PART 799—[AMENDED]

■ 1. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

■ 2. In § 799.5085, revise the section heading and Table 2 of paragraph (j) to read as follows:

§ 799.5085 Chemical testing requirements for first group of high production volume chemicals (HPV1).

* * * * *

(j) * * *

TABLE 2—CHEMICAL SUBSTANCES AND TESTING REQUIREMENTS

CAS No.	Chemical name	Class	Required tests (see table 3 of this section)
74–95–3	Methane, dibromo-	1	A, C1, E2, F2.
78–11–5	1,3-Propanediol, 2,2-bis[(nitrooxy)methyl]-, dinitrate (ester)	1	A4, A5, B, C6, F2.
84–65–1	9,10-Anthracenedione	1	A4, A5, F2.
110–44–1	2,4-Hexadienoic acid, (*E,E*)-	1	A, C4.
112–52–7	1-Chlorododecane	1	A2, A3, A4, A5, B, C3, D, E1, E2, F1.
118–82–1	Phenol, 4,4'-methylenebis[2,6bis(1,1-dimethylethyl)]-	1	A1, A2, A3, B, E2.
149–44–0	Methanesulfinic acid, hydroxy-, monosodium salt	1	A1, A5, E2, F1.
409–02–9	Heptenone, methyl-	2	A, B, C1, D, E1, E2, F1.
594–42–3	Methanesulfenyl chloride, trichloro-	1	A, B, C1, E1, E2, F2.
1324–76–1	Benzenesulfonic acid, [[4-[[4-(phenylamino)phenyl][4-(phenylimino)-2,5-cyclohexadien-1-ylidene]methyl]phenyl]amino]-.	2	A4, C2, F1.
2941–64–2	Carbonochloridothioic acid, *S*-ethyl ester	1	A, B, C1, E2, F1.
8005–02–5	C.I. Solvent Black 7	2	A, F2.

* * * * *

[FR Doc. 2012–6430 Filed 3–15–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2010–0079; FXES11130900000C3–123–FF09E30000]

RIN 1018–AX27

Endangered and Threatened Wildlife and Plants; Establishing a Manatee Refuge in Kings Bay, Citrus County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, establish a manatee refuge in Citrus County, Florida, in the waters of Kings Bay, including its tributaries and connected waters. This action is based on our determination that there is substantial evidence showing that certain waterborne activities would result in the taking of one or more manatees and that certain waterborne activities must be restricted to prevent the taking of one or more manatees in Kings Bay. In making this rule final, we considered the biological needs of the manatee, the level of take at these sites, and the likelihood of additional take of manatees due to human activity at these sites.

This final rule is modified from the proposed rule to ensure that the provisions do not compromise human safety and to clarify certain aspects. The modifications are not considered significant as they are within the scope of the proposed rule. To avoid creation of a hazard to human safety, watercraft may be operated at 25 miles per hour during daylight hours in a portion of the manatee refuge from June 1 through August 15. The portion of the rule prohibiting use of mooring and floatlines that can entangle manatees has been removed. Language regarding prohibitions on waterborne activities in Three Sisters Spring has been revised to improve clarity. We also announce the availability of a final environmental assessment and Finding of No Significant Impact for this action.

DATES: This rule is effective March 16, 2012.

ADDRESSES: This final rule, and supporting documentation, including public comments, are available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2010–0079. Comments and materials received, as well as supporting documentation used in preparing this final rule, are also available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, North Florida Ecological Services Office, 7915 Baymeadows Way, Suite 200, Jacksonville, Florida, 32256.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, U.S. Fish and Wildlife Service, North Florida Ecological Services Office, 7915 Baymeadows Way, Suite 200, Jacksonville, Florida, 32256; by telephone (904/731–3336); by facsimile (904/731–3045); by email: *manatee@fws.gov;* or on-line at *http://www.fws.gov/northflorida.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Previous Federal Actions

The West Indian manatee *(Trichechus manatus)* was listed as an endangered species on June 2, 1970 (35 FR 8491), under the Endangered Species Conservation Act of 1969 and this status was retained under the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531 *et seq.*), and the population is further protected as a depleted stock under the Marine Mammal Protection Act of 1972, as amended (MMPA) (16 U.S.C. 1361 *et seq.*). On October 22, 1979, the U.S. Fish and Wildlife Service (Service) adopted a regulatory process to provide a means for establishing manatee protection areas in waters under the jurisdiction of the United States where manatees were taken by waterborne activities (44 FR 60964). The first manatee protection areas were designated in Kings Bay on November 12, 1980, for the purpose of preventing the take of manatees by harassment from waterborne activities and included the Banana Island Sanctuary (including King Spring), the Sunset Shores Sanctuary, and the Magnolia Springs Sanctuary (45 FR 74880). The Service subsequently designated four additional manatee protection areas in Kings Bay on May 12, 1994, and on October 16, 1998, (including the Buzzard Island Sanctuary, Tarpon Springs Sanctuary, Warden Key Sanctuary, and Three

Sisters Springs Sanctuary, respectively) (59 FR 24654 and 63 FR 55553). To prevent the imminent take of manatees by waterborne activities, we published an emergency rule that temporarily established the Kings Bay manatee refuge in Citrus County, Florida, on November 9, 2010 (75 FR 68719). On June 22, 2011, the Service proposed to establish the manatee refuge throughout Kings Bay, while maintaining the seven existing Manatee Sanctuaries in the Bay (76 FR 36493).

The West Indian manatee includes two subspecies: the Florida manatee (*Trichechus manatus latirostris*) and the Antillean manatee (*Trichechus manatus manatus*). Florida manatees can be found throughout the southeastern United States, with Florida at the core of its range. Extensive efforts are ongoing by the Service and the Florida Fish and Wildlife Conservation Commission (Commission or FWC) to recover this species. In particular, significant efforts are made to minimize human-related threats and to reduce the number of manatees taken by human activities.

Take, as defined by section 3(19) of the ESA, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Harm is further defined by regulation at 50 CFR 17.3 to mean an act which actually kills or injures wildlife. Harass is also defined by regulation to mean any 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). 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. Take is further defined in 50 CFR 18.3 to include, without limitation, any of the following: The collection of dead animals or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; or the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in the disturbing or molesting of a marine mammal. Under section 3(18) of the MMPA, harassment is defined to include any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A); 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 (Level B). All takings, including takings by harassment, are prohibited.

The primary human-related causes of death and injury to manatees rangewide include watercraft-related strikes (impacts and/or propeller strikes), entrapment and/or crushing in water control structures (gates, locks, etc.), and entanglement in fishing lines, crab pot lines, etc. A 2005 analysis concluded that watercraft-related mortality was the leading human-related cause of death for manatees throughout Florida (MPSWG 2005, p. 5). A subsequent threats analysis concluded that watercraft strikes and the potential loss of warm-water habitat pose the greatest threats to the Florida manatee population (Runge *et al.* 2007, p. 17).

The Service may establish manatee protection areas (in the form of a manatee refuge or a manatee sanctuary) whenever there is substantial evidence showing that such establishment is necessary to prevent the taking of one or more manatees. Regulations authorizing designation of manatee refuges and sanctuaries in areas where restrictions or prohibitions on certain waterborne activities are needed to prevent the take of manatees are codified in 50 CFR 17 subpart J. A manatee refuge is defined as an area in which the Director has determined that: (1) Certain waterborne activities would take one or more manatees; or (2) certain waterborne activities must be restricted to prevent the take of one or more manatees, including but not limited to taking by harassment. A manatee sanctuary is an area where it has been determined that any waterborne activity would result in the taking of one or more manatees, including but not limited to a taking by harassment (50 CFR 17.102). Manatee refuges and manatee sanctuaries are established under a different authority from Federal National Wildlife Refuges.

Kings Bay

The Florida manatee's range includes Kings Bay, Florida. Kings Bay is a large embayment located at the headwaters of the Crystal River, a tidal river located on Florida's west coast. Springs are the primary water source for this estuarine system; a recent report describes 70 springs that discharge warm, artesian water (that is, water rises under pressure from a permeable stratum overlaid by impermeable rock) into Kings Bay (Vanasse, Hangen, and Brustlin, Inc., 2010, p. 1). Kings Bay is partially located within the City of Crystal River's city limits, and wholly within Citrus County, Florida. Citrus County and the City of Crystal River are an integral part of ''Florida's Nature Coast,'' a northwestern Florida region marketed for outdoor recreational opportunities, including opportunities for viewing manatees (Nature Coast Coalition 2010 Web site). In addition to viewing manatees, area recreationists engage in snorkeling and diving, boating, canoeing and kayaking, fishing, waterskiing, and other activities (Gold 2008, pp. 4–5). Local eco-tour operators, dive shops, marinas, hotels and motels, restaurants, and other businesses benefit from these activities (Buckingham 1990, p. 6).

The Kings Bay springs constitute one of the most important natural warm-water shelters for manatees. Manatees have historically been attracted to the warm, spring-fed waters in Kings Bay where they retreat from the cold during the winter. As manatee populations have increased, year-round use of Kings Bay by manatees has increased accordingly (Figures 1 and 2). Wintering manatees have been the focus of a manatee viewing industry for many years, and bay waters are widely used by commercial and recreational waterway users for a variety of activities throughout the year. Manatees are struck and killed or injured by watercraft operating in Kings Bay. Manatees are harassed by the viewing public. The number of manatees struck and killed by watercraft in Kings Bay is increasing, as are the number of public reports of acts of manatee harassment.

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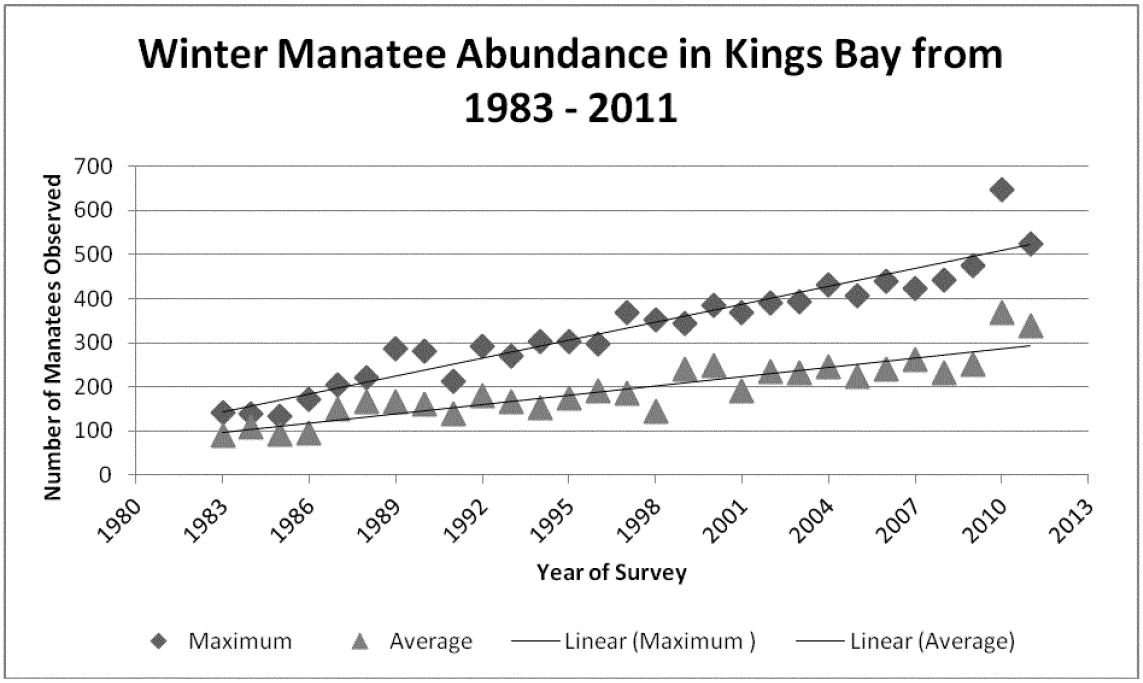

Figure 1. Maximum and average numbers of manatees detected with winter aerial manatee surveys from 1983 through 2011 within the Kings Bay area. The winter survey area is flown from October through March. (Kleen and Breland. 2011 unpublished report)

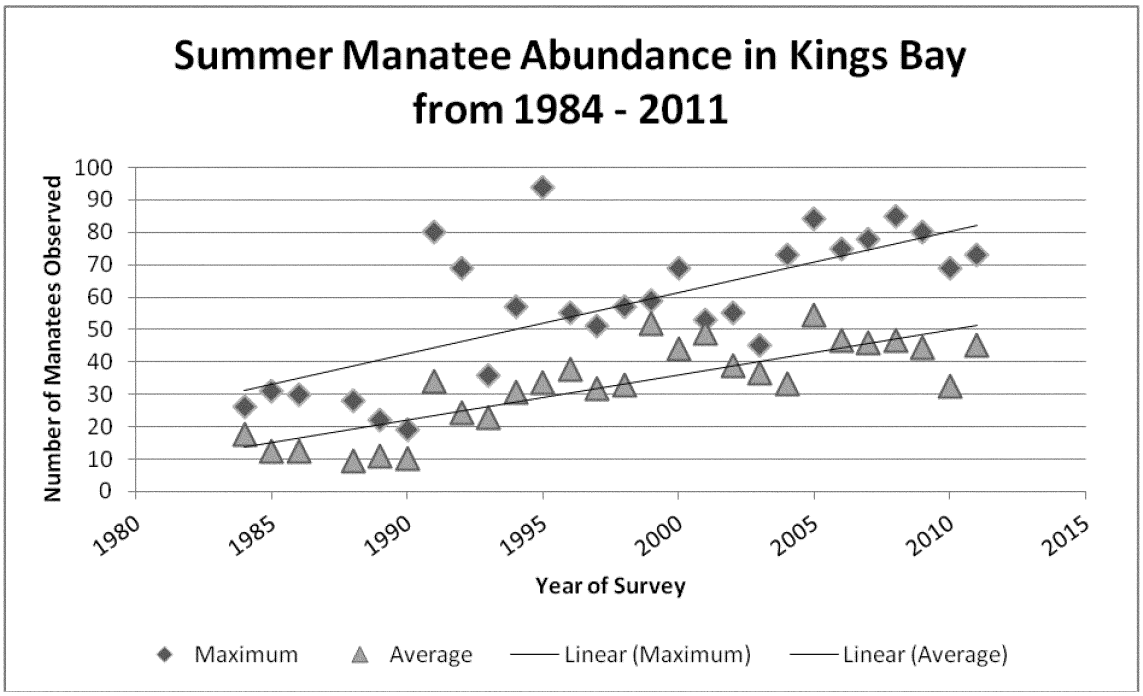

Figure 2. Maximum and average numbers of manatees detected with summer aerial manatee surveys from 1984 through 2011 within the Kings Bay area. The summer survey area is flown from April through September. (Kleen and Breland. 2011 unpublished report)

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Watercraft associated with recreational and commercial activities strike and kill manatees. In the State's northwestern region, where Kings Bay is located, adult manatee mortality is almost equally split between human-related and natural causes, with watercraft collisions being the leading source of human-caused mortality. According to mortality statistics compiled by the FWC, 13 manatees killed as a result of collisions with watercraft have been recovered within the boundaries of the Kings Bay manatee refuge (as established by this rule) between April 1974 and November 2010; all of these occurred since 1999 (Table 1; FWC FWRI Manatee Mortality Database 2011 Web site).

TABLE 1—ALL CARCASSES RECOVERED IN THE "KINGS BAY" REGION FROM APRIL 1974 THROUGH NOVEMBER 2010 FOR WHICH THE CAUSE OF DEATH WAS SPECIFICALLY DETERMINED TO BE WATERCRAFT. *THE ENTRY FOR 06/11/2002 IS A CARCASS THAT WAS RECOVERED OUTSIDE OF THE BOUNDARIES OF THE KINGS BAY MANATEE REFUGE (AS ESTABLISHED BY THIS RULE), BUT CONSIDERED THE "KINGS BAY" REGION BY FWC

[Data source: FWC FWRI Manatee Mortality Database 2011 Web site]

FL county	Date	Field ID	Sex	Size (cm)	Region	Probable cause of death
Citrus	10/27/1999	MNW9934	F	268	Kings Bay	Watercraft.
Citrus	10/12/2000	MNW0029	F	275	Kings Bay	Watercraft.
Citrus	06/11/2002	MNW0222	M	207	Kings Bay*	Watercraft.
Citrus	07/17/2002	MNW0229	F	310	Kings Bay	Watercraft.
Citrus	02/01/2003	MNW0305	F	257	Kings Bay	Watercraft.
Citrus	06/01/2004	MNW0417	F	204	Kings Bay	Watercraft.
Citrus	05/19/2006	LPZ102120	F	259	Kings Bay	Watercraft.
Citrus	05/24/2007	MNW0715	F	227	Kings Bay	Watercraft.
Citrus	07/04/2007	MNW0721	F	331	Kings Bay	Watercraft.
Citrus	08/23/2007	LPZ102383	M	262	Kings Bay	Watercraft.
Citrus	03/25/2008	MNW0813	F	219	Kings Bay	Watercraft.
Citrus	07/13/2008	MNW0814	M	228	Kings Bay	Watercraft.
Citrus	12/05/2008	LPZ102654	F	261	Kings Bay	Watercraft.
Citrus	01/03/2010	MNW1002	M	246	Kings Bay	Watercraft.

Manatee viewing activities provide a significant source of revenue to the local economy (Buckingham 1990, p. 6). Local eco-tour businesses bring visitors out to Kings Bay where visitors view manatees while in the water, from boats, and from other vantage points. Some manatees initiate encounters with visitors, but most manatees avoid or ignore encounters with people, preferring to frequent manatee sanctuaries where all human activities are prohibited. Some manatees are harassed by visitors, despite the fact that all forms of harassment are prohibited by law.

Hartman (1979, pp. 128–131) was the first to observe and describe how manatees respond to the presence of people in the water, observing that most manatees tended to avoid people, some ignored people, a few approached people and then left, and some approached and initiated interactions with people. These observations were made in Kings Bay's warm water springs and the author correlated a reduction in the number of manatees using the Main Spring with an increasing number of people (Hartman 1979, p. 131). Concern has been expressed about manatees displaced from warm water springs for prolonged periods of time; prolonged exposure to cold can be fatal to manatees, especially for smaller animals (O'Shea 1995, p. 304). Hartman (1979, p. 126) believed that manatees in Kings Bay are harassed by people in the water and by boats.

Researchers have observed and documented manatee responses to people and boats (Sorice *et al.* 2003, p. 324). Researchers noted increases in swimming, milling, and cavorting behaviors and decreases in resting, feeding, and nursing behaviors in the presence of increasing numbers of people and boats (Abernathy 1995, pp. 23–26; Wooding 1997, p. 1; King and Heinen 2004, pp. 230–231). They also observed that increases in numbers of boats and people prompted manatees to use other areas (Kochman *et al.* 1985, pp. 922–924; Buckingham *et al.* 1999, p. 514). However, none of these studies' observations of manatee responses to viewing participants and boats suggest that harm (killing or injuring of manatees) has occurred or is occurring (Sorice *et al.* 2003, p. 320). Nor have there been any significant increases in the number of cold-related injuries and mortalities in the northwestern Florida region, even in the recent extreme cold events, which killed large numbers of manatees in other portions of the winter range. For example, in the 2009–2010 winter cold event, only two deaths due to cold stress were recorded in Citrus County while to the south in Lee County, 24 manatee deaths were reported due to cold stress (FWC FWRI Manatee Mortality Database 2011 Web site). Manatee survival rates in the northwestern region are among the highest in Florida (Runge *et al.* 2007, p. 20).

Observations of manatee harassment in Kings Bay prompted the Service to promulgate a rule in 1979 that allowed the agency to designate manatee protection areas where certain waterborne activities, including boating and swimming, could be prohibited in order to "reduce the incidence of manatee injuries and deaths" and to "lessen the likelihood that manatees will encounter boats and people" (44 FR 60964; October 22, 1979). Subsequently, three manatee sanctuaries were designated in Kings Bay in 1980 (45 FR 74880; November 12, 1980) and, in 1983, the Service purchased lands in and around Kings Bay and established the Crystal River NWR for the purpose of protecting manatees and to educate the public about manatees.

In 1994, citing a doubling of the number of manatees in the area since 1980, a large increase in the number of visitors, the inability of the existing sanctuaries to provide sufficient shelter for manatees, and reports of increasing manatee harassment, the Service designated three additional sanctuaries in Kings Bay to prevent the take of manatees by harassment (59 FR 24654; May 12, 1994). This expansion was

followed by the addition of another sanctuary in 1998, similarly justified by reports of increasing harassment and observations of increasing numbers of manatees, increasing numbers of recreational divers and snorkelers, and insufficient space for manatees to rest, free from harassment (63 FR 55553; October 16, 1998: See Table 2.).

TABLE 2—INFORMATION JUSTIFYING PREVIOUS MANATEE SANCTUARY DESIGNATIONS IN KINGS BAY, FLORIDA

Date of Kings Bay manatee sanctuary designations	Approximate number of manatees using Kings Bay	Estimated number of people viewing manatees	Number of sanctuary designations new (total)
November 12, 1980 (45 FR 74880)	100	30,000 to 40,000	3(3)
May 12, 1994 (59 FR 24654)	240	60,000 to 80,000	3(6)
October 16, 1998 (63 FR 55553)	250	100,000	1(7)

Over the last 30 years (1980–2010), the Service and the State of Florida have created a network of manatee protection areas within the Kings Bay area. This network was designed to prevent the take of manatees by waterborne activities, including but not limited to, boating and manatee viewing activities, and was established to allow manatees to continue to gain access to critical warm-water areas and important resting and foraging areas. During the manatee season (November 15 through March 31), the network includes seven Federal manatee sanctuaries (which are described in our regulations at 50 CFR 17.108(a)(1)–(a)(7)) and five State manatee protection zones (as described in Chapter 68C–22, ''The Florida Manatee Sanctuary Act'' (2010)).

The seven Federal sanctuaries are located at heavily–used winter, warm-water sites (springs) and foraging areas and preclude all waterborne activities within their boundaries, preventing take from both boating and manatee viewing within these areas. The State protection zones include year-round idle and slow-speed zones that prevent the take of manatees from high-speed watercraft collisions. Given the State's statutory responsibilities for balancing the needs of manatees with the needs of the boating community, the State designated a 35-mile per–hour (mph) (daytime)/25 mph (nighttime) watersports area (watersports area) in Kings Bay between May 1 and August 31. This area encircles Buzzard Island in the center of the bay.

This network of manatee protection areas is enforced by Service, State, and local law enforcement officers. Extensive outreach and education programs support the protection area network, encouraging the public who engage in waterborne activities, including boating, manatee viewing activities, and others, to avoid taking manatees.

Summary of Comments and Recommendations

In the June 22, 2011, proposed rule (76 FR 36493), we requested comments concerning any aspect of the proposal and the accompanying draft Environmental Assessment (EA) that might contribute to development of the final decision on the proposed rule. A 60-day comment period was provided. We sent notifications and other informational materials about the proposal to Federal and State agencies, Congressional representatives, conservation groups, local governments, local commercial diving operations, and numerous private citizens who may be affected or had expressed an interest in receiving further information on the proposal. In accordance with our policy on peer review, published on July 1, 1994 (59 FR 34270), we also provided copies of the proposed rule to three appropriate independent peer reviewers.

We published a legal notice in the Citrus County Chronicle newspaper on June 24, 2011, announcing the proposal and availability of the draft EA, inviting public comment on both, and announcing the schedule for the informal open house and formal public hearing. Informational flyers were also distributed by the Crystal River National Wildlife Refuge (NWR) staff and friends group to all waterfront properties adjoining Kings Bay, as well as other nearby residences, and copies were mailed to the NWR's Comprehensive Conservation Plan development stakeholder and interested party list.

We held a public informational open house and formal public hearing at the College of Central Florida—Citrus Campus, CF Conference Center in Lecanto, Florida, on July 7, 2011. The public hearing was attended by 169 people, not including Service staff. Of the 49 hearing attendees who signed up to speak, 42 provided oral comments (including 15 local officials).

During the comment period, we received 415 written comments and 42 oral comments. A number of reviewers attached supporting documents such as petitions with multiple signatures or member form letters. Overall, comments came from individuals, conservation organizations, property owners, dive shop owners, tour operators, business owners, local officials, and other stakeholders. The majority of the comments expressed support for or opposition to the proposed manatee refuge without any substantive data or information provided for Service consideration.

Those expressing support generally either supported the rule as proposed, with some minor modifications and suggestions for improving education, or expressed concerns that it was not extensive enough. Those expressing opposition cited a broad range of concerns including riparian property rights, lack of alternatives considered, perception that the public was not involved earlier in the process, recreational user safety, and perceived economic effects. In some cases those in opposition generally supported most of the winter aspects of the rule but not the year-round watercraft restrictions. Analysis of all comments received is summarized in the main issues that are identified and discussed below.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from three knowledgeable individuals with expertise in various aspects of the rule. We received responses from two of the peer reviewers. The peer reviewers generally concurred with our proposal and its content. One provided an additional economic reference, which was incorporated into the EA. Another recommended protection of an additional spring (Hunter Spring) but did not provide accompanying justification. The Service does not have

sufficient information to justify its inclusion at this time.

Public Comments

In responding to public comments, the Service has grouped similar comments into a single cohesive comment/response in order to provide greater clarity to the reader. We have not addressed or included comments that were unrelated to the rule, for example, comments about critical habitat designation. Finally, there were comments that were unrelated to the mechanics or effects of the rule such as perceptions, motives, etc. These comments are not addressed in the final rule but may be addressed in outreach materials accompanying the release of the final rule.

(1) *Comment:* With the increased number of manatees using Kings Bay, the death of one manatee should be acceptable.

Our Response: The available data show that, in several years, one or more manatees have been killed or harassed; the Service is establishing the manatee refuge in Kings Bay with the intent of reducing those impacts. All take (as defined by the ESA and the MMPA) of manatees, including take by harassment, is prohibited by Federal law.

(2) *Comment:* The Service did not fully engage the public in the Federal rulemaking process.

Our Response: In accordance with 50 CFR 17.100–108, we issued an emergency rule on November 9, 2010 (75 FR 68719) to establish Kings Bay as a manatee refuge to prevent the imminent take of manatees by waterborne activities. We held four informational meetings with the community to provide the public with information on the next steps in the regulatory process as well as for the exchange of useful information. These meetings were held on November 16, 18, and 20 and December 2, 2010, at the Plantation Inn and Golf Resort, Crystal River, FL, to initiate the process of formalizing the manatee emergency regulation. On June 22, 2011 (76 FR 36493), we proposed to establish Kings Bay as a manatee refuge as defined under 50 CFR 17 subpart J and announced a public hearing on this proposed rule. A 60-day public comment period was provided. On July 7, 2011, we held the public hearing at the College of Central Florida—Citrus Campus, CF Conference Center in Lecanto, Florida. As stated above, the public hearing was well attended, and overall we received 415 written comments and 42 oral comments from interested parties. We have worked closely with the public and the State of Florida and fully engaged the public in the rulemaking process in accordance with applicable laws and regulations. We have thoroughly evaluated and considered comments received and incorporated edits to the regulation where appropriate.

(3) *Comment:* The establishment of Kings Bay as a manatee refuge is an expansion of the Federal Crystal River National Wildlife Refuge.

Our Response: The manatee protection area (manatee refuge) established in Kings Bay through this final rule does not alter the boundary of the existing Crystal River National Wildlife Refuge, although it does overlap with part of this National Wildlife Refuge. It is an area established in accordance with 50 CFR 17.100–108, subpart J, the sole purpose of which is to prevent the take of one or more manatees from waterborne activities being conducted in the area. As previously defined, ''manatee refuges'' are established solely to prevent the take of one or more manatees. They are protection areas designated in the water and are not land acquisitions or land parcels. No ownership of the waterways or submerged lands is transferred as a result of establishing a manatee protection area (i.e., a manatee refuge or manatee sanctuary). National Wildlife Refuges, on the other hand, are part of the Federal National Wildlife Refuge System. These are Federal lands set aside to conserve America's fish, wildlife, and plants through the National Wildlife Refuge System Improvement Act of 1997. The manatee protection area (manatee refuge) established in Kings Bay through this final rule is also *not* an expansion of an existing Federal Crystal River National Wildlife Refuge. The Crystal River National Wildlife Refuge Fish and Wildlife Service staff is only associated with this manatee refuge because they will be a part of the team that implements the management activities detailed in this rule, as they currently are for the seven existing Federal seasonal manatee sanctuaries in Kings Bay.

(4) *Comment:* The establishment of Kings Bay as a manatee refuge will stop all boating activity and recreation.

Our Response: Designating Kings Bay as a manatee refuge pursuant to 50 CFR 17.100–108, subpart J, will not stop all boating and recreational activity. It provides for specific prohibitions, including speed and anchoring restrictions, time and area prohibitions, and prohibited activities such as chasing manatees, to avoid and minimize the harassment of manatees. However, boating, fishing, kayaking, and other forms of recreation are still allowed within all or portions of the manatee refuge, except in manatee sanctuaries and temporary no entry areas while they are in effect, as defined in the rule portion of this regulation.

(5) *Comment:* The proposed designation of Kings Bay as a manatee refuge infringes on property rights of homeowners that own property on the banks of Kings Bay. The establishment of Kings Bay as a manatee refuge will require homeowners on Kings Bay to get a permit.

Our Response: Manatee protection areas (manatee sanctuaries) were established in Kings Bay in 1980, 1994, and 1998. With all of these rules, exceptions were allowed for homeowners that own property on the banks of Kings Bay adjoining manatee sanctuaries or no-entry areas to continue to use waterways to go from and to their property under idle speed. They have also continually been allowed to maintain their property. Homeowners that own property as described above under these prior rules were not required to get a permit. Under these past rules, they notified the Crystal River NWR office and received a no-cost sticker to identify their watercraft. Some of these homeowners on Kings Bay already have identification stickers. When effective, this final rule for Kings Bay allows similar exceptions to all riparian property homeowners (their guests, employees, and designees including contractors and lessees) whose property adjoins a manatee sanctuary or no-entry area so they can retain their watercraft access and conduct property maintenance. This final rule also employs a similar no-cost sticker and no-cost letter of authorization program that has been used in the area for many years. The letter of authorization for contractors and designees is a process to help and protect homeowners as well. These stickers and/or letters are not required for those riparian property homeowners (their guests, employees, and designees including contractors and lessees) with Kings Bay property that does not adjoin a manatee sanctuary or no-entry area.

(6) *Comment:* Several comments related to the human safety aspects of the proposal. Some commenters expressed concern that, by closing the summer watersports zone, recreational watercraft operators would be forced into the narrow channel of Crystal River proper. Others expressed concern that the current watersports zone is unsafe because of the high number of users and the speed at which watercraft are being operated. Some commenters suggested that a reduced watersports zone could

increase safety for manatees while not forcing too much recreational activity into the river.

Our Response: We have fully evaluated comments shared by the public in and around Kings Bay and other concerned stakeholders in relation to actions being considered for implementation that were identified in the Services' June 2011 proposed rule. These concerns led us to seek and review Florida Fish and Wildlife Conservation Commission boating accident records in Crystal River and Kings Bay. Review of that information revealed that, since 2000, eight boating accidents have been reported in Kings Bay. Those accidents resulted in four injuries. In Crystal River, 24 accidents have been reported since 1998. Those accidents resulted in 12 injuries and 1 fatality.

As part of our evaluation of comments, the Service worked with the U.S. Coast Guard (USCG) to evaluate the human safety aspects of the proposed rule. In an October 7, 2011, memorandum, the USCG (and confirmed by FWC by letter of December 8, 2011) conveyed their concern that the proposed closure of the watersports zone is likely to result in the displacement of high-speed watercraft activity into the Gulf of Mexico and the connecting waters of Crystal River, with the latter being the more likely of the two options due to the 2-hour transit time from Kings Bay to the Gulf. Crystal River has a narrow high-speed channel. In working with the USCG, we concluded that an increase in traffic such as might occur with implementation of our proposed rule is likely to result in unsafe conditions for watercraft operators by increasing the density of boaters in a smaller area and, therefore, the danger of boating safety infractions and marine accidents including vessel collisions, potentially involving serious bodily injury. We worked with the USCG to ensure that the manatee protection area designated through this rule both prevents the take of one or more manatees and alleviates the human safety issues raised in public comments.

The Service examined seasonal manatee use data (i.e., numbers of manatees seen and when they were seen) in the watersports zone on a monthly basis from May through August for a period of 13 years (1999–2011); 69 surveys in all (Crystal River NWR unpublished data). Manatee use was highest during May (23.7 manatees/survey), declined in June (16.8 manatees/survey), July (17.5 manatees/survey), and the first half of August (11.0 manatees/survey), and increased in the latter half of August (19.4 manatees/survey). Coincidentally, the period of least manatee use also matched the timeframe when the least experienced boaters would be most likely to be on the water, the public school summer vacation period.

The Service also examined manatee area use data (i.e., numbers of manatees seen and their locations) in various portions of the watersports zone for this same time period. Manatees are found throughout Kings Bay; however, some portions of Kings Bay appear to have less frequent use than others, such as a portion of the bay north of Buzzard Island. Manatee use during the months of May through August, was greatest (approximately 60 percent of all observations) in the waters east, west, and south of Buzzard Island. The waters along the south, west, and north shorelines in that portion of Kings Bay north of Buzzard Island combined encompassed approximately 15 percent of all observations. The remainder of the waters north of Buzzard Island encompassed approximately 25 percent of the manatee observations (Crystal River NWR unpublished data).

We, therefore, considered the best available information, including manatee area and seasonal use within the Bay, and concluded that we could still meet the regulatory requirements of 50 CFR 17.100–108, subpart J, while also considering the human safety aspects by modifying the proposed rule to continue to allow some level of high speed watercraft recreation in Kings Bay. The final rule reflects these modifications that are within the scope of the proposed rule. Further, as confirmed in a memorandum to the Service dated November 8, 2011, these modifications alleviate the USCG's concerns regarding the proposed rule. Specifically, watercraft will be able to operate at high speed, not to exceed 25 mph, in a portion of Kings Bay generally north of Buzzard Island from June 1 through August 15 during daylight hours (sunrise to sunset). Slow-speed operation is required from sunset to sunrise during this period and at all times from August 16 through May 31. Manatees in Kings Bay are known to approach anchored boats for various and sometimes unknown reasons (*e.g.,* to rub on the anchor line, seek cover, etc.). Therefore, we added a protection measure in the high-speed area through a prohibition against anchoring a vessel in the area (except in emergency situations) while the zone is in effect, which will avoid creating an attractive nuisance. A secondary benefit of this manatee protection measure is that it enhances the value of the area for safe waterborne recreation by precluding anchorage of vessels in the high-speed area during the defined time period. Currently, this area is a location where recreational vessels are anchored for extended periods and this effectively limits high-speed recreation in the widest portion of the Bay, causing recreationists to use the more constricted portions of the watersports area.

The modifications to the rule will allow continued use of a portion of Kings Bay for high-speed recreation and, therefore, is less likely to result in additional recreational pressure in Crystal River during this peak summer recreation period. The modifications also coincide with the period of least manatee use based on available occurrence data (Crystal River NWR 2011, unpublished data). The area north of Buzzard Island provides the most open space available for watercraft operation in Kings Bay and is of less value to manatees for feeding, breeding, and sheltering (Crystal River NWR unpublished data). The waters to the east, west, and south of Buzzard Island that will become a year-round slow-speed zone generally have a greater density of manatee occurrences during the summer months, are shallower, and likely contain more submerged aquatic vegetation than the waters to the north of the island.

The *''Speed and anchoring restrictions''* portion of the rule provides for slow speed shoreline buffers along the south, west, and north shorelines in the portion of Kings Bay north of Buzzard Island. This provision allows the Service to protect the areas most frequented by manatees and to allow a safe operating area for recreational vessels. Based on our estimates of the location of these buffers relative to manatee observational data, we believe the final rule provides significant improvements in manatee protection over current conditions. It provides the same level of manatee protection as the June 2011 proposed rule during 47 days of May and August when the bay is slow speed throughout. During June, July, and the first half of August (76 days total), boats will be required to travel at slow speed where manatees are most likely to occur east, west, and south of Buzzard Island (approximately 60 percent of the observed locations) and along shorelines north of Buzzard Island (approximately 15 percent of the observed locations; Crystal River NWR unpublished data). As a result of the changes to the rule, which prohibits mooring and anchoring in the area north of Buzzard Island from June 1 to August 15, we also believe there will be fewer

manatees (currently, this area supports approximately 5 percent of observed locations; Crystal River NWR unpublished data) in the area where boats have historically anchored and moored which will also increase manatee protection in the 25 mph area. In total, we estimate that the final rule will provide at least 84 percent of the slow-speed benefits of the proposed rule (100 percent for 47 days and 75 percent for 76 days) and could reduce the potential risk of manatee mortality and injury by this fraction as the result of legal vessel operation. We believe the final rule will prevent the take of one or more manatees and resolves the safety concerns expressed by the public and confirmed by the USCG and FWC. Therefore, the Service is exercising its discretionary authority under 50 CFR subpart J to establish this manatee protection area.

(7) *Comment:* One reviewer commented that slowing boat speeds will not protect manatees.

Our Response: Slowing vessels allows increased reaction time for both boaters and manatees to avoid each other. It also minimizes the amount of force involved should a collision occur. Blunt force trauma is a significant factor in the deaths of manatees and injuries in collisions with boats.

(8) *Comment:* The definition of slow speed in the rule should be modified to include the aspect of ''no wake'' and should be modified to define a certain miles per hour.

Our Response: The Service uses definitions of watercraft operation speeds that are consistent with those of the State of Florida. We do not have any information to indicate that addition of ''no wake'' and a set miles per hour limit would offer further protection than the current definition in use.

(9) *Comment:* We received comments that there is not enough information to support establishing a temporary no-entry area around House and Jurassic Springs as well as comments that requested greater protection for these springs in the form of sanctuaries.

Our Response: As many as 20 animals have been seen in each of these sites on particularly cold days (J. Kleen, Crystal River NWR, 2010, pers. com.). Based on the best available information, including manatee use data, we believe that having the ability to establish temporary no-entry areas in House and Jurassic Springs will prevent the take, including harassment, of one or more manatees. These temporary no-entry areas will not be established in these spring areas when manatees are not present. Establishment of temporary no-entry areas will be based on aerial survey observations of manatees using the existing sanctuary sites, current weather information, and other sources of credible, relevant information. Depending on the winter season, House and Jurassic Springs may not have to be temporarily closed to entry or may only need to be closed for a time less than the duration of the winter season. In relation to greater protection, manatee use at these Springs is also expected to increase with less disturbance and future growth of the manatee population. At this time, the evidence does not support a determination that establishment of permanent sanctuaries is necessary to prevent the taking of one or more manatees. We will work closely with the local, State, and Federal officials and the local community if rule changes are considered in the future.

(10) *Comment:* The Service should specify specific air and water temperatures and tidal conditions that are necessary before an early or late creation of any temporary no-entry area could occur.

Our Response: Creation of any temporary no-entry area will be made only after an evaluation of a number of factors. The designation of temporary no-entry areas in advance of or after the regular manatee winter season will be made based on presence of manatees as identified by aerial survey observations of manatees using the existing sanctuary sites, and current weather information including air and water temperature and forecast duration of the cold event. Tidal conditions are not a factor in considering these designations.

(11) *Comment:* Some reviewers commented that we are only establishing the Kings Bay manatee refuge because of the threat of court action against the Service from several environmental groups.

Our Response: In designating the Kings Bay manatee refuge, the Service is guided by the provisions of 50 CFR 17.100–108.

(12) *Comment:* Some reviewers commented that, with the manatee population increasing, there is no need for establishing a Federal manatee refuge in Kings Bay, Citrus County, Florida.

Our Response: Both the ESA and MMPA prohibit the take, including incidental take, of manatees without appropriate authorization, which, to be obtained, must meet certain findings made under these Acts. Preventing the take of manatees as a result of watercraft collisions is a top priority in manatee recovery and management programs because of the overall value of this area to recovery, and the risk of take from harassment and watercraft. This action is consistent with prior Service rulemaking. After evaluating the best available information, we have determined that designation of this area as a manatee refuge is warranted pursuant to 50 CFR 17.100–108.

(13) *Comment:* Kings Bay as a whole and the channel proper that feeds into Kings Bay should be established as a manatee sanctuary.

Our Response: At this time, there is not substantial evidence to support the establishment of a manatee sanctuary throughout Kings Bay or the Crystal River channel proper that feeds into Kings Bay. Establishment of such a designation would unnecessarily restrict recreational opportunities within the Bay.

(14) *Comment:* Several reviewers commented that harassment as defined by these more specific prohibited activities should be added to 50 CFR 17.102 and that these prohibited actions that clarify take of manatees should apply everywhere it occurs and should be clarified in the rule.

Our Response: With the publication of this final rule, 50 CFR part 17 will be amended as noted in the Regulation Promulgation section of this rule. The Director may establish manatee protection areas whenever there is substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees. Defining ''harassment'' under 50 CFR 17.102 is outside the scope of this rule. We have substantial evidence that the prohibited behaviors specifically identified in this rule can and have resulted in take of manatees in Kings Bay. It is not clear that extending the prohibitions beyond Kings Bay is warranted at this time, and in any case, goes beyond the scope of the rule. We will work closely with the local, State, and Federal officials and the local community if rule changes outside of Kings Bay are considered in the future.

(15) *Comment:* Some reviewers expressed confusion about the proposed prohibition against using mooring or float lines that can entangle manatees. Comments were also received suggesting that this line prohibition should apply everywhere the manatee occurs.

Our Response: The intent of the prohibition against the ''use of mooring and float lines that can entangle manatees'' was to prevent one or more manatees from being injured or killed from entanglement in such lines that have been abandoned or are not regularly checked and could, therefore, become an entanglement hazard. We recognize, however, that our intent was not clearly articulated in the proposed

rule. Entanglements are a threat to manatees in Kings Bay. In our attempts to clarify this proposed prohibition, we have recognized that this threat and solutions toward this threat need additional consideration. Implementing this provision at this time is not practical for several reasons (*e.g.,* uncertainty regarding identification and availability of appropriate materials, application for different uses, and enforceability). Our goal of the proposed prohibition was the removal of derelict line sources and to encourage all operators to regularly check lines that are secured in Kings Bay. Through improved outreach, we are going to encourage all operators to help us meet this goal. We intend to work with the community and researchers to assess and evaluate equipment (line, connections, traps) solutions that are feasible and evidence suggests will help reduce manatee entanglements. Until we can accomplish that, other measures, such as fishing line recycling programs and the State of Florida's derelict crab pot removal program, are already in existence within Kings Bay to provide means for reducing the number of lines discarded in this area. Therefore, we have modified the rule to remove this proposed prohibition.

(16) *Comment:* Comments expressed the opinion that the Service does not have the resources to enforce the prohibitions and restrictions within the Kings Bay manatee refuge. Similarly, we received comments suggesting that enforcement should be increased in Kings Bay before additional protections are implemented.

Our Response: Both State and Federal law enforcement agents are authorized to enforce these regulations, and enforcement is a valuable tool to reduce take from noncompliant activity. The watercraft speed restrictions address the potential for accidental take associated with currently legal activities. Increased enforcement of existing laws would not prevent these injuries and deaths.

(17) *Comment:* Numerous comments stated the need to improve education for all parties who participate in waterborne activities within Kings Bay.

Our Response: Education and public awareness are important elements in the ongoing efforts to protect and recover manatees. In addition, our analysis of the best available information indicates that establishment of manatee protection areas and their requisite enforcement are equally important components in the comprehensive approach toward manatee protection. We will continue to work with the local community to increase education and public awareness of these regulations and restrictions.

(18) *Comment:* Some reviewers commented that elimination of the summer watersports zone will adversely impact the economy by reducing property values, certain forms of recreation, and tourism. Others commented that the proposal will support economic growth through increased ecotourism in the summer. One commenter pointed out the savings in costs from rescuing and caring for injured manatees.

Our Response: The net economic effect of the rule, whether positive or negative, is expected to be minimal. There is little debate that manatees are an economic asset to the community, but the extent to which that value may increase in summer months is unknown. The changes in the slow-speed requirements for safety purposes will have the secondary effect of buffering potential adverse economic effects through lost use. The rule will reduce the duration when certain waterborne activities may take place by 38 percent, but will maintain the opportunity for such recreation during the peak summer use period. It will remove some areas where high-speed watercraft operation can take place but improve opportunities for such recreation in other areas. It will increase and enhance the opportunities for other forms of waterborne recreation such as kayaking or canoeing, swimming, diving, and wildlife observation immediately east, south, and west of Buzzard Island. We know that the most recent annual reimbursement by the State to rehabilitation facilities for the cost of rescue and care for injured or distressed manatees is $1.15 million. Any incremental reduction in manatee injuries will represent a cost savings.

(19) *Comment:* One reviewer commented that the manatee mortality statistics in the rule and Environmental Assessment are inaccurate.

Our Response: The statistics have been reviewed and have been revised in this final rule to be current and accurate at the time of publication.

(20) *Comment:* One reviewer commented that the refuge establishment will prevent dredging.

Our Response: Manatee-safe procedures are currently required for all dredging activities in Florida where manatees are found. The rule does not impose additional restrictions on dredging.

(21) *Comment:* Several comments stated that the rule should incorporate additional protected areas both within and beyond the refuge and noted that the Service is not closing access to the ''keyhole'' in Kings Spring, a marked corridor within the Banana Island Sanctuary that currently allows access to swimmers and divers while the sanctuary is in place.

Our Response: The Service does not believe that additional closures are warranted within the manatee refuge and closures outside of the manatee refuge are beyond the scope of this rule. The Service believes that the rule is sufficient to prevent the take of one or more manatees and is, therefore, compliant with our discretionary authority. We believe swimming and diving can be allowed in the ''keyhole'' without harassing manatees. However, should swimming, diving, or both in the keyhole prove to be a problem, the Service has authority to close public access without additional rulemaking, as this area is Federally-owned and administered by the Service.

(22) *Comment:* Several comments suggested additional rules for in-water behavior relative to specific approach distances, touching of manatees, gear requirements or prohibitions, and passive observation.

Our Response: In order for the Service to implement and enforce a restriction we must be able to demonstrate substantial evidence that the activity results in ''take.'' As such, the rule prohibits numerous types of contact with manatees that will result in take. However, we have no evidence that simply touching a manatee, or approaching a manatee within some specific proximity, or use of some specific types of gear near a manatee will necessarily result in take. The commenter also acknowledged that ''* * * interactions between certain manatees that invite contact with people may not annoy, disturb, or harm [manatees].'' Adding these prohibitions would thus exceed our authority under subpart J and MMPA. Conversely, all of the prohibitions in the rule can be shown to result in take and will collectively allow us to prevent illegal take, and violations can be successfully prosecuted.

(23) *Comment:* Some reviewers suggested that the Service delay implementation and create a stakeholder committee to develop a solution.

Our Response: Prior to development of this final rule, we held four public meetings and one public hearing. No specific alternative solutions were submitted during these public meetings, subsequent to these meetings, or during the public comment period, despite the request for such information. We coordinated with Law Enforcement, FWC, and the USCG. The Service

considered alternative configurations for the final rule in coordination with the USCG and incorporated the changes that maximize manatee protection while addressing human safety concerns that were brought to our attention during the proposed rule comment period. Finally, the Service, as part of our mission, supports fishing, boating, and other outdoor recreation. In the future, if there is a technological means or other alternative that will protect manatees to the extent provided in the rule and allow us to lift some or all of the prohibitions, we will modify the manatee refuge and/or its prohibitions.

Summary of Changes and Clarifications

(1) The proposed prohibition on use of mooring and float lines at paragraph (c)(14)(ix)(M) was removed. Entanglements are a threat to manatees in Kings Bay. In our attempts to clarify this proposed prohibition, we have recognized that this threat and solutions toward this threat need additional consideration. Implementing this provision at this time is not practical for several reasons (*e.g.,* uncertainty regarding identification and availability of appropriate materials, application for different uses, and enforceability). Our goal of the proposed prohibition was the removal of derelict line sources and to encourage all operators to regularly check lines that are secured in Kings Bay. Through improved outreach, we are going to encourage all operators to help us meet this goal. We intend to work with the community and researchers to assess and evaluate equipment (line, connections, traps) solutions that are feasible and evidence suggests will help reduce manatee entanglements. Until we can accomplish that, other measures, such as fishing line recycling programs and the State of Florida's derelict crab pot removal program, are already in existence within Kings Bay to provide means for reducing the number of lines discarded in this area. Therefore, we have modified the rule to remove this proposed prohibition.

(2) The requirement at paragraph (c)(14)(ii)(A) in reference to Three Sisters Springs was changed from ''no entry'' to prohibiting all waterborne activities during nighttime hours. Additionally, the timeframe was revised from specific hours to ''sunset to sunrise.'' The reference to ''waterborne activities'' is necessary to ensure that we are within our authorities under subpart J. This minor revision in hours is necessary to accomplish the intent to restrict activities during darkness when manatees cannot be seen and avoided and human activities cannot be monitored by enforcement officials.

(3) As described in comment 6 and its response (above), we received numerous comments concerned that implementing a portion of the June 2011 proposed rule would result in human safety issues. The Service worked with the USCG (later confirmed by FWC) to evaluate the human safety aspects of the proposed rule and concluded that the proposed closure of the watersports zone is likely to result in the displacement of high-speed watercraft activity into the Gulf of Mexico and the connecting waters of Crystal River, with the latter being the more likely of the two options due to the 2-hour transit time from Kings Bay to the Gulf. Crystal River has a narrow high-speed channel, and we concluded that an increase in traffic such as might occur with implementation of our proposed rule is likely to result in unsafe conditions for watercraft operators by increasing the danger of boating safety infractions and marine accidents including vessel collisions, potentially involving serious bodily injury.

We, therefore, reconsidered the substantial evidence showing that such establishment is necessary to prevent the taking of one or more manatees, including manatee area and seasonal use within the Bay, and concluded that we could still meet the regulatory requirements of 50 CFR 17.100–108 while also considering human safety by modifying the proposed rule to continue to allow some level of high speed watercraft recreation in Kings Bay. The final rule reflects these modifications that are within the scope of the proposed rule. Specifically, watercraft will be able to operate at high speed, not to exceed 25 mph, in a portion of Kings Bay generally north of Buzzard Island from June 1 through August 15 during daylight hours (sunrise to sunset). Slow-speed operation is required from sunset to sunrise during this period and at all times from August 16 through May 31. Manatees in Kings Bay are known to approach anchored boats for various and sometimes unknown reasons (*e.g.,* to rub on the anchor line, seek cover, etc.). Therefore, we added protection measures in the high speed area through a prohibition against anchoring a vessel in the area (except in emergency situations) while the zone is in effect, which will avoid creating an attractive nuisance. A secondary benefit of this manatee protection measure is that it enhances the value of the area for safe waterborne recreation by precluding anchorage of vessels in the high-speed area during the defined time period. Currently, this area is a location where recreational vessels are anchored for extended periods and this situation effectively limits high-speed recreation in the widest portion of the Bay, causing recreationists to use the more constricted portions of the watersports area.

The modifications to the rule will allow continued use of a portion of Kings Bay for recreation and, therefore, are less likely to result in additional recreational pressure in Crystal River during this peak summer recreation period. The modifications also coincide with the period of least manatee use based on available occurrence data (Crystal River NWR 2011, unpublished data). The area north of Buzzard Island provides the most open space available for watercraft operation in Kings Bay and is of less value to manatees for feeding, breeding, and sheltering (Crystal River NWR unpublished data). The waters to the east, west, and south of Buzzard Island that will become a year-round slow-speed zone generally have a greater density of manatee occurrences during the summer months, are shallower, and likely contain more submerged aquatic vegetation than the waters to the north of the island. The final rule at paragraph (c)(14)(iii) contains these changes.

The rule greatly increases manatee protection over current conditions. The rule reduces the period of high-speed watercraft operation from 123 to 76 days. During the 76-day period (June 1 through August 15), it reduces the speed limit from 35 mph to 25 mph during the day and requires slow-speed operation at night. Based on aerial survey data (Crystal River NWR unpublished reports), this rule does not allow watercraft to travel at high speed where they are most likely to encounter manatees (*e.g.,* shallow, grassy areas). High-speed operation is confined to a timeframe and area when and where it is least likely to impact manatees. The rule allows high-speed watercraft operation during the peak human use period to prevent exacerbating human safety risks in Crystal River. It increases human safety associated with waterborne activities in portions of the manatee refuge immediately east, south, and west of Buzzard Island, which are the more confined and shallower areas of the State-designated watersports area (and where manatee use is most concentrated).

As was the case with the proposed rule, this rule does not supersede any more restrictive Federal, State, or local regulations currently in place nor does it preclude more restrictive future actions by these entities.

(4) The information standard for designating manatee protection areas is substantial evidence. As stated in 50 CFR 17.103, ''The Director may * * * establish manatee protection areas whenever there is substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees.'' This is also the legal standard for emergency designations under section 17.106. There is no indication in the subpart J regulations that information to be considered is limited to scientific or commercial (i.e., species trade) data. The substantial evidence standard means that the Service can appropriately consider any valid, reliable evidence as long as it is relevant to the question of whether the establishment is ''necessary to prevent the taking of one or more manatees.''

The Service made a minor technical error in our proposed rule. In our opening summary section, we correctly stated the substantial evidence standard and shared a summary of the substantial evidence we used on page 36494 in our proposed rule. But, in the Public Comments Solicited section of the proposed rule, we incorrectly cited the use of only the best scientific and commercial data. While we certainly use up-to-date scientific data in our evaluation as part of the evidence we consider (for example, we would not establish a manatee protection area where manatees are not documented), the standard by which we designate manatee protection areas is that we have substantial evidence that designation of the area is necessary to prevent the taking of one or more manatee(s). We wanted to clarify this technical error in this final rule.

Kings Bay—Assessment of Current Conditions

Similar to previous circumstances that warranted increases in the level of protection for manatees in Kings Bay, the number of manatees using Kings Bay more than doubled since 1998 (from 250 animals to 516 animals in December 2010, with the highest count on record of 566 in January 2010; Kleen 2011, pers. com.); the number of residents, visitors, and boats increased; and the amount of space in the existing sanctuaries became insufficient to provide this number of manatees with shelter free from harassment. In addition, the number of manatees struck and killed by boats in Kings Bay has increased since 1999.

The manatee population in northwestern Florida grew at a rate of 4.0 percent per year through 2000, based on an assessment of adult survival rates (Runge *et al.* 2004, p. 371). Consistent with this rate of increase, the number of manatees counted in the region has increased, as well. Aerial counts were first conducted during the winter of 1983–1984, when 142 manatees were sighted in Citrus County; 124 of these animals were sighted in Kings Bay and Crystal River. In January 2010, Crystal River NWR researchers counted 646 manatees in Citrus County's coastal waters, including 566 manatees in Kings Bay. This is the highest number of manatees ever counted in this region and in Kings Bay (Kleen 2010, pers. com.). Aerial observations of manatees in Kings Bay during especially cold periods include sightings of manatees within the sanctuary areas and in smaller springs. In recent years, dozens of manatees are seen sheltering just outside of the sanctuary boundaries because the sanctuaries are overcrowded. Some animals shelter in some of Kings Bay's smaller, unprotected springs, including House Spring, Jurassic Spring, and a spring just east of the mouth of Three Sisters Springs run referred to in this rule as Idiot's Delight Number 2. As many as 20 animals have been seen in each of these sites on particularly cold days (Kleen 2010, pers. com.).

The number of Citrus County residents increased by 19.8 percent (an average annual growth rate of 2.5 percent per year), from 118,085 to 141,416, between 2000 and 2008 (U.S. Census Bureau 2010 Web site). Concurrent with this increase in number of residents, the number of boats registered in Citrus County increased by 36.2 percent at an average annual growth rate of 4.0 percent per year. In 2010, there were 16,901 boats registered in Citrus County, 3,975 more than the 12,926 vessels registered there in 2000 (FDHSMV 2011 Web site). While the number of visitor-owned watercraft that are used in Citrus County waterways including Kings Bay is unknown, this number is likely increasing based on county revenue trends that describe an increasing number of visitors to the area. Revenue trends associated with businesses that cater to visitors, including Citrus County lodging and food service revenues and tourist tax revenues, have increased by 178 percent and 214 percent, respectively, over the past 10 years, suggesting an increase in the number of visitors to the area (U.S. Census Bureau 2010 Web site). Tourism surveys suggest that about half of all visitors to the area come to Citrus County to enjoy water-based activities that include manatee viewing, snorkeling, and diving (Gold 2008, pp. 4–5).

From 1974 through 2010, collisions with watercraft killed 60 manatees in Citrus County waterways, including 13 manatees recovered within the boundaries of the Kings Bay manatee refuge, as established by this rule (FWC–FWRI Manatee Mortality Database 2011 Web site). All 13 deaths occurred since 1999. In 2008, FWC recorded the highest number (eight) of manatees ever killed by watercraft in Citrus County and three of these carcasses were recovered in Kings Bay (FWC–FWRI Manatee Mortality Database Web site).

While watercraft-related deaths occur throughout the year in Citrus County, 7 of the 13 watercraft-related deaths that were recovered in Kings Bay since 1999 took place during those times of the year when the watersports area was in effect (May 1 through August 31). In May 2004, observers witnessed a boat striking a manatee in the watersports area; a carcass was recovered nearby the following day (FWC–FWRI Manatee Mortality Database 2011 Web site). Researchers are currently working on determining manatee scar acquisition rates for the Crystal River/Kings Bay manatee population, but preliminary findings suggest that propeller wounds continue to be acquired during their residency in the area (R. Bonde, peer review 2011).

Every year, manatees are entangled in fishing line, float lines, anchor and mooring lines, and other types of gear. In extreme cases, entangled manatees can die when entangling gear cuts into their hide, causing sepsis and the occasional loss of limbs. In cases when animals are superficially entangled, entangling gear is removed and the animals are released onsite. In more severe cases, manatees are transported to rehabilitation facilities where they are treated for injuries and infections associated with entanglements. There are 30 known cases of manatee entanglements from Citrus County, including 10 from Kings Bay. Fourteen of these cases include manatees entangled in crab pot float lines, including four from Kings Bay. The remaining cases from Kings Bay include four from fishing lines and two from anchor lines. County-wide records of entanglements include 24 rescues and four deaths. More than half of these are known to have occurred during the past 15 years (U.S. Fish and Wildlife Service Manatee Rescue Rehabilitation and Release Program entanglements unpubl. data). However, measures, such as fishing line recycling programs and the State of Florida's derelict crab pot removal program, are already in existence within Kings Bay to provide

means for reducing the number of lines discarded in this area.

Manatee harassment, largely associated with wintertime manatee viewing activities, occurs in Kings Bay; a variety of methods are being used to help prevent and minimize harassment from occurring. The Service, State, nongovernment organizations, and private companies prepare and distribute outreach materials to manatee-viewing recreationists to familiarize them with best practices to follow when in the water with manatees. Best practices include the ''Manatee Viewing Guidelines,'' developed by the Service and partners. Outreach materials include, among other things, handouts, kiosks, signs, and videos. The Crystal River NWR developed ''Manatee Manners,'' a video that dive shops and kayak outfitters are required to show their customers before they enter Kings Bay. These businesses take visitors to see manatees in Kings Bay, including Crystal River NWR. Under the National Wildlife Refuge System Improvement Act (16 U.S.C. 668dd–668ee), commercial interests conducting business within the NWR are required to obtain special-use permits (SUPs), which are conditioned to ensure that the permittees and their designees do not take manatees. Crystal River NWR also maintains a visitor center where guests are provided with outreach materials. The Crystal River Refuge's ''Manatee Watch'' volunteer network places volunteers in kayaks near the sanctuaries to educate visitors and report infractions when they occur.

Federal regulations include 50 CFR 17.100–108, which provide for enforcement of manatee protection measures, and State regulations include provisions of the State's Florida Manatee Sanctuary Act as codified in 68 C–22 of the Florida Administrative Code. State and Federal officers have been cross-deputized and can enforce both State and Federal regulations. The Service, State, and other law enforcement agencies actively enforce harassment regulations in Citrus County and in Kings Bay. Cited acts of harassment include trespass by manatee-viewing individuals into manatee sanctuaries where the Service has determined that any waterborne activity occurring within these areas would result in take of manatees, including but not limited to take by harassment. Indirectly, the presence of large numbers of people in the vicinity of manatees may cause some animals to abandon the area, another form of harassment. Outside of these areas, the public disturbs and occasionally harasses manatees while engaged in viewing and other waterborne activities. When observed, violators are warned or cited. State violations include boaters traveling at speeds in excess of those described by law within specific areas. Given variations in enforcement practices and recordkeeping systems, these records are not used to describe trends in harassment activity.

Summary

Based on current and historical data that document increasing numbers of manatees, waterway users, watercraft-related manatee deaths and injuries, and reports of manatee harassment in Kings Bay, we conclude that the take of manatees is occurring and increasing in this area. Sources of information include the U.S. Geological Survey, the FWC, manatee experts, the public, and peer-reviewed literature. Future take would occur without additional protection measures and we do not anticipate any alternative protection measures being enacted by other agencies in sufficient time to reduce the likelihood of take. For these reasons and based on this substantial evidence, we believe the establishment of an additional manatee protection area is needed to prevent the take of manatees. The Kings Bay manatee refuge covers the same geographical area as that defined by the November 9, 2010, emergency rule (75 FR 68719).

To prevent the take of manatees, the Service and the State of Florida have designated a network of manatee protection areas at sites throughout Florida where threats to manatees have been well-documented and where manatees are known to frequently occur. This network supports our goal of providing areas of protected habitat throughout peninsular Florida, adequate to satisfy the biological needs of the species. This network is enhanced by the establishment of an additional manatee protection area, i.e., a manatee refuge in Kings Bay, a waterbody located in Crystal River, Citrus County, Florida.

Kings Bay Manatee Refuge

Under the manatee refuge designation, specified restrictions will improve the Service's ability to address takings associated with watercraft and manatee viewing activities. Restrictions on watercraft operation will reduce the number of watercraft-related manatee deaths and injuries occurring in Kings Bay. Harassment associated with manatee viewing can be controlled through the establishment of no-entry areas not to exceed specified distances around existing manatee sanctuaries, the designation of no-entry areas at other springs when needed, and the identification of manatee refuge-specific prohibitions.

Location

The Service designates the waters of Kings Bay as a manatee refuge. These waters include that tract of submerged land that includes all waters of Kings Bay, including all tributaries and adjoining waterbodies, upstream of the confluence of Kings Bay and Crystal River, described by a line that bears North 53°00′00″ East (True) from the northeasternmost point of an island on the southwesterly shore of Crystal River (approximate latitude 28°53′32″ North, approximate longitude 82°36′23″ West) to the southwesternmost point of a peninsula of Magnolia Shores (approximate latitude 28°53′38″ North, approximate longitude 82°36′16″ West). See Map ''Kings Bay Manatee Refuge''.

The manatee refuge encompasses seven existing Federal manatee sanctuaries, described in 50 CFR 17.108: The Banana Island Sanctuary (including King Spring), the Sunset Shores Sanctuary, the Magnolia Springs Sanctuary (including Gator Hole), the Buzzard Island Sanctuary, the Tarpon Springs Sanctuary, the Warden Key Sanctuary, and the Three Sisters Springs Sanctuary. The existing sanctuaries are in effect from November 15 through March 31 (referred to as the ''manatee season''). The manatee refuge measures would be in effect in Kings Bay as described below.

Manatee Refuge Measures

The manatee refuge measures, described in more detail below, include:

- Maintaining the seven existing manatee sanctuaries where all waterborne activities are prohibited November 15 through March 31;
- Regulating watercraft speeds throughout the manatee refuge at all times;
- Prohibiting anchorage (other than emergency anchorage) of watercraft in the high-speed (25 mph) area from June 1 through August 15;
- 12 specifically prohibited activities throughout the manatee refuge at all times;
- Temporary 'no-entry' areas adjacent to existing sanctuaries and specified additional springs during the manatee season (November 15 through March 31);
- Temporary 'no-entry' areas prior to or after the manatee season during unusual cold events; and
- Exceptions for adjoining property owners and their designees.

Existing Manatee Sanctuaries

All seven currently existing manatee sanctuaries in Kings Bay, where all waterborne activities are prohibited November 15 through March 31, will remain in effect.

Watercraft Speeds and Anchorage

To prevent the take of one or more manatees killed and injured by high-speed watercraft, operating speeds in Kings Bay are regulated throughout the year. Watercraft operation is restricted to slow speed throughout the manatee refuge unless otherwise marked. In some portions of the manatee refuge, State or local regulations require watercraft to travel at idle speed. For example, during summer holiday weekends, local ordinances and USCG regulations can require watercraft to travel at restricted speeds throughout Kings Bay due to human safety concerns regarding the high volume of watercraft activity, regardless of posted zones allowing greater speed. This rule allows watercraft to travel at speeds up to 25 mph during daylight hours (slow speed at night) in a portion of the manatee refuge from June 1 through August 15. The intent of regulating watercraft speeds and slowing all watercraft down in areas most frequented by manatees is to prevent the take of one or more manatees in Kings Bay from compliant watercraft operation. Some manatees in Kings Bay are known to approach anchored boats and, therefore, anchoring boats in the high-speed (25 mph) area is prohibited from June 1 through August 15. By prohibiting anchorage of boats in the high-speed (25 mph) area during this time period, manatees will not be attracted into harm's way by seeking cover around the boats, being attracted to the discharge of bilge water, chewing on anchor lines, etc.

Manatee Viewing and Other Waterborne Activities

To prevent the take of one or more manatees associated with manatee viewing and other waterborne activities, we specify prohibitions that would be in effect throughout the year. Pursuant to the ESA and MMPA, all takings, including takings by harassment, are prohibited throughout the year, wherever they may occur. In regard to these prohibited activities, we consider a resting manatee to be a mostly motionless manatee that rises to breathe from the water bottom, in the water column, or on the water's surface. While resting, a manatee may make minor changes in its posture and may slightly shift its position. Minor changes in posture occur when manatees breathe or roll. Resting manatees may also make slight movements with their flippers or tail to compensate for draft, etc. (Hartman 1979, pp. 82–84). To prevent the take of manatees by individuals engaged in waterborne activities while in the water, in boats, or on-shore within the Kings Bay Manatee Refuge, we specifically identify and prohibit the following activities:

(i) Chasing or pursuing a manatee(s).

(ii) Disturbing or touching a resting or feeding manatee(s).

(iii) Diving from the surface onto a resting or feeding manatee(s).

(iv) Cornering or surrounding or attempting to corner or surround a manatee(s).

(v) Riding, holding, grabbing, or pinching or attempting to ride, hold, grab, or pinch a manatee(s).

(vi) Poking, prodding, or stabbing or attempting to poke, prod, or stab a manatee(s) with anything, including your hands and feet.

(vii) Standing on or attempting to stand on a manatee(s).

(viii) Separating a mother and calf or attempting to separate a mother and calf.

(ix) Separating a manatee(s) from a group or attempting to separate a manatee(s) from a group.

(x) Giving a manatee(s) anything to eat or drink or attempting to give a manatee(s) anything to eat or drink.

(xi) Actively initiating contact with a belted and/or tagged manatee(s) and associated gear, including any belts, harnesses, tracking devices, or antennae.

(xii) Interfering with rescue and research activities.

The following activities are prohibited within Three Sisters Springs from November 15 through March 31:

a. All waterborne activities in Three Sisters Springs from sunset to sunrise.

b. Scuba diving.

c. Fishing, including but not limited to fishing by hook and line, by cast net, and by spear.

Prohibited Anchoring in the High-Speed Area of Kings Bay

Some manatees in Kings Bay are known to approach anchored boats. To minimize the potential for attraction (manatees seeking cover, bilge water, etc.) into harm's way, anchorage (other than emergency anchorage) of watercraft is prohibited in the high speed (25 mph) area from June 1 through August 15.

Temporary No-Entry Areas (November 15 Through March 31)

Because there is insufficient space in the existing sanctuaries for all manatees that use Kings Bay to shelter, rest, and feed, free from harassment, we will create temporary no-entry areas outside of and adjacent to the existing sanctuaries to ensure adequate room for manatees wanting to access these sites when space is needed during the manatee season (between November 15 and March 31). This rule allows for creation of no-entry areas around one or more of the existing sanctuaries, as appropriate. The creation and removal of the temporary no-entry areas will be based on manatee usage data (such as aerial survey or on-the-water observations), current weather, and other sources of substantial information. We will also create no-entry areas around House Spring, Jurassic Spring, and Idiot's Delight Number 2 Spring when these springs are occupied by manatees in need of shelter free from harassment. With this rule, we have the ability to create temporary no-entry areas around any or all sanctuaries and specified springs for the manatee season, but we do not envision this will be necessary in all years. Temporary no-entry areas will be created at the distances specified in this rule to accommodate manatee biological needs as they use Kings Bay during cold events. The temporary no-entry areas will be posted for as long as they are necessary within the manatee season.

Temporary No-Entry Areas (April 1 Through November 14)

To prevent the take of manatees sheltering in Kings Bay from cold weather that occurs outside of the manatee season (November 15 through March 31), temporary no-entry areas under this rule can be put in effect during early onset and protracted cold weather events that occur outside of the manatee season. Manatees that appear in Kings Bay during cold fronts that pre-date the start of the manatee season are especially vulnerable to harassment because none of the sanctuaries and no-entry areas are in effect prior to November 15. Similarly, none of these measures are in effect after March 31, during those times when cold weather continues beyond this period of time. In April 2010, the Service asked the public to voluntarily stay out of existing manatee sanctuaries after the close of the manatee season due to protracted cold weather and the continued presence of manatees at these sites. While the public generally complied with the request, some people did not and manatees were harassed.

By designating temporary no-entry areas prior to November 15 and after March 31 during cold fronts when manatees are present, manatee harassment that could occur during

these times can be prevented. Designations would remain in effect for the duration of a cold front and only when there is regular manatee use; manatee presence at warm-water sites during unseasonal cold events typically lasts for several days or less. Temporary designations would remain in effect for no longer than 14 consecutive days.

Exceptions for Adjoining Property Owners and Their Designees

Public and private property owners who own property that adjoins designated no-entry areas, their guests, employees, and designees (including but not limited to contractors and lessees) will continue to be able to access their property by obtaining, at no charge, an exception from the Crystal River NWR that will allow them to operate watercraft within the adjoining no-entry area for purposes of access and property maintenance. The Crystal River NWR will continue to provide adjoining property owners and their designees with a no-cost sticker or letter of authorization that identifies their watercraft as authorized to access no-entry areas. Watercraft owned by excepted owners will be required to be marked by stickers and operate at idle speed while within a designated no-entry area. Designees with a letter of authorization would be required to have a copy of the letter in their possession and required to operate at idle speed while within a designated no-entry area.

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, the Office of Management and Budget (OMB) has determined that this rule is not a significant regulatory action. OMB bases its determination on the following four criteria:

a. Whether the rule will have an annual economic impact of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of government.

b. Whether the rule will create inconsistencies with other Federal agencies' actions.

c. Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions) (5 U.S.C. 601 *et seq.*). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities. This section presents a screening level analysis of the potential effects of the designation of a manatee protection area on small entities. We certify that this rule would not have a significant economic impact 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.

In order to determine whether the rule would have a significant economic impact on a substantial number of small entities, we utilize available information on the industries most likely to be affected by the designation of the manatee refuge. Small entities likely affected by the rule include entities whose businesses support high-speed recreational boating activities and commercial fishing. However, no current information is available on the specific number of small entities that would potentially be affected. This rule reduces the area and duration of high-speed activities from a previously existing summertime water-sports area and would add travel time to boating recreationists and commercial activities having to travel through the additional slow-speed zones. Because the only restrictions on recreational activity result from a reduction in time and space of the water-sports area and added travel time and alternative sites are available for all waterborne activities, we believe that the economic impact on small entities resulting from changes in recreational use patterns will not be significant. The economic impacts on small businesses resulting from this rule are likely to be indirect effects related to reduced demand for goods and services if recreationists choose to reduce their level of participation in waterborne activities. Similarly, because the only restrictions on commercial activity result from the inconvenience of added travel time, we believe that any economic impact on small commercial fishing or charter boat entities would not be significant. Also, the indirect economic impact on small businesses that may result from reduced demand for goods and services from commercial entities is likely to be insignificant.

Small Business Regulatory Enforcement Fairness Act

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

a. Is not expected to have an annual effect on the economy of $100 million or more. This rule may cause some inconvenience in the form of displacement and added travel time for recreationists and commercial fishing and charter boat businesses because of speed and access restrictions in this manatee refuge, but it should not translate into any significant business reductions for the many small businesses in Citrus County. Since the only restrictions on recreational activity would result from displacement and added travel time and alternative sites are available for all waterborne activities, we believe that the economic impact on small entities resulting from changes in recreational use patterns would not be significant. The economic impacts on small business resulting from this rule are likely to be indirect effects related to reduced demand for goods and services if recreationists choose to reduce their level of participation in waterborne activities. Similarly, because the only restrictions on commercial activity result from the inconvenience of added travel time, we believe that any economic impact on small commercial fishing or charter boat entities would not be significant. Also, the indirect economic impact on small businesses that may result from reduced demand for goods and services from commercial entities is likely to be insignificant.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It is unlikely that there are unforeseen changes in costs or prices for consumers stemming from this rule. The recreational charter boat and commercial fishing industries may be affected by lower speed limits for

some areas when traveling to and from fishing grounds. However, this impact is likely to be limited.

c. Would 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 due to displacement and added travel time, but the resulting economic impacts are believed to be minor and would not interfere with the normal operation of businesses in the affected county. Added travel time to traverse some areas is not expected to be a major factor that would 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 imposes no substantial 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 manatee protection area is located over Federal-, State-, or privately-owned submerged bottoms. Any property owners in the vicinity would retain navigational access and the ability to maintain their property.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. This rule will not have substantial direct effects on the State, on the relationship between the Federal Government and the State, or on the distribution of power and responsibilities among the various levels of government. 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 would 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 new collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The regulation would not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. OMB has reviewed and approved the information collection requirements associated with special use permits and assigned OMB Control No. 1018–0102. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act (42 USC 4321 *et seq.*). This final rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment and Finding of No Significant Impact has been prepared and is available on-line at *http://www.regulations.gov* (see **ADDRESSES**), or upon request (see **FOR FURTHER INFORMATION CONTACT**).

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), Executive Order 13175 and the Department of the Interior's manual at 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

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 would only require vessels to proceed at slow or idle speeds (with the exception of a posted high-speed area available June 1 through August 15) or avoid no–entry areas in 530 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

For a list of the references cited in this rule, see Docket No. FWS–R4–ES–2010–0079, available at *http://www.regulations.gov.*

Author

The primary author of this document is the U.S. Fish and Wildlife Service, North Florida Ecological Services Office (see **ADDRESSES**).

Authority

The statutory 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, as amended (16 U.S.C. 1361 *et seq.*).

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. Amend § 17.104 by revising paragraph (b) to read as follows:

§ 17.104 Prohibitions.

* * * * *

(b) *Manatee refuge.* It is unlawful for any person within a particular manatee refuge to engage in any waterborne activity which has been specifically prohibited within that refuge, or to engage in any waterborne activity in a manner contrary to that permitted by regulation within that area. Any take of manatees under the Acts (see § 18.3 of this chapter for a definition of ''take'' in regard to marine mammals), including take by harassment, is prohibited wherever it may occur.

* * * * *

■ 3. Amend § 17.108 by:

■ a. In paragraph (a)(3), removing the period at the end of the paragraph and adding in its place a comma and the words ''to be known as the Magnolia Springs Manatee Sanctuary.'';

■ b. In paragraph (a)(4), removing the period at the end of the paragraph and

adding in its place a comma and the words ''to be known as the Buzzard Island Manatee Sanctuary.'';

■ c. In paragraph (a)(5), removing the period at the end of the paragraph and adding in its place a comma and the words ''to be known as the Tarpon Springs Manatee Sanctuary.'';

■ d. In paragraph (a)(6), removing the period at the end of the paragraph and adding in its place a comma and the words ''to be known as the Warden Key Manatee Sanctuary.'';

■ e. Revising paragraph (b) to read as set forth below; and

■ f. Adding paragraph (c)(14) to read as set forth below:

§ 17.108 List of designated manatee protection areas.

* * * * *

(b) *Exceptions.* (1) Adjoining property owners, their guests, employees, and their designees (including but not limited to contractors and lessees) may engage in watercraft access and property maintenance activities through manatee sanctuaries (set forth in paragraphs (a)(1) through (a)(11) of this section) and designated ''no-entry areas'' in the Kings Bay Manatee Refuge (set forth in paragraph (c)(14) of this section). Use of sanctuary and no-entry area waters is restricted to authorized individuals accessing adjoining properties, storing watercraft, and maintaining property and waterways. Maintenance activities include those actions necessary to maintain property and waterways, subject to any Federal, State, and local government permitting requirements.

(2) Authorized individuals must obtain a sticker or letter of authorization from the U.S. Fish and Wildlife Service identifying them as individuals authorized to enter no-entry areas that adjoin their property. Stickers must be placed in a conspicuous location to readily identify authorized watercraft. Individuals with a letter of authorization must have a valid letter in their possession when accessing no-entry areas.

(3) Authorized individuals must conduct any authorized boating activity within these areas at idle or no-wake speeds.

(c) * * *

(14) *The Kings Bay Manatee Refuge.* A tract of submerged land that includes all waters of Kings Bay, including all tributaries and adjoining waterbodies, upstream of the confluence of Kings Bay and Crystal River, described by a line that bears North 53°00′00″ East (True) from the northeasternmost point of an island on the southwesterly shore of Crystal River (approximate latitude 28°53′32″ North, approximate longitude 82°36′23″ West) to the southwesternmost point of a peninsula of Magnolia Shores (approximate latitude 28°53′38″ North, approximate longitude 82°36′16″ West).

(i) *Area covered.* The Kings Bay Manatee Refuge encompasses existing manatee protection areas as described in paragraphs (a)(1) through (a)(7) of this section, and areas outside these sections as depicted on the map in paragraph (c)(14)(ii) of this section.

(ii) *Particular areas.* The following springs fall within the boundaries of the Kings Bay Manatee Refuge. A map showing the entire refuge, including these springs, follows:

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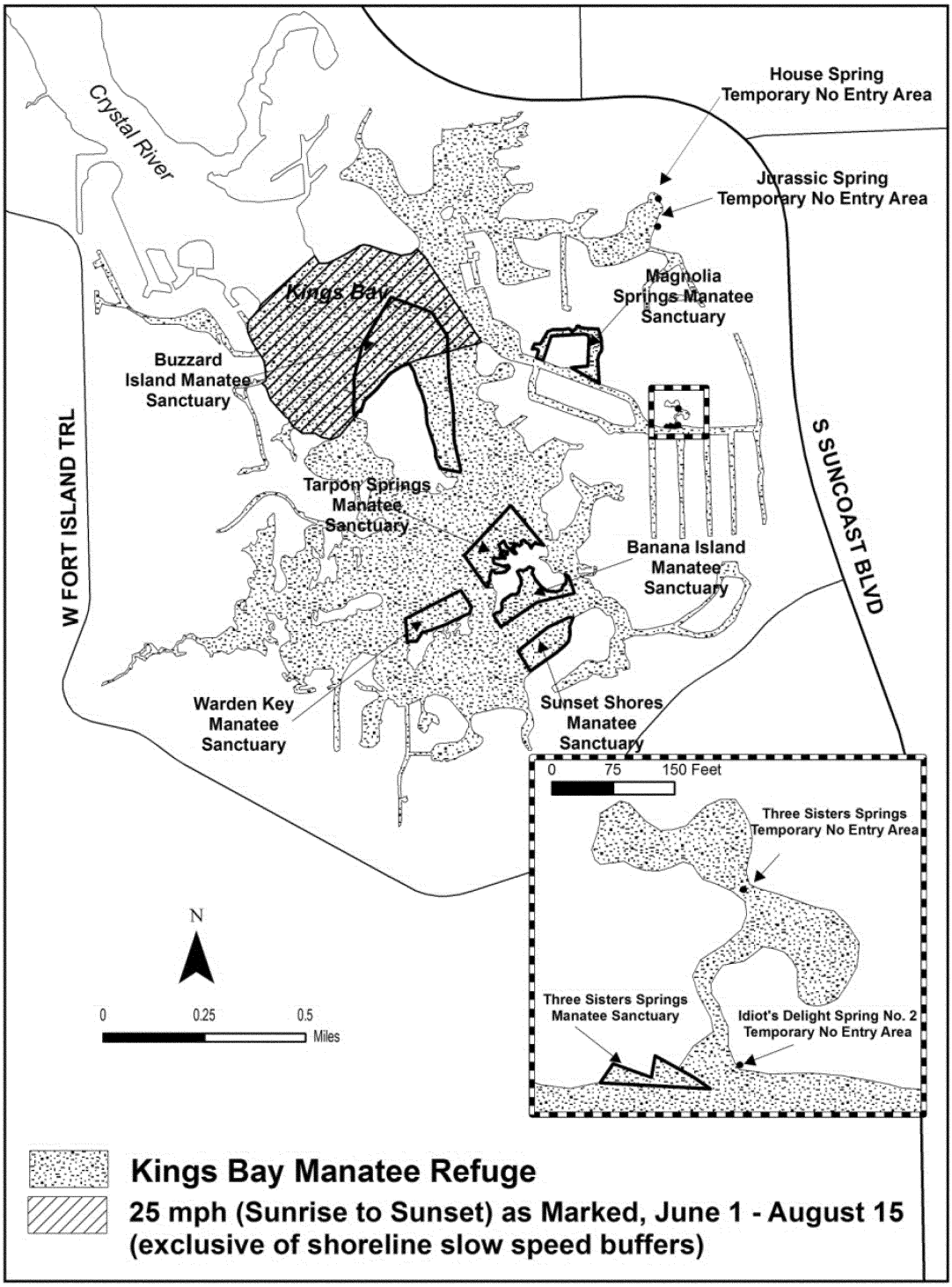

BILLING CODE 4310–55–C

(A) *Three Sisters Springs.* A tract of submerged land, lying in Section 28, Township 18 South, Range 17 East, Tallahassee Meridian, Citrus County, Florida, more particularly described as follows: For a point of reference, commence at the northwest corner of said Section 28 in an east southeast direction to the canal that begins on the west side of Southeast Cutler Spur Boulevard and runs west-northwest to Kings Bay. The spring is north and east of the northern terminus of Southeast Paradise Avenue along the northern shore of said canal. Three Sisters Springs includes three main and numerous smaller spring vents and a spring run that connects the vents to said canal in Crystal River, Citrus County, Florida. This area is not the same as set forth in paragraph (a)(7) of this section. This area is behind the sanctuary (north from the mouth of the channel) as set forth in paragraph (a)(7) of this section.

(*1*) All waterborne activities in this specific area are prohibited from sunset to sunrise from November 15 through March 31 exclusive of the provisions of paragraph (c)(14)(v) of this section.

(*2*) Scuba diving and fishing (including but not limited to fishing by

hook and line, by cast net, and by spear) are also prohibited in this specific area from November 15 through March 31 exclusive of the provisions of paragraph (c)(14)(v) of this section.

(*3*) If the provisions of paragraph (c)(14)(vi) of this section are put in effect, all waterborne activities are prohibited in this specific area for the duration established under paragraph (c)(14)(vi) of this section.

(B) *House Spring.* A tract of submerged land, lying in Section 21, Township 18 South, Range 17 East, Tallahassee Meridian, Citrus County, Florida, more particularly described as follows: For a point of reference, commence at the southwest corner of said Section 21 in an east-northeast direction to the northeasternmost corner of Hunter Spring Run. The spring is immediately west of and adjacent to Northeast 2nd Court in Crystal River, Citrus County, Florida.

(C) *Jurassic Spring.* A tract of submerged land, lying in Section 21, Township 18 South, Range 17 East, Tallahassee Meridian, Citrus County, Florida, more particularly described as follows: For a point of reference, commence at the southwest corner of said Section 21 in an east northeast direction to the eastern shore of Hunter Spring Run. The spring is immediately west of the western terminus of Bayshore Drive in Crystal River, Citrus County, Florida.

(D) *Idiot's Delight Number 2 Spring.* A tract of submerged land, lying in Section 28, Township 18 South, Range 17 East, Tallahassee Meridian, Citrus County, Florida, more particularly described as follows: For a point of reference, commence at the northwest corner of said Section 28 in an east southeast direction to the canal that begins on the west side of Southeast Cutler Spur Boulevard and runs west-northwest to Kings Bay. The spring is north and east of the northern terminus of Southeast Paradise Avenue along the northern shore of said canal just east of the southern terminus of the Three Sisters Springs run in Crystal River, Citrus County, Florida.

(iii) *Speed and anchoring restrictions.* (A) Throughout the entire year, watercraft speeds are restricted to slow speed throughout the manatee refuge with the following exceptions:

(*1*) A posted area generally north of Buzzard Island, exclusive of shoreline slow-speed buffer zones, where watercraft may travel at speeds up to 25 miles per hour during daylight hours (sunrise to sunset) from June 1 through August 15;

(*2*) Those areas where access is precluded (manatee sanctuaries, no-entry areas); or

(*3*) Areas where more restrictive speed restrictions are in effect.

(B) From June 1 through August 15, anchorage (other than emergency anchorage) of watercraft is prohibited in the posted high speed (25 miles per hour) area around Buzzard Island referenced in paragraph (c)(14)(iii)(A) of this section.

(iv) *Time and area prohibitions.* When the provisions of paragraphs (c)(14)(v) or (vi) of this section are in effect (November 15 through March 31 and April 1 through November 14, respectively), all waterborne activities, including swimming, diving (including skin and scuba diving), snorkeling, water skiing, surfing, fishing (including with hook and line, by cast net, or spear), and the use of water vehicles (including but not limited to boats powered by engine, wind, or other means; ships powered by engine, wind, or other means; barges, surfboards, personal watercraft, water skis, and any other devices or mechanisms capable of locomotion on, across, or underneath the surface of the water) are prohibited in areas that are adjacent to and within specified distances from the existing manatee sanctuaries located in Kings Bay (defined in paragraphs (a)(1) through (a)(7) of this section) and the springs defined in paragraph (c)(14)(ii) of this section: Three Sisters Springs, House Spring, Jurassic Spring, and Idiot's Delight Number 2 Spring.

(v) *Expanded temporary no-entry area (November 15 through March 31).* When manatees exceed the capacity of an existing manatee sanctuary or shift usage around an existing manatee sanctuary or shift usage to Three Sisters Springs, House Spring, Jurassic Spring, and Idiot's Delight Number 2 Spring, due to water or weather or other conditions, we will designate ''no-entry'' areas from November 15 through March 31 as appropriate and necessary around any of these sites. The determination to designate and subsequently remove no-entry areas around existing manatee sanctuaries and Three Sisters Springs, House Spring, Jurassic Spring, and Idiot's Delight Number 2 Spring within the Kings Bay Manatee Refuge will be based on aerial survey observations of manatees using the existing sanctuary sites, current weather information, and other sources of credible, relevant information. We will designate no-entry areas within Kings Bay Manatee Refuge and outside of existing sanctuaries as follows:

(A) For the sanctuaries set forth in paragraphs (a)(1) through (a)(6) of this section, to a distance not to exceed 100 feet from the existing sanctuary boundary.

(B) For the Three Sisters Springs Sanctuary, to a distance not to exceed 400 feet from the existing boundary. We do not intend to completely mark off the manmade channel. Expansions could occur directly around the existing sanctuary and north into the area locally known as Three Sisters Springs.

(C) For House Spring and Jurassic Spring, an area that does not exceed 100 feet from the associated spring vents.

(D) For Idiot's Delight Number 2 Spring, an area that does not exceed 25 feet from the associated spring vent. Any temporary designation will be configured to avoid the manmade channel in the canal and will not block access into Three Sisters Springs.

(vi) *Temporary no-entry areas (April 1 through November 14).* Temporary no-entry area designations may be made in the existing manatee sanctuaries located in Kings Bay defined in paragraphs (a)(1) through (a)(7) and paragraphs (c)(14)(v)(A) through (D) of this section prior to November 15 and after March 31 during cold fronts when manatees are present. Designations will remain in effect for the duration of a cold front and only when there is regular manatee use; temporary no-entry area designations will remain in effect for no longer than 14 consecutive days.

(vii) *Posting of temporary no-entry areas designated in accordance with paragraph (c)(14)(v) or (vi) of this section.* Additional temporary protection areas will be posted to distances as described in paragraph (c)(14)(v) of this section and identified by the following devices: buoys, float lines, signs, advisories from onsite Service employees and their designees, or other methods.

(viii) *Notifications of temporary no-entry areas designated in accordance with paragraph (c)(14)(v) or (vi) of this section.* When we determine that the provisions of paragraph (c)(14)(v) or (vi) of this section are appropriate, the temporary protection areas will be designated and posted to distances as described in paragraph (c)(14)(v) of this section. No-entry area designations will occur immediately. We will advise the public of designations through public notice(s) announcing and describing the measures in a local newspaper and other media, including but not limited to, local television and radio broadcasts, Web sites and other news outlets, as soon as time permits. Onsite Service employees and their designees, when

present, may also inform waterway users of designations.

(ix) *Prohibited activities (year-round).* We specifically identify and prohibit the activities set forth in this paragraph to prevent the take of one or more manatees by individuals engaged in waterborne activities while in the water, in boats, or on-shore within the Kings Bay Manatee Refuge. In regard to these prohibited activities, we consider a resting manatee to be a mostly motionless manatee that rises to breathe from the water bottom, in the water column, or on the water's surface. While resting, a manatee may make minor changes in its posture and may slightly shift its position. Minor changes in posture occur when resting manatees breathe or roll. Resting manatees may also make slight movements with their flippers or tail to compensate for drift, etc. Prohibited activities include:

(A) Chasing or pursuing manatee(s).

(B) Disturbing or touching a resting or feeding manatee(s).

(C) Diving from the surface on to a resting or feeding manatee(s).

(D) Cornering or surrounding or attempting to corner or surround a manatee(s).

(E) Riding, holding, grabbing, or pinching or attempting to ride, hold, grab, or pinch a manatee(s).

(F) Poking, prodding, or stabbing or attempting to poke, prod, or stab a manatee(s) with anything, including your hands and feet.

(G) Standing on or attempting to stand on manatee(s).

(H) Separating a mother and calf or attempting to separate a mother and calf.

(I) Separating manatee(s) from a group or attempting to separate manatee(s) from a group.

(J) Giving manatee(s) anything to eat or drink or attempting to give manatee(s) anything to eat or drink.

(K) Actively initiating contact with belted or tagged manatee(s) and associated gear, including any belts, harnesses, tracking devices, or antennae.

(L) Interfering with rescue and research activities.

Dated: March 1, 2012.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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