

## PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for part 76 is revised to read as follows:

**Authority:** 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

### § 76.227 [Removed and Reserved]

2. Section 76.227 is removed and reserved.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### RIN 1018-AH80

### Endangered and Threatened Wildlife and Plants; Manatee Protection Areas in Florida

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the Fish and Wildlife Service (Service), take final action to establish two additional manatee protection areas in Florida. This action is authorized under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361-1407) (MMPA), to further recovery of the Florida manatee (*Trichechus manatus latirostris*) through a reduction in the level of take. In evaluating the need for additional manatee protection areas, we considered the needs of the manatee at an ecosystem level with the goal of ensuring that adequate protected areas are available throughout peninsular Florida to satisfy the biological requirements of the species, with a view toward the manatee's recovery. We are establishing two manatee refuges in Brevard County, in which certain waterborne activities will be restricted. These two sites are located within the water bodies commonly known as the Barge Canal and Sykes Creek. Watercraft operating within these water bodies will be required to proceed at "slow speed" throughout the year.

**DATES:** These designations will become effective upon the posting of appropriate signage designating the boundaries of the manatee protection areas and restrictions on watercraft

operating within those boundaries. Such posting will not occur sooner than February 6, 2002.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Jacksonville Field Office, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216.

**FOR FURTHER INFORMATION CONTACT:** David Hankla, Peter Benjamin, or Cameron Shaw (see **ADDRESSES** section), telephone 904/232-2580; or visit our website at <http://northflorida.fws.gov>.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Florida manatee is Federally listed as an endangered species under the ESA (16 U.S.C. 1531 *et seq.*) (32 FR 4001) and is also federally protected under the MMPA (16 U.S.C. 1361-1407). It resides in freshwater, brackish, and marine habitats of coastal and inland waterways in the southeastern United States. The majority of this population resides in the waters of the State of Florida throughout the year, and nearly all manatees use the waters of peninsular Florida during the winter months. The manatee is a cold-intolerant species and requires warm waters (above 20 degrees Celsius (68 degrees Fahrenheit)) to survive during periods of cold weather. During the winter months many manatees rely on the warm water from natural springs and industrial outfalls for warmth. During the summer months they expand their range and are seen rarely as far north as Rhode Island on the Atlantic Coast and as far west as Texas on the Gulf Coast.

Recent information indicates that the overall manatee population has grown since the species was listed (U.S. Fish and Wildlife Service 2001). However, in order for us to determine that an endangered species has recovered to a point that it warrants removal from the List of Endangered and Threatened Wildlife and Plants, the species must have improved in status to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the ESA. That is, threats to the species that caused it to be listed must be reduced or eliminated such that the species no longer fits the definitions of threatened or endangered. While indications of increasing population size are very encouraging, there is no indication that important threats to the species, including human-related mortality and harassment, have been effectively reduced or eliminated.

Human activities, particularly waterborne activities, are resulting in the take of manatees. Take, as defined by the ESA, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Harm means an act which actually kills or injures wildlife (50 CFR 17.3). Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding or sheltering (50 CFR 17.3).

The MMPA sets a general moratorium, with certain exceptions, on the taking and importation of marine mammals and marine mammal products and makes it unlawful for any person to take, possess, transport, purchase, sell, export, or offer to purchase, sell, or export, any marine mammal or marine mammal product unless authorized. Take, as defined by section 3(13) of the MMPA means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

Harassment is defined under the MMPA as any act of pursuit, torment, or annoyance which—(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Human use of the waters of the southeastern United States has increased dramatically as a function of residential growth and increased visitation. This phenomenon is particularly evident in the State of Florida. The population of Florida has grown by 124 percent since 1970 (6.8 million to 15.2 million, U.S. Census Bureau) and is expected to exceed 18 million by 2010, and 20 million by the year 2020. According to a recent report by the Florida Office of Economic and Demographic Research (2000), it is expected that, by the year 2010, 13.7 million people will reside in the 35 coastal counties of Florida. In a parallel fashion to residential growth, visitation to Florida has increased dramatically. It is expected that Florida will have 83 million visitors annually by the year 2020, up from 48.7 million visitors in 1998. In concert with this increase of

human population growth and visitation is the increase in the number of watercraft which ply Florida waters. In 1999, 829,971 vessels were registered in the State of Florida. This is an increase in registered vessels of almost 20 percent since 1993 (Florida Fish and Wildlife Conservation Commission 2000). During this same period, the number of watercraft-related manatee mortalities has increased by 144 percent, from 35 to 82 deaths per year. The Florida Department of Community Affairs estimates that, in addition to boats belonging to Florida residents, between 300,000 and 400,000 boats registered in other States use Florida waters each year.

The large increase in human use of waters inhabited by manatees has had direct and indirect impacts on this endangered species. Direct impacts include injuries and death from vessel impacts, deaths and injuries from water control structure operations, lethal and sub-lethal entanglements with commercial and recreational fishing gear, and alterations of behavior due to harassment. Indirect impacts include habitat destruction and alteration, decreases in water quality throughout some aquatic habitats, decreases in quantity of warm water at natural sites, marine debris, and general disturbance from human activities.

Over the past 10 years, more than 62 percent of watercraft-related manatee mortality has taken place in seven Florida counties (Duval, Volusia, and Brevard, on the east coast; and Collier, Lee, Charlotte, and Hillsborough on the west coast) (U.S. Fish and Wildlife Service 2001). Manatee mortality has continued to climb steadily. Average annual mortality in the 1990s (227.9) was nearly twice that of the 1980s (118.2), and this trend continued in 2000, when 273 dead manatees were recorded. Total mortalities over the past 4 years have averaged 45 percent higher than in the early 1990s. When the record high total of 1996 is added (the year in which the red tide die-off inflated total mortality to 416 animals), average annual mortality over the past 5 years has been nearly 60 percent greater than in the early 1990s (Marine Mammal Commission 2001).

The continuing increase in the number of recovered dead manatees throughout Florida has been interpreted as evidence of increasing mortality rates (Ackerman *et al.* 1995). Between 1976 and 1999, the number of carcasses collected in Florida increased at a rate of 5.8 percent per year, and deaths caused by watercraft strikes increased by 7.2 percent per year (U.S. Fish and Wildlife Service 2001). Because the

manatee has a low reproductive rate, a decrease in adult survivorship due to watercraft collisions could contribute to a long-term population decline (O'Shea *et al.* 1985). It is believed that a 1 percent change in adult survival likely results in a corresponding change in the rate of population growth or decline (Marmontel *et al.* 1997).

Collisions with watercraft are the largest source of human-related manatee deaths. Data collected during manatee carcass salvage operations in Florida indicate that a total of 979 manatees (from a total carcass count of 4,021) are confirmed victims of collisions with watercraft since 1976. This number may not accurately represent the actual number of watercraft-related mortalities since many of the mortalities listed as "undetermined causes" show evidence of collisions with vessels. Collisions with watercraft comprise approximately 24 percent of all manatee mortalities since 1976. The last 5 years have been record years for the number of watercraft-related mortalities, and watercraft-related deaths have become a larger proportion of total mortality. Since 1998, watercraft-related deaths have represented about 30 percent of all mortality, a 5 percent increase compared to the early 1990s. During the 1980s and 1990s the manatee population apparently grew; however, if population growth rate levels off and manatee mortality continues to increase, a decline in abundance is inevitable (Marine Mammal Commission 2001).

The second largest cause of human-related manatee mortality is entrapment in water control structures and navigation locks (U.S. Fish and Wildlife Service 2001). Manatees may be crushed in gates and locks or may be trapped in openings where flows prevent them from surfacing to breathe. Locks and gates were responsible for 159 manatee deaths between 1976 and 1999 (U.S. Fish and Wildlife Service 2000). While there are no well-defined patterns characterizing these mortalities, it is believed that periods of low rainfall increase the likelihood of manatees being killed in these structures. These periods require more frequent, large-scale movements of water, which require more frequent gate openings and closings in areas that attract manatees searching for fresh water.

Manatees are also affected by other human-related activities. Impacts resulting from these activities include death caused by entrapment in pipes and culverts; entanglement in ropes, lines, and nets; ingestion of fishing gear or debris; vandalism; and poaching. These activities have accounted for 106 manatee deaths since 1976, an average

of 4 deaths per year. As with watercraft-related mortalities, other human-related deaths also appear to be increasing, with 31 deaths, approximately 3 percent of the total mortalities, recorded between 1997 and 2000 attributed to these sources. This is an average of 7.75 deaths per year over the last 4 years attributable to other human-related activities.

Harassment of manatees is a concern, particularly when it impedes the use of warm water areas critical to manatee survival during periods of cold weather. In particular, an increasing number of swimmers and divers are visiting Florida's waters to view and swim with the manatees. The presence of large numbers of people and the resultant disturbance has been documented to cause manatees to leave warm water areas (Jay Gorzaleny, Mote Marine Laboratory, personal communication 2001). On occasion, divers and swimmers have been observed attempting to pet, chase, ride, and even sit on manatees. This type of harassment may cause the manatee to leave warmer water to find relief from the harassment in colder areas where there are fewer people. Such responses, if they are instigated by human harassment, are considered take under the ESA and MMPA.

In response to these problems and the watercraft-related impacts in particular, conservation agencies, such as the Service and the Florida Fish and Wildlife Conservation Commission (FWC), have increased their emphasis on enforcement and compliance with manatee speed zones by adding new officers, conducting enforcement task force initiatives, increasing overtime, and increasing the proportion of law enforcement time devoted to manatee conservation. We are also continuing to evaluate development proposals that would increase watercraft traffic in manatee habitats where speed zones, signage, and enforcement are insufficient. To further address the negative effects of human actions on manatees, we are establishing two additional manatee refuges in Florida.

The authority to establish protection areas for the Florida manatee is provided by the ESA and the MMPA, and is codified in 50 CFR part 17, subpart J. We may, by regulation, establish manatee protection areas whenever there is substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees.

We may establish two types of manatee protection areas—manatee refuges and manatee sanctuaries. A manatee refuge, as defined in 50 CFR

17.102, is an area in which we have determined that certain waterborne activities would result in the taking of one or more manatees, or that certain waterborne activities must be restricted to prevent the taking of one or more manatees, including but not limited to a taking by harassment. A manatee sanctuary is an area in which we have determined that any waterborne activity would result in the taking of one or more manatees, including but not limited to a taking by harassment. A waterborne activity is defined as including, but not limited to, swimming, diving (including skin and SCUBA diving), snorkeling, water skiing, surfing, fishing, the use of water vehicles, and dredging and filling activities.

Throughout the development of this rule, many commenters cited the increase in the overall size of the manatee population as evidence that the establishment of additional manatee protection areas is not needed. Recent data regarding the size of the manatee population are very encouraging, and indicate that local, State, and Federal efforts to recover the manatee are working. However, we remain concerned that waterborne activities are resulting in take of manatees, which is not allowed under the ESA and MMPA, and which may slow or even impede further recovery. Our obligation under the ESA and MMPA is to further manatee recovery, so that we may someday achieve our goal of removing the species from the List of Endangered and Threatened Wildlife and Plants. This includes using available tools, as practicable, to reduce the level of human-related manatee mortality. The establishment of manatee protection areas is one such tool. We are pursuing other complementary tools simultaneously, as described in the next two sections.

#### Synopsis of Manatee Lawsuit Settlement

In *Save the Manatee Club, et al. v. Ballard, et al*, Civil No. 00-00076 EGS (D.D.C.), several organizations and individuals filed suit against the Fish and Wildlife Service and the U.S. Army Corps of Engineers (Corps) alleging violations of the Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), National Environmental Policy Act (NEPA), and Administrative Procedure Act (APA). Four groups representing development and boating interests intervened. Following extensive negotiations, a Settlement Agreement was approved by the court on January 5, 2001. Under the terms of

the settlement, we agreed to the following:

- Submit a proposed rule for new refuges and sanctuaries to the **Federal Register** by April 2, 2001, and submit a final rule by September 28, 2001. Subsequent to the Federal settlement, the FWC also voted to settle *Save the Manatee v. Egbert*, Case No. 90-00-400CIV17-WS (N.D.Fla.) (the State case). That settlement, which was entered by the court on November 7, 2001, calls for very similar protective measures in many of the locations included in our proposed rule. As a result of these simultaneous processes, the parties in the Federal lawsuit agreed to extend the April 2 deadline in an attempt to negotiate a means to avoid duplication of effort and better serve the public. Subsequent negotiations resulted in additional extensions, which resulted in the proposed rule being submitted to the **Federal Register** on August 3, 2001. We also agreed to evaluate the propriety of invocation of our emergency sanctuary/refuge designation authority. We published an advance notice of proposed rule-making in the **Federal Register** on September 1, 2000, and held a series of six public workshops in December 2000. We received 1,752 comments in response to the advance notice, and 396 people attended the public workshops. The proposed rule was published in the **Federal Register** on August 10, 2001 (66 FR 42318). A 60-day comment period followed this publication. In addition, we held four public hearings in September 2001, to provide the public an opportunity to comment. We held these hearings in Crystal River, Clearwater, Venice, and Melbourne, Florida. As a result of both the public hearings and written submissions, we received approximately 3,500 comments. These comments are summarized and responded to in the "Summary of Comments and Recommendations" section of this rule.
  - Revise the Manatee Recovery Plan. We were required, by December 1, 2000, to make a draft revised Recovery Plan available for public review and comment, and to circulate our final revised Recovery Plan for signature no later than February 28, 2001. We published a draft revised Recovery Plan on November 30, 2000, and received over 500 comments. The Plaintiffs and Interveners agreed to new dates for development of a second draft and finalization of the Recovery Plan. As a result of the comments, we made substantial revisions to the Recovery Plan and subsequently issued a second draft for public review and comment on July 10, 2001. The Recovery Plan was finalized on October 30, 2001.

- Pursue a rulemaking proceeding to adopt incidental take regulations under the MMPA. By March 6, 2001, we were required to submit to the **Federal Register** an advance notice of proposed rulemaking; invite by letter the Corps and other entities that conduct activities which may influence factors relating to effects of watercraft on manatees to participate in the MMPA rulemaking process; and promptly provide copies of the **Federal Register** notice and invitation letters to the Plaintiffs and Interveners. The advance notice was published in the **Federal Register** on March 12, 2001, and copies of the advance notice and invitation letters were mailed to the Plaintiffs and Interveners on March 6, 2001. We will determine if any anticipated take by entities participating in the rulemaking process meets the requirements set forth in section 101(a)(5) of the MMPA, 16 U.S.C. 1371(a)(5). The process should result in—(1) if the requirements set forth in section 101(a)(5) of the MMPA are deemed satisfied, a proposed and final MMPA incidental take regulation; (2) preparation of appropriate NEPA documentation which will identify and assess the direct, indirect, and cumulative effects of the overall MMPA regulation (either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS)); (3) detailed assessments of agency programs, including cumulative effects on manatees and their habitat, for any activities covered under the regulation; and (4) consultation pursuant to section 7 of the ESA. We have determined that we will prepare an EIS in association with this action. Draft and final products are due on November 5, 2002, and May 5, 2003, respectively. If the requirements of the MMPA cannot be met, we must notify the Plaintiffs and Interveners as soon as practicable, and publish a negative finding in the **Federal Register** with the basis for denying the request. We must publish our negative finding by May 5, 2003. We will conduct public hearings on draft proposals as appropriate.

- By March 6, 2001, furnish Plaintiffs and Interveners with a letter describing how we will spend increased enforcement resources in FY 2001. This letter was sent on March 6, 2001.

- Revise, and make available for public review, our "interim guidance" for addressing potential manatee impacts associated with development and permitting of new watercraft access facilities. We were required to submit this document by March 6, 2001. The revised document appeared in the **Federal Register** on March 14, 2001 (66 FR 14924-32). We agreed to provide at

least thirty (30) days of public comment and actually provided sixty (60) days comment on the revised draft guidance. The final decision on the guidance was released to the public on August 13, 2001, and published in the **Federal Register** on August 21, 2001 (66 FR 43885).

- Provide written progress reports on the status of tasks agreed upon in the settlement agreement every 6 months. The first report was due and was provided to the parties on July 5, 2001.

- Provide copies of concurrence and non-concurrence letters to Plaintiffs and Interveners. Whenever we send a letter to the Corps in response to the Corps' determination that a project "may affect" the manatee or "may affect but is not likely to adversely affect" the manatee, we are required to concurrently make a copy of the correspondence available to the Plaintiffs and Interveners. This obligation may be satisfied by establishing a web-based system or by transmitting a copy of the letter by U.S. mail or electronically. Until such time as we establish a web-based system, we will forward copies by U.S. mail. These letters have been provided accordingly.

- Provide copies of Biological Opinions (BO). Whenever we issue a final BO regarding the effect of a particular project on manatees or manatee critical habitat, we are required to concurrently make a copy of that opinion available to the Plaintiffs and Interveners. This obligation may be satisfied by establishing a web-based system or by transmitting a copy of the opinion by U.S. mail or electronically. Until such time as we establish a web-based system, we will forward copies by U.S. mail. These biological opinions have been provided accordingly.

#### Coordination With State Actions

A network of manatee speed zones and sanctuaries has been established throughout peninsular Florida by Federal, State, and local governments. This existing structure works toward our goal of providing adequate protected areas throughout peninsular Florida to satisfy the biological requirements of the species. The purpose of our current evaluation is to identify gaps in the existing network and to propose appropriate measures for filling those gaps. We have focused the current action on those sites in which we have determined that Federal action can effectively address the needs in the particular area.

We recognize that the existing system of speed zones and sanctuaries has been established primarily by State and local governments. We also recognize the

important role of our State and local partners, and we continue to support and encourage State and local measures to improve manatee protection.

The sites contained in the proposed rule were selected based on the criteria described below, prior to the disclosure of terms of the proposed settlement in the State case. That settlement contains a list of sites that the FWC will be evaluating for potential State designation of speed zones and sanctuaries. There is considerable overlap in terms of sites identified in that settlement and the sites discussed in our proposed rule. The fact that the State's list of sites is more expansive than the list in our proposed rule does not indicate a determination on our part that sites on the State's list, and not proposed by us, do not warrant designation, but is rather a reflection of our focusing on sites for which we believe we can provide the most effective protection for manatees, given our staffing and funding limitations.

We have been coordinating closely with the FWC, since the terms of their proposed settlement were disclosed, to determine which sites are most appropriate for State designation and which are better suited for Federal designation. At the time our proposed rule was prepared, final agreement had not been reached on the terms of the proposed State settlement. Pursuant to the terms of our settlement agreement described previously we were required to submit our proposed rule to the **Federal Register** by April 2, 2001, which was prior to the time in which the FWC made a final decision regarding sites they intend to evaluate. As stated previously, the deadline was extended on several occasions by agreement of the parties in an attempt to negotiate a means to avoid duplication of effort and better serve the public. Alternatives to the proposed rule were rejected by the Plaintiffs, as were requests for further extensions; therefore, considerable overlap is possible between our proposal and potential State action.

We strongly believe that the State should have leadership in establishing additional manatee protection areas. However, we also must meet our settlement obligations. Therefore, we will continue to participate in the State's evaluation. If the State adopts identical or comparable manatee protection measures to the ones we adopt, we will assess whether withdrawing Federal designations is appropriate. We will also continue to evaluate the other 14 proposed sites not currently included in this final rule, and will consider foregoing Federal

designations if appropriate measures are adopted by the State or local governments. Additionally, we will continue to monitor other sites that may warrant additional protection. If we identify additional areas in need of protection, we will work with the State to establish necessary protection or may propose actions in the future, as appropriate.

Given that reducing watercraft-related manatee mortality is important to the recovery of the species, and given continuing watercraft-related mortality in Brevard County, we have decided to proceed with final designation of the Barge Canal and Sykes Creek sites. The remaining 14 sites in the proposed rule are somewhat less urgently in need of regulation than the Barge Canal and Sykes Creek sites. Therefore, we are deferring final rulemaking on these sites until December 1, 2002. At that time, if we determine that designation is warranted for the remaining 14 sites, and if the State has been unable to complete rulemaking on those sites, we intend to proceed with final rulemaking on those sites.

#### Site Selection Process and Criteria

In preparation for this action, we met with representatives from local, State, and Federal agencies and organizations involved in manatee research, management, and law enforcement. These meetings helped us to develop a list of sites throughout Florida and southeast Georgia that manatee experts believed should be considered for possible designation as manatee protection areas.

As mentioned above, we published an advance notice of proposed rulemaking in the **Federal Register** on September 1, 2000 (65 FR 53222). The purpose of the advance notice was to inform the public that we were initiating the process of investigating areas for possible designation as manatee protection areas, and to solicit initial public input. We received 1,752 responses to the advance notice. Of these, 1,737 supported our efforts to establish additional manatee protection areas, and 13 opposed them. The remaining two comments did not state a specific opinion.

We also conducted six public workshops throughout peninsular Florida to present the list of potential sites and to solicit public input. A total of 396 people attended the workshops, and 166 provided either oral or written comments. Of these, 79 were general in nature, either supporting our efforts to establish additional manatee protection areas (40) or opposing them (39). An additional 36 comments were not specific to the topic or discussed other

items. Fifteen commenters provided specific information or comments, including recommendations to increase enforcement, increase education, use new technology including satellite tracking of manatees, and other rule-related topics. Of the remaining comments, 28 specifically opposed and 8 specifically supported the establishment of additional manatee protection areas.

We selected sites for inclusion in the proposed rule from the list of sites developed through the preliminary meetings and the information gathered at the public workshops and in response to the advance notice. We based site selection on four factors: (1) Evidence that the site is used by manatees; (2) historic evidence of take (harm or harassment) of manatees at the site due to waterborne human activities; (3) the potential for additional take based on manatee and human use of the site; and (4) a determination that we could implement effective measures at the site to address the identified problem.

In documenting manatee use and historic manatee harm and harassment, we relied on the best available data including aerial survey data, manatee mortality data, and information from the Florida Marine Research Institute, Pathobiology Laboratory, and other information from State and Federal sources. These data were supplemented with information from manatee experts and the public, and our best professional judgment. In determining the potential effectiveness of our proposed actions, we considered the costs of managing and enforcing sites versus the benefits to manatee conservation. Costs associated with site management include installation and maintenance of appropriate signage, public education, and enforcement. In addition, designation of sanctuaries in the waters bordered by private property would entail additional administrative burdens in terms of identifying and providing access to affected residents. We considered these administrative burdens in selecting sites. Finally, we evaluated the effectiveness of our actions against the likely effectiveness of actions by State and/or local governments. As stated previously, it was our goal to avoid sites that could be most effectively addressed by State or local government. However, the parallel suits against the State and Federal governments limited early coordination in the development of this proposal and the proposed State settlement. Therefore, duplication of effort may occur in the future. To resolve this, as appropriate we will consider withdrawing any actions where

comparable State or local protection is established. We did, however, make every effort to make our designations consistent with the existing adjacent State or local designations.

#### Definitions

“Idle speed” means the minimum speed needed to maintain watercraft steerage.

“Planing” means riding on or near the water’s surface as a result of the hydrodynamic forces on a watercraft’s hull, sponsons (projections from the side of a ship), foils, or other surfaces. A watercraft is considered on plane when it is being operated at or above the speed necessary to keep the vessel planing.

“Slow speed” means the speed at which a watercraft proceeds when it is fully off plane and completely settled in the water. Watercraft must not be operated at a speed that creates an excessive wake. Due to the different speeds at which watercraft of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to slow speed. A watercraft is not proceeding at slow speed if it is—(1) on a plane, (2) in the process of coming up on or coming off of plane, or (3) creating an excessive wake. A watercraft *is* proceeding at slow speed if it is fully off plane and completely settled in the water, and not creating an excessive wake.

“Slow speed (channel exempt)” designates a larger area where slow speed is required, through which a maintained, marked channel is exempt from the slow speed requirement.

“Slow speed (channel included)” means that the slow-speed designation applies to the entire marked area, including within the designated channel.

“Wake” means all changes in the vertical height of the water’s surface caused by the passage of a watercraft, including a vessel’s bow wave, stern wave, and propeller wash, or a combination of these.

We have amended the definition of “water vehicle” to include the terms watercraft and vessel. These terms are used interchangeably in the rule and in 50 CFR subpart J.

We have also added personal watercraft to this definition.

#### Areas Designated as Manatee Refuges

##### *Barge Canal*

We are establishing a manatee refuge, containing approximately 276.3 hectares (ha) (682.7 acres), for the purpose of regulating watercraft operation to slow

speed (channel included) for the entire length of the Barge Canal and extending eastward to the Canaveral Locks, Brevard County. These regulations will be in effect all year.

The Barge Canal serves as a travel corridor between the Indian and Banana Rivers for manatees and mariners alike. Aerial survey data indicate significant use of the site by manatees. Currently there are four areas within the Barge Canal that are regulated by the State as 40-kilometers-per-hour (25-miles per hour) zones with a 7.6-meters (25-foot) slow-speed shoreline buffer, all year, while the remainder of the Barge Canal is a slow-speed all-year zone. High-speed vessel operation in a confined migration corridor has an enhanced likelihood of resulting in take of manatees. There have been 16 watercraft-related manatee mortalities in the Barge Canal and its vicinity (Florida Marine Research Institute 2000). Requiring vessels to operate at slow speed would minimize the potential for take of manatees.

The State recently approved new regulations for Brevard County that would also designate the Barge Canal as a slow-speed zone; thereby providing a comparable level of manatee protection as our designation. A number of organizations and individuals have appealed the State’s rulemaking and it is uncertain at this time when, or whether, the State’s designation may take effect. Due to the urgent need to reduce watercraft-related mortality in the Barge Canal, we are proceeding with this designation at this time so that appropriate protective measures will be in place should the State be unable to implement its rule.

##### *Sykes Creek*

We are establishing a manatee refuge, containing 342.3 ha (845.8 acres) more or less, in Sykes Creek in Brevard County for the purpose of regulating watercraft operation to slow-speed (channel included) all year.

Aerial survey data indicate a significant amount of manatee use of Sykes Creek. Manatees consistently use this site for feeding, resting, and breeding. Like the Barge Canal, it is a fairly narrow water body and has been the site of 13 watercraft-related manatee mortalities (Florida Marine Research Institute 2000). High-speed vessel operation in this area has a high likelihood of resulting in take of manatees. Regulating vessels to proceed at slow speed minimizes the likelihood of a take incident.

The State recently approved new regulations for Brevard County that would also designate Sykes Creek as a

slow speed zone; thereby providing a comparable level of manatee protection as our designation. A number of organizations and individuals have appealed the State's rulemaking and it is uncertain at this time when, or whether, the State's designation may take effect. Due to the urgent need to reduce watercraft-related mortality in Sykes Creek we are proceeding with this designation at this time so that appropriate protective measures will be in place should the State be unable to implement its rule.

### Summary of Comments and Recommendations

In the August 10, 2001, proposed rule (66 FR 42318), we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. We sent direct notification of the proposal and public hearings to 3,258 institutions and individuals, including Federal and State agencies, county governments, scientific organizations, and interested parties. We published legal notices announcing the proposal, inviting public comment, and announcing the schedule for public hearings, on August 30, 2001, in the *Fort Myers News-Press*, *Citrus County Chronicle*, *Daytona Beach News-Journal*, and *Naples Daily News*, on August 31, 2001, in the *St. Petersburg Times*, *Miami Herald*, *Orlando Sentinel*, *Charlotte Sun-Herald*, and *Tallahassee Democrat*, and on September 4, 2001, in *Florida Today*. The comment period closed on October 9, 2001. We held the public hearings at the Plantation Inn and Conference Center in Crystal River, Florida, on September 10, 2001; Harborview Convention Center in Clearwater, Florida, on September 11, 2001; Holiday Inn in Venice, Florida, on September 12, 2001; and the Radisson Hotel & Conference Center in Melbourne, Florida, on September 13, 2001. Approximately 315 people were in attendance at the public hearings. We received oral comments from 121 individuals.

During the comment period, we received approximately 3,500 written and oral comments concerning the proposal. Most expressed opposition to, or concern about, the proposed designation; however, a number of individuals supported the proposed action. Opposition to the proposed designation primarily centered on perceived economic effects and potential inconvenience to boaters resulting from the action, and the adequacy of current State conservation actions to protect the manatee. We received comments from one State

agency and the Governor of Florida. The remaining comments were from individuals or representatives of organizations or groups. The Governor of Florida stated support for the proposed action. The following is a summary of the comments received. Comments of a similar nature have been grouped together. Comments related to specific sites in the proposed rule, other than the two discussed in this final rule, will be addressed when final determinations for those sites are published.

*Comment 1:* The FWC noted our intention to consider withdrawing Federal designations should State or local governments enact comparable protective measures, and recommended that we define the means by which we will determine if actions by State or local governments provide a comparable level of protection.

*Response:* With regard to the Barge Canal and Sykes Creek, we believe that the pending State rule for Brevard County provides, on balance, a greater level of manatee protection than our rule. While we continue to have reservations regarding certain exemptions that have been granted by the State (see response to Comment 21 below), it is clear that the FWC's Brevard County rule, taken as a whole, provides needed protection to a far greater area than our rule. The FWC rule addresses the four areas identified in our proposed rule (Barge Canal, Sykes Creek, Haulover Canal, and Cocoa Beach Municipal Park) with similar or identical measures. Additionally, the FWC rule provides additional protection for manatees throughout the Indian River and Banana River within Brevard County by adding additional shoreline buffers and by eliminating several high-speed access channels. As such, should the State prevail in the challenge to their rulemaking, we believe that the Federal designation of the Barge Canal and Sykes Creek would likely be unnecessary. We view this as a prime example of how the greater resources of the FWC can enable them to accomplish more through State action than can be accomplished through Federal action.

With respect to the other 14 sites identified in our proposed rule, we cannot, at this time, identify specific standards for what would constitute comparable levels of protection. We recognize that there may be alternative means of implementing effective protective measures at many of these sites. These alternatives may be beyond our authority or resources to implement through our rulemaking, but may be available to State or local governments. Rather than limiting the options of State

and local governments by insisting that they enact regulations identical to those we have proposed, we intend to participate fully in the State and local rulemaking processes and to articulate our views and recommendations regarding proposed protective measures as early as possible in those processes, particularly with respect to whether we consider potential protection measures to provide a comparable level of protection.

*Comment 2:* The FWC noted that appropriate posting of designated manatee protection areas is a critical element in the success of manatee protection zones, and recommended that we incorporate meetings with the FWC, appropriate Inland Navigation Districts, and local governments, to develop a clear delineation of responsibilities for posting signs for federally designated areas.

*Response:* We agree that appropriate signage is a critical element to the effective implementation of manatee protection areas. We will fully involve the FWC, appropriate Inland Navigation District and local governments, as well as the U.S. Coast Guard, in the development of sign plans for all Federal manatee protection areas.

*Comment 3:* The FWC expressed concern regarding enforcement of the new manatee protection areas and recommended that we clarify that we are responsible for enforcement of these areas. They also expressed concern that establishment of Federal manatee protection areas in and adjacent to State speed zones, which carry different penalties for violation, may generate confusion among the boating public.

*Response:* Manatee protection areas are only effective to the extent that boaters comply with posted regulations. As such, enforcement is an essential component of our effort to establish additional manatee protection areas. FWC officers are authorized to enforce Federal manatee protection area regulations, just as our law enforcement officers can and do enforce State manatee protection regulations. We welcome any assistance that the FWC can provide in the enforcement of these manatee protection areas, but we have made a commitment to ensure that adequate enforcement is provided for these areas. As noted above, the ability to adequately post and enforce designated sites was an important factor in our site selection process.

*Comment 4:* The FWC noted that we have deferred action on the remaining 14 sites identified in the proposed rule until December 2002 to give State and local governments the opportunity to enact comparable protective measures.

The FWC stated that they have no plans to consider rules in two of the sites in the proposed rule (Little Sarasota Bay and Shell Island) and that no final State action would be taken on sites in Tampa Bay by December 2002.

*Response:* We note that, while State action on the sites in Tampa Bay is not anticipated to occur prior to December 2002, local action is likely within this timeframe. Pinellas County has recently adopted an ordinance to provide increased manatee protection at the Bartow Power Plant, and we are currently evaluating the effectiveness of this action. Additionally, Hillsborough County is currently considering measures to improve manatee protection in much of Tampa Bay, including the Gannon and Tampa Electric Company power plant sites identified in our proposed rule. We will monitor the progress of these initiatives over the coming months to determine whether the proposed Federal designations are warranted.

Information regarding the Shell Island and Little Sarasota Bay sites was presented during the public comment period. We are continuing to evaluate the information and have made no decisions regarding final designation of these sites.

*Comment 5:* The FWC concurred with our determination that the data strongly support the decision to designate the Barge Canal and Sykes Creek as manatee protection areas. The FWC indicated they support our proposed designations for these areas, but recommended that the Federal rules be repealed if the FWC is successful in defending their recently adopted rules.

*Response:* We agree that, should the State prevail in the challenge to their Brevard County rule, the Federal designations would likely be unnecessary.

*Comment 6:* Several commenters recommended establishing manatee protection areas at several sites in addition to, or in lieu of, the 16 sites identified in the proposed rule. Other sites recommended for considerations included—the downtown Jacksonville portion of the St. John's River, Duval County; Goodby's Creek, Duval County; the Tomoka River, Volusia County; the Canaveral sewer outfall, Brevard County; the Indian River southeast of the railroad bridge causeway, Brevard County; the Haulover Canal observation area, Brevard County; the Riviera Beach power plant outfall, Palm Beach County; the Weeki Wachee River, Hernando County; the Little Manatee River, Hillsborough County; the Manatee and Braden Rivers, Manatee County; Charlotte Harbor, Charlotte County;

Bokeelia Point, Lee County; San Carlos Bay, Lee County; the Caloosahatchee River, Lee County; Mullock Creek/Ten Mile Canal, Lee County; Estero Bay, Lee County; Everglades National Park, Collier and Monroe Counties; Faka Union Canal/Port of the Islands, Collier County; and Ten Thousand Islands/Chokoloskee Bay, Collier County.

*Response:* In designating manatee protection areas, we considered the needs of the species on an ecosystem level in an attempt to address life requirements of the manatee and to progress toward recovery of the species. Tempering this evaluation was the limited resources available to us, in terms of both staffing and funding, for accomplishing the establishment, maintenance, and regulation and enforcement of designated areas.

All of the above-mentioned sites, and many others, were considered at some point in the evaluation process. Some (such as the Weeki Wachee River, Goodby's Creek, and the Canaveral sewer outfall) did not meet our criteria for further consideration because adequate protective measures are currently in place at these sites and the likelihood of future take at these sites is limited, provided the existing regulations are appropriately enforced. Others (such as Caloosahatchee River, Everglades National Park, and Ten Thousand Islands/Chokoloskee Bay) did not meet our criteria for designation at this time because it is as yet unclear, based on current information, what additional protective measures could be implemented to effectively reduce on-going watercraft-related manatee mortality in these areas; however, we agree that these areas warrant further study. We note that even the commenter who recommended we take immediate action in the Ten Thousand Islands/Chokoloskee Bay area could offer no specific recommendation as to what to do in this area. We agree that the remaining sites mentioned above (the St. John's River in downtown Jacksonville, the Tomoka River, the Haulover Canal observation area, the Indian River southeast of the railroad bridge causeway, the Riviera Beach power plant outfall, the Little Manatee River, the Manatee and Braden Rivers, Charlotte Harbor, Bokeelia Point, Estero Bay, San Carlos Bay, Mullock Creek/Ten Mile Canal, and Faka Union Canal/Port of the Islands) do, or may, warrant further consideration, particularly if State or local efforts to improve manatee protection at these sites are unsuccessful, and if manatees do not make satisfactory progress toward recovery. However, we do not agree with the commenters that action at any

of these sites is any more urgent than the actions identified in our proposed rule. As previously stated, we believe the sites included in this final rule are areas where federal action could be most effective for manatee conservation and is most urgently needed.

We are committed to continuing the protection of the manatee through a cooperative effort with our management partners at the Federal, State, and local levels, as well as efforts involving private entities and members of the public. We encourage State and local measures to improve manatee protection. Additionally, we have indicated that future actions could establish additional manatee protection areas if the need becomes apparent.

*Comment 7:* In recommending action at the sites identified in Comment 6, some commenters noted that several of the sites identified in our proposed rule were under consideration for designation by the FWC and/or local governments, and questioned our decision to include such sites in our proposed rule, given the likelihood that these sites would be appropriately regulated without Federal designation.

*Response:* Many of the sites in our proposed rule and the two sites in this final rule are currently under consideration for State action. We first became aware of this overlap when the Plaintiffs in the State lawsuit made the terms of the draft settlement agreement public. Due to our inability to discuss pending legal actions with the FWC, only the Plaintiffs were in a position to recognize the overlap and conflicts between the two settlement agreements. The Plaintiffs did not raise these conflicts to our attention. In fact we requested and received several extensions of the deadline for publishing the proposed rule, and during these extensions several options for resolving the situation were presented to the Plaintiffs. All were rejected along with our request for further extensions. As such, in order to meet our settlement obligations, we published the proposed rule. We are publishing this final rule at this time because we have determined that the actions are urgently needed at these sites and because these actions will fulfill our settlement obligations. We have deferred action on the remaining 14 sites because they are somewhat less urgently in need of action, and in order to allow for additional coordination with State and local governments.

*Comment 8:* One commenter stated that we excluded areas from the proposed rule that are, in their view, of extremely high priority, while including in our proposed rule a number of sites



that are, in their view, of much lower concern and/or are being addressed in other ways.

*Response:* We have concluded that the sites recommended by this commenter either do not warrant additional protection, or are of no higher priority than the sites identified in our proposed rule. We note that this commenter agreed that the Barge Canal and Sykes Creek are in need of improved manatee protection.

*Comment 9:* Many commenters recommended that we take action on sites identified in the proposed rule sooner than we have proposed. Many recommended that we make emergency designations on the Barge Canal, Sykes Creek, and the Blue Waters on the Homosassa River, and make final designations on other sites sooner than December 2002.

*Response:* We are firmly committed to establishing appropriate manatee protection in concert with State and local agencies and authorities. We believe that the State should have a lead role in establishing additional manatee protection areas. As such, we are providing latitude to the State and local governments to establish protection at 14 of the proposed manatee protection areas prior to finalizing Federal action. Such protection must be the same or comparable to that described in our proposed rule. We decided to expeditiously enact protection at the Barge Canal and Sykes Creek sites after evaluation of the significant amount of manatee use at these sites and the high probability of take, especially lethal take, at these sites, and after we determined that we could implement effective measures to reduce take at these sites. We determined that enacting emergency designations at any of the sites identified in our proposed rule was not prudent given the high level of public use of these waters and the high level of public interest/concern regarding this rulemaking. While we have determined that effective actions to reduce take over the long term can be implemented at the remaining 14 sites identified in the proposed rule, immediate action at these sites is not necessary to prevent take, nor is it necessary for the recovery of the species.

*Comment 10:* One commenter implied that we were violating the terms of the settlement agreement in the Federal case by failing to propose actions at sites identified by the Plaintiffs in the Federal case to be of high priority.

*Response:* The plain language of the settlement states (paragraph 11): "The parties recognize that, in evaluating the need for refuges and sanctuaries the

Service anticipates considering the needs of the manatee at an ecosystem level in order to ensure that adequate protected areas are available throughout peninsular Florida to satisfy the biological requirements of the species, with a view towards the manatees' recovery within the meaning of section 4 of the ESA." The settlement agreement does not require designation of any specific sites as manatee protection areas, and nowhere in the settlement is there a requirement that all protected areas established to meet the needs of the manatee be Federal. Clearly, in "evaluating the need" we must consider the existing condition of the ecosystem of which the manatee is a part, which includes an extensive network of protected areas designed specifically to meet the "needs of the manatee." As long as appropriate protective measures are enacted, whether those actions are taken by State or Federal agencies does not matter.

The recovery plan for the Florida manatee makes clear that achieving the goal of recovery will necessarily require the cooperation and efforts of all stakeholders. Our proposed rule for manatee protection areas was also clear on this point when it stated:

We acknowledge that there exists a network of manatee speed zones and sanctuaries, which have been established throughout peninsular Florida by Federal, State, and local governments. This existing structure works toward the above-stated goal of providing adequate protected areas throughout peninsular Florida to satisfy the biological requirements of the species. The purpose of our evaluation is to identify gaps in the existing network and to propose appropriate measures for filling those gaps.

As such, we have clearly met the letter and spirit of the settlement with respect to designation of manatee protection areas. As stated previously, we have concluded that many of the sites recommended by this commenter do not warrant Federal designation at this time, and we do not agree that the other sites recommended by the commenter are of any higher priority than the sites identified in the proposed rule.

*Comment 11:* One commenter noted that the sites identified in our proposed rule differ in some respects from the "areas with inadequate protection" identified in our Final Interim Strategy on Section 7 Consultations for Watercraft Access Projects that may Indirectly Affect the Florida Manatee (Final Interim Strategy) (66 FR 14924).

*Response:* The areas we have proposed for designation as Federal manatee protection areas are in some cases different from the waterbodies we

identified as "areas with inadequate protection" for the purposes of the Final Interim Strategy. Specifically, of the 13 sites for which we proposed 16 manatee protection areas, only 6 are also identified as "areas with inadequate protection" in the Final Interim Strategy.

The standard for manatee protection areas is that such establishment is "necessary to prevent the taking of one or more manatees" (50 CFR 17.103). Because "take" is very broadly defined, action of some form could be justified for many coastal waters in the State of Florida. In order to focus our efforts in the current rulemaking, we defined four criteria for selecting sites as follows—(1) evidence that the site is used by manatees; (2) historic evidence of take (harm or harassment) of manatees at the site due to waterborne human activities; (3) the potential for additional take based on manatee and human use of the site; and (4) a determination that we could implement effective measures at the site to address the identified problem. Again, many sites throughout Florida could be argued to satisfy the first three criteria to some extent; however, the vast majority of sites do not satisfy criterion four because of limitations we face in terms of personnel and budget and because many areas present manatee protection problems due to circumstances that are difficult or impossible to correct within our manatee protection area authority.

On the other hand, "areas with inadequate protection" were identified in the context of conducting ESA section 7 consultations regarding U.S. Army Corps of Engineers authorization of boat access facilities. In this context, watercraft-related "take" of manatees is a distant indirect effect of the authorization of a boat access facility. While we agree that construction of boat access facilities is a potential contributing factor to watercraft-related take of manatees, in the vast majority of cases a direct cause and effect relationship does not exist between the construction of a marina, dock, or boat ramp, and watercraft-related take of manatees. As such, in order to be considered an "area with inadequate protection" in this context, the existing protection measures on a given waterbody must be such that the likely result of adding additional boat access to the area is a foreseeable increase in watercraft-related take. This could be because current protection measures are either totally lacking or woefully inadequate in areas with chronic watercraft-related take, or because of issues peculiar to the waterbody such that incidental take of manatees is



inevitable regardless of protective measures implemented.

As such, the standard for identifying a waterbody as an "area with inadequate protection" is generally higher than that for establishing a manatee protection area. This is why 7 of the 13 areas proposed as manatee protection areas are not also "areas with inadequate protection." Conversely, 11 sites identified as "areas with inadequate protection" were not proposed as manatee protection areas. This is because either we determined that we could take no action at this time to effectively address the identified problem at a given site, or we decided that action at a particular site was not as high a priority as action at the sites contained in the proposed rule, and was therefore not included in the proposed rule due to limitations of staff and/or budget. Designation as manatee protection areas could be proposed for this latter group of sites in the future, if staffing and funding permit, and if such actions are determined to be necessary for the recovery of the species. Our list of "areas with inadequate protection" will continue to be updated as new information becomes available.

*Comment 12:* Some commenters expressed concern that requiring boats to travel at slow speed throughout the entire length of the Barge Canal and Sykes Creek would add an unreasonable amount of time to boat trips through this area. One commenter estimated that the designations would add 3 hours and 12 minutes to a round trip.

*Response:* In response to this concern we tested the amount of time required to travel from the southernmost end of the slow speed zone on Sykes Creek, through Sykes Creek and the Barge Canal to the Canaveral Locks. This represents the longest possible distance that would need to be traveled at slow speed under this final rule. Under the existing speed zones this trip currently takes approximately 50 minutes. Under the conditions established in this final rule, the same trip will take approximately 1 hour and 25 minutes; an increase in travel time of 35 minutes.

*Comment 13:* Several commenters requested that we hold additional public hearings.

*Response:* One public hearing was announced with the proposed rule. We scheduled an additional three hearings in order to provide ample opportunity for public comment. All hearings were well attended, and everyone in attendance was afforded the opportunity to express their comments and concerns. Additionally, we afforded a 60-day public comment period to allow for the submission of written comments.

Finally, additional information regarding the proposed rule, including the material presented at the public hearings has been available on our website. We have also responded, in timely fashion, to requests for information from specific stakeholders throughout the rulemaking process. We believe that we have provided sufficient opportunity for public comment on this rulemaking.

*Comment 14:* Some commenters expressed concern that human safety could be compromised by forcing all boaters into narrow channels, bottlenecks, and other confined circumstances.

*Response:* We were very cognizant of human safety issues during the design phase of the manatee protection area planning process. Human safety while boating has always been and will continue to be the responsibility of the vessel operator. The two manatee protection areas in this final rule require vessels to proceed at slow speed and, as such, enhance boater safety while in these areas. At no site does the designation of these manatee protection areas place mariners in a position of encountering high-speed vessel traffic with no alternative safe route.

*Comment 15:* Some commenters expressed concern that human safety will be compromised by requiring vessel operators to proceed at slow speeds in the face of emergency situations, like rapidly approaching thunderstorms or medical emergencies.

*Response:* Federal regulations allow for an exemption to manatee protection area regulations in the event of emergency. Specifically, our regulations (50 CFR 17.105(c)) state that "any person may engage in any activity otherwise prohibited by this subsection if such activity is reasonably necessary to prevent the loss of life or property due to weather conditions or other reasonably unforeseen circumstances, or to render necessary assistance to persons or property."

*Comment 16:* Several commenters noted that the size of the manatee population appears to have increased over time, and questioned the need for additional protective measures.

*Response:* A discussion of the current status of the manatee population is provided in the "Background" section. Two of the criteria for determining whether species are endangered or threatened under the ESA are "(D) the inadequacy of existing regulatory mechanisms and (E) other natural or manmade factors affecting its continued existence" (16 USC 1533(a)). Furthermore, the MMPA sets a general moratorium for the taking of marine

mammals. Regardless of the size or status of the manatee population, we are required to ensure that take of manatees is minimized to the extent possible, and all take is prohibited unless authorized under the MMPA.

Minimizing, to the extent practical, the taking of manatees as a result of watercraft collisions is a top priority in manatee recovery and management programs. Currently, the areas addressed in this rule have a significant potential for "take" based on the amount of manatee use and are characterized by limited current protective regulations.

*Comment 17:* Several commenters stated that we should focus on better enforcement of existing regulations before imposing additional restrictions on boaters.

*Response:* This issue was identified as one of the alternatives addressed within the Manatee Protection Area Environmental Assessment. While improvements in both the enforcement and education arenas are laudable in enhancing manatee protection, such improvements may be of little effect when applied to areas without regulations or with inadequate protection to minimize the take of manatees. The State has placed an increased emphasis on enforcement, and we have made a substantial commitment to enforcing manatee protection areas over the past few years. We anticipate that these efforts will continue.

*Comment 18:* Some commenters recommended that we abstain from designation of Federal manatee protection areas and allow the State and local authorities to provide for manatee protection.

*Response:* We are the Federal agency responsible for manatee management and protection activities under both the ESA and the MMPA. As such, we must take an active role in regulatory activities involving the manatee. This in no way diminishes the important role that State and local agencies play, or the role of the private sector. Recognition is given to both State and local efforts to establish manatee protection, and we are committed to supporting these efforts. We have stated that the State should have leadership in establishing additional manatee protection areas. With this final rule, we have focused on sites where watercraft-related manatee mortality is highest, and where we determined that Federal action can effectively address the needs in the particular area. If the State is successful in implementing their pending rules for Brevard County, we will consider

withdrawing Federal designation of these sites.

*Comment 19:* Some commenters stated that the definition of "Slow Speed" is arbitrary and unenforceable, and recommended that we consider using some other standard, such as a "miles per hour" limit to regulate vessel speed.

*Response:* The definition of "slow speed" used in this rule is essentially the same as that used by the State in the Florida Manatee Sanctuary Act (F.A.C. 68C-22). This definition is generally understood by mariners and has proven to be enforceable. It is important to use a definition of "slow speed" that complements that used by the State. The sites included in this final rule are located in direct proximity to areas regulated by the State. The use of the same definition will ensure consistency and lessen confusion among the boating public.

The establishment of another definition of "slow speed" or the use of a "miles per hour" speed zone poses many problems. Establishment of a "miles per hour" standard would necessitate all boats operating in these zones to be equipped with accurate speedometers. This standard would also require enforcement officers to procure equipment and attend periodic training to enforce these conditions. Of more importance is that boats operating at speeds in excess of what is allowed under the current definition of "slow speed" pose increased threats to manatees. Boats proceeding while "plowing the water" with elevated bows, such as occurs when a vessel is operating at greater than "slow speed," both obscure the forward vision of the operator and place the propulsion systems of the watercraft lower in the water. Both of these conditions increase the likelihood of a vessel collision with a manatee. With a subsequent increase of speed, the configuration of the vessel changes to one of planing. While this condition places the hull and outdrives of vessels higher in the water, it also decreases the reaction time needed by both the operator and the manatee to detect one another and take action to avoid collision.

*Comment 20:* Many commenters stated that we have not adequately evaluated the economic impact of these designations.

*Response:* The economic analysis conducted as part of this rulemaking determined that these actions would not have a significant economic impact. The two sites identified in this final rule will remain open for public access, albeit at "slow speed" travel. Through public hearings and public comment periods

we sought information and comment on the activities occurring in these two sites. To our knowledge of the activities in these areas, and the fact that no activities will be prohibited although some may be inconvenienced by the need to proceed at slower speeds, we believe that this rule will not result in a significant economic dislocation.

*Comment 21:* One commenter noted that the commenter operates boat manufacturing facilities on the Barge Canal, and stated that the proposed designation would adversely affect their ability to economically continue boat testing operations resulting in a substantial economic loss to the commenter's company. The commenter requested that we provide an exemption to our rule, similar to the exemption granted by the State, to allow the commenter to continue to conduct up to 40 tests per month at speeds up to 35 miles per hour in a portion of the Barge Canal.

*Response:* Federal regulations provide exceptions to manatee protection area regulations only in limited circumstances (50 CFR 17.105(c)). We have assessed the information and recommendations presented by this commenter and have concluded that we do not have the authority under our existing regulations to grant an exception for this type of activity based on economic hardship.

The MMPA prohibits the take of marine mammals, including manatees. As such, we cannot authorize, or exempt from regulation, any activities that may cause the take of manatees, other than those necessary for protecting life and property. Nonetheless, we recognize that certain existing uses of some waterbodies could be adversely affected or eliminated by designation of manatee protection areas. We do not oppose continuation of these uses, provided it can be demonstrated that such uses will not cause take of manatees. Flexibility exists under the MMPA to except certain waterborne activities in refuges from the speed zone restrictions if it can be shown that such activities will be carried out under stringent conditions that prevent the take of manatees. At this time we intend to propose amendments to our regulations to incorporate a process by which we may evaluate and authorize specific activities within designated manatee protection areas, provided parties requesting such authorization can demonstrate that their activities will not cause the take of manatees.

*Comment 22:* One commenter suggested that our proposed rule was contrary to the spirit and intent of Executive Order 12866, because we did

not contact the commenter directly regarding the impact the proposed rule may have upon the individual's operations.

*Response:* As part of the rulemaking process, we published an advance notice of proposed rulemaking in which we solicited information from the public regarding issues that should be addressed through the rulemaking. We also held six public workshops that provided additional opportunities for the public to provide input and voice concerns. With publication of the proposed rule, we afforded a 60-day period for submitting written comments, and held four public hearings. Through the commenter's participation in this process, we are aware of their concerns. We have responded to those concerns to the best of our ability with this final rule and our stated intent to pursue amendments to our regulations. We have also updated the information regarding the economic effects of the rule, as appropriate, to reflect information submitted by the commenter. These actions meet the requirements of Executive Order 12866.

*Comment 23:* Many commenters suggested that technological advances may now make it possible for boaters and manatees to better detect the presence of one another and thereby avoid collisions, and recommended that these technologies be employed instead of restricting boat speeds.

*Response:* Ongoing research is evaluating the sensory abilities of the manatee and the environmental factors that may affect these abilities. Potential technologies may enable boaters to better detect the presence of manatees. However, no technology is currently available that is proven to be effective in avoiding collisions between manatees and boats. For the foreseeable future, detection and avoidance technology will likely be used to supplement, rather than replace, traditional management strategies.

*Comment 24:* Some commenters recommended that we selectively regulate watercraft and provide exemptions for those not responsible for take of manatees. These commenters stated that most watercraft-related manatee mortality is caused by large vessels and/or barges, and that boats without propellers do not harm manatees.

*Response:* The manatee mortality database contains information on the necropsy results of over 4,000 manatees. From this large information source, several interesting aspects of watercraft-related manatee mortality may be surmised. It is impossible to determine, in most cases, the size of the boat which

struck a manatee. The exception to this is the very few cases where a responsible boater has reported a collision and researchers are able to compare the actual vessel to the observed injuries. In a few documented cases, manatees were obviously killed by a large vessel, the symptoms of which include massive crushing and or bifurcation (slicing into pieces) of the animal. The vast majority of cases involving watercraft-related mortality involve less dramatic injuries.

Investigations comparing blade diameter and pitch indicate that the majority of manatees killed from watercraft-related collision are struck by smaller, fast-moving vessels.

As stated above, injuries to manatees from vessel impacts can be characterized as either lacerations or blunt trauma. Percentages generated by the mortality data-base indicate that 55 percent of the watercraft-related mortalities are the result of blunt trauma. Such trauma can result from impacts from vessel hulls, lower units, or other vessel components. Vessels without propellers (e.g., personal watercraft) still have the potential to "take" manatees.

*Comment 25:* Some commenters recommended that we consider factors such as water depth and the presence of aquatic vegetation when deciding the boundaries of manatee protection areas rather than base boundaries on unnatural features such as navigation channels or bank-to-bank designation of waterbodies.

*Response:* We considered such environmental features in evaluating potential manatee protection sites, because these factors influence manatee use of areas. There have been instances where habitat features (such as water depth) have been used to delineate boundaries of protection areas. The disadvantage of the use of such features for the purpose of this rule is the complexity and costs associated with such designs, and the potential for causing confusion among the regulated public resulting in poor compliance. Protection areas designed around environmental factors tend to be irregular and complex. This, in turn, results in significant increases in costs of implementation in terms of posting and the subsequent costs of maintenance. The limited resources available for this program required a less complex strategy for providing adequate protection for manatees and reasonable use of these areas by the public.

*Comment 26:* Some commenters recommended that we allow the challenge to the State rule for Brevard

County to be adjudicated prior to taking action at the Barge Canal and Sykes Creek.

*Response:* Information regarding these sites indicates a clear need to establish protective measures to prevent, to the extent possible, take of manatees. The process of finalizing this rule is occurring simultaneously with the aforementioned challenge to the State rule. We concluded that we must move forward with designation of these sites at this time in order to ensure that appropriate protective measures are in place at these sites as soon as possible.

*Comment 27:* Some commenters noted that the Barge Canal and Sykes Creek provide ideal training sites for competitive rowers from around the Nation and the world, particularly during winter months. These waterbodies are ideally suited for training due to the fact that, regardless of wind direction, crews can find protected areas with flat water that prevents the rowing shells from being swamped. These commenters further noted that crews are accompanied by chase boats that carry the coaches, and that a primary function of these chase boats is to render aid to the crews in the event of an emergency. The chase boats are typically small john boats with 10 to 15 horsepower engines. The commenters stated that designating the Barge Canal and Sykes Creek as slow speed zones would deprive them of use of these waters as training facilities, and that no other suitable locales for such training are available in the area.

*Response:* We place a high priority on human safety. As such, we will allow chase boats operating in the Barge Canal and Sykes Creek manatee protection areas to travel in excess of "slow speed" for the purpose of safety during training of sculling/rowing athletes. The purpose of the chase boats is, in part, to render necessary assistance to persons or property, which is excepted under our existing regulations (50 CFR 17.105). Chase boats must remain in close proximity to rowing shells to provide safety equipment (such as personal flotation devices) and other needed assistance. Persons engaged in such activity must remain vigilant for manatees and must take appropriate action, including termination of training if necessary, to avoid take of manatees. These vessels will be required to comply with all posted speed zones when not actively engaged in training, including during transit to and from training areas.

## Required Determinations

### *Regulatory Planning and Review*

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. The Office of Management and Budget makes the final determination under Executive Order 12866.

a. This rule will not have an annual economic impact of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit analysis is not required. We do not expect that any significant economic impacts would result from the establishment of 2 manatee refuges (1,528.5 acres) in Brevard County in the State of Florida. The public support for manatee protection is substantial in Florida. Using a contribution continuum method and reinforced by other empirical techniques, a study by Bendle and Bell in 1993 estimated that Floridians placed an asset value of \$3.2 billion (2001 dollars) on the protection of the manatee population. This amounts to a per-household value of \$18.12. The \$3.2 billion is an estimate of the benefit derived by Floridians from the existence of the manatee population.

The purpose of this rule is to establish two additional manatee protection areas in Florida. We are proposing to reduce the level of take of manatees by controlling human activity in these two areas. Affected waterborne activities include the use of water vehicles. The two areas designated would be slow-speed zones. The economic effect of these designations will be measured by the number of watercraft users who use alternative sites for their activity or have a reduced quality of the waterborne activity experience at the designated sites. The State of Florida has 12,000 miles of rivers and streams and 3 million acres of lakes and ponds so the designation of 1,528 acres for lower speed operation is unlikely to prevent any waterborne activity because of this rule, although some individuals may need to modify slightly when, where, or how they pursue certain waterborne activities.

One watercraft manufacturer is known to use one of the designated sites as a boat testing area. While alternative sites without speed zones are available nearby that allow for continuation of boat testing, use of these sites would entail costs to the manufacturer due to additional travel time needed to conduct testing. This rule will affect the company's boat testing program. We are intending to propose amendments to our regulations (50 CFR 17.105) to allow for otherwise prohibited activities to

continue provided those engaging in such activities can demonstrate that the activities will not result in take of manatees.

For some watercraft users, the inconvenience and extra time required to cross a slow-speed zone will reduce the quality of the waterborne activity. The extra time required for commercial charter boats to reach fishing grounds will reduce on-site fishing time and could result in lower consumer surplus for the trip. The number of recreationists and charter boats using the designated sites is not known. The State of Florida has nearly 800,000 registered boats, but only those boats and recreationists using the designated sites will potentially be affected. However, since Florida has 12 thousand miles of rivers and streams and 3 million acres of lakes and ponds, only a small percentage of boat users will likely be affected by this rule. The current designation of these two protection areas will cause some inconvenience in travel time, but alternative sites within the proximity of the sites are available for all waterborne activities. Recreationists may be inconvenienced by having to travel to an undesignated area, but they are not prohibited from participating in any waterborne activity. Currently, no data sources estimate the amount of recreational activity in and around the two designated areas. For these reasons, we believe some inconvenience to the public may occur because of reduced

travel speeds but that the economic impact will not be significant.

b. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule is consistent with the approach used by State and local governments to protect manatees in Florida. We recognize the important role of State and local partners, and we continue to support and encourage State and local measures to improve manatee protection. We have focused the current action on those sites in which we have determined that Federal action can effectively address the needs in the particular area. If comparable protections are put in place in the future, we will consider removing those areas from Federal protection.

c. This final rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Minimal restrictions to existing human uses of the sites will result from this rule, and no entitlements, grants, user fees, loan programs or the rights and obligations of their recipients will be affected.

d. This rule will not raise novel legal or policy issues. We have previously established manatee protection areas.

#### Regulatory Flexibility Act

I certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial/

final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

We conducted both public hearings and public notice and comment periods to determine the activities occurring in Barge Canal and Sykes Creek that might be affected by the creation of these manatee refuges. Based on the activities that we are aware of being conducted in these areas, and the fact that no activities will be prohibited although some may be inconvenienced by the need to proceed at slower speeds, we believe that this rule will not result in a significant economic dislocation.

To determine the potential effects of this rule on small entities, we looked at economic data from Brevard County. Table 1, below, depicts general economic characteristics, and Table 2 gives employment data. As can be seen in Table 1, the growth rate is slightly lower than the State average. Larger households account for the lower per capita income estimate. The proportion of total industry earnings coming from the amusements and recreation sector is 0.5 percent. The service sector is the largest economic contributor followed by retail trade and the real estate sectors. Overall, only a small proportion of earnings come from the amusement and recreation sector. As a result, a small impact to the recreation sector would not result in a significant effect on county-level income.

TABLE 1.—ECONOMIC CHARACTERISTICS OF THE SEVEN AFFECTED COUNTIES IN FLORIDA—1997

Selected Florida Counties	Employment	Per capita personal income (Dollars)	10 year rate of growth (Percent)	Personal Income (\$000)	10 year rate of growth (Percent)	Total industry earnings (\$000)	Services industry earnings for amusements and recreation (\$000)	Percent of total
<b>Establishing Sanctuaries:</b>								
Citrus .....	35,663	\$18,493	3.9	\$2,060,167	6.9	\$793,347	\$6,650	0.8
Hillsborough .....	644,694	23,719	5.2	21,558,783	6.6	18,847,236	67,676	1.4
Pinellas .....	506,946	28,367	4.9	24,770,929	5.5	13,876,518	114,826	0.8
<b>Establishing Refuges:</b>								
Brevard .....	223,815	22,205	3.7	10,342,080	6.3	6,255,354	34,237	0.5
Charlotte .....	47,091	21,861	3.7	2,894,781	7.6	995,159	10,336	1.0
Lee .....	196,448	25,568	4.4	9,862,900	7.3	4,848,936	61,103	1.3
Sarasota .....	169,984	35,654	5.2	10,706,931	6.8	4,239,034	114,742	2.7
State of Florida .....	8,032,538	24,799	4.5	363,979,647	6.6	220,985,959	4,255,304	1.9

Source: <http://govinfo.library.orst.edu/cgi-bin/reis-list>.

Table 2 provides employment data using Standard Industrial Classification (SIC) codes. The latest available published data pertained to 1997 for the total number of establishments in the SIC codes for fishing, hunting, trapping (SIC code 9), water transportation (SIC code 44), miscellaneous retail and

services (SIC code 59), amusement and recreation services (SIC code 79), and nonclassifiable establishments. These are the establishments most likely to be directly associated with recreationists pursuing waterborne activities where manatees may be involved. As can be seen on Table 2, of the total number of

establishments in these SIC codes, a large proportion employ fewer than 9 employees with the largest number of establishments employing fewer than 4 employees. If any economic impacts are associated with this rule, they will affect some proportion of these small entities.

TABLE 2.—EMPLOYMENT CHARACTERISTICS OF BREVARD COUNTY, FLORIDA—1997

[Includes sic codes 09, 44, 59, 79, services, and nec]<sup>1</sup>

	Mid-March employment	Total establishments	Number of establishments (1–4 employees)	Number of establishments (5–9 employees)	Number of establishments (10–19 employees)	Number of establishments (20 and over employees)
Brevard County .....	65,049	5,292	3,145	1,075	581	591

Source: <http://fisher.lib.virginia.edu/cig-local/cbpbpin/go.cgi>.

<sup>1</sup> sic 09—Fishing, hunting, and trapping.

sic 44—water transportation.

sic 59—miscellaneous retail services division.

sic 79—amusement and recreation services nonclassifiable establishments division.

All of the acreage designated (1,528.5 acres) by this rule is for manatee refuges, which would only require a reduction in speed. We acknowledge that watercraft operating in barge canal will be required to go slower in designated areas and will require approximately 35 additional minutes to traverse the canal. We believe the additional time necessary will cause more than an insignificant economic effect. The additional time required may cause some recreationists to go to alternative sites, which may cause some loss of income to some small businesses. However, the additional time required is minimal and we believe that this will not be a significant economic dislocation.

The only known direct effect will be on a boat manufacturer which tests boats in the Barge Canal. Testing boats require the manufacturer to operate boats at speeds of up to 35 mph, and the costs of relocating the test site have not been specifically estimated. However, based on information provided by the company, designation of the Barge Canal as a manatee protection area may have a more than minimal impact on the boat testing operations of this business. Substitute sites are available within a reasonable distance; however, the costs of operating at these sites will be substantially greater than the costs of using the current test site in the Barge Canal.

As mentioned above, we intend to propose amendments to our regulations (50 CFR 17.105) to incorporate a process by which we may evaluate and authorize specific activities within designated manatee protection areas, provided parties requesting such authorization can demonstrate that their activities will not cause the take of manatees. If the manufacturer is able to meet this standard, we anticipate that this rule will result in at most a temporary impact on their boat testing program.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2). This rule:

a. Does not have an annual effect on the economy of \$100 million or more. As shown above, this final rule may cause some inconvenience to recreationists because of the speed restriction on manatee refuge areas, but this should not translate into any significant business reductions for the many small businesses in the seven potentially affected counties, aside from the above-mentioned boat manufacturer. An unknown portion of the establishments shown on Table 2 could be affected by this rule. Because the restrictions on recreational activity are believed to be no more than an inconvenience for recreationists, we believe that any economic effect on small entities resulting from changes in recreational use patterns will be insignificant also.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Aside from the above-mentioned effects of this rule on the testing of boats in the Barge Canal, which have not been specifically quantified and which are anticipated to be temporary, unforeseen changes in costs or prices for consumers stemming from this rule are unlikely. The charter boat industry may be affected by lower speed limits for some areas when traveling to and from fishing grounds. No specific information regarding potential costs to the charter boat industry was provided during the rulemaking process. We do not believe that reduced speed limits will result in a significant economic effect.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As stated above, this rule may generate some level of inconvenience to

recreationists because of speed limits, and a temporary interruption in the testing of boats in the Barge Canal, but these effects are believed to be minor and will not interfere with the normal operation of other businesses in the affected counties. The added travel time to traverse some areas is not expected to be a major factor that will impact business activity.

*Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not “significantly or uniquely” affect small governments. A Small Government Agency Plan is not required. The designation of manatee refuges and sanctuaries imposes no new obligations on State or local governments.

b. This rule will not produce a Federal mandate of \$100 million or greater in any year. As such, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

*Takings*

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. The final manatee protection areas are located over State-owned submerged bottoms. Any property owners in the vicinity will have navigational access to their property.

*Federalism*

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. This rule will not have substantial direct effects on the State, in the relationship between the Federal Government and the State, or on the distribution of power and responsibilities among the various levels of government. As discussed earlier, we coordinated with the State of Florida to the extent possible on the development of this rule.

### Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

### Paperwork Reduction Act

This regulation does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The final regulation will not impose new record keeping or reporting requirements on State or local governments, individuals, businesses, or organizations.

### National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment has been prepared and is available for review upon request by writing to the Jacksonville Field Office (*see ADDRESSES* section).

### Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175 and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects.

### Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule is not a significant regulatory action under Executive Order 12866 and it only requires vessels to proceed at slow speed along two small segments (600.6 ha or 1528.5 acres) of waterways in Florida, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

### References Cited

A complete list of all references cited in this final rule is available upon

request from the Jacksonville Field Office (*see ADDRESSES* section).

### Author

The primary author of this document is Cameron Shaw (*see ADDRESSES* section).

### Authority

The authority to establish manatee protection areas is provided by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), as amended.

### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

### Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

#### PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub.L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.102, remove the definition for "water vehicle" and add definitions, in the alphabetical order, as follows:

#### § 17.102 Definitions.

\* \* \* \* \*

*Idle speed* is defined as the minimum speed needed to maintain steerage (direction) of the vessel.

\* \* \* \* \*

*Planing* means riding on or near the water's surface as a result of the hydrodynamic forces on a water vehicle's hull, sponsons, foils, or other surfaces. A water vehicle is considered on plane when it is being operated at or above the speed necessary to keep the vessel planing.

*Slow speed* is defined as the speed at which a water vehicle proceeds when it is fully off plane and completely settled in the water. Due to the different speeds at which water vehicles of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to slow speed. A water vehicle is *not* proceeding at slow speed if it is: on a plane; in the process of coming up on or coming off of plane; or creating an excessive wake. A water vehicle *is* proceeding at slow speed if it is fully off

plane and completely settled in the water, not creating an excessive wake.

*Slow speed (channel exempt)* means that the slow-speed designation does not apply to those waters within the maintained, marked channel.

*Slow speed (channel included)* means that the slow-speed designation applies both within and outside the designated channel.

*Wake* means all changes in the vertical height of the water's surface caused by the passage of a water vehicle, including a vessel's bow wave, stern wave, and propeller wash, or a combination thereof.

\* \* \* \* \*

*Water vehicle, watercraft, and vessel* include, but are not limited to, boats (whether powered by engine, wind, or other means), ships (whether powered by engine, wind, or other means), barges, surfboards, personal watercraft, water skis, or any other device or mechanism the primary or an incidental purpose of which is locomotion on, or across, or underneath the surface of the water.

3. Amend § 17.108 as follows:

a. Remove the note following paragraph (b) and;

b. Add paragraph (c) as set forth below.

#### § 17.108 List of designated manatee protection areas.

\* \* \* \* \*

(c) *Manatee refuges.* The following areas are designated as manatee refuges. For each manatee refuge, we will state on appropriate signs which, if any, waterborne activities are prohibited, and state the applicable restrictions, if any, on permitted waterborne activities. The areas that will be posted are described as follows:

(1) The Barge Canal Manatee Protection Area

(i) The Barge Canal Manatee Protection Area is described as all waters lying within the banks of the Barge Canal, Brevard County, including all waters lying within the marked channel in the Banana River that lie between the east entrance of the Barge Canal and the Canaveral Locks; containing approximately 276.3 ha (682.7 acres).

(ii) Watercraft are required to proceed at slow speed (channel included) all year. The use of watercraft at speeds greater than slow speed is prohibited throughout the Barge Canal Manatee Protection Area.

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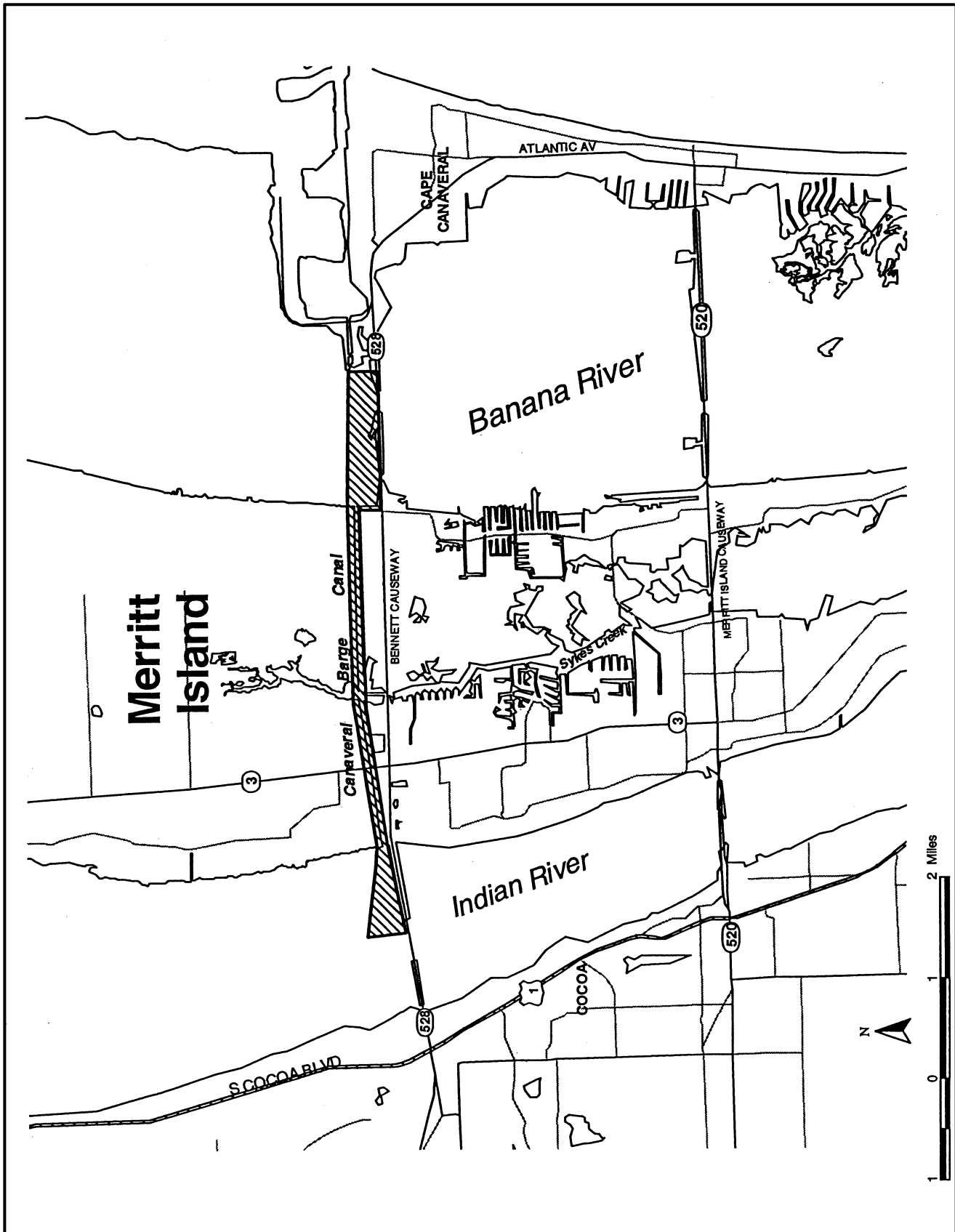


Figure 1. Barge Canal Manatee Refuge



(2) The Sykes Creek Manatee Protection Area.

(i) The Sykes Creek Manatee Protection Area is described as all waters, including the marked channel in Sykes Creek, Brevard County. In particular, the portion of Sykes Creek southerly of the southern boundary of

that portion of the creek commonly known as the "S" curve (said boundary being a line bearing East from a point on the western shoreline of Sykes Creek at approximate latitude 28 degrees 23'24" N, approximate longitude 80 degrees 41'27" W) and northerly of the Sykes

Creek Parkway; containing approximately 342.3 ha (845.8 acres).

(ii) Watercraft are required to proceed at slow speed (channel included) all year. The use of watercraft at speeds greater than slow speed is prohibited throughout the Sykes Creek Manatee Protection Area.

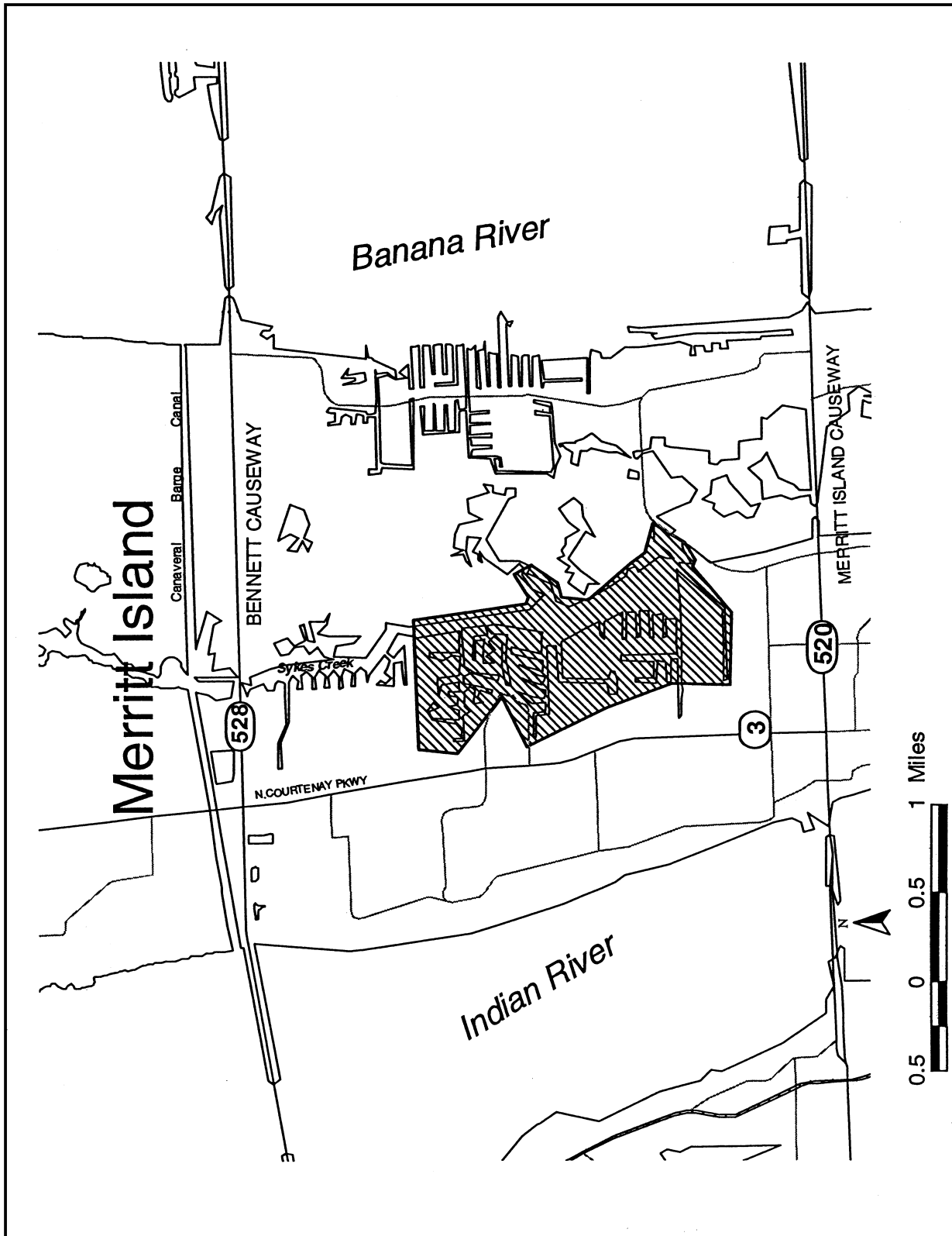


Figure 2. Sykes Creek Manatee Refuge

Dated: December 28, 2001.

Marshall P. Jones, Jr.,  
Acting Assistant Secretary for Fish and  
Wildlife and Parks.

[FR Doc. 02-265 Filed 1-4-02; 8:45 am]

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