

**STORAGE NAME:** h1177.nrep.doc  
**DATE:** March 23, 2001

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
HOUSE NATURAL RESOURCES & ENVIRONMENTAL PROTECTION  
ANALYSIS**

**BILL #:** HM 1177

**RELATING TO:** Open Access to the Waterways of the State

**SPONSOR(S):** Representative(s) Kottkamp

**TIED BILL(S):**

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) HOUSE NATURAL RESOURCES & ENVIRONMENTAL PROTECTION
  - (2) COUNCIL FOR READY INFRASTRUCTURE
  - (3)
  - (4)
  - (5)
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**I. SUMMARY:**

HM 1177 urges Congress to assure all Floridians that their boating rights will not be abridged by federal designation of manatee protection refuges and sanctuaries, and declares the Legislature's resolve that copies of the Memorial be sent to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and all members of the Florida Delegation to the United States Congress.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |                             |   |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

**Case No. 1:00CV00076 EGS/JMF      Save the Manatee Club, Inc. vs USFWS**

In January 2000, Save the Manatee Club, Inc. and several other environmental organizations filed suit against the United States Fish & Wildlife Service (USFWS). The plaintiffs, asking for declaratory and injunctive relief, claimed that USFWS failed to comply with provisions of the Endangered Species Act of 1973 (as amended), the National Environmental Policy Act, the Marine Mammal Protection Act and the federal Administrative Procedure Act by participating in the issuance of federal permits whose cumulative impact killed and maimed manatees, and destroyed and despoiled critical manatee habitat.

The Endangered Species Act (ESA) protects "endangered or threatened" plant and animal species by designating critical habitat for listed species, and by developing and implementing recovery plans. Section 9 of the ESA prohibits persons from "taking" listed species and defines "take" as actions that cause harm to listed species. The USFWS has further defined "harm" to mean destruction or degradation of habitat.

The National Environmental Policy Act (NEPA) requires all agencies of the federal government to prepare an Environmental Impact Statement describing the environment impact of specific actions, and adverse impacts caused by implementing those actions.

The Marine Mammal Protection Act (MMPA) prohibits the "taking" of manatees without obtaining a "small take permit" (a/k/a "incidental take") permit. The Secretary of Commerce, or the Secretary of the Interior, must issue regulations under the federal Administrative Procedures Act to authorize the incidental take of manatees and other marine mammals.

Plaintiffs in the case claimed four causes of action:

1. The Army Corps of Engineers (ACOE) violated the ESA by issuing federal permits that resulted in the illegal take of manatees, and the USFWS violated the ESA by failing to issue a manatee recovery plan.
2. The ACOE and the USFWS violated the APA by failing to prepare an Economic Impact Statement documenting the impacts of permit decisions.
3. ACOE permits violated the MMPA by authorizing the incidental take of manatees.

4. USFWS violated provisions of the federal code by denying the public the opportunity to comment on guidance decisions affecting ESA Section 7 consultations with other federal agencies.

### **Negotiated Settlement**

In January 2001, the plaintiffs and the USFWS entered into a Settlement Agreement that proposed the following:

- USFWS would develop a proposed rule for new manatee refuges and sanctuaries in Florida no later than April 2, 2001. Refuges allow some waterborne activities. Sanctuaries prohibit all waterborne activities. The federal settlement agreement does not establish where the proposed sites are.
- The final rule for new refuges and sanctuaries in peninsular Florida must be developed no later than September 28, 2001.
- Requires the development of interim measures to be implemented until the USFWS can develop an "incidental take" regulation.
- Provides that one of the interim measures could be dock or marina facility impact fees to provide for increased enforcement and mitigation for habitat damage.

### **Case No. 99-00-400CIV17-WS:**

#### **Save the Manatee Club, Inc., et al v Dr. Allan Egbert, FWCC**

In an unrelated but similar case, the Save the Manatee Club, Inc., and other environmental organizations sued Dr. Allan Egbert, as Executive Director of the Florida Fish & Wildlife Conservation Commission for violating the ESA by authorizing vessels to travel at high rates of speed in areas frequented by manatees, thereby causing "incidental take" of an endangered species. In a proposed settlement agreement, the FWCC has tentatively agreed to establish 8 additional "hot spots" or speed-zone sites within the state, and will, over a two-year period, establish fourteen additional sanctuaries and refuges. It remains to be seen if the sites in the federal settlement agreement and the proposed sites in the state settlement agreement are the same sites.

The FWCC meets on March 29 and 30, 2001, in Tallahassee and is expected to address the proposed settlement offer.

#### **C. EFFECT OF PROPOSED CHANGES:**

HM 1177 has no effect on Florida law.

#### **D. SECTION-BY-SECTION ANALYSIS:**

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

None.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

None.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

None.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

**STORAGE NAME:** h1177.nrep.doc

**DATE:** March 23, 2001

**PAGE:** 5

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON HOUSE NATURAL RESOURCES & ENVIRONMENTAL PROTECTION:

Prepared by:

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