were approved by OMB. See OMB No. 3060–0994.

List of Subjects in 47 CFR Parts 2 and 25

Radio, Satellites, Telecommunications.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 04–7869 Filed 4–6–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT65

Endangered and Threatened Wildlife and Plants; Establishment of an Additional Manatee Protection Area in Lee County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: We, the Fish and Wildlife Service (Service), take emergency action to establish an additional manatee protection area in Lee County, Florida. This action is authorized under the Endangered Species Act of 1973, as amended (ESA), and the Marine Mammal Protection Act of 1972, as amended (MMPA), based on our determination that there is substantial evidence of imminent danger of taking one or more manatees and the emergency designation of a manatee refuge is necessary to prevent such taking. In evaluating the need for emergency designation of an additional manatee protection area, 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. Within 10 days after establishing a protection area in accordance with this section, the Service will begin proceedings to establish these areas in accordance with 50 CFR 17.103. The area established by this rule will be a manatee refuge as defined by 50 CFR 17.102 and watercraft will be required to proceed at either "slow speed'' or at not more than 25 miles per hour, on an annual or seasonal basis, as marked. While adjacent property owners must comply with the speed restrictions, the designation will not preclude ingress and egress to private property.

We anticipate making a final determination of these sites in a final rule within the 120-day effective period unless State or local governments implement measures at these sites that would, in our view, make such establishment unnecessary to prevent the taking of one or more manatees.

DATES: In accordance with 50 CFR 17.106, the effective date for this action will be April 7, 2004, which will also be the date of posting of the sites, and publication in the following newspapers: Ft Myers News-Press, Cape Coral Daily Breeze, and Naples Daily News. This emergency action will remain in effect for 120 days after publication in the **Federal Register** or until August 5, 2004.

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

FOR FURTHER INFORMATION CONTACT: David Hankla or Chuck Underwood (see **ADDRESSES** section), telephone 904/232–2580 or visit our Web site at *http://northflorida.fws.gov.* In the event that our Internet connection is not functional, please contact the Service by mail (see ADDRESSES) or telephone (904/232–2580), for alternative methods to obtain further information related to this issue.

SUPPLEMENTARY INFORMATION:

Background

The West Indian manatee (*Trichecus manatus*) is federally listed as an endangered species under the ESA (16 U.S.C. 1531 *et seq.*) (32 FR 4001) and the population is further protected as a depleted stock under the MMPA (16 U.S.C. 1361–1407). Manatees reside in freshwater, brackish, and marine habitats in coastal and inland waterways of the southeastern United States. The majority of the population can be found in waters of the State of Florida throughout the year, and nearly all manatees winter in peninsular Florida during the winter months. The manatee is a cold-intolerant species and requires warm water temperatures generally above 20° Celsius (68° Fahrenheit) to survive during periods of cold weather. During the winter months, most manatees rely on warm water from natural springs and industrial discharges for warmth. In warmer months, they expand their range and are seen rarely as far north as Rhode Island on the Atlantic Coast and as far west as Texas on the Gulf Coast.

Recent information indicates that the overall manatee population has grown since the species was listed (U.S. Fish and Wildlife Service 2001). However, in order for us to determine that an endangered species has recovered to a point that it warrants removal from the List of Endangered and Threatened Wildlife and Plants, the species must have improved in status to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the ESA.

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

The MMPA sets a general moratorium, with certain exceptions, on the take and importation of marine mammals and marine mammal products and makes it unlawful for any person to take, possess, transport, purchase, sell, export, or offer to purchase, sell, or export, any marine mammal or marine mammal product unless authorized. Take, as defined by section 3(13) of the MMPA, means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Harassment is defined under the MMPA as any act of pursuit, torment, or annoyance which—(i) Has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Human use of the waters of the southeastern United States has increased dramatically as a function of residential growth and increased visitation. This phenomenon is particularly evident in the State of Florida. The population of Florida has grown by 124 percent since 1970 (6.8 million to 15.2 million, U.S. Census Bureau) and is expected to exceed 18 million by 2010, and 20 million by the year 2020. According to a report by the Florida Office of Economic and Demographic Research (2000), it is

expected that, by the year 2010, 13.7 million people will reside in the 35 coastal counties of Florida. In a parallel fashion to residential growth, visitation to Florida has increased dramatically. It is expected that Florida will have 83 million visitors annually by the year 2020, up from 48.7 million visitors in 1998. In concert with this increase of human population growth and visitation is the increase in the number of watercraft that travel Florida waters. In 2001, 943,611 vessels were registered in the State of Florida. This represents an increase of 42 percent since 1993.

The large increase in human use of manatee habitat has had direct and indirect impacts on this endangered species. Direct impacts include injuries and deaths from watercraft collisions, deaths and injuries from water control structure operations, lethal and sublethal entanglements with commercial and recreational fishing gear, and alterations of behavior due to harassment. Indirect impacts include habitat destruction and alteration, including decreases in water quality throughout some aquatic habitats, decreases in the quantity of warm water in natural spring areas, the spread of marine debris, and general disturbance from human activities.

Federal authority to establish protection areas for the Florida manatee is provided by the ESA and the MMPA, and is codified in 50 CFR part 17, subpart J. We have discretion, by regulation, to establish manatee protection areas whenever there is substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees. In accordance with 50 CFR 17.106, areas may be established on an emergency basis when such takings are imminent.

We may establish two types of manatee protection areas—manatee refuges and manatee sanctuaries. A manatee refuge, as defined in 50 CFR 17.102, is an area in which we have determined that certain waterborne activities would result in the taking of one or more manatees, or that certain waterborne activities must be restricted to prevent the taking of one or more manatees, including but not limited to, a taking by harassment. A manatee sanctuary is an area in which we have determined that any waterborne activity would result in the taking of one or more manatees, including but not limited to, a taking by harassment. A waterborne activity is defined as including, but not limited to, swimming, diving (including skin and scuba diving), snorkeling, water skiing, surfing, fishing, the use of water vehicles, and dredge and fill activities.

Reasons for Emergency Determination

In deciding to implement this emergency rule, we assessed the effects of a recent State court ruling overturning critically important, State-designated manatee protection zones in Lee County (*State of Florida Fish and Wildlife Conservation Commission vs. William D. Wilkinson, Robert W. Watson, David K. Taylor, James L. Frock (2 Cases), Jason L. Fluharty, Kenneth L. Kretsh, Harold Stevens, Richard L. Eyler, and John D. Mills*), as well as the best available information to evaluate manatee and human interactions in these areas.

Manatees are especially vulnerable to fast-moving power boats. The slower a boat is traveling, the more time a manatee has to avoid the vessel and the more time the boat operator has to detect and avoid the manatee. Nowacek *et al.* (2000) documented manatee avoidance of approaching boats. Wells *et al.* (1999) confirmed that, at a response distance of 20 meters, a manatee's time to respond to an oncoming vessel increased by at least 5 seconds if the vessel was required to travel at slow speed. Therefore, the potential for take of manatees can be greatly reduced if boats are required to travel at slow speed in areas where manatees can be expected to occur.

The water bodies encompassed in this emergency designation receive extensive manatee use either on a seasonal or year-round basis as documented in radio telemetry and aerial survey data (FWCC 2003). The areas contain feeding habitats and serve as travel corridors for manatees (FWCC 2003). They have also been regulated at either slow speed or with a 25-mile-per-hour speed limit by State government since 1999. However, a recent challenge to citations for violations of the State speed zone regulations has resulted in a State court voiding these State zones. Without this emergency Federal designation, watercraft can be expected to travel at high speeds in areas frequented by manatees, which would result in the take of one or more manatees. In fact, boat operators could inadvertently be encouraged to travel at high speeds. While the State court invalidated speed limits in the areas adjacent to navigation channels, it did not invalidate the 25-mile-per-hour speed limit in the navigation channels that traverse the affected area. Therefore, the speed limit in the navigation channel is now lower than that of the surrounding, shallower areas. As a result, shallow-draft high-speed boats capable of traveling outside the navigation channels can be expected to be operated at high speeds (greater than 25 miles per hour) in the areas more likely to be frequented by manatees.

There is a history of manatee mortalities in the area as a result of collisions with watercraft. At least 14 carcasses of manatees killed in collisions with watercraft have been recovered in or immediately adjacent to the designated areas since 1999 (FWCC 2003), and an additional carcass was recently recovered in close proximity to the site following the State court action. Necropsy revealed that the animal died of wounds from a boat collision. In areas of more seasonal use by manatees, the slow speed requirements begin on April 1. Without the emergency designation, these areas would not receive the needed protection because of the time necessary to complete the normal rulemaking process.

For these reasons, we believe that there is imminent danger of take of one or more manatees in these areas and emergency designation of a manatee refuge is necessary to prevent such taking. Manatees utilize these areas, there is a history of take at these sites, future take is imminent, protection measures are insufficient, and we do not anticipate any alternative protection measures being enacted by State or local government in sufficient time to reduce the likelihood of take occurring.

Effective Date

We are making this rule effective upon publication. In accordance with the Administrative Procedure Act, we find good cause as required by 5 U.S.C. 553(d)(3) to make this rule effective immediately upon publication in the **Federal Register**. As discussed under "Reasons for Emergency Determination,'' we need to establish this manatee protection area immediately. Any delay in making this manatee refuge effective would result in further risks of manatee mortality, injury and harassment during the period of delay. In view of the finding of substantial evidence that taking of manatees is imminent and in fact has already occurred in or in close proximity to the site, we believe good cause exists to make this rule effective upon publication. For the same reasons, we also believe that we have good cause under 5 U.S.C. 553(b)(3)(B) to issue this rule without notice and public procedure. We believe such emergency action is in the public interest because of the imminent threat to manatees and the time required to complete the standard rulemaking process would probably result in additional take of manatees. This rule does not supersede

any more stringent State or local regulations.

Future Federal Actions

Once this emergency rule is in effect, the emergency designation is temporary and applies to these areas for only 120 days. We believe the danger to manatees due to watercraft collisions in the Pine Island-Estero Bay area is not only imminent, but also ongoing and year-round. Accordingly, we are preparing a proposed rule to establish an additional manatee protection area in Lee County, Florida, in accordance with 50 CFR 17.103. We anticipate publishing a proposed rule by the end of May 2004.

Definitions

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

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

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

Area Designated as a Manatee Refuge by Emergency Rule

Pine Island-Estero Bay Manatee Refuge

The Pine Island-Estero Bay Manatee Refuge encompasses water bodies in Lee County including portions of Matalacha Pass and San Carlos Bay south of Green Channel Marker "77'' and north of the Intracoastal Waterway, portions of Pine Island Sound in the vicinity of York and Chino Islands, portions of Punta Rassa Cove and Shell Creek in San Carlos Bay and the mouth of the Caloosahatchee River, and portions of Estero Bay and associated water bodies. These water bodies are designated, as posted, as either slow speed or with a speed limit of 25 miles per hour, on either a seasonal or annual basis. Legal descriptions and maps are provided in the "Regulation Promulgation'' section of this notice.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this emergency rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the emergency rule clearly stated? (2) Does the emergency rule contain unnecessary technical language or jargon that interferes with the clarity? (3) Does the format of the emergency rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the emergency rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make the emergency rule easier to understand?

Send a copy of any comments that concern how we could make this emergency rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240.

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. The Office of Management and Budget makes the final determination under Executive Order 12866. Because this is an emergency rule, an extensive economic analysis was not possible.

a. Based on experience with similar rulemakings in this area, this rule will not have an annual economic impact of over $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. It is not expected that any significant economic impacts would result from the establishment of a manatee refuge (approximately 30 river miles) in Lee County in the State of Florida.

The purpose of this rule is to establish an emergency manatee refuge in Lee County, Florida. We are preventing the take of manatees by controlling certain human activity in this County. For the manatee refuge, the areas are year-round or seasonal slow speed, or year-round or seasonal speed limits of 25 miles per hour. Affected waterborne activities include, but are not limited to, transiting, cruising, water skiing, fishing, marine construction, and the use of all water vehicles. This rule will impact recreational boaters, commercial charter boats, and commercial fishermen, primarily in the form of restrictions on boat speeds in specific areas. We will experience increased administrative costs due to this rule. Conversely, the rule may also produce economic benefits for some parties as a result of increased manatee protection and decreased boat speeds in the manatee refuge areas.

Regulatory impact analysis requires the comparison of expected costs and benefits of the rule against a "baseline,'' which typically reflects the regulatory requirements in existence prior to the rulemaking. For purposes of this analysis, the baseline assumes that the Pine Island-Estero Bay area has no regulating speed limits other than the 25 miles per hour in the navigation channels. The State-designated speed zones, other than in the navigation channels, have been lifted by a State Court decision. However, residents and other water users have lived with speed restrictions in this area for many years and have established business and recreational patterns on the water to accommodate their needs and desires for water-based recreation. Even though the baseline is set at no speed zones, the actual economic effects may very well be insignificant for this 120-day emergency rule because almost all users have been previously subject to these restrictions. Thus, the rule is expected to have only an incremental effect. As discussed below, the net economic impact is not expected to be significant, but cannot be monetized given available information.

The economic impacts of this rule would be due to the changes in speed zone restrictions in the manatee refuge areas. These speed zone changes are summarized in the emergency rule.

In addition to speed zone changes, the rule no longer allows for the speed zone exemption process in place under State regulations. Florida's Manatee Sanctuary Act allows the State to provide exemptions from speed zone requirements for certain commercial activities, including fishing and events such as high-speed boat races. Under State law, commercial fishermen and professional fishing guides can apply for permits granting exemption from speed zone requirements in certain counties. Speed zone exemptions were issued to 28 permit holders in the former State zones that comprise the proposed manatee refuge area.

In order to gauge the economic effect of this rule, both benefits and costs must be considered. Potential economic

benefits related to this rule include increased manatee protection and tourism related to manatee viewing, increased number of marine construction permits issued (estimated at 80 per month for family boat docks), increased fisheries health, and decreased seawall maintenance costs. Potential economic costs are related to increased administrative activities related to implementing the rule and affected waterborne activities. Economic costs are measured primarily by the number of recreationists who use alternative sites for their activity or have a reduced quality of the waterborne activity experience at the designated sites. In addition, the rule may have some impact on commercial fishing because of the need to maintain slower speeds in some areas. The extension of slower speed zones in this rule is not expected to affect enough waterborne activity to create a significant economic impact (*i.e.*, an annual impact of over $100 million).

Economic Benefits

We believe that the designation of the Pine Island-Estero Bay Manatee Refuge in this rule will increase the level of manatee protection in these areas. A potential economic benefit is increased tourism resulting from an increase in manatee protection. To the extent that some portion of Florida's tourism is due to the existence of the manatee in Florida waters, the protection provided by this rule may result in an economic benefit to the tourism industry. We are not able to make an estimate of this benefit given available information.

In addition, due to reductions in boat wake associated with speed zones, property owners may experience some economic benefits related to decreased expenditures for maintenance and repair of shoreline stabilization structures (*i.e.*, seawalls along the water's edge). Speed reductions may also result in increased boater safety. Another potential benefit of slower speeds is that fisheries in these areas may be more productive because of less disturbance. These types of benefits cannot be quantified with available information.

Based on previous studies, we believe that this rule produces some economic benefits. However, given the lack of information available for estimating these benefits, the magnitude of these benefits is unknown.

Economic Costs

The economic impact of the designation of a manatee protection area results from the fact that, in certain areas, boats are required to go slower than under current conditions. Some impacts may be felt by recreationists who have to use alternative sites for their activity or who have a reduced quality of the waterborne activity experience at the designated sites because of the rule. For example, the extra time required for anglers to reach fishing grounds could reduce onsite fishing time and could result in lower consumer surplus for the trip. Other impacts of the rule may be felt by commercial charter boat outfits, commercial fishermen, and agencies that perform administrative activities related to implementing the rule.

Affected Recreational Activities

For some boating recreationists, the inconvenience and extra time required to cross additional slow speed areas may reduce the quality of the waterborne activity, or cause them to forgo the activity. This will manifest in a loss of consumer surplus to these recreationists. In addition, to the extent that recreationists forgo recreational activities, this could result in some regional economic impact. In this section, we examine the waterborne activities taking place in each area and the extent to which they may be affected by designation of the manatee refuges. The resulting potential economic impacts are discussed below. These impacts cannot be quantified because the number of recreationists and anglers using the designated sites is not known.

Recreationists engaging in cruising, fishing, and waterskiing may experience some inconvenience by having to go slower or use undesignated areas; however, the extension of slow speed zones is not likely to result in a significant economic impact.

Currently, not enough data are available to estimate the loss in consumer surplus that water skiers will experience. While some may use substitute sites, others may forgo the activity. The economic impact associated with these changes on demand for goods and services is not known. However, given the number of recreationists potentially affected, and the fact that alternative sites are available, it is not expected to amount to a significant economic impact. Until recently, speed zones were in place in this area and recreationists have adjusted their activities to accommodate them. It is not expected that for a 120-day emergency rule there would be a significant loss in consumer surplus from this activity.

Affected Commercial Charter Boat Activities

Various types of charter boats use the waterways in the affected counties, primarily for fishing and nature tours. The number of charter boats using the Pine Island-Estero Bay areas is currently unknown. For nature tours, the extension of slow speed zones is unlikely to cause a significant impact, because these boats are likely traveling at slow speeds. The extra time required for commercial charter boats to reach fishing grounds could reduce onsite fishing time and could result in fewer trips. The fishing activity is likely occurring at a slow speed and will not be affected. Added travel time may affect the length of a trip, which could result in fewer trips overall, creating an economic impact.

Affected Commercial Fishing Activities

Several commercial fisheries will experience some impact due to the regulation. To the extent that the regulation establishes additional speed zones in commercial fishing areas, this will increase the time spent on the fishing activity, affecting the efficiency of commercial fishing. While limited data are available to address the size of the commercial fishing industry in the manatee refuges, county-level data generally provide an upper bound estimate of the size of the industry and potential economic impact.

Given available data, the impact on the commercial fishing industry of extending slow speed zones in the Pine Island-Estero Bay area cannot be quantified. The designation will likely affect commercial fishermen by way of added travel time, which can result in an economic impact. Some of the 28 active permit holders with speed limit exemptions are commercial fishermen. However, because the manatee refuge designation will not prohibit any commercial fishing activity, and because there is a channel available for boats to travel up to 25 miles per hour in the affected areas, the Service believes that it is unlikely that the rule will result in a significant economic impact on the commercial fishing industry. It is important to note that, in 2001, the total annual value of potentially affected fisheries was approximately $8.3 million (2001$); this figure represents the economic impact on commercial fisheries in these counties in the unlikely event that the fisheries would be entirely shut down, which is not the situation associated with this rule.

Agency Administrative Costs

The cost of implementing the rule has been estimated based on historical expenditures by the Service for manatee refuges and sanctuaries established previously. The Service expects to spend approximately $600,000 (2002$) for posting and signing 15 previously designated manatee protection areas (an average of $40,000 per area). This represents the amount that the Service will pay contractors for creation and installation of manatee refuge signs. While the number and location of signs needed to post the manatee refuges is not known, the cost of manufacturing and posting signs to delineate the manatee refuges in this rule is not expected to exceed the amount being spent to post previously designated manatee protection areas (Service, 2003a). In addition, the Service anticipates that it will spend additional funds for enforcement of a staff newly designated manatee refuge for 120 days. These costs cannot be accurately estimated at this time. The costs of enforcement may include hiring and training new law enforcement agents and special agents, and the associated training, equipment, upkeep, and clerical support (Service, 2003b). Finally, there are some costs for education and outreach to inform the public about this new manatee refuge area.

While the State of Florida has 12,000 miles of rivers and 3 million acres of lakes, this rule will affect approximately 30 river miles. The speed restrictions in this rule will cause inconvenience due to added travel time for recreationists and commercial charter boats and fishermen. As a result, the rule will impact the quality of waterborne activity experiences for some recreationists, and may lead some recreationists to forgo the activity. This rule does not prohibit recreationists from participating in any activities. Alternative sites are available for all waterborne activities that may be affected by this rule. The distance that recreationists may have to travel to reach an un-designated area varies. The regulation will likely impact some portion of the charter boat and commercial fishing industries in these areas as well. The inconvenience of having to go somewhat slower in some areas may result in changes to commercial and recreational behavior, resulting in some regional economic impacts. Given available information, the net economic impact of designating the manatee refuge is not expected to be significant (*i.e.*, an annual economic impact of over $100 million). While the level of economic benefits that may be attributable to the manatee refuge is unknown, these benefits would cause a reduction in the economic impact of the rule.

b. The precedent to establish manatee protection areas has been established primarily by State and local governments in Florida. We recognize the important role of State and local partners and continue to support and encourage State and local measures to improve manatee protection. We are designating the Pine Island-Estero Bay area, where previously existing State designations have been eliminated, to protect the manatee population in that area.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Minimal restriction to existing human uses of the sites would result from this rule. No entitlements, grants, user fees, loan programs or effects on the rights and obligations of their recipients are expected to occur.

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

Regulatory Flexibility Act

We certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

In order to determine whether the rule will have a significant economic effect 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. Currently no information is available on the specific number of small entities that are potentially affected. However, 28 active permit holders were exempt from the speed limits in the proposed refuge area. Since these zones have been in place since 1999 and people have adjusted and there were no other permit holders, it is reasonable to expect that the emergency rule will impact only the 28 permit holders in the former State speed zones. They are primarily commercial fishing boats and fishing guides. Both would be considered small businesses. The 28 permit holders had State exemptions from the speed restrictions based on an application that stated they would suffer at least a 25 percent income loss without the permit. The usual income level for these businesses is not known, however a 25 percent loss of business income is significant regardless of the level of business income. We acknowledge that there could be a significant loss of income to those permit holders that rely on speed to carry out their business activities, however, the Service believes that the 28 permit holders do not constitute a substantial number.

This rule will add to travel time for recreational boating and commercial activities resulting from extension of existing speed zones. Because the only restrictions on recreational activity result from added travel time, and alternative sites are available for all waterborne activities, we believe that the economic effect on small entities resulting from changes in recreational use patterns will not be significant. The economic effects on most 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, and boats can continue to travel up to 25 mph in the navigation channels, we believe that any economic effect on small commercial fishing or charter boat entities (other than the 28 permit holders) will 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.

The employment characteristics of Lee County are shown in Table 1 for the year 1997. We included the following SIC (Standard Industrial Classification) categories, because they include businesses most likely to be directly affected by the designation of a manatee refuge:

- Fishing, hunting, trapping (SIC 09);
- Water transportation (SIC 44);
- Miscellaneous retail (SIC 59);
- Amusement and recreation services (SIC 79);
- Non-classifiable establishments (NCE).

TABLE 1.—EMPLOYMENT CHARACTERISTICS OF LEE COUNTY IN FLORIDA—1997 INCLUDES SIC CODES 09, 44, 59, 79, AND NCE [a])

County	Total Mid-March employment [b] (All industries)	Mid-March establishment [b] (select SIC (Codes)	Total establishments (all industries)	Select SIC Codes (Includes SIC Codes 09, 44, 59, 79, and NCE [a])				
				Total establishments	Number of establishments (1–4 employees)	Number of establishments (5–9 employees)	Number of establishments (10–19 employees)	Number of establishments (20+ employees)
Lee	135,300	7,734	11,386	974	602	193	92	87

Source: U.S. Census County Business Patterns (*http://www.census.gov/epcd/cbp/view/cbpview.html*).
[a] Descriptions of the SIC codes included in this table as follows:
SIC 09—Fishing, hunting, and trapping.
SIC 44—Water transportation.
SIC 59—Miscellaneous retail service division.
SIC 79—Amusement and recreation services.
NCE—Non-classifiable establishments division.
[b] Table provides the high-end estimate whenever the Census provides a range of mid-March employment figures for select counties and SIC codes.

As shown in Table 1, the vast majority (over 80 percent) of these business establishments in Lee County have fewer than ten employees, with the largest number of establishments employing fewer than four employees. Any economic impacts associated with this rule will affect some proportion of these small entities.

Since the emergency designation is for a manatee refuge, which only requires a reduction in speed, we do not believe the designation would cause significant economic effect on a substantial number of small businesses. Currently available information does not allow us to quantify the number of small business entities such as charter boats or commercial fishing entities that may incur direct economic impacts due to the inconvenience of added travel times resulting from the rule but it is safe to assume that the current 28 permit holders may constitute the affected parties for a 120-day rule. The Service does not believe the 28 permit holders constitute a substantial number. If a future rulemaking establishes the Pine Island-Estero Bay as a permanent manatee refuge, public comments on a proposed rule will be used for further refinement of the impact on small entities and the general public. In addition, the inconvenience of slow speed zones may cause some recreationists to change their behavior, which may cause some loss of income to some small businesses. The number of recreationists that will change their behavior, and how their behavior will change, is unknown; therefore, the impact on potentially affected small business entities cannot be quantified. However, because boaters will experience only minimal added travel time in most affected areas and the fact that speed zones were in place until recently, we believe that this designation will not cause a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

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

a. Does not have an annual effect on the economy of $100 million or more. As shown above, this rule may cause some inconvenience in the form of added travel time for recreationists and commercial fishing and charter boat businesses because of speed restrictions in manatee refuge areas, but this should not translate into any significant business reductions for the many small businesses in the affected county. An unknown portion of the establishments shown in Table 1 could be affected by this rule. Because the only restrictions on recreational activity result from 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 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, and boats can continue to travel up to 25 miles per hour in the navigational channels, we believe that any economic impact on most small commercial fishing or charter boat entities will 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. Will 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, because of the availability of 25-miles-per-hour navigational channels, this impact is likely to be limited. Further, only 28 active permit holders were exempt from the former State speed zones. The impact will most likely stem from only these permit holders.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As stated above, this rule may generate some level of inconvenience to recreationists and commercial users due to added travel time, but the resulting economic impacts are believed to be minor and will not interfere with the normal operation of businesses in the affected counties. Added travel time to traverse some areas is not expected to be a major factor that will impact business activity.

Unfunded Mandates Reform Act

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

a. This rule will not "significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The designation of manatee refuges and sanctuaries, while imposing regulations for at least a limited period, will not impose obligations on State or local governments that have not previously existed.

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 areas are located over publicly-owned submerged water bottoms.

Federalism

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

Civil Justice Reform

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

Paperwork Reduction Act

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

National Environmental Policy Act

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

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175 and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized tribes on a government-to-government basis. 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 only requires vessels to continue their operation as they have in the past, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this final rule is available upon request from the Jacksonville Field Office (*see* **ADDRESSES** section).

Author

The primary author of this document is David Hankla (*see* **ADDRESSES** section).

Authority

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

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

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

■ 2. Amend § 17.108 by adding paragraph (c)(15) as follows:

§ 17.108 List of designated manatee protection areas.

* * * * *

(c) * * *

(15) *The Pine Island-Estero Bay Manatee Refuge.* (i) Watercraft are required to proceed at slow speed all year in all waters of Matlacha Pass, south of a line that bears 90° and 270° from Matlacha Pass Green Channel Marker "77'' (approximate latitude 26°40′00″ North, approximate longitude 82°06′00″ West), and north of Pine Island Road (State Road No. 78), excluding:

(A) The portion of the marked channel otherwise designated in paragraph (c)(15)(iii) of this section;

(B) All waters of Buzzard Bay east and northeast of a line beginning at a point (approximate latitude 26°40′00″ North, approximate longitude 82°05′20″ West) on the southwest shoreline of an unnamed mangrove island east of Matlacha Pass Green Channel Marker "77'' and bearing 219° to the northeasternmost point (approximate latitude 26°39′58″ North, approximate longitude 82°05′23″ West) of another unnamed mangrove island, then running along the eastern shoreline of said island to its southeasternmost point (approximate latitude 26°39′36″ North, approximate longitude 81°05′09″ West), then bearing 115° to the westernmost point (approximate latitude 26°39′34″ North, approximate longitude 82°05′05″ West) of the unnamed mangrove island to the southeast, then running along the western shoreline of said island to its southwesternmost point (approximate latitude 26°39′22″ North, approximate longitude 82°04′53″ West), then bearing 123° to the northwesternmost point (approximate latitude 26°39′21″ North, approximate longitude 82°04′52″ West) of an unnamed mangrove island, then running along the western shoreline of said island to its southeasternmost point (approximate latitude 26°39′09″ North, approximate longitude 82°04′44″ West), then bearing 103° to the northwesternmost point (approximate latitude 26°39′08″ North, approximate longitude 82°04′41″ West) of a peninsula on the unnamed mangrove island to the southeast, then running along the southwestern shoreline of said island to its southeasternmost point (approximate latitude 26°38′51″ North, approximate longitude 82°04′18″ West), then bearing 99° to the southernmost point (approximate latitude 26°38′50″ North, approximate longitude 82°04′03″ West) of the unnamed mangrove island to the east, then bearing 90° to the line's terminus at a point (approximate latitude 26°38′50″ North, approximate

longitude 82°03′55″ West) on the eastern shoreline of Matlacha Pass; and

(C) All waters of Pine Island Creek and Matlacha Pass north of Pine Island Road (State Road No. 78) and west and southwest of a line beginning at a point (approximate latitude 26°39′29″ North, approximate longitude 82°06′29″ West) on the western shoreline of Matlacha Pass and bearing 160° to the westernmost point (approximate latitude 26°39′25″ North, approximate longitude 82°06′28″ West) of an unnamed island, then running along the western shoreline of said island to its southernmost point (approximate latitude 26°39′18″ North, approximate longitude 82°06′24″ West), then bearing 128° to the northernmost point (approximate latitude 26°39′12″ North, approximate longitude 82°06′17″ West) of an unnamed mangrove island to the south, then running along the eastern shoreline of said island to its southeasternmost point (approximate latitude 26°39′00″ North, approximate longitude 82°06′09″ West), then bearing 138° to a point (approximate latitude 26°38′45″ North, approximate longitude 82°05′53″ West) on the northern shoreline of Bear Key, then running along the northern shoreline of Bear Key to its easternmost point (approximate latitude 26°38′44″ North, approximate longitude 82°05′46″ West), then bearing 85° to the westernmost point (approximate latitude 26°38′45″ North, approximate longitude 82°05′32″ West) of Deer Key, then running along the northern shoreline of Deer Key to its easternmost point (approximate latitude 26°38′46″ North, approximate longitude 82°05′22″ West), then bearing 103° to the northwesternmost point (approximate latitude 26°38′45″ North, approximate longitude 82°05′17″ West) of the unnamed mangrove island to the east, then running along the western shoreline of said island to its southernmost point (approximate latitude 26°38′30″ North, approximate longitude 82°05′04″ West), then bearing 106° to the westernmost point (approximate latitude 26°38′30″ North, approximate longitude 82°04′57″ West) of the unnamed island to the southeast, then running along the northern and eastern shorelines of said island to a point (approximate latitude 26°38′23″ North, approximate longitude 82°04′51″ West) on its eastern shoreline, then bearing 113° to the northernmost point of West Island (approximate latitude 26°38′21″ North, approximate longitude 82°04′37″ West), then running along the western shoreline of West Island to the point where the line intersects Pine Island Road (State Road No. 78).

(ii) Watercraft are required to proceed at slow speed all year in all waters of Matlacha Pass, St. James Creek, and San Carlos Bay, south of Pine Island Road (State Road No. 78), north of a line 500 feet northwest of and parallel to the main marked channel of the Intracoastal Waterway, west of a line that bears 302° from Intracoastal Waterway Green Channel Marker "99'' (approximate latitude 26°31′00″ North, approximate longitude 82°00′52″ West), and east of a line that bears 360° from Intracoastal Waterway Red Channel Marker "10'' (approximate latitude 26°29′16″ North, approximate longitude 82°03′35″ West), excluding:

(A) The portions of the marked channels otherwise designated in paragraphs (c)(15) (iv) and (v) of this section;

(B) All waters of Matlacha Pass south of Pine Island Road (State Road No. 78) and west of the western shoreline of West Island and a line beginning at the southernmost point (approximate latitude 26°37′25″ North, approximate longitude 82°04′17″ West) of West Island and bearing 149° to the northernmost point (approximate latitude 26°37′18″ North, approximate longitude 82°04′12″ West) of the unnamed mangrove island to the south, then running along the eastern shoreline of said island to its southernmost point (approximate latitude 26°36′55″ North, approximate longitude 82°04′02″ West), then bearing 163° to the line's terminus at a point (approximate latitude 26°36′44″ North, approximate longitude 82°03′58″ West) on the eastern shoreline of Little Pine Island;

(C) All waters of Matlacha Pass, Pontoon Bay, and associated embayments south of Pine Island Road (State Road No. 78) and east of a line beginning at a point (approximate latitude 26°38′12″ North, approximate longitude 82°03′46″ West) on the northwestern shoreline of the embayment on the east side of Matlacha Pass, immediately south of Pine Island Road and then running along the eastern shoreline of the unnamed island to the south to its southeasternmost point (approximate latitude 26°37′30″ North, approximate longitude 82°03′22″ West), then bearing 163° to the northwesternmost point of the unnamed island to the south, then running along the western shoreline of said island to its southernmost point (approximate latitude 26°37′15″ North, approximate longitude 82°03′15″ West), then bearing 186° to the line's terminus at a point (approximate latitude 26°37′10″ North, approximate longitude 82°03′16″ West) on the eastern shoreline of Matlacha Pass;

(D) All waters of Pine Island Creek south of Pine Island Road (State Road No. 78); and all waters of Matlacha Pass, Rock Creek, and the Mud Hole, west of a line beginning at a point (approximate latitude 26°33′52″ North, approximate longitude 82°04′53″ West) on the western shoreline of Matlacha Pass and bearing 22° to a point (approximate latitude 26°34′09″ North, approximate longitude 82°04′45″ West) on the southern shoreline of the unnamed island to the northeast, then running along the southern and eastern shorelines of said island to a point (approximate latitude 26°34′15″ North, approximate longitude 82°04′39″ West) on its northeastern shoreline, then bearing 24° to a point (approximate latitude 26°34′21″ North, approximate longitude 82°04′36″ West) on the southern shoreline of the large unnamed island to the north, then running along the southern and eastern shorelines of said island to a point (approximate latitude 26°34′31″ North, approximate longitude 82°04′29″ West) on its eastern shoreline, then bearing 41° to the southernmost point (approximate latitude 26°34′39″ North, approximate longitude 82°04′22″ West) of another unnamed island to the northeast, then running along the eastern shoreline of said island to its northwesternmost point (approximate latitude 26°35′22″ North, approximate longitude 82°04′07″ West), then bearing 2° to the southernmost point (approximate latitude 26°35′32″ North, approximate longitude 82°04′07″ West) of the unnamed island to the north, then running along the eastern shoreline of said island to its northernmost point (approximate latitude 26°35′51″ North, approximate longitude 82°03′59″ West), then bearing 353° to the line's terminus at a point (approximate latitude 26°36′08″ North, approximate longitude 82°04′01″ West) on the eastern shoreline of Little Pine Island; and

(E) All waters of Punta Blanca Bay and Punta Blanca Creek, east of the eastern shoreline of Matlacha Pass and east and north of the eastern and northern shorelines of San Carlos Bay.

(iii) Watercraft may not exceed 25 miles per hour, all year, in all waters within the main marked channel in Matlacha Pass south of Green Channel Marker "77'' (approximate latitude 26°40′00″ North, approximate longitude 82°06′00″ West) and north of a line perpendicular to the channel at a point in the channel ¼ mile northwest of the Pine Island Road Bridge (State Road No. 78).

(iv) Watercraft may not exceed 25 miles per hour, all year, in all waters within the main marked channel in

Matlacha Pass south of a line perpendicular to the channel at a point in the channel ¼ mile southeast of the Pine Island Road Bridge (State Road No. 78), and north of a line 500 feet northwest of and parallel to the main marked channel of the Intracoastal Waterway (just north of Green Channel Marker "1").

(v) Watercraft may not exceed 25 miles per hour, all year, in all waters within the marked channel in Matlacha Pass that intersects the main Matlacha Pass channel near Green Channel Marker "15" (approximate latitude 26°31′57″ North, approximate longitude 82°03′38″ West) and intersects the main marked channel of the Intracoastal Waterway near Green Channel Marker "101" (approximate latitude 26°30′39″ North, approximate longitude 82°01′00″ West).

(vi) Watercraft are required to proceed at slow speed from April 1 through November 15 in all canals and boat basins of St. James City and the waters known as Long Cut and Short Cut; and all waters of Pine Island Sound and San Carlos Bay south of a line beginning at the southernmost tip (approximate latitude 26°31′28″ North, approximate longitude 82°06′19″ West) of a mangrove peninsula on the western shore of Pine Island approximately 2200 feet north of Galt Island and bearing 309° to the southeasternmost point (approximate latitude 26°31′32″ North, approximate longitude 82°06′25″ West) of another mangrove peninsula, then running along the southern shoreline of said peninsula to its southwesternmost point (approximate latitude 26°31′40″ North, approximate longitude 82°06′38″ West), then bearing 248° to a point (approximate latitude 26°31′40″ North, approximate longitude 82°06′39″ West) on the eastern shoreline of an unnamed mangrove island, then running along the southern shoreline of said island to its southwesternmost point (approximate latitude 26°31′39″ North, approximate longitude 82°06′44″ West), then bearing 206° to the line's terminus at the northernmost point of the Mac Keever Keys (approximate latitude 26°31′09″ North, approximate longitude 82°07′09″ West), east of a line beginning at said northernmost point of the Mac Keever Keys and running along and between the general contour of the western shorelines of said keys to a point (approximate latitude 26°30′27″ North, approximate longitude 82°07′08″ West) on the southernmost of the Mac Keever Keys, then bearing 201° to a point (approximate latitude 26°30′01″ North, approximate longitude 82°07′19″ West) approximately 150 feet due east of the southeasternmost point of Chino Island, then bearing approximately 162° to Red Intracoastal Waterway Channel Marker "22" (approximate latitude 26°28′57″ North, approximate longitude 82°06′55″ West), then bearing approximately 117° to the line's terminus at Red Intracoastal Waterway Channel Marker "20" (approximate latitude 26°28′45″ North, approximate longitude 82°06′38″ West), north of a line beginning at said Red Intracoastal Waterway Channel Marker "20" and bearing 86° to a point (approximate latitude 26°28′50″ North, approximate longitude 82°05′48″ West) ¼ mile south of York Island, then running parallel to and ¼ mile south of the general contour of the southern shorelines of York Island and Pine Island to the line's terminus at a point on a line bearing 360° from Red Intracoastal Waterway Channel Marker "10" (approximate latitude 26°29′16″ North, approximate longitude 82°03′35″ West), and west and southwest of the general contour of the western and southern shorelines of Pine Island and a line that bears 360° from said Red Intracoastal Waterway Channel Marker "10," excluding the portion of the marked channel otherwise designated in paragraph (c)(15)(vii) of this section.

(vii) Watercraft may not exceed 25 miles per hour from April 1 through November 15 in all waters of the marked channel that runs south of the power lines from the Cherry Estates area of St. James City into Pine Island Sound, east of the western boundary of the zone designated in 17.108(c)(15)(vi), and west of a line perpendicular to the power lines that begins at the easternmost point (approximate latitude 26°30′25″ North, approximate longitude 82°06′15″ West) of the mangrove island on the north side of the power lines approximately 1800 feet southwest of the Galt Island Causeway.

(viii) Watercraft are required to proceed at slow speed all year in all waters of San Carlos Bay and Punta Rassa Cove east of a line that bears 352° from the northernmost tip of the northern peninsula on Punta Rassa (approximate latitude 26°29′44″ North, approximate longitude 82°00′33″ West), and south of a line that bears 122° from Intracoastal Waterway Green Channel Marker "99" (approximate latitude 26°31′00″ North, approximate longitude 82°00′52″ West), including all waters of Shell Creek and associated waterways.

(ix) Watercraft are required to proceed at slow speed all year in all waters of San Carlos Bay and the Caloosahatchee River, including the residential canals of Cape Coral, northeast of a line that bears 302° and 122° from Intracoastal Waterway Green Channel Marker "99" (approximate latitude 26°31′00″ North, approximate longitude 82°00′52″ West), west of a line that bears 346° from Intracoastal Waterway Green Channel Marker "93" (approximate latitude 26°31′37″ North, approximate longitude 81°59′46″ West), and north and northwest of the general contour of the northwestern shoreline of Shell Point and a line that bears approximately 74° from the northernmost tip (approximate latitude 26°31′31″ North, approximate longitude 81°59′57″ West) of Shell Point to said Intracoastal Waterway Green Channel Marker "93," excluding the Intracoastal Waterway between markers "93" and "99" (which is already designated as a Federal manatee protection area, requiring watercraft to proceed at slow speed, and is not impacted by this rulemaking).

(x) Watercraft are required to proceed at slow speed from April 1 through November 15 and at not more than 25 miles per hour the remainder of the year in all waters of Hell Peckney Bay southeast of Hurricane Bay, northeast of the northern shorelines of Julies Island and the unnamed island immediately northwest of Julies Island and a line that bears 312° from the northwesternmost point of Julies Island (approximate latitude 26°26′37″ North, approximate longitude 81°54′57″ West), northwest of Estero Bay, and southwest of a line beginning at the southernmost point (approximate latitude 26°27′23″ North, approximate longitude 81°55′11″ West) of an unnamed mangrove peninsula in northwest Hell Peckney Bay and bearing 191° to the northernmost point (approximate latitude 26°27′19″ North, approximate longitude 81°55′11″ West) of an unnamed mangrove island, then running along the northern shoreline of said island to its southeasternmost point (approximate latitude 26°27′11″ North, approximate longitude 81°55′05″ West), then bearing 115° to a point (approximate latitude 26°27′03″ North, approximate longitude 81°54′47″ West) on the northwest shoreline of an unnamed mangrove island, then running along the northern shoreline of said island to its northeasternmost point (approximate latitude 26°27′02″ North, approximate longitude 81°54′33″ West), and then bearing 37° to the line's terminus at the westernmost point of an unnamed mangrove peninsula in eastern Hell Peckney Bay.

(xi) Watercraft are required to proceed at slow speed from April 1 through November 15 and at not more than 25 miles per hour the remainder of the year in all waters of Hendry Creek south of a line that bears 270° from a point (approximate latitude 26°28′40″ North, approximate longitude 81°52′56″ West) on the eastern shoreline of Hendry

Creek; and all waters of Estero Bay southeast and east of Hell Peckney Bay, a line that bears 340° from a point (approximate latitude 26°25′56″ North, approximate longitude 81°54′25″ West) on the northern tip of an unnamed mangrove peninsula on the northeastern shoreline of Estero Island, and the northern shoreline of Estero Island, south of Hendry Creek and a line that bears 135° and 315° from Red Channel Marker "18'' (approximate latitude 26°27′46″ North, approximate longitude 81°52′00″ West) in Mullock Creek, and north of a line that bears 72° from the northernmost point (approximate latitude 26°24′22″ North, approximate longitude 81°52′34″ West) of Black Island, including the waters of Buccaneer Lagoon at the southern end of Estero Island, but excluding:

(A) The portions of the marked channels otherwise designated in paragraph (c)(15)(xiii) of this section;

(B) The Estero River; and

(C) To waters of Big Carlos Pass east of a line beginning at a point (approximate latitude 26°24′34″ North, approximate longitude 81°53′05″ West) on the eastern shoreline of Estero Island and bearing 36° to a point (approximate latitude 26°24′40″ North, approximate longitude 81°53′00″ West) on the southern shoreline of Coon Key, south of a line beginning at a point (approximate latitude 26°24′36″ North, approximate longitude 81°52′30″ West) on the eastern shoreline of Coon Key and bearing 106° to a point (approximate latitude 26°24′39″ North, approximate longitude 81°52′34″ West) on the southwestern shoreline of the unnamed mangrove island north of Black Island, and west of a line beginning at a point (approximate latitude 26°24′36″ North, approximate longitude 81°52′30″ West) on the southern shoreline of said unnamed mangrove island north of Black Island and bearing 192° to the northernmost point (approximate latitude 26°24′22″ North, approximate longitude 81°52′34″ West) of Black Island.

(xii) Watercraft are required to proceed at slow speed from April 1 through November 15 and at not more than 25 miles per hour the remainder of the year in all waters of Estero Bay and Big Hickory Bay south of a line that bears 72° from the northernmost point (approximate latitude 26°24′22″ North, approximate longitude 81°52′34″ West) of Black Island, east of the centerline of State Road No. 865 (but including the waters of the embayment on the eastern side of Black Island and the waters inshore of the mouth of Big Hickory Pass that are west of State Road No. 865), and north of a line that bears 90° from a point (approximate latitude 26°20′51″ North, approximate longitude 81°50′33″ West) on the eastern shoreline of Little Hickory Island, excluding Spring Creek and the portions of the marked channels otherwise designated under 17.108 (c)(15)(xiii) and the portion of Hickory Bay designated in paragraph (c)(15)(xiii) of this section.

(xiii) Watercraft may not exceed 25 miles per hour all year in:

(A) All waters of Big Hickory Bay north of a line that bears 90° from a point (approximate latitude 26°20′51″ North, approximate longitude 81°50′33″ West) on the eastern shoreline of Little Hickory Island, west of a line beginning at a point (approximate latitude 26°20′48″ North, approximate longitude 81°50′24″ West) on the southern shoreline of Big Hickory Bay and bearing 338(to a point (approximate latitude 26°21′39″ North, approximate longitude 81°50′48″ West) on the water in the northwestern end of Big Hickory Bay near the eastern end of Broadway Channel, south of a line beginning at said point on the water in the northwestern end of Big Hickory Bay and bearing 242(to the northernmost point (approximate latitude 26°21′3″ North, approximate longitude 81°50′50″ West) of the unnamed mangrove island south of Broadway Channel, and east of the eastern shoreline of said mangrove island and a line beginning at the southernmost point of said island (approximate latitude 26°21′07″ North, approximate longitude 81°50′58″ West) and bearing 167(to a point on Little Hickory Island (approximate latitude 26°21′03″ North, approximate longitude 81°50′57″ West);

(B) All waters of the main marked North-South channel in northern Estero Bay from Green Channel Marker "37'' (approximate latitude 26°26′02″ North, approximate longitude 81°54′29″ West) to Green Channel Marker "57'' (approximate latitude 26°25′08″ North, approximate longitude 81°53′29″ West);

(C) All waters of the main marked North-South channel in southern Estero Bay south of a line beginning at a point (approximate latitude 26°24′36″ North, approximate longitude 81°52′30″ West) on the southern shoreline of the unnamed mangrove island north of Black Island and bearing 192° to the northernmost point (approximate latitude 26°24′22″ North, approximate longitude 81°52′34″ West) of Black Island, and north and east of Red Channel Marker "62'' (approximate latitude 26° 21′31″ North, approximate longitude 81° 51′20″ West) in Broadway Channel;

(D) All waters within the portion of the marked channel leading to the Gulf of Mexico through New Pass, west of the North-South channel and east of State Road No. 865; all waters of the marked channel leading to Mullock Creek north of a line beginning at a point (approximate latitude 26°24′36″ North, approximate longitude 81°52′30″ West) on the eastern shoreline of Coon Key and bearing 106° to a point (approximate latitude 26°24′39″ North, approximate longitude 81°52′34″ West) on the southwestern shoreline of the unnamed mangrove island north of Black Island, and south of Red Channel Marker "18'' (approximate latitude 26°27′46″ North, approximate longitude 81°52′00″ West);

(E) All waters of the marked channel leading from the Mullock Creek Channel to the Estero River, west of the mouth of the Estero River. (This designation only applies if a channel is marked in accordance with permits issued by all applicable state and federal authorities. In the absence of a properly permitted channel, this area is as designated under paragraph (c)(15)(xi) of this section);

(F) All waters of the marked channel commonly known as Alternate Route Channel, with said channel generally running between Channel Marker "1'' (approximate latitude 26°24′29″ North, approximate longitude 81°51′53″ West) and Channel Marker "10'' (approximate latitude 26°24′00″ North, approximate longitude 81°51′09″ West);

(G) All waters of the marked channel commonly known as Coconut Channel, with said channel generally running between Channel Marker "1'' (approximate latitude 26°23′44″ North, approximate longitude 81°50′55″ West) and Channel Marker "23'' (approximate latitude 26°24′00″ North, approximate longitude 81°50′30″ West);

(H) All waters of the marked channel commonly known as Southern Passage Channel, with said channel generally running between Channel Marker "1'' (approximate latitude 26°22′58″ North, approximate longitude 81°51′57″ West) and Channel Marker "22'' (approximate latitude 26°23′27″ North, approximate longitude 81°50′46″ West); and

(I) All waters of the marked channel leading from the Southern Passage Channel to Spring Creek, west of the mouth of Spring Creek.

(xiv) Maps of the Pine Island-Estero Bay Manatee Refuge follow:

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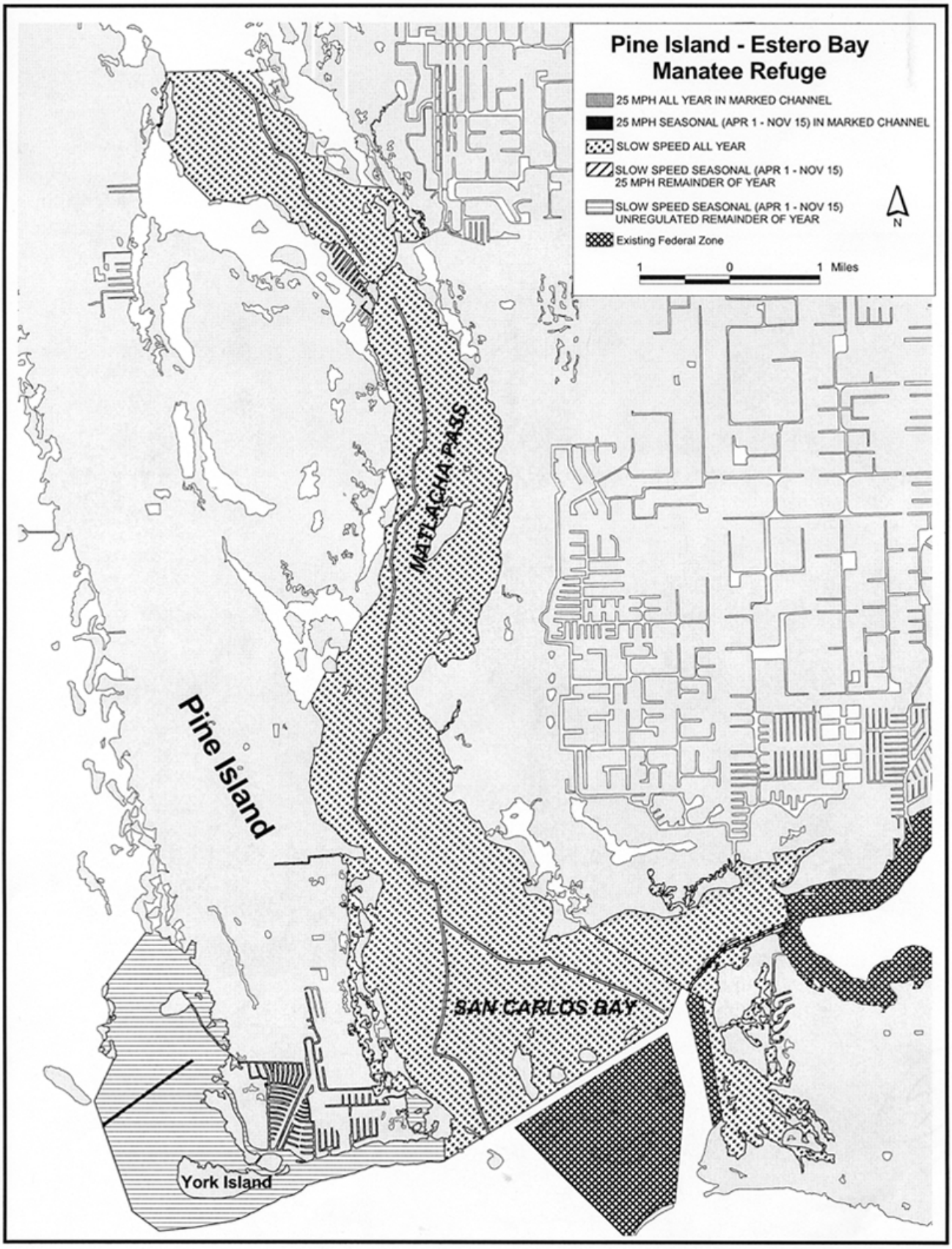
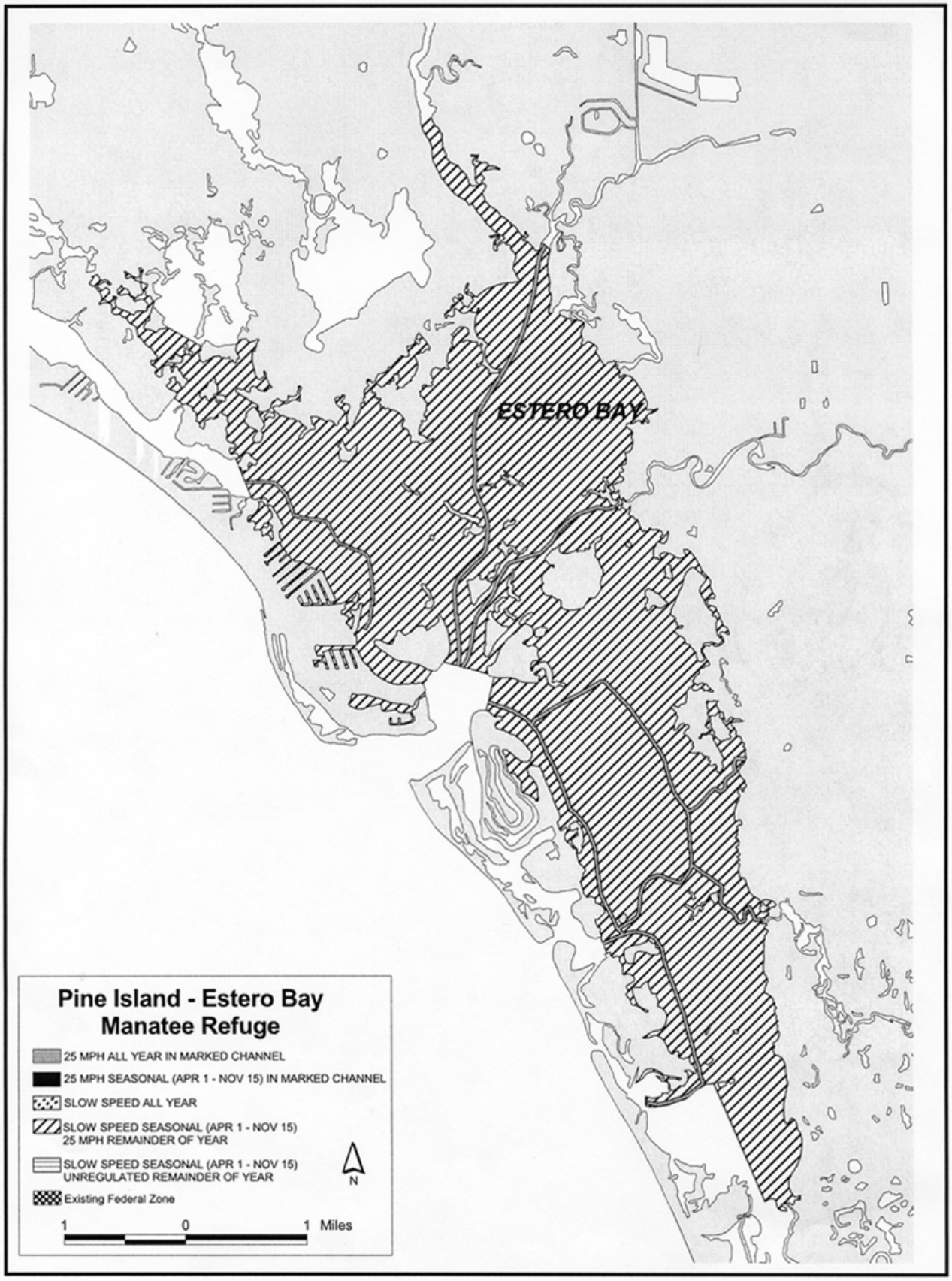

Pine Island - Estero Bay
Manatee Refuge
25 MPH ALL YEAR IN MARKED CHANNEL
25 MPH SEASONAL (APR 1 - NOV 15) IN MARKED CHANNEL
SLOW SPEED ALL YEAR
SLOW SPEED SEASONAL (APR 1 - NOV 15)
25 MPH REMAINDER OF YEAR
SLOW SPEED SEASONAL (APR 1 - NOV 15)
UNREGULATED REMAINDER OF YEAR
Existing Federal Zone
N
1 0 1 Miles
MATLACHA PASS
Pine Island
SAN CARLOS BAY
York Island


ESTERO BAY
Pine Island - Estero Bay
Manatee Refuge
25 MPH ALL YEAR IN MARKED CHANNEL
25 MPH SEASONAL (APR 1 - NOV 15) IN MARKED CHANNEL
SLOW SPEED ALL YEAR
SLOW SPEED SEASONAL (APR 1 - NOV 15)
25 MPH REMAINDER OF YEAR
SLOW SPEED SEASONAL (APR 1 - NOV 15)
UNREGULATED REMAINDER OF YEAR
Existing Federal Zone
N
1 0 1 Miles

Dated: March 30, 2004.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–7828 Filed 4–6–04; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.040212056–4101–02; I.D. 020604B]

RIN 0648–AR89

Fisheries of the Northeastern United States; Monkfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS implements measures to establish target total allowable catch (TAC) levels for the monkfish fishery for the 2004 fishing year (FY), and adjust trip limits and days-at-sea (DAS) for limited access monkfish vessels fishing in the Southern Fishery Management Area (SFMA) based upon the target TAC setting and trip limit and DAS adjustment methods established in Framework Adjustment 2 (Framework 2) to the Monkfish Fishery Management Plan (FMP). Based on these methods, this final rule establishes FY 2004 target TACs of 16,968 mt for the Northern Fishery Management Area (NFMA), and 6,772 mt for the SFMA; adjusts the trip limits for vessels fishing in the SFMA to 550 lb (250 kg) tail weight per DAS for limited access Category A and C vessels, and 450 lb (204 kg) tail weight per DAS for limited access Category B and D vessels; and restricts the FY 2004 DAS available for monkfish limited access vessels fishing in the SFMA to 28 DAS.

DATES: Effective May 7, 2004.

ADDRESSES: Copies of the Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and Final Regulatory Flexibility Analysis (FRFA) prepared for this action are available upon request from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930–2298. Copies of the Environmental Assessment (EA) prepared for Framework Adjustment 2 to the FMP are available upon request from Paul Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Policy Analyst, (978) 281–9103, fax (978) 281–9135, e-mail *Allison.Ferreira@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The monkfish fishery is jointly managed by the New England Fishery Management Council (NEFMC) and the Mid-Atlantic Fishery Management Council (MAFMC), with the NEFMC having the administrative lead. Framework Adjustment 2, which became effective on May 1, 2003 (68 FR 22325; April 28, 2003), implemented a target TAC setting method that is based upon the relationship between the 3–year running average of the NMFS fall trawl survey biomass index (3–year average biomass index) and established annual biomass index targets (annual index target). The annual index targets are based on 10 equal increments between the 1999 biomass index (the start of the rebuilding program) and the biomass target (Btarget), which is to be achieved by 2009 according to the rebuilding plan established in the FMP. According to this method, annual target TACs are set based on the ratio of the observed biomass index to the annual index target applied to the monkfish landings for the previous fishing year.

A proposed rule was published in the **Federal Register** on February 24, 2004 (69 FR 8364), with public comment accepted through March 10, 2004. The measures contained in this final rule are unchanged from those published in the proposed rule. A complete discussion of the methods used to establish the target TACs, trip limits, and DAS restrictions for FY 2004 appeared in the preamble to the proposed rule and is not repeated here.

This action establishes annual target TACs of 16,968 mt for the NFMA, and 6,772 mt for the SFMA for FY 2004. In addition, this action adjusts the trip limits for vessels fishing in the SFMA to 550 lb (250 kg) tail weight per DAS for limited access Category A and C vessels, and 450 lb (204 kg) tail weight per DAS for limited access Category B and D vessels. In order to prevent exceeding the target TAC for the SFMA, this action restricts the FY 2004 DAS available for monkfish limited access vessels fishing in the SFMA to 28 DAS, although the remaining 12 DAS could be fished in the NFMA under the regulations applicable to that area.

The target TAC setting process, and the trip limit and DAS adjustment procedures established in Framework 2 cannot be changed by this action. A change to these procedures would require further action on behalf of the NEFMC and MAFMC (Councils) in the form of a framework adjustment, or an amendment to the FMP, both of which are public processes. The regulations governing framework adjustments to the FMP, specified at § 648.96(c)(3), require at least one initial meeting of the Monkfish Oversight Committee (Committee) or one of the Councils, and at least two Council meetings, one at each Council. Because this action follows the annual adjustment procedures for the monkfish fishery, specified under § 648.96(b), such meetings are not required, and, therefore, were not conducted.

Comments and Responses

Three public comments were received on the proposed rule.

Comment 1: One commenter requested that NMFS reduce the target TAC for the NFMA and SFMA to 8,000 mt and 3,000 mt, respectively, and continue to reduce the target TACs for each area by 10 percent in each subsequent year.

Response: Framework 2 specified a target TAC setting method based upon a series of annual biomass index targets that gradually increase to achieve the Btarget established in the FMP. This process, developed by the Council and approved by NMFS, complies with the rebuilding goals of the FMP. To reduce the target TACs below those generated through this target TAC setting method would not allow for harvesting at optimum yield and is not an option authorized under existing regulations specifying the annual adjustment process for setting target TACs.

Comment 2: NMFS received two letters expressing lack of support for the reduction in DAS available for vessels fishing in the SFMA. These letters also contained additional comments relating to the proposed DAS reduction. In one letter, the commenter stated that the estimated economic impact of 27–percent reduction in vessel revenue for vessels from MA and NJ that fish only in the SFMA is unreasonable, given that the management measures for the NFMA have gone unchanged each year. In the second letter, the commenter requested that NMFS utilize information from the 2003 FY, once this information is available, to conduct an additional DAS analysis for the purpose of developing and implementing a separate action that would readjust DAS in the SFMA during the 2004 FY.

Response: In addition to implementing target TAC setting procedures, Framework 2 also