWELL: And what is a slow speed, Laura?

MS. COMBS: What is slow speed?

CHAIRMAN MAXWELL: Yeah.

MS. COMBS: It's in our definitions, but basically in a...

CHAIRMAN MAXWELL: How many miles per hour?

MS. COMBS: There's really not a mile associated, miles per hour associated, it's generally a boat that's level into the water producing minimum wake.

MS. TUTOR: There's a minimum wake speed, whatever that is.

MR. LAMBROS: Mr. Chairman, Mote Marine, in their documents, were saying 5 mph.

CHAIRMAN MAXWELL: That's what I thought it would be.

MS. TUTOR: So, slow speed would be somewhere around 5 mph. OK So, Ernie, it sounds like yours conflicts. You're asking for a 25 mph. throughout that whole Hendry

Creek. OK. So, that's different from her's. Two different... This is actually the same thing, but two different speeds.

CHAIRMAN MAXWELL: What's the depth at Hendry Creek?

MR. HENDRY: I'm not the one to ask, but, I mean, it varies from very shallow to four feet, four to five typically, within these areas.

CHAIRMAN MAXWELL: We need to kind of have that as a denominator there, if we could, four to five feet, plus or minus.

MR. WILSON: To elaborate, I just want to touch upon a couple of points that were made here. Again, since we're sitting here trying to make these decisions on what area might be appropriate for manatee slow speed zones and what might not, in a relatively arbitrary and capricious manner, I think one of the things we want to point out here is that all of these waterways, Hendry Creek, Mullock Creek, Spring Creek, Estero River, Imperial River, are all watersheds. In other words, they are all receiving waters from a very broad area of fresh water runoff from the upland. What distinguishes these areas from others... predominately Mullock Creek is different than the remaining watershed creeks from the standpoint that it has a number of artificially created canals that you can see on your map and we have some very deep borrow pits that are upstream of Ten Mile Canal that serve as a winter haven for manatees. So that is, even though this Ten Mile Canal continues all the way up into the City of Fort Myers. It doesn't stop where the yellow line is. It keeps going north. It's a... what I would perceive as a destination location for manatees, predominantly in the winter months, because of the deeper waters of those borrow pits. Which is different than the Hendry Creek complex, Spring Creek or the Estero River.

Now, when you get down to the Imperial River, you've got a somewhat larger waterbody in terms of the river itself, and you have a lot of artificially created canals down in that river also. So, if given the charge of trying to differentiate these waterbodies, one from the other, where we've taken a look at Spring Creek and the Estero River and essentially said that we think those shouldn't have no speed zones, alright, which is one end of the spectrum here, and we've taken a look at Mullock Creek and Ten Mile Canal which we feel should be a slow speed area year-round, I think, in the hope of recognizing the utilization in that area by the manatee to get to the borrow pit. I mean, that is truly a travel corridor to the destination location for manatees to do manatee business in the borrow pits. I would say those are the two ranges that we're dealing with. The only exception to the Mullock Creek being this jump-over location where you accelerate between five miles per hour to planing speed to get over the shallow water. Which I personally tend to kind of agree with Laura on that, if you've been able to idle through it for two years, why do we now have to have a planing speed? You just basically trim your motor up or buy a boat that's the right size for that tributary. But, regardless, those are the two extremes that we're dealing with. And if I was going to characterize Hendry Creek, I would characterize it more so as being similar to Spring Creek and the Estero River than I would so much as the Ten Mile Canal or Mullock Creek.

MS. TUTOR: OK, so that's your rationale. You're using that as some sort of a rationale in looking at how you would determine which one you wanted to go ...

MR. WILSON: Well, if you're looking, I mean, you know, if we're trying to make the...unless we can come up with some easy formula which says density of manatees to density of boats to square footage of area, it's anybody's guess really.

CHAIRMAN MAXWELL: OK, hold this thought. Scott goes first, then you, Laura. Go ahead.

MR. TREBATOSKI: The one concern that I have in looking at available data, and I know some of the data is old, but we have to look at what we have. We don't have current data. In looking at Judge Schoonover's decision, and the whole basis of arbitrary and capricious, is we have to use the data that's in front of us. Whether it's complete, incomplete, or not. And I think we almost swing to the opposite end of arbitrary and capricious if we look at a map that is loaded with dots in the April to November time period and we're going to say that there is no basis for making that a slow speed zone during that time. I think we...the pendulum swings yet to another side, but it's still arbitrary and capricious. Our basis of how we determine these zones needs to be consistent and supportable. I think that's the whole thrust of an arbitrary...trying to avoid the arbitrary. And I think there are going to be some points when we look at other portions of this zone where being really neutral to this, I can see where some of the judge's rulings come in that big empty areas with a zone don't make sense. But here I see data that does seem to make sense.

CHAIRMAN MAXWELL: Alright, do we have any other discussion now? Yes, Laura, I'm sorry, go ahead.

MS. COMBS: I just want to hand out for folks...this is Florida Fish and Wildlife Conservation Commission's data of manatee mortality [1974 – November 2003]. And I printed it out to reflect the seasonality of the zones. Did I not send two that way? Here Hans, there's more going this way. No, that's not it. Here, you can have that one.

MS. TUTOR: I don't need it. I'm just making sure everybody else gets it.

MS. COMBS: And, I guess I'd want to check in with Hans and just be sure I understand. So, Hans, where do you...what is your thinking about protecting all of Hendry Creek right now, yes or no? Because, earlier it sounded like you were supportive of that, first of all.

MR. WILSON: Well, I was just kind of confused by why you have the split. Basically, we're on a see-saw the way as I look at it right now. This might be the defining moment for this whole committee. Because I think what Ernie is suggesting kind of makes a lot of sense. If you make all of Hendry Creek 25 mph, you get people that can get out to the waterways to recreate and that has time to maybe avert an impact with a manatee, which I'm assuming is the premise for the 25 mph speed. Plus it makes it boating safety, which

is the reason why we're not here. But you also have the telemetry which shows manatees utilizing all of Hendry Creek. Which is, I understand, where you're coming from. So, if you make the assumption that, you look at the telemetry, manatees are basically everywhere. So, if we're going to go with manatees everywhere, then we should have slow speed everywhere. I'm sure you would probably go for that one. But...is this manatee mortality boating related, or total?

MS. COMBS: It's all. All mortality is on this document. And what I wanted to get at, or try and understand better was your position. But when you look at the aerial survey data, which I think you were calling telemetry data, but the aerial survey data that were passed out...um, excuse me...

MR. WILSON: Well, I'm assuming that this little green trail here is one of the telemetry critters. Is that correct? Justin, what is that?

MR. McBRIDE: Ignore the green line.

MS. COMBS: Pay no attention to the line...

MR. McBRIDE: That's an incorrect flight pattern for the data that's on there. I apologize.

MR. WILSON: So, it's just aerial sightings, that's all this is.

MR. McBRIDE: Yeah.

MS. COMBS: The thing I was going to get at was that the aerial survey data, and I don't have the flight path with me, but the reason you see some holes or lack of data in some areas could be that the area just wasn't flown as part of the flight route. And we don't have the flight route in front of us to make that a better assumption. But manatees are in Hendry Creek year-round. The mortality data show them in the upper reaches of Hendry Creek. If you look at them as a form of locational data, they're there, dying year-round. They are seen there year-round. And it's an area that has withstood...well, actually, was Hendry Creek part of the Schoonover Ruling with FWC, Scott? It was? OK. It's an area that FWC formerly saw, or probably still sees, obviously, in their proposal as worthy of year-round regulations...or excuse me, seasonal regulation...but still as regulated at slow speed. So, I think that looking at the mortality data and the aerial survey data, to me it suggests a year-round regulation through the entire creek.

CHAIRMAN MAXWELL: OK, Ernie.

MR. HENDRY: I guess, I'm trying to think procedurally if we should make this a form of a motion and then have discussion on that.

CHAIRMAN MAXWELL: Exactly. We've had a lot of discussion so...

MR. HENDRY: OK, I withhold my discussion.

CHAIRMAN MAXWELL: That's fine then. Is there anyone else that has any points they would like to raise? What I'd like to do, to put forth to the committee, is for any of those persons that has a motion that they would like to frame and bring to us raise your hand and I'll consider those people that have motions. And then well go from...each person.

MS. TUTOR: Slowly, and one motion at a time please.

CHAIRMAN MAXWELL: Yes, so Ernie?

MR. HENDRY: I'd like to make the motion that you have written there, Valerie, to remove the seasonal 25 mph zone...

MS. TUTOR: [writing on the board]...remove the zone...

MR. HENDRY: ... from the mouth...

MS. TUTOR: ... from the mouth...

MR. HENDRY: ...of the southern half of Hendry Creek...

MS. TUTOR: OK, I'm going to shorthand it. OK

MR. HENDRY: ... and make it, along with the northern half...

MS. TUTOR: ... and make it, along with the northern half...

MR. HENDRY: ...of Hendry Creek...

MS. TUTOR: ...along with the northern half of Hendry Creek...

MR. HENDRY: ... a 25 mph year-round...

MS. TUTOR: ... a 25 mph year-round...

MR. HENDRY: ...manatee zone.

MS. TUTOR: ...manatee zone...manatee speed zone. So, that's the motion

CHAIRMAN MAXWELL: OK. So we have to go with that motion...let's go with ...I'm going to circumvent the rule for a minute so at least we get both of them on there and then we'll go with motion to motion. Anyone else have another motion that they would like to ...

MR. WILSON: Do you want a second for discussion?

CHAIRMAN MAXWELL: Yeah. Second for discussion.

MR. WILSON: I'll second for discussion.

CHAIRMAN MAXWELL: OK, second. And then were going to "zzzzzztttt" right there, because I want to get both motions up.

MR. KINNEY: Mr. Chairman, my question is, this is an area that was ruled on by Schoonover? Is that correct?

MS. TUTOR: Is this an area that was ruled on by Schoonover?

CHAIRMAN MAXWELL: Yes.

MR. KINNEY: I'd like to know what that says. What is the decision making process?

CHAIRMAN MAXWELL: OK, we'll get there. I believe the overriding argument was that it's arbitrary and capricious in terms of where they were at, at certain points in time, throughout the whole review.

MS. TUTOR: So we have one motion and a second on right now...

CHAIRMAN MAXWELL: OK, do we have any other motions on the floor?

MS. COMBS: I'd like to make a motion, if I can.

CHAIRMAN MAXWELL: OK. Laura.

MS. COMBS: Laura Combs, Save the Manatee Club. I'd like to make a motion that Hendry Creek be regulated slow speed year-round, the entire creek.

MS. SCOTT: I second.

MS. TUTOR: Did we have a second?

MS. SCOTT: Yes. Susan Scott.

MS. TUTOR: ...year-round...have to be regulated at slow speed year-round, the entire creek, again northern and southern half then.

CHAIRMAN MAXWELL: OK Alrighty. Let's do this now. Let's start with the first motion that was offered by Mr. Hendry. We had a first and a second. Now we're open for discussion. Any of those who wish to discuss it... You're at it, John.

MR. KINNEY: Mr. Chairman, I'd like to have an idea of how many boats transverse that area and use it. I mean, it's an area that I'm not well versed in, to be honest. Do we have any, I mean...

CHAIRMAN MAXWELL: We have a subdivision that is in there that uses it, much like Mullock Creek in context. Meaning that there are single-family homes that have been purchased to be able to utilize those particular tributaries to get out to the gulf. It was advertised as gulf-access. And, Hans, you could probably educate us in terms of ...would you say the depth is four to five feet throughout most of those areas?

MR. WILSON: Are you talking about all of Hendry Creek?

CHAIRMAN MAXWELL: Well, no, I'm ...well, comparing with Ten Mile and Mullock.

MR. WILSON: I would tender that Mullock Creek is probably shallower than Hendry Creek.

CHAIRMAN MAXWELL: OK. So you're going to have more frequency of boats in Hendry, being deeper and so forth, and different kinds of boats.

MS. TUTOR: Does anybody know what the boat traffic is, or has found the data?

MS. SCOTT: Yes, Mr. Chairman, Susan Scott. We all received this "Evaluation Of Boater Compliance In Association With New Boat Speed Regulations At Two Locations in Estero Bay." This was done 30 September 2002 by Mote Marine.

MS. TUTOR: First or second packet?

MS. SCOTT: The big packet we recently received.

MS. TUTOR: OK That was your second packet. OK

MS. SCOTT: Page 13 talks about Mullock Creek from two different standpoints. One being seasonal...and I've highlighted some information in there...

MS. TUTOR: We're on Hendry Creek though.

MS. SCOTT: I'm sorry, what was I looking at, I'm all over the place here. I was just looking for Hendry Creek. It is in here.

MR. WILSON: There is a Sea Grant boat study somewhere in here. Sea Grant's done a boat study for all of Lee County that defines different watersheds. It gives you boat types and characterizes those boat types by region. I don't have that in front of me, but that's available. I can provide that to the group.

MR. McBRIDE: Mr. Chairman, I've sent someone upstairs to get that. But we are not sure in that package where you can find it.

MS. TUTOR: I would suggest...you all have a motion on the floor, and I know you either want to continue with some additional discussion and/or have your vote. Because if you have a majority – you're done.

MS. SCOTT: OK. I'm sorry I couldn't find it. I had two different things highlighted. My apologies, but the information is in the packet.

MS. TUTOR: OK, great.

MS. COMBS: Laura Combs. I'd like to suggest that if there is a desire for more information, we should use as much information as we can. I'd like to, if we need to move on, consider tabling the motion.

CHAIRMAN MAXWELL: OK, all those ...make sure we get in focus here. First, 1. we've been in the discussion mode relating to the first motion that was brought forth by Mr. Kinney. We now have the comment that there is additional data that could help us reach a more informed decision as to the motion presented by Mr. Hendry. So, we're now going to...I need a motion to table that from someone. John?

MR. KINNEY: I make that motion.

CHAIRMAN MAXWELL: I've got a motion to table by John Kinney. A second?

MS. COMBS: I'll second it.

CHAIRMAN MAXWELL: I've got a second by Laura Combs. Discussion? All those in favor?

COMMITTEE MEMBERS: Aye.

CHAIRMAN MAXWELL: OK

MS. TUTOR: Was that unanimous?

CHAIRMAN MAXWELL: Yes. We'll then move to the second motion under the same context as to needing additional data. Is that not correct, Laura?

MS. COMBS: As far as the motion that I made?

CHAIRMAN MAXWELL: Yeah.

MS. COMBS: Yes, to get the questions answered.

CHAIRMAN MAXWELL: OK, I need a motion to table based on the need for additional data.

MR. KINNEY: I'll make that motion, Mr. Chairman.

CHAIRMAN MAXWELL: Thank you, John. Second? OK, by Ernie and Susan. All those in favor?

COMMITTEE MEMBERS: Aye.

CHAIRMAN MAXWELL: Alright, asterisks, we'll come back to those. Let's move on, if we can. Did we do Imperial River?

MS. TUTOR: No, you have not done Imperial River.

CHAIRMAN MAXWELL: Let's run through Imperial River. That's a county jurisdiction, is that not correct, Justin?

MS. TUTOR: Imperial River, dear.

MR. McBRIDE: Both.

CHAIRMAN MAXWELL: Both, OK. Here we go. Alright, Imperial River. Yes sir, please.

MR. McBRIDE: The county ruled the same as it was in the others, the-500 foot maritime property rule. And then the state regulations are the same as Spring Creek.

MS. TUTOR: What is the state? It's all that green. It's all slow speed.

MR. McBRIDE: Yeah, year-round slow speed.

MS. TUTOR: So the state, which is the ruling you all are looking at, is year-round slow speed.

CHAIRMAN MAXWELL: OK, what's the county's? The same?

MS. TUTOR: The county is the same as the other one where you...Spring Creek, where you go how fast? 25 mph or something?

MR. McBRIDE: Idle speed. 500 feet.

MS. TUTOR: Idle speed, 500 feet, and that's year-round.

CHAIRMAN MAXWELL: OK, do we have any discussion, motions anyone wishes to entertain in relationship to either proposing a motion to keep it as it is, or...Scott?

MR. TREBATOSKI: Mr. Chairman, I would move that we keep as it is, with the state zone being slow speed year-round.

CHAIRMAN MAXWELL: OK, do I get a second?

MR. BIXLER: Second

CHAIRMAN MAXWELL: I got a second by Matt. Discussion, John?

MR. KINNEY: Yeah, it says most of the Imperial River is already regulated. What's "most?" Eighty...what's "most?"

CHAIRMAN MAXWELL: Eighty percent?

MR. McBRIDE: Mr. Chairman, without ??? you have to look at Imperial, because it changes at 500 foot. It ??? can get it on the map and point it out to you that it is ??? It's hard for me to describe what it is.

MR. KINNEY: I mean, talking about miles, I mean, maybe that's just as hard to answer, most of it.

Tape 3, 057

MR. McBRIDE: It's hard. It's hard. To be honest, one cannot travel that. A fair amount it's hard to get 500 feet without ??? There's not any place on that river where you're not 500 feet ??? water.

CHAIRMAN MAXWELL: OK, OK, OK, thank you. OK, any other discussion? OK, the motion being read?

MS. TUTOR: Steve, Scott, the motion is to ...

MR. TREBATOSKI: To keep the zone as it is - slow speed year-round in the Imperial River.

CHAIRMAN MAXWELL: OK, we've had a second, we've had discussion. Anyone else? All those in favor? Unanimous. All those opposed? Nay: zero. Let's, if we can, move to Hell Peckney Bay.

MS. TUTOR: That would be number 3, that's your purple, and again I'm doing a lot of this, too, for the public, so you all can see up here. That would be this area here.

CHAIRMAN MAXWELL: What have we got there jurisdiction-wise and so forth? Justin?

MR. McBRIDE: Hell Peckney is a state zone.

MS. TUTOR: Hell Peckney is a state zone.

MR. McBRIDE: The lower portion, where it's shaded green, is a seasonal zone like the body of Estero Bay.

MS. TUTOR: OK, this area right here?

MR. McBRIDE: Yes.

MS. TUTOR: So this part isn't regulated.

MR. McBRIDE: Correct.

MS. TUTOR: This part down here is.

MR. McBRIDE: Yes.

MS. TUTOR: And that is the seasonal slow speed. That's not part of the waterway.

CHAIRMAN MAXWELL: OK, that's the area that we're focusing on right now for the moment.

MS. TUTOR: We're going to have a split.

CHAIRMAN MAXWELL: Yeah, much like Hendry Creek was. So, is this a "need-to-know-more-data" scenario here? Or do we have...yes, Alex.

MR. LAMBROS: Mr. Chairman, Alex Lambros. Do we know what the depth of that is?

CHAIRMAN MAXWELL: Do you have the depth for that bay? Hell Peckney, what have we got?

MR. WILKINSON: The north side of that, you're looking at ankle-deep.

CHAIRMAN MAXWELL: OK, do I have any motions on the floor, any discussion? Yes, Laura?

MS. COMBS: Laura Combs, Save the Manatee Club. It makes no sense to have part of that area be seasonal. If you look at the mortality data, manatees are dying year-round north and south of that area. If you look at the aerial survey data, which I can't find right now, they are present both north and south of that area year-round. And I think that the seasonally regulated area should be slow speed. So, I would like to make a motion to accept the state's slow speed zones in that area, the state's year-round slow speed zones in that area, and the state's...change the state's seasonal slow speed zone to a year-round slow speed zone in the Hell Peckney area.

MS. TUTOR: So, a point of clarification, Laura, actually...for Hell Peckney it is actually this piece here. So that's the speed you're talking about - the year-round slow speed.

MS. COMBS: Right. Accept that as is. And then the area up there, that should be year-round.

MS. TUTOR: You want to make that year-round. That's your motion?

MS. COMBS: Yes.

CHAIRMAN MAXWELL: OK, we've got a motion on the floor. I need a second.

MS. SCOTT: Second.

CHAIRMAN MAXWELL: I got a second by Susan. Discussion?

MR. LAMBROS: Excuse me, Alex Lambros, again. I'm still unclear of the depth of this area here, which apparently is the seasonal zone. What exactly is the depth?

MR. WILKINSON: I said the north side of that is ankle deep.

CHAIRMAN MAXWELL: Yeah, the north side is ankle...That gets a little bit...

MS. COMBS: [Looking on nautical chart] Here we go. One foot or less.

MR. WILKINSON: The north shore is one foot or less.

MR. LAMBROS: Well, if it's one foot or less, you're not going to have manatees in there. And you can make the argument that manatees are dying all over Lee County because, quite frankly, they are; but that doesn't necessarily mean it's because of boat traffic. And the commission is limited to where it can establish regulations where manatee sightings are frequent and it can be assumed that manatees inhabit an area. If it's one foot or less, they're not inhabiting this area. And I think this area should be unregulated. And this area, the light green area, you know, you can put whatever you want in there. Because if it's one or two feet, there's not going to be manatees who are frequently inhabiting that particular area.

MS. COMBS: Mr. Chairman, Laura Combs.

CHAIRMAN MAXWELL: OK, hold that for a second, Laura.

MR. TREBATOSKI: I would like to make a motion also.

MS. TUTOR: We need to vote on one motion at a time.

CHAIRMAN MAXWELL: OK, we have to deal with this motion, one at a time. We've got two deferred due to more information. Let's do this. Those persons that have not been recognized to discuss where we're at now in Hell Peckney, are there any other people? OK, let's go with Scott.

MR. TREBATOSKI: I have just a point of information, or a question related to the motion. Where the data was saying that there's mortality in Hell Peckney Bay and looking at the map, which is very difficult to read, I'm going to just...it's difficult for me to interpret this map with the size of the dots and the spots. And I'm totally a novice here, so you guys that are out there more than me...I see the dots there, but I'm not so sure that the dots aren't in this green area and not up into this area where...this dark green area. It's very difficult on this small map to see and so if we're, you know, we're talking conflicting zones here. If we're saying Hell Peckney is ...you know, we've got kind of, we've got two zones there. We're looking at the dark green zone and the light green zone, and I tend to think that the dark green zone has very little, if no data to show that there's any need for zones up here. Where this, again, being the different zone, you know, I think that point is maybe the point you're trying to make, that's the way I see it. I definitely see a difference in the two halves of that.

MS. COMBS: Look at the aerial survey data. Laura Combs. You're looking at mortality data. If you go to the aerial survey data you'll see manatees are in Hell Peckney Bay in the shallow areas. Map charts aren't always accurate and up-to-date. And I think FWC staff could provide us more information about manatee use in Hell Peckney Bay as well. Their aerial data shows them there in the shallows, supposed shallow areas of the nav chart.

CHAIRMAN MAXWELL: OK, but just as a point of information, we did hear information today that talked about the depth and which is more conducive to manatee congregation as well as livelihood / habitat areas and, generally, it's three feet and above. Was that not...I think that was even mentioned by someone here. But one second...for clarification, Susan, go ahead.

MS. SCOTT: Sure. Just that the depths are ...there is basic scientific information out there, some basic, they used to use meters, and a meter is approximately three feet, as to where you will find them in higher congregations depending on time of year and what's going on. However, there is substantiating information throughout the information we've been given that shows, as Laura mentioned, that navigational charts typically mention the low...the shortest depth at ...this is where I'm not a seaman...so, mean low water mark versus the fact that in many areas, and those of you who have been here a long time know, you can range from six inches to three or four feet in depth of water, depending on tides and time of year and such. So that is something we should consider. And that also tagged manatees have been shown going into these areas where supposedly they don't go. So that is something we should consider, and the documentation is there. So you want to consider everything. And also that manatees, like people, we don't all adhere to a very straight line. Granted we're supposed to look at frequency as an important component of

that. But it doesn't mean that they're not found in some of those areas. Just for a point of clarification.

CHAIRMAN MAXWELL: Thank you, Susan, I appreciate that. Ernie?

MR. HENDRY: OK. Getting back to the motion, the discussion on the motion, I kind of have feelings about this Hell Peckney Bay for a couple of different reasons. I think the intracoastal, where we've identified some of the mortality areas where the slow speed is, I agree there needs to be some type of regulation and slow speed is probably the way to go. The area above in the dark green, that's where I tend to agree with a couple of others who mentioned that regulations may not be necessary. I mean, and if you do look at the watercraft mortality for that area for the last, what is it -30 years, what have you, we're really not seeing what true watercraft mortality is. Partly, you just don't have a whole lot of boats up there in that area. If you look, one of the things that is of most benefit, that carry into Estero Bay right outside the intercoastal waterways, it's fairly shallow and limited access to fewer boats traveling in and out of that area. I just don't think you have many boats traveling in and out of that area. And what you do have are shallow draft. I don't think it's an issue that we need to be concerned with, with having boat traffic utilizing those areas.

And you know, people I talked to that do utilize those areas, you know, it is a hardship, believe it or not, to get from some of these areas of the bay from let's say this area [Estero Bay] up to this area [Hell Peckney Bay] in the summer months when it is slow speed. So, taking all of these things into consideration, my thought would be to keep the lighter shaded area of green at the slow speed that it is year-round and then un-regulate that darker green area, as mentioned.

CHAIRMAN MAXWELL: OK, any other discussion? We have a motion on the floor, we need to ...yes, Matt.

MR. BIXLER: Just one more piece of information I came across in the original document that we got, there is telemetry of a specific manatee that shows him up in Hell Peckney Bay in both the north and the south portions. So there is evidence of manatee use in that area, what we're discussing right now.

CHAIRMAN MAXWELL: OK. Alex.

MR. LAMBROS: Mr. Chairman, one more point, too. Let's not forget, just because there's an occasional manatee or an occasional herd of manatees transversant to an area, I mean, the rules are real specific, the commission should not establish restrictions that result in undue interference with the rights of fishers, boaters, and waterskiers. OK.

It's limited to where it can establish a regulation where sightings are frequent and it can generally be assumed that manatees inhabit the area. It also talks about balancing the need for manatee protection with the need for boats and recreational uses. You know. We're not in a preserve here, we're not in a marine sanctuary. We're in a recreational

area of Lee County, Florida. Just because there's an occasional manatee sighted and as some of the...if I'm not mistaken, some of the court documents say a manatee can go into two and three feet of water if it's chasing a female, if it's running from something; but, that does not mean that it's inhabiting that area or has frequented that area. And, again, I think that the purpose of the committee is to balance what is appropriate on the manatee portion to protect the manatees and also so the citizens of Lee County have the rights to use the waterways.

CHAIRMAN MAXWELL: OK, here's what I'd like to do so we can cut to the chase in terms of getting to the motion addressed in terms of the vote is: 1. what is the existing rule right now as we know it for that area, Hell Peckney? Can we get that from the State?

MR. FROHLICK: Slow speed seasonal, 25 mph...

MR. TREBATOSKI: Well, our zone is split. That's where the confusion is, we've two different rulings.

MS. TUTOR: You have three different. Let me clarify this. In the Hell Peckney Bay area that you all identified, this the purple area here, you have no state regulation to the north and the southern part of the bay area you have the slow speed that's seasonal - the summer months. And then in what Ernie called the intercoastal area here of Hell Peckney, you actually have the bright green which is the slow speed year-round. You have the three zones and the motion on the floor is to make all of the state regulated area, Laura, I believe you said...

MS. COMBS: Yes.

MS. TUTOR: ...the slow speed year-round.

CHAIRMAN MAXWELL: OK, now that everyone has been able to hear and see the distinction, we are going to go to the vote of the motion on the floor. Read your motion into the record, if you would, Laura, please.

MS. COMBS: For the Hell Peckney Bay area, as defined by this committee, that the entire area be regulated as slow speed.

MS. TUTOR: OK, the entire area. I had it make it all state regulated areas.

MS. COMBS: Yeah, yeah, OK, all state regulated areas should be slow speed.

CHAIRMAN MAXWELL: OK, all those in favor of the motion as read, signify by raising your hand as "aye." All those opposed? OK, motion fails for a majority. Do we have an alternative motion to address this issue and to put it to bed? Yes, Ernie.

MR. HENDRY: I'd like to make a motion that we keep the year-round slow speed portion, the intercoastal portion, of Hell Peckney Bay, as we described it, as is and take the seasonal northeastern half manatee zone and make that an unregulated area.

CHAIRMAN MAXWELL: Is there a second?

MR. WILKINSON: Second.

CHAIRMAN MAXWELL: OK, second by Mr. Wilkinson.

MS. TUTOR: Keep the intercoastal portion at slow speed year-round, which is as is, and then recommend changing the seasonal slow speed area to unregulated, Ernie, you said?

MR. HENDRY: Correct.

MS. TUTOR: To unregulated.

CHAIRMAN MAXWELL: OK, I have a second by Mr. Wilkinson. Discussion?

MR. WILSON: Just a point regarding the nomenclature that we're using. The channel that extends down the eastern side of Estero Island is basically referred to as Matanzas Pass Channel, not the intercoastal waterway. I know we're using that as a kind of a casual discussion point, but you know, who knows who's...

MS. TUTOR: Yeah and I like that you give me the correct terminology. So that's Matanzas Pass Channel, is what that's called, Hans? Thank you.

MR. WILSON: Yeah. The MPC.

MS. TUTOR: OK so we're going to keep the Matanzas Pass Channel portion at slow speed year-round as is, and then recommend changing the seasonal slow speed area to unregulated. That's going to be our recommendation to the commission.

CHAIRMAN MAXWELL: OK, I have a second on the floor. All those in favor of the motion signify by saying "aye."

COMMITTEE MEMBERS: Aye.

CHAIRMAN MAXWELL: All those opposed?

MS. TUTOR: Wait, you've got to ask for a count. One, two, three, four, five, six, seven. OK, now, and I think, Mr. Chairman, at this point I would like to again point out at some point we need, because I don't want to "dis-include" the minority, we want to make sure we don't forget that we have some of these that will have a minority opinion on them and we need to at some point address what we're going to put in the report to address that. Now, whether you want, I don't know...Oh, good, your back, Kris...as the attorney, what

the regulations are as far as you all sending me information, as far as here we want to make sure this is what the minority is and we can send that around to each other and I can add it to your notes, or however you want to do that for the sake of moving the meeting along.

CHAIRMAN MAXWELL: OK, what's the pleasure of the board?

MR. WILSON: Just include what the other motion was.

MS. SCOTT: That's what I was going to recommend. Yeah.

MS. TUTOR: If you look, and I guess the reason I ask is, if you look at some of the stuff Tampa did they did have like a section where they put ...here's the majority recommendation and here's what the minority said. So, I want to make sure I write that right. So, I would say, like for instance, in this case based on what Hans just said, and you're nodding your head, is that what I would write for the minority would be the motion that Laura made that that's what the minority felt.

CHAIRMAN MAXWELL: Yes. Good.

MS. TUTOR: OK, I just want to make sure. And again, Ms. Kris, on anything like that as far as Sunshine Law Rules or anything, if there's things that their facilitator, and I'm keeping a set of informal working notes which will eventually become the report and we'll have draft documents to work back and forth within the committee, but as I put that together, is it possible for them to email me? Or should they email ...like, do a whole group email, so that whatever they're telling me to put in the notes so they want to make sure that we talk about, as their facilitator, that they also get that out at the same time to every other member, is that how they would do that?

MR. WILKINSON: Mr. Chairman, excuse me...

CHAIRMAN MAXWELL: One moment.

MR. WILKINSON: If you're going to have a minority report, you need to do it here. The same as we're doing voting on the motion. It ought to be done right here. I don't think that's something that we ought to start getting stuff in so everybody can say, well, this is the minority report.

MR. BIXLER: I think you should do it distinctly as a minority motion, if you want, for lack of a better term.

CHAIRMAN MAXWELL: Alright. Yes, Sue.

MS. SCOTT: I'm sorry. Just one more point of clarification on this particular area. I noted Matt Bixler did not vote on either motion and I would request that he give us...if

he has a third motion...to please give us that motion for consideration. I think that should be part of it, too.

CHAIRMAN MAXWELL: No, problem. Let's first do this. We've got to do a couple of things first. OK

MS. SCOTT: Just keep that in mind.

CHAIRMAN MAXWELL: Yes.

MS. SCOTT: Thank you.

CHAIRMAN MAXWELL: In point of organization and time management, we're at about 5:16, so we need to look at how much we have left. What I want to do is... generally we said we would go no longer than three hours, and I want to make sure we stick to that. We're not going to go any longer than three hours, period.

MS. TUTOR: You may change your mind as you get further into it. But for right now...

CHAIRMAN MAXWELL: Well, we're moving at a pretty good clip right now, I think. Here's what we need to do, if we can. What is left to be done in relationship to Estero Bay? We have two pending motions that we want additional information from council we've got to take care of. We have what else left? We have the main body of Estero Bay, and...?

MS. TUTOR: Hurricane Bay and Matanzas Pass, other than your two tabled issues.

CHAIRMAN MAXWELL: OK, let's do this. Can we just put those up that have to be...that are left to be done. Not in process, but what is actually left to be done.

MS. TUTOR: Justin, I'm going to write on your map, OK?

MR. McBRIDE: Bingo.

MS. TUTOR: Can I do that? Because I want to keep my flip charts, because I want to keep rolling as you go. So what I'll do for you all. This, this, and down here. OK? And I'll be here with the red. The Estero River and Spring Creek, I believe those were the two you tabled? OK So, the two red spots are the two that were tabled, these are the three that remain to be discussed.

MR. WILSON: No, no, those weren't tabled. Hendry Creek was tabled.

MS. TUTOR: OK, that's what I'm asking. Thank you very, very much. That's what we needed.

MR. McBRIDE: Mr. Chairman, we have the information you requested.

CHAIRMAN MAXWELL: We're going to get right to you, Justin, thank you. OK, here's what we're going to do then. At the pleasure of the board, we're going to go back to the POC items, process of completion, as it relates to the motions that are outstanding on the floor. Justin, you're on the air.

MR. McBRIDE: For Hendry Creek, the survey of 1999, in that watershed there were 54 vessels.

MR. KINNEY: I'm sorry, how many?

CHAIRMAN MAXWELL: Speak up, so...

MR. McBRIDE: There were 54. Fifty-four vessels in the 1999 data.

CHAIRMAN MAXWELL: In where?

MR. KINNEY: Does that include or exclude Mullock Creek?

MR. McBRIDE: Hendry Creek only.

CHAIRMAN MAXWELL: OK, 54. "Car 54, Where Are You?" You guys are too young for that.

MS. TUTOR: In Hendry Creek, 54 vessels in Hendry Creek when?

MR. McBRIDE: In 1999.

MS. TUTOR: OK

MR. WILSON: Are you talking about docked? Or used, or ...?

MR. McBRIDE: That wasn't counted.

CHAIRMAN MAXWELL: So that means nothing.

MR. BOUTELLE: Mr. Chairman, we contracted Florida Sea Grant to do a study of all of Lee County. They physically went all through these waterways and counted the number of docks and boats observed while they were there, which were typically weekdays during the day. In the process of that survey, they counted 54 vessels in that area. All of which are in the headwaters of Hendry Creek.

CHAIRMAN MAXWELL: So, no distinction then, Steve? There was no distinction as to docked or just...

MR. BOUTELLE: We have additional data that could be extracted that would tell you how many unoccupied docks they observed, as well. But, I don't have that in this summary report that I'm looking at now.

MS. TUTOR: Those were mainly weekdays. Right?

CHAIRMAN MAXWELL: That's moored boats?

MR. BOUTELLE: Correct.

CHAIRMAN MAXWELL: Moored boats, OK. Alright.

MR. KINNEY: Is there a distinction with Mullock Creek and Ten Mile Canal from this? Or does this include those? Is there a difference?

MR. BOUTELLE: This is just Hendry Creek. There would be similar data compiled for Mullock Creek.

MR. KINNEY: Do you know what that is?

MR. BOUTELLE: Mullock Creek, which also included Ten Mile Canal and all of the canals and tributaries thereto, had a total of 321 vessels observed.

CHAIRMAN MAXWELL: Alrighty.

MR. WILSON: So Ten Mile and Mullock have a higher boating population, per se, than Hendry does.

CHAIRMAN MAXWELL: Yes, Absolutely

MS. COMBS: And Hendry Creek's vessels were moored at the headwaters, meaning they have to traverse the entire creek to get out.

MR. KINNEY: Yes, Mr. Chairman, my question was, besides the vessels moored, do you know ...it's like, do you have an area where you have some vessels moored but it's a fishing area, they go in there and utilize that area, so you would have more boat traffic in and out? We don't have anything in addition to the moored vessels count?

MR. BOUTELLE: As far as boat traffic patterns in that area, no.

CHAIRMAN MAXWELL: Alright, let's go then, if we could...is everyone clear with the information that was provided by the Attorney's Office? OK. If we can, let's go back to that motion...we have two motions relating to Hendry Creek. The first motion was to remove...

MS. TUTOR: ...the seasonal zones from the mouth of the southern half of Hendry Creek and make it, along with the northern half of Hendry Creek, a 25 mph year-round manatee speed zone. Correct? And the maker of the motion was Ernie Hendry.

CHAIRMAN MAXWELL: OK, let's read the second motion, just for fun.

MS. TUTOR: OK. So, if this motion is voted on and fails, the other motion that you have to consider would be that Hendry Creek be regulated at slow speed year-round and that would be the entire creek, both north and south. That would be the second motion, the alternative motion. There's one on the table.

CHAIRMAN MAXWELL: Very good, alright. Is everyone clear with the motion that's been presented? Let's go to the first motion. All those individuals that have any further discussion relative to the information that was just provided, now is your time to speak up.

MS. TUTOR: And that will apply to both motions.

CHAIRMAN MAXWELL: Yes, it will apply to both.

MR. HENDRY: This applies to my motion and this has a lot to do with that, probably the biggest crux of why I made this motion to do that. I am familiar with this creek. It is a creek that is not heavily used, like in Mullock Creek or at Ten Mile Canal. There are not that many boats. There never have been and there never will be. If you knew the geography of that area, that area is surrounded by a lot of wetlands and undeveloped areas. You just are not going to have the boat traffic in that area. The boats that use that are shallow-draft boats, there are fewer boats, the lack of mortality in that area, all the above reasons... I say let's put a 25 mph zone. And I think it is important to put a manatee zone in there. But I want to put it at a lesser restrictive form of a manatee zone versus some of these other areas for all the above reasons that I mentioned.

CHAIRMAN MAXWELL: OK, very good. Anyone else? Seeing none, anyone have any further discussion relative to the second motion offered by Ms. Combs, based on the new data that were presented? OK Seeing none, let's go back to the first motion. The first motion read into the record, please.

MS TUTOR: Ernie, go ahead.

MR. HENDRY: Remove speed zones...seasonal speed zones from the mouth of the south half of Hendry Creek and make it, along with the northern half of Hendry Creek, a 25 mph year-round manatee speed zone.

CHAIRMAN MAXWELL: OK with the motion on the floor, all those in favor signify by raising your hand.

MS. TUTOR: OK, we have one, two, three, four, five, six.

CHAIRMAN MAXWELL: All those opposed?

MS. TUTOR: We have four.

CHAIRMAN MAXWELL: OK. Let's go to the second motion.

MS. TUTOR: Would that be the minority motion? Are we using that as the minority motion?

CHAIRMAN MAXWELL: Well, then we have to officially...since what we did was we had two motions that were brought to the floor. We have to vote on each individual motion.

MS. TUTOR: OK

CHAIRMAN MAXWELL: So, we're going to go with the second motion. If you would, Laura, please read it.

MS. COMBS: Uh...

MS. TUTOR: Hendry Creek...

MS. COMBS: Where? Oh, it's the brown, OK. I have a hard time reading it exactly. What's that first part?

MS. TUTOR: Your motion is: "Hendry Creek be regulated..."

MS. COMBS: OK, you see, I didn't know what that was. Hendry Creek be regulated slow speed year-round for the entire creek.

CHAIRMAN MAXWELL: OK, that's the motion that's on the floor. We've had discussion relative to this motion. All those favor of this motion signify by raising your hand, please.

MS. TUTOR: One, two, three, four.

CHAIRMAN MAXWELL: All those that are opposed signify.

MS. TUTOR: One, two, three, four, five, six.

CHAIRMAN MAXWELL: OK, based on the responses by the committee members, the former motion that passed six to four, that was entered by Mr. Hendry, passes. We will also have a minority motion - dissent language involved in the recording of said action.

MS. COMBS: Excuse me. Mr. Chairman?

CHAIRMAN MAXWELL: Yes.

MS. COMBS: Laura Combs. As far as the minority report...I don't know, maybe FWC can give us some guidance...the minority motions that fail are certainly a signifier of some of the intent of the minority group. But a minority opinion would encompass more than just that motion as far as rebutting, and from my perspective, why the majority motion is not as protective as it needs to be.

MS. TUTOR: Which is why I had asked for how we were going to put that language together.

CHAIRMAN MAXWELL: OK. Generally, and again I don't want to appear arbitrary and capricious, or unilateral, but generally in the context of administrative proceedings you will provide a minority opinion or you can provide any explanations justifying the reason for your position. So it could be a position paper, it could be any form that you wish to present in an attachment to the motion that failed, OK, as was used as a convincer, if you will.

MS. TUTOR: OK, and please understand, Laura's point is a good one for those reasons. When you all put this report together, we have to put it in some sort of format. That's also why I urge you to look at the way Tampa did it. We don't have to do it the way Tampa did it. It's just something like a template to use how they did it, because we want to be able to present...I mean, something that maybe doesn't have to be carried out in a wheelbarrow, so that we want to present a report.

Now if we have attachments to go along with that, I don't know, and that maybe, I think, where we'll address some of your comments back here to FWC to see if that's what they want, if that's allowed. We can certainly get a ruling on that. We do want to format this somehow where we say "here's what the majority recommendation was, that was voted on" and what it is and if you want to include a what, or this is why we voted that, or you don't want to include anything, that's up to you all. And then here's the minority recommendation and what it is and why. And that's what I'm saying. How you do that, at some point during these these meetings we do want to think about how we format the report itself.

That's all I'm going to add. You don't have to do it today, think about that, how you want to maybe look at what Tampa did and say, "hey, that looks good, let's do it that way," or "let's do it a different way." And then at some point we may have to revisit, because I did, Mr. Chairman, double check and go back and make a little check mark for myself that there was one of these first motions that passed, for instance, the first on Mullock Creek, that had a minority and we really didn't have a minority motion, so we don't have what's the minority recommendation...so I'm just going to keep track of that in your notes, and make sure we clean that up at some point. OK? Thank you.

CHAIRMAN MAXWELL: OK, Scott.

MR. TREBATOSKI: Mr. Chairman, if I might make a suggestion for consideration.

CHAIRMAN MAXWELL: Certainly.

MR. TREBATOSKI: On this whole issue of minority and majority opinions, obviously the motion is going to stand as far as the action that this group has taken. What I might suggest in either the majority or the minority, any member who wishes to make a statement for the record present it at the following meeting in writing. That it just be accepted that way, that we not try to write formal minority opinions.

CHAIRMAN MAXWELL: Certainly.

MR. TREBATOSKI: I think it would speed the process up. I think anybody who has input that way can deal with it. We don't deal with Sunshine issues...

CHAIRMAN MAXWELL: Correct.

MR. TREBATOSKI: ... because of people talking outside this committee. I think that would be the safest

CHAIRMAN MAXWELL: Good point.

MR. TREBATOSKI: ...for appearances.

MS. TUTOR: And Mr. Wilkinson, did that...would that be fair, as far at that goes?

MR. WILKINSON: Yeah, that's the original concern.

MS. TUTOR: Hopefully, we'll get enough done that we can do a draft and y'all can take it apart and we can put it together and say, "now let's add this and do that." OK, and we can clean this stuff up.

CHAIRMAN MAXWELL: Alright.

MS. TUTOR: And one...this is a real good time just to make another suggestion for y'all. When you do look at the Tampa, y'all talked about public input and one of the things that's my understanding and Scott or anybody else can correct me if I'm wrong, that as they voted on these things, Hans, like we're doing and we talked at the first meeting, "well, gee are we now set in stone," from what I understand, the way it was done up there, they did have a couple of meetings, like you all set, that were specifically designed to get more public input, they were able to tell the public here's what we voted on so far and get more public input. If anything in the public input changed the mind of anybody that voted in the majority... obviously if it changes the minority, it doesn't matter as far as changing the vote goes and what your recommendation would be... but if anything did change the mind of someone in the majority that they might want to change their vote for

any reason, they were able then to reintroduce that area for discussion. If it would change the vote only.

CHAIRMAN MAXWELL: The only point of record there is, and this relates to the rule, is that the original proponent of the motion... see again you're talking to this issue of Sunshine... generally would be the one that would have to come up and provide the persuasive argument, documentation, to bring it to this board again. We would then have to vote on it and then it would crystallize if, in fact, it did.

MS. TUTOR: And you...right, and usually it would have to be someone from the majority that would do that with the original motion, make it ...but, apparently that's how they handled it up there. If anything in the public...so that way you were not ignoring, or if any public input that came after the fact, because you're form, I think July 9th is your first real big public meeting...

CHAIRMAN MAXWELL: Right, correct.

MS. TUTOR: ...and if they want to comment on these issues they can.

CHAIRMAN MAXWELL: OK, if we can, let's get on the horse. Here we are. We're now left with ...

MS. TUTOR: That's done. You've got Matanzas Pass, Hurricanne Bay, and Estero main body.

CHAIRMAN MAXWELL: OK, let's go with Hurricane...well, let's see, where's Matanzas Pass? Show me the pass. There and there. Where's Hurricane Bay?

MS. TUTOR: Right next to it. And then we've got all of this.

CHAIRMAN MAXWELL: Alright. Let's just start from the top and go sequentially. We'll start with Matanzas Pass and if we can get the jurisdiction clarification, I know it's up there on the green but I want it for the record, so we have it.

MS. TUTOR: OK, the jurisdiction is that it's slow speed year-round.

CHAIRMAN MAXWELL: Who is it? State?

MR. WILSON: State proposed. So moved.

CHAIRMAN MAXWELL: Hold on, hold on. Don't throw me off the horse here, Hans. OK. Go ahead, Susan.

MS. COMBS: Mr. Chairman, just a point of reference that in our materials it does state that most of the pass is currently regulated at idle speed by local ordinance. So, this is a point of reference in our thinking pattern here.

CHAIRMAN MAXWELL: OK, so we have conflict. Overlap.

MS. TUTOR: Year-round slow speed is the state regulation, so that's the state rule, as you were saying, Hans. State rule. And then you said the county ordinance is idle...?

MS. SCOTT: It says that most of the pass is currently regulated at idle speed by local ordinance. It probably could be a combination of both Fort Myers Beach and County, I would think, in that area.

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CHAIRMAN MAXWELL: Does the Town of Fort Myers Beach cleft in two?

MR. WILSON: ??? aspect in the same county ordinance.

MS. COMBS: Yeah, they are in some areas. They have idle speed zones within 100 feet of bridges and also within so many feet of their beaches. So...

CHAIRMAN MAXWELL: Alright, so, we have three jurisdictions that...do we have anyone from Fort Myers Beach? Of course not.

MR. McBRIDE: Mr. Chairman, within 1000 feet of the city limits of the Town of Fort Myers Beach is idle speed on the bay side. On the other side it falls back to the same county ordinance of 500 feet from maritime structures. So, either local ordinance will cover the majority of that light green area, from the mouth of Matanzas Pass all the way down to the main body of Estero Bay. In addition to the state zone.

MS. TUTOR: OK, so a thousand feet of the city limits of Fort Myers Beach is cover under the city ordinance. They have a city ordinance to cover that?

MR. McBRIDE: Right

MS. TUTOR: The rest of it is covered by a county ordinance, then we also have a state regulation, is what you're saying?

MR. McBRIDE: Correct.

CHAIRMAN MAXWELL: What's the pleasure of the board in this particular interlocking, overlapping, jurisdictional,...? Do we have a motion to...?

MS. COMBS: Oh, could we have another point of discussion, or not? Where are we at? I'm lost now.

CHAIRMAN MAXWELL: Well I think right now we're looking at Matanzas Pass. We have a conundrum in the sense that we have three overlapping jurisdictional bodies that have promulgated their rule as it relates to the water. So, I...

MR. WILSON: May I make a suggestion?

CHAIRMAN MAXWELL: ... go Hans.

MR. WILSON: Much of the local ordinances were adopted for reasons other than manatee protection. It's for protection of docks, structures, boats, safe navigating. The state rules are proposed for manatee protection. We're here to look at the state rules. If there's an overlapping jurisdiction...if there's an overlapping jurisdiction, I don't know as I'd lose much sleep over it.

CHAIRMAN MAXWELL: OK, so then ...Alex?

MR. LAMBROS: I was just going to make a motion to leave it as it stands at slow speed.

CHAIRMAN MAXWELL: Alright, I've got a motion on the floor. I've got a second from Ernie and Hans.

MS. TUTOR: OK. So the motion is to accept the state rule as it is, Mr. Lambros?

MR. LAMBROS: Yes

MS. TUTOR: ...as it is in the Matanzas Pass area, which would be the slow speed year-round.

CHAIRMAN MAXWELL: OK, discussion?

MR. WILSON: Do you want to make the point of clarification for the area west of San Carlos Boulevard? Because we're making some motions on some regions, but we're not really defining those regions. They're slightly different than the state regions. We may want to either adhere to what the state zones are and reference our motions relative to the state zones on the map to the right, or we may continue with our regionalized areas for discussion purposes for those on the left. My suggestion would be to simply deal with the state zones as shown on the map on the right.

MS. TUTOR: OK, I don't know, y'all are the ones who split it up here so...

MR. TREBATOSKI: Mr. Chairman.

CHAIRMAN MAXWELL: Yes, Scott?

MR. TREBATOSKI: I would agree with Hans at this point. We've already talked about the southern end, we've talked about the northern end, now we have a little sliver in the middle. I would say why don't we just make a motion that, if we can, that would cover that entire zone, if

MS. TUTOR: And apparently that zone is covered by... what you're calling here, when you split it into the ten areas...Matanzas Pass, and then this area is part of Hurricane Bay.

MR. WILSON: Well, Hurricane Bay...you see, you've got ...Matanzas Pass Channel extends from that green area all the way to the southeast along the whole eastern side of Estero Island. Hurricane Bay is an area that's to the north. That's a different speed zone. So, my recommendation or suggestion, I guess, would be at least if you're going to break Matanzas Pass Channel into three areas, we just voted on the left area west of San Carlos Boulevard, and the next point we're discussing the Matanzas Pass Channel on the east area proximate to Hell Peckney Bay and Hurricane Bay.

MS. TUTOR: And please understand, just for clarification, you all split it up this way. And what I'm hearing Hans say is "maybe we don't need to, maybe we should just make ..." What I'm hearing you say is "maybe we should just look at right this..."

CHAIRMAN MAXWELL: Slow down.

MS. TUTOR: Mr. Wilson, you're asking, wait, you're asking to go ahead and just look at this are right here, Hans? Is that what you're saying?

MR. WILSON: I need to take it all the way to ...

MS. TUTOR: Well, you've already voted on this, so that's kind of a moot point at the moment.

MR. WILSON: Well, we discussed Hell Peckney Bay, which in my sense is that we looked at Hell Peckney Bay excluding the Matanzas Pass Channel section.

MS. TUTOR: No, no, because you actually have that in your motion...if I can find it. [looking on flip chart]

MS. SCOTT: You just went past it. No, the other way.

MS. TUTOR: OK, that's it - Hell Peckney. We had...the motion was to make all state regulated areas a year-round speed zone. That failed. Then we went to the motion to keep Matanzas Pass Channel portion at slow speed year-round – which is what it is right here. OK. And that was in your motion that passed. So that's the only reason I say that. So, are you now saying let's just go ahead and call that Matanzas...for the rest of Matanzas Pass?

MR. WILSON: Yes, that would be fine.

MS. TUTOR: And then, and then make this for like that little spot here up would be Hurricane Bay?

MR. WILSON: Typically it would be Hurricane Bay by geographical reference, yeah.

MS. TUTOR: So, just so everybody's clear? Is that OK? Can we do that? OK, I'm seeing lots of head nods, Miss Denise, so we're going to do that. So, right now, now Mr. L.

CHAIRMAN MAXWELL: Go ahead, Alex.

MR. LAMBROS: I restate my motion to include all of Matanzas Pass down to the section that we voted on before, the purple section, as slow speed zones.

MS. TUTOR: You want to include all of Matanzas Pass? So, it would be kind of a redundant vote on that area, but it would cover all of this.

MR. LAMBROS: Um, hmm.

MS. TUTOR: OK, so that's the motion.

CHAIRMAN MAXWELL: I've got the motion on the floor. Do I have a second? John [Kinney] was the second. Any discussion? Seeing no discussion, we're going to go to the vote. Read the motion into the record.

MR. LAMBROS: My motion is to accept all of Matanzas Pass as a slow speed zone all year-round.

CHAIRMAN MAXWELL: OK, all those in favor signify by raising your hand.

MS. TUTOR: We have a count of one, two, three, four, five, six, seven, eight, nine, ten. Unanimous.

CHAIRMAN MAXWELL: OK, we're moving on. Good job folks. Let's see. We're now at the next item.

MS. TUTOR: Go ahead and do the rest of Hurricane Bay.

CHAIRMAN MAXWELL: OK, Hurricane Bay...we've got a motion on the floor regarding Hurricane Bay? Yes, Scott.

MR. TREBATOSKI: I would move that we accept the state regulations as they stand for Hurricane Bay.

MS. TUTOR: And Hurricane Bay is a...for the record, it's state regulated at a slow speed April 1st through November 15th / 25 mph the remainder of the year.

CHAIRMAN MAXWELL: OK, do I have a second.

MR. BIXLER: Second

CHAIRMAN MAXWELL: I have a second by Matt.

MS. TUTOR: OK, the motion is to accept as is, Scott? Is that the motion you made?

MR. TREBATOSKI: Yeah.

CHAIRMAN MAXWELL: Second by Matt. Discussion?

MS. TUTOR: As is.

CHAIRMAN MAXWELL: OK, recognize Laura for discussion.

MS. COMBS: Laura Combs, Save the Manatee Club. I'd like to ask Matt, and the seconder, to reconsider that motion and consider regulating that area year-round. It is surrounded by year-round manatee regulations. Mortality data show they are dying in that area year-round. Aerial survey data, right now, do not show the year-round use that the mortality data gives and it makes no sense that there aren't manatees using that area year-round when the entire surrounding area is used year-round.

MR. WILSON: Mr. Chairman?

CHAIRMAN MAXWELL: Yes, Hans.

MR. WILSON: The problem that I have with the manatee mortality data is that it's not only boat-related manatee mortality. I think that really needs to be part of what we're dealing with now. The other thing I would like to point out is just being consistent with choosing to convert Hell Peckney Bay, all of it to an unregulated status, and given that Hell Peckney Bay and Hurricane Bay are very similar in terms of water depths, habitat, just by design. If you look at it, it's the same. With the exception of the channel that runs around the north side of San Carlos Island and ties into Hurricane Pass. My only struggle would be being consistent with our previous decision on Hell Peckney Bay and seeking to be the same as we go down the line. So...just a point.

CHAIRMAN MAXWELL: Thank you, Hans. Go, Scott.

MR. TREBATOSKI: As the person who made the motion, my rationale...and this would be a good point for discussion, especially amongst the people who boat more than I do... is with the canal system to the north, and the boat traffic and the other considerations of people going through that area, to me it has a different geographical look than where we just talked about – Hell Peckney Bay. We didn't have that situation in Hell Peckney Bay. I'm almost certain that's why the other motion is put the way it is. I think they are geographically different, based on the human population and the man-made canals and things like that.

CHAIRMAN MAXWELL: OK, any other discussion? Seeing no discussion, let's ... further discussion, let's read the motion into the record.

MS. TUTOR: Scott, can you read your motion.

MR. TREBATOSKI: My motion is to accept the area as Hurricane Bay, which is state regulated, as it stands: seasonally slow speed from April 1st to November 15th and 25 mph the remainder of the year. Slow speed until November and then 25 the remainder of the year.

CHAIRMAN MAXWELL: OK, super. All those in favor of the motion...Oh, oh, what?

MR. WILSON: Does this include the marked channels at 25 mph? That's part of what...

MR. TREBATOSKI: Yes, what the current regulation is.

MR. WILSON: OK.

CHAIRMAN MAXWELL: OK, thank you, Hans. OK, all those in favor of the motion before the board, all signify by raising your hand. Yeah.

MS. TUTOR: We have a count: one, two, three, four, five, six, seven, eight.

CHAIRMAN MAXWELL: All those opposed?

MS. TUTOR: One, two.

CHAIRMAN MAXWELL: OK, alright, what does that leave us with?

MS. TUTOR: First, I want to make sure I add this so we don't forget it. Hans, you said there is some little blue dots in that area. Is that what you're talking about, the areas that are 25 mph in the marked channel?

MR. WILSON: Well, the marked channel on the north side. The red channel that you see is marked 25 mph, at least on that map. And then the historic zone is also connected with the subdivision to the north as being a 25 mph zone.

MR. McBRIDE: This map probably shows it better than any of the others.

MS. TUTOR: OK, I just want to make sure, we're going to accept the rule as is, leave it slow speed, and the marked channels at 25. I'm just going to make sure I word it right. OK. What you have left then, Mr. Chairman, is the Estero Bay main body.

CHAIRMAN MAXWELL: OK, if I can, so that we know where we're at in terms of time management, we're now at approximately 5:40. We are moving to see if we can get Matanzas done, we are done in terms of...hold on...

MS. TUTOR: Yeah, go ahead.

CHAIRMAN MAXWELL: We'll be done in terms of our first area. We, of course, have the Caloosahatchee, which we certainly aren't going to get through tonight, based on what we set as a time limit. I think that's a good place to start at our next meeting. There's a lot of promo for those people who will be able to make the night meeting. So, the Caloosahatchee is certainly going to have a lot of people, I'm sure, interested what's that's all going to uncover as to where we need to be at that point in meeting this goal of our committee. So, if we can, let's go into the Estero Bay.

MS. TUTOR: And what I would like just to add...

CHAIRMAN MAXWELL: ...main body.

MS. TUTOR: As Mr. Chairman says, we do have the Estero main body. But before 6 [6:00 p.m.], if possible. We also then, and what we still remain to do, is setting your agenda for the next meeting. As Mr. Chairman has said, we want to set that and then any other dates that we need to block out. OK. So that's what we've got to do.

CHAIRMAN MAXWELL: Is everyone good with that? Alright. What have we got with the Estero Bay main body as the jurisdiction, so we know where we're all at, obviously. That is who? How many jurisdictions have we got going? Where's the data?

MS. TUTOR: Right here, this is the state regulated area. It's all that. And whatever the red channel means. What's that? 25 mph there too, Hans?

MR. WILSON: Yes.

MS. TUTOR: OK, so everything else is the slow speed, the seasonal slow speed, with 25 mph the remainder of the year. Most everything else, that's what it is, currently for state. The question Mr. Chairman has asked and I'll put it to staff – is there any other ordinances that cover that area, that you know of, Stephen, Justin? Or is that just state regulated? The whole Estero main body.

MR. BOUTELLE: Steve Boutelle. The dark green areas are not covered as a general rule by any other local ordinances. The exceptions are going to be within 500 feet of a developed shoreline on Fort Myers Beach. And then...

MS. TUTOR: What color do you want him to use? Pick a color, use something.

MR. BOUTELLE: Within 500 feet of "developed shoreline" on the back side of Fort Myers Beach. This is not to scale, obviously. Then Carl Johnson boat ramp, then right here, then Hogue's channel.

MS. TUTOR: Hogue's Channel, or something, Justin?

MR. BOUTELLE: That's alright.

MR. McBRIDE: [Marking on the map exhibit] Right here at Carl Johnson boat ramp and then Broadway and Hogue...just Hogue...down here, so we have a very limited area, primarily four points.

CHAIRMAN MAXWELL: OK, now with that being brought into focus for us, do I have anyone on the floor that would like to discuss / propose a motion as we see it? Yes, Ms. Combs.

MS. COMBS: Let's discuss before we even start proposing motions. A lot of manatee data for Estero Bay, a lot of studies have been done. If you look at aerial survey data and mortality data, you can see the animals are all over the bay area. They are not just restricted in the channel. When you look at the boating data that was passed out, the boating maps here that were passed out earlier by Justin, you can see boaters are throughout Estero Bay. There is vast prop scarring in Estero Bay. I've been out on the water personally, kayaked it, witnessed prop scarring in action...So, manatees and boaters go throughout Estero Bay. They're there year-round when you break the data down, I broke down FWC's data ...seasonally manatees, when you look at all the mortality data, are dying at a slightly faster rate during the colder months than the warmer months. I have the statistics right here. From November 16th to March 31st sixty-three manatees deaths, or 43 percent of the animals, have died in the Estero Bay system. And from April to November 15th, eighty-five manatees have died in the Estero Bay system. So, for that smaller period, there is a slightly higher rate of mortality in the area. They're there year-round and ...

MR. KINNEY: What was the cause of the deaths?

MS. COMBS: That was all causes of deaths.

MR. WILSON: I'm sorry, say again, what caused the deaths?

MS. COMBS: All causes. Just to show that there is a significant year-round presence of manatees in Estero Bay. And, again, the boats do not stay strictly in the channels and neither do the manatees, as is shown by the boating data and manatee usage. I guess I wanted to get that initial discussion out on the floor.

CHAIRMAN MAXWELL: Just one thing that was brought to my attention, we could factor that in along with the points that you raised, Laura, is that one of the issues is: 1. how well aware are the boaters out there in terms of being forewarned by signage? Is there good signage in that area? Is there sufficient signage? Is it large enough for boaters to read? One of my friends, he boats down from the north end of the Caloosahatchee in Alva and he comes out to Fort Myers Beach and Sanibel and the upper islands all the time, and one of his major concerns that he brought to my attention was that the signage is terrible. I mean, they're like little signs, how are you going to see. And as crowded as that area is with boats, could it be that maybe we're falling short in awareness. Are there enough signs out there, Hans? Are they visible?

MR. WILSON: When I drive by in my car on the streets, I learn what all the signs mean before I get on the road.

CHAIRMAN MAXWELL: That's true. That's a good thing...but then the question is: are the signs visible enough? Are there enough out there?

MR. WILSON: Oh, there's plenty out there.

CHAIRMAN MAXWELL: OK

MR. TREBATOSKI: One of the...I think one of the natural things that that discussion might lead to is when you're...one of the issues with signage that I see is that it's very difficult when signage puts up something that's not a natural formation. It's a lot easier...the whole natural formation from point A to point B is all covered by the same sort of zoning. Maybe this is a discussion that could have taken place at the beginning of the whole discussion. For some reason, it's just a lot easier for people to catch it, understand it...When you look at some of these places we looked at before, like the creek and things like that where from one end to the next it's covered. So, if you'd sign...especially where there you've got a smaller area...you sign real well at the mouth and people know there's a sign. Where you've got these huge expanses like this, you've got a real big problem because there's not necessarily the natural...

CHAIRMAN MAXWELL: Continuity.

MR. TREBATOSKI: Right.

CHAIRMAN MAXWELL: Exactly. So I guess, is there anyone on the board that has discussion that they want to...

MR. LAMBROS: [changing tapes - Mr. Lambros' question did not get recorded]

MS. TUTOR: Are you rolling?

MS. BAYLISS: Looks good.

MS: TUTOR: OK. Go for it.

MR. WILKINSON: Mr. Chairman, if I could, I'll answer that question, and yes it does, Alex, it does talk about that. In fact, if I could Mr. Chairman, I'd like to make a motion to get us off the dime on here if we could.

CHAIRMAN MAXWELL: Make your point, if you could. Did you all see Doug on that?

MR. WILKINSON: Judge Schoonover did, it's in the ruling in here, in the book that we gave to you last week. So you did discuss it.

CHAIRMAN MAXWELL: Alright, I'll entertain a motion.

MR. WILKINSON: To start with, I'd like to take the main channel running north and south, if you will. Everything on the west side of the channel...

MS. TUTOR: Would this be from here, Mr. Wilkinson, up to here? [pointing on map]

MR. WILKINSON: That's correct. Everything on the west side of the channel.

MS. TUTOR: All of that.

MS. COMBS: That's east.

MS. TUTOR: Oh, I'm sorry. Well, I'm an east coast gal. OK.

MR. WILKINSON: Everything on the west side continue to be regulated by the rules that are in effect. Everything on the east side fall under Judge Schoonover's ruling, which basically has it unregulated.

MS. TUTOR: OK, everything on the west side of the channel continue to be regulated as is?

MR. WILKINSON: Correct.

CHAIRMAN MAXWELL: And everything east of that leave unregulated.

MR. WILKINSON: Follow Judge Schoonover's ruling.

MS. TUTOR: And everything east of that...now I'm going to say: as per the Schoonover...S-c-h-o-o-n-o-v-e-r...Oh, I did spell his name right before, good...as per the Schoonover ruling, be unregulated. Is that the ruling?

MR. WILKINSON: Correct.

CHAIRMAN MAXWELL; OK. Do we have a second? Ernie?

MR. LAMBROS: I second.

CHAIRMAN MAXWELL: OK. Alex, discussion? OK. Susan.

MS. SCOTT: Just a couple of points to bring up. One is that manatees do use all of Estero Bay. Second, studies of pre-regulatory boating traffic patterns and speeding, and speed that the boats traveled at, that was done prior to regulations. And studies showed that the maximum speed the boats tended to go, of all vessel sizes, was 20 to 30 mph anyway. Just something to consider. Probably due to the fact that the area has a lot of very shallow

water. There are other things you have to be considerate of besides other humans and manatees. Just the fact of how the area is designed. So that's something to consider as well. And whether or not regulations would pose a hardship on those who are already going a maximum of 20 to 30 mph.

The other question I would like to pose, only because I don't know, are there areas in there where people tend to water ski or other things? In other words, does the site itself, by it's own shape and topography, dictate that certain things just aren't going to happen there? And it's a good question...I want to bring that up because I know that's an area of concern that people have is... are we providing those areas for people who want to do those kinds of things. But if it doesn't physically exist anyway...I just wanted to bring that point up.

CHAIRMAN MAXWELL: Mixed boat uses, that, yeah, there's one thing between pleasure, just going around and feeling the wind going against you, then you've got the fisher-person, and then you've got the one that recreates. Now, that's in the boating population. Then we are dealing with the jet skis and the other types of vessels. So, would we all conclude that this is a mixed watercraft area? High density, mixed watercraft area? Or not?

MS. SCOTT: That's a question that I'm posing for those who are power boaters.

CHAIRMAN MAXWELL: Do have any data that talks about that, Justin? The characteristics of watercraft activity.

MR. McBRIDE: That was included in the Estero Bay study by Borzolini ?????

CHAIRMAN MAXWELL: And where was the sum of that? I would assume it would be highly mixed, but...Yes, Laura?

MS. COMBS: As someone who lived in Estero and kayaked Estero Bay, and there's recently been a kayak / canoe trail put in through Estero Bay... allowing that area to be unregulated is going to put paddlers at risk. I mean, it's going to create a boating safety issue as well, I think. As one who has been waked in Estero Bay...so, it's a boating concern as well. That's a heavily kayaked area.

CHAIRMAN MAXWELL: Yes, go ahead Steve.

MR. BOUTELLE: I just wanted to clarify...Steve Boutelle...that the county ordinance has provisions such that if there is a conflict between that paddling trail and power boats, that the trail can be regulated at idle speed under the county ordinance.

MS. COMBS: But boats do go outside of that trail to kayak. They kayak that entire area.

MR. KINNEY: How would a boater know that it was an idle speed area?

MR. BOUTELLE: It would have to be posted. But this ordinance allows for it to be posted in it's current format.

CHAIRMAN MAXWELL: It does?

MR. BOUTELLE: Yes.

MS. TUTOR: So right now it's not posted, but if they were to find that there was conflicts starting between the power boats and that trail, they could then go out and post that at idle speed, says the county ordinance.

MR. BOUTELLE: Correct.

CHAIRMAN MAXWELL: OK, good. Anyone else have a discussion point? Yes, Scott.

MR. TREBATOSKI: I put a question, and this is for the boaters who have boated Estero or for the other people...this one section down here in the lower southwest quadrant where it's 25 miles year-round, what makes that different than the rest of this? I'm not familiar with that area.

MR. WILSON: I've just been reading the commission's rationale. Basically, if you look where the red channel is, it comes out of the ??? waters at the very south, OK, where it enters the blue from the south, you have to go to the west if you stay in the marked channel where you pick up the County's ordinances. And then if you want to continue to the north, you have to go back east and then continue north up the red line. The blue area was zoned so that you can run your boat at planing speed over the sea grasses there, theoretically avoiding sea grass impacts in short-cutting to the channel moving to the north, so you didn't have to make the big loop around. That was the theory. And I believe that the reason for not marking the channel was not to invite inexperienced boaters from prop dredging through those sea grasses.

CHAIRMAN MAXWELL: Alright, we have a motion on the floor. Oh, yes, Kipp.

MR. FROHLICH: Just a point of reference on the way that the shorthand is written for the motion that follows the way it was stated.

MS. TUTOR: Thank you.

MR. FROHLICH: And out of concern that the motion as stated, as written, references "as per the Schoonover Ruling." We've read the ruling and I don't see where it says that everything west of the channel should be unregulated. It talks about that area...

MR. WILSON: east

MR. FROHLICH: East, excuse me. So, I would request, so there wouldn't be confusion if we get a motion that says something that says that we have to then go to another

document, we may interpret that document differently, I would recommend you make your motion at what you want the regulations to be. And so that we don't have to have a different interpretation and read through, as we were just doing a moment ago, the Schoonover Ruling.

MR. WILKINSON: I can do that. Unregulated everything on that side...

MS. TUTOR: If we...Mr. Wilkinson, then I would say that everything on the west side of the channel continue to be regulated as is, and everything east of the channel be unregulated.

MR. WILKINSON: That's correct.

CHAIRMAN MAXWELL: OK. That's the motion on the floor. We've had ... Yes, Justin?

MR. McBRIDE: Mr. Chairman, just a question, or a point of clarification on the motion. The channel itself would be regulated then as well?

MR. WILKINSON: The channel already has an adopted speed limit there, so...

CHAIRMAN MAXWELL: OK, Kipp?

MR. FROHLICH: Just another point, in many areas around the state we are ...the commissioners, usually they can do anything they want, but they've been reluctant to regulate a channel and leave immediately outside the channel unregulated. And the reason for that is, and I think it becomes obvious, that you then encourage people to leave the channel. Some may know how to do that safely, some of the visitors probably won't. But, human nature being what it is, boaters tend to leave a regulated channel and venture out..."Oh, I can go as fast as I want"...so that... you can recommend this, and that's fine. I just want to point out that from the commission point of view, we look very carefully at regulating boats that way where we restrict speed in the channel and leave it unregulated immediately to...adjacent to it, because of the potential of leading people to run aground or leading them at speed. So it's something you have to discuss.

CHAIRMAN MAXWELL: OK

MR. WILSON: I have a question.

CHAIRMAN MAXWELL: Yes, Hans.

MR. WILSON: Mr. Chairman, the red underneath this graphic, and this is really for Justin, the red channels that we show as being physically 25 mph limit in the channels, or whatever, in certain cases, do they extend all the way, for example, to the mouth of the Estero River and to the mouth of Spring Creek? I can't see it on that graphic and I don't know...

MR. McBRIDE: Yes. Unfortunately those handouts that I gave you that represent this on yours, I muted the red out. The red are the marked channels. They are not representative of speed zones. The handouts that you have that mirror this are dark blue underneath, and that zone is 25. And they do go all the way to those mouths.

MS. TUTOR: And you say the channels have adopted the speed limits, Mr. Wilkinson?

CHAIRMAN MAXWELL: Yes, Susan.

MS. SCOTT: A quick question, Mr. Chairman. Then are we able to consider a second motion for consideration after this one then?

CHAIRMAN MAXWELL: Uh, huh.

MS. SCOTT: At what time is it proper to make that motion?

CHAIRMAN MAXWELL: Once we've disposed of this motion based on the fact that...

MS. SCOTT: OK, because I thought previously we had two motions before we voted.

CHAIRMAN MAXWELL: Correct, but there we kind of got the jiggle-joggle. We were getting more data...

MS. TUTOR: That got a little confusing.

MS. SCOTT: OK

MS. TUTOR: Really, by point of order...

[Many people talking altogether. Unintelligible.]

MS. SCOTT: We can't offer the second option until...OK

CHAIRMAN MAXWELL: Yeah, let's do that because, again, that exception was made because we were trying to get some additional information to deal with them.

MS. SCOTT: OK, thank you.

MR. WILSON: The statement is that the channel has adopted speed limits?

MS. TUTOR: I just...I put that on there and I asked if you want that...

MR. WILKINSON: There's a 25 mph speed limit now.

MR. WILSON: So, you want to keep the channel at 25 mph, but leave the rest of the area east of the channels unregulated?

CHAIRMAN MAXWELL: That's his proposal. OK? Alright, we have a motion on the floor, we've had it seconded, we've had discussion. Any further discussion on the motion before the floor?

MR. WILKINSON: The only reason...if I could?

CHAIRMAN MAXWELL: Yes.

MR. WILKINSON: One of the reasons, too, is if you look at the mortality that is there and you look at it along the channel there, I think allowing that to be totally unregulated is going to cause, you know, further impact there. I think the channel does cause a lot of problems. I don't think it should be any faster than that.

CHAIRMAN MAXWELL: OK. Alright, with the motion on the floor, all those in favor of the motion signify by raising your hand.

MS. TUTOR: Leave them up to be counted. We have one, two, three, four.

CHAIRMAN MAXWELL: All those that are opposed?

MS. TUTOR: One, two, three, four, five, six.

CHAIRMAN MAXWELL: OK. Do I have another motion to be presented? Fails for lack of majority, six to four. Susan Scott.

MS. SCOTT: I'd like to make a motion to keep the proposed regulations as is.

CHAIRMAN MAXWELL: OK. I have a motion to keep the proposed regulations as is. Do I have a second?

MR. KINNEY: I'll second it for discussion.

CHAIRMAN MAXWELL: OK, John. Alex, do you have something that you want to say?

MR. LAMBROS: If we keep it as is, I would like to see some type of corridors through there at 25 mph.

MS. SCOTT: They are already there.

MR. LAMBROS: I thought that was just a marked channel.

MS. TUTOR: No... Justin could you clarify the channels? Are they at a posted 25 mph speed limit? Do they have an adopted 25 mph speed limit?

MR. McBRIDE: On the graphics it's hard to tell, but it is probably easier on the one that you have. The red, as it extends out here, are just the marked channels. The blue, the dark blue, are 25 mph and they mimic the channels. And 25 mph in the channels goes to the tip of the mouth of nearly all the systems...

MS. TUTOR: All that blue there that's kind of under the red...

MR. McBRIDE: This same color blue under the red, it didn't show up well on this graphic, but it should on the handouts that you have in your packets. It's kind of a faded red. That blue that's underneath is 25. The only place that it is not is this section right here. That's slow speed right in there, the same as the green, but the remainder of the channels are at 25.

CHAIRMAN MAXWELL: Is everyone clear?

MS. TUTOR: So the motion is to keep the proposed regulation as is, which is a seasonal slow speed with channels...channels are at 25 mph you said, Justin?

MR. McBRIDE: Correct.

CHAIRMAN MAXWELL: Yes, Ernie?

MR. HENDRY: Discussion on the motion. The portion of Matanzas Pass west, I fully agree with, no problems with that. The problem I have is with the area east of Matanzas Pass and that's the seasonal nature of the that. I'm not opposed to doing some type of 25 mph zones. And, in fact, that might be one of the thoughts that Kipp was saying to not have any areas where you encourage somebody to get out of the channel. But going back to some of the other areas that we've talked about, if you look at the mortality – the boat mortality level – you're not going to see any death in that area, in this area east that I'm talking about. And if you're going to put on your mortality data chart... but what I'm saying is that from this area up you're just not seeing any mortality on this - boat mortality - in this particular area.

This area is, historically, a pretty shallow body of water that requires an awful lot of local knowledge in order to access. Again, me talking to various people before we came to this meeting were mostly fishermen, and the big problem they had were, and seasonal merits for this was idle speed, for someone coming out of this area, having to go to this area, having to run down in here, and I know it doesn't look like much, but it's a kind of a undue interference with what they are trying to do. And I just don't see the mortality support making that a year-round type of a seasonal zone. What I'd to see is make that just a...or seasonal...I'd like to see that as a year-round 25 mph zone east of that channel. I think we could allay some of the fears that you all have and I think it would be a good point to end up at. And I think it's going to still provide adequate protection for manatees.

Again, my full thought on this is that area east of the channel is not the problem with what's causing that mortality in Estero Bay.

CHAIRMAN MAXWELL: OK, So we have that point of information that's been offered by Ernie in relationship to the east part of the channel up... that you want to make it 25?

MR. HENDRY: I'd say 25, but I'm not...

CHAIRMAN MAXWELL: Well, we've got to get it so it's out there. It's not a motion, but I at least anticipate...

[MS. TUTOR talking at the same time. Can't make out what she is saying]

CHAIRMAN MAXWELL: OK, we have that point. Any other discussion? Laura Combs.

MS. COMBS: This is more been discussion about manatee mortality. Aerial survey data show manatee are all over Estero Bay. It's a great place for the animals to go, eat, hang out, be manatees. They do get off into the shallower areas. And the boats travel in the shallower areas, as is shown by the propeller scarring among other things. This system at 25 year-round would put them at more jeopardy. Just because a carcass is not recovered there does not mean an animal has not been struck there and survived that injury, or been struck there and gone somewhere else. And it's protecting manatees from harassment, injury and death that we're charged with, not just looking at the mortality. The animals are at great risk in Estero Bay and 25 mph is just not enough to protect them.

CHAIRMAN MAXWELL: OK, thank you. Scott?

MR. TREBATOSKI: Another point that I would like to make, in looking at various maps and overlays and looking at the watercraft mortality, looking at the distributions November to March and April to November, one might argue the reason that the mortality is showing the way it is with a lack of mortality is that in the time of the heaviest concentration we have a slower speed and to lift that may very well put the mortality rates up high. And the reason that the mortality may be showing a lack of mortality is because the zone, as it stands, is working perfectly fine.

CHAIRMAN MAXWELL: OK, and we also need to think of season. What kind of traffic we're dealing with at seasonal period. Yes, John, did you have something?

MR. KINNEY: No, no, I'm just agreeing with what you said.

CHAIRMAN MAXWELL: OK, we now have a motion on the floor to keep the proposed regulation as is and ...

MS. TUTOR: Which is seasonal slow speed in the channels or at 25 mph.

CHAIRMAN MAXWELL: All those in favor?

MR. BIXLER: Point of clarification, Mr. Chairman. Seasonal slow speed and 25 the rest of the year?

MS. TUTOR: Yes, it's slow speed seasonal, it's April 1st through November 15th, 25 mph the remainder of the year, with the channels having an adopted speed limit of 25 mph in that area there. But that's what it is - as is.

MS. COMBS: Another point of clarification. If there's a tie vote, the motion fails, right?

CHAIRMAN MAXWELL: Well, unfortunately, that's the way it runs. Alright, now. Are we there gang? OK, does everyone understand what the motion is? OK, all those in favor of the motion, as presented, signify by raising your hand aye.

MS. TUTOR: Leave them up for count. One, two, three, four, five, six.

CHAIRMAN MAXWELL: All those that are opposed?

MS. TUTOR: One, two, three, four.

CHAIRMAN MAXWELL: OK. The way I see it we've accomplished a lot as a team today folks. We did take care of Estero Bay. And what we need to do quickly so that you'll know, next week we will be meeting Friday, July 9th at 6 p.m. in this room. Correct, Justin?

MR. McBRIDE: In this room., yes.

CHAIRMAN MAXWELL: OK. Also, you know, I serve on that Smart Growth thing, I know you have goodies hidden somewhere. Goodies in the sense of water, Coca Cola, Sprite...

MR. BOUTELLE: Wayne Daltry has ...those are Smart Growth things.

CHAIRMAN MAXWELL: I get ahold of Wayne Daltry. We'll get ahold of him.

MS. TUTOR: Anybody who wants to bring cookies...

CHAIRMAN MAXWELL: No, we're going to get some goodies next week. So, we'll put that in a memo for fun. OK. Memo for fun.

MS. TUTOR: Friday, July 9th. What time, Mr. Chairman?

CHAIRMAN MAXWELL: Uh, 6 p.m. here. And then specifically the items on the agenda: Call to Order, Public Input, there will be Caloosahatchee River discussion...

MS. TUTOR: Call to order, public input, the next thing will be the Caloos...was that the whole Caloosahatchee? OK, thank you.

CHAIRMAN MAXWELL: And we need to look at our calendar to make sure...

MS. TUTOR: Are there any other dates...

MR. HENDRY: I am attempting to fly back the day of the 9th meeting.

MS. TUTOR: On the 9th? Because you are going to be out of town, right? OK And I'm looking for where we decided where...OK. So, that would then...we had started with Estero Bay. That would take us into Caloosahatchee, that would leave you the other three remaining areas, Mr. Chairman, are San Carlos, cause we said we would go in descending order, the next one would be San Carlos Bay. So whether you want to do like you did for this time, where you actually put Caloosa on in case you got finished with Estero, would you like staff to go ahead and put San Carlos Bay? Or have Justin make those maps should you get done with Caloosahatchee?

CHAIRMAN MAXWELL: Yes, that way it'll keep people kind of knowing where we're going in progression.

MS. TUTOR: OK, you got that Justin?

MR. McBRIDE: Yes

MS. TUTOR: So where...

MR. McBRIDE: I have one question. Mr. Chairman, in looking at how much we're relying on the maps, if the board would agree, we would like to try and get a live feed in here with a laptop so we could manipulate maps as you were...would you like to try that out?

MS. TUTOR: What, so you can print them out then?

MR. McBRIDE: No, they would be on the screen and would be easier for people to see them. We would have overlays and ...

CHAIRMAN MAXWELL: Yeah, overlays are important. That would be good. Let's try that. Certainly. OK, that's a custodial issue.

MS. TUTOR: Does that work for you all?

COMMITTEE MEMBERS: Uh-huh, yes, sure.

CHAIRMAN MAXWELL: The other thing is with respect to proper noticing / advertising, I'm sure the County Attorney will take care of that.

MS. KROSLACK: We will.

CHAIRMAN MAXWELL: Thank you, ma'am. OK. I just wanted to kind of make sure we're on the same channel. Yes?

MS. COMBS: Just for housekeeping purposes, at the previous meeting I talked about manatee models, population models... I did bring in copies from FWC for everybody and one for the record. Also, the one I was talking about isn't published yet, but the gentlemen in question, Michael Rungee, did give me something to download that is also a different model to look at, and I think it's important. You know, the more the merrier. So, I have those. And if the public is interested, I did highlight because I didn't want to print waste paper, I have highlighted that website, if you're interested, so you can go there too. I wanted to make sure there are plenty copies of that. So one for the record and one for each member of the panel. And then there are also copies if the public is interested. I did want to make sure....

CHAIRMAN MAXWELL: Anything for the good of the order? Anyone have anything? Yes, AI?

MR. LAMBROS: Just one question. If all the committee members aren't here next week, and I think the Caloosahatchee is a very important waterway that we need to really spend some time on, what do we do?

CHAIRMAN MAXWELL: Yes, certainly. Well we're hoping that everyone will be here. Other than Ernie, is there anyone else anticipating not being able to make the meeting next week? OK, Hans.

MR. WILSON: I'm going away.

CHAIRMAN MAXWELL: Away, far away? OK. Wait. Again, as we stated, a quorum is six.

MS. TUTOR: So we're going to have eight here? Is that the deal? Hans and ... although Ernie, you're going to work like the daylights to be here. All three of these?

MS. COMBS: They're different pieces of paper with information on them. And there's one for the record.

CHAIRMAN MAXWELL: OK, with that, do I have a motion to...oh. Yes, Laura?

MS. TUTOR: Wait. Let me finish passing these things out before you all leave.

MS. COMBS: Can I make this as a point of order? Or actually, I guess I'll frame this as a motion. I'd like to make a motion that before the discussion of each waterway that staff give us a brief presentation of the data so that we all are on the same page looking at

aerial surveys, boating data, manatee mortality. And then we can all move forward, instead of bringing it in, hit or miss.

CHAIRMAN MAXWELL: OK, we've got a motion on the floor to make sure that staff gives us a brief overview on each area as it relates to data and current ...

MS. TUTOR: Wait, Justin's got his hand up frantically.

CHAIRMAN MAXWELL: OK, hold on. Yes, Justin?

MR. McBRIDE: I would like the committee to absolutely define what data.

CHAIRMAN MAXWELL: The data. OK

MS. COMBS: OK. The manatee mortality, aerial survey, satellite telemetry, and boating data, and sea grass data.

MS. TUTOR: The only caution I would have is to make sure that this doesn't turn into a giant presentation meeting and then you don't have any time to discuss and vote.

MS. COMBS: We have to make our decisions based on the data and it's defined in 68-C so I guess, you know, if there are other **scar catalog** data that make be important, or rescue data...um, but more along the lines of 68-C and the things that the FWC are also going to want to get through. I want to make sure we all have a baseline.

CHAIRMAN MAXWELL: I need a second. [banging desk for order] Time out. I need a second on the motion on the floor in relationship to making sure that we're data smart.

MS. TUTOR: Staff presentation.

MS. SCOTT: Would that be in addition to anything currently we have, correct? Or is this...

MS. COMBS: Well, it's...I would just like an overview. That's my point. Because we're not always starting off with the data and I think we need to have that.

MR. HENDRY: As FWC already said, we've got what we have here and that's the latest data that we have.

MS. COMBS: It is, but when start to make decisions sometimes, it just goes straight into a motion without a look at the data. And I would like to see a reminder of the data.

CHAIRMAN MAXWELL: OK, we have a motion on the floor. Do I have a second? I don't see a second.

MR. BIXLER: I'll second that.

CHAIRMAN MAXWELL: We got a second by Matt. Discussion?

MS. COMBS: That will be good. A brief, definitely... a brief overview is fine...of the particular water body any ...for example, one thing we did discuss and we did take time to look at was existing regulations that are municipal and county in nature. Those are things we should have an overview of.

CHAIRMAN MAXWELL: OK, conditioned proceedings. OK. Yes?

MR. HENDRY: I agree with what Susan just said, and I thought that was a most helpful presentation that Justin made. I kind of want to avoid getting into excessive data that we already have in CD, or what have you. I think we have that information at our disposal. But I think the brief description that we went with today would be more than suitable.

CHAIRMAN MAXWELL: OK. With that in mind, all I would say is what I'm hearing from everyone is...for example, we have the Caloosahatchee River next week. Some people may not know where the Caloosahatchee River is, just in terms of bringing us into orientation: how long it is, how wide it is, what's the depths in certain areas. I think that would be good in terms of backdrop. Correct?

MS. TUTOR: And then hitting the highlights of the day to day...

MS. COMBS: The power plant's presence and...

CHAIRMAN MAXWELL: Just kind of a little backdrop.

MS. COMBS: Where we hit the highlights.

MR. McBRIDE: I can do that.

MR. WILSON: I think what would really help the most, if you're going to computerize the displays, you can just get some nautical charts up so we can see it. That seems to be an important component of the decision making process.

MS. COMBS: Is that possible?

MR. McBRIDE: I think we can accommodate everything that everyone asked for on the laptop setting, so we can throw it up there so everyone can see it.

MS. TUTOR: And then you can do like just a couple minutes, "this is what your looking at," and be done.

MR. McBRIDE: I'll just do a map, it won't take very long, on the Caloosahatchee River and see what you think.

CHAIRMAN MAXWELL: OK. We've have a second, so... and we've had discussion. Is there any way that you might want to just change that word, Laura, maybe to brief? Yeah, you got brief...overview, overview. Alright, do we got the language here. OK we have a second. Anymore discussion? All those in favor, raise your hand.

MS. TUTOR: Hold them up for a count. One, two, three, four, five, six, seven, eight, nine, ten.

CHAIRMAN MAXWELL: All those opposed? OK. I need a motion for the meeting to adjourn.

MS. COMBS & MR. BIXLER: So moved.

CHAIRMAN MAXWELL: OK, we got a unanimous on that. Good-night. Thanks. You guys did a great job today. [Meeting adjourned at 6:20 p.m.]