

**§ 1208.184 Compliance procedures.**

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of disability in programs and activities conducted by the agency, including those programs and activities funded by NHPRC grants.

(b) The agency must process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791). The agency will refer complaints alleging employment discrimination by NHPRC grant recipients, in violation of section 504 of the Rehabilitation Act, to the appropriate Government entity, pursuant to paragraph (e) of this section.

(c) The Director, Equal Employment Opportunity and Diversity Programs (NEEO), is responsible for coordinating implementation of this section. Complaints may be sent to the Director, NEEO (address: National Archives and Records Administration (NEEO), 8601 Adelphi Road, College Park, MD 20740-6001).

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(h) The complainant has the right to file an appeal; however, appeals must be filed within 90 days of receipt from the agency of the letter required by § 1208.184 (g). The agency may extend this time for good cause. Appeals may be sent to the Archivist of the United States for reconsideration (address: National Archives and Records Administration (N), 8601 Adelphi Road, College Park, MD 20740-6001).

\* \* \* \* \*

Dated: October 16, 2003.

**John W. Carlin,**

*Archivist of the United States.*

[FR Doc. 03-26614 Filed 10-21-03; 8:45 am]

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**FEDERAL COMMUNICATIONS COMMISSION**
**47 CFR Part 73**

[DA 03-3039; MB Docket No. 03-219 RM-10797]

**Radio Broadcasting Services; Clemmons and Statesville, NC**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rulemaking filed by Mercury Broadcasting Company, Inc., licensee of Station

WFMX (FM), Statesville, North Carolina, proposing the substitution of Channel 289C1 for Channel 289C at Statesville, and reallocation of Channel 289C1 from Statesville to Clemmons, North Carolina, as the community's first local transmission service, and the modification of the license for Station WFMX (FM) to reflect the changes. Channel 289C1 can be reallocated at Clemmons at a site 32 kilometers (19.9 miles) north of the community at coordinates 36-17-30 NL and 80-15-30 WL.

**DATES:** Comments or counterproposals must be filed on or before December 1, 2003, and reply comments on or before December 16, 2003.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Harry C. Martin, Esq., Fletcher, Heald & Hildreth, 1300 North 17th Street, 11th Floor, Arlington, VA 22209-3801

**FOR FURTHER INFORMATION CONTACT:** Victoria McCauley, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03-219 adopted October 8, 2003, and released October 10, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com)

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

**PART 73—RADIO BROADCAST SERVICES**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by adding Clemmons, Channel 289C1 and by removing Channel 289C at Statesville.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 03-26682 Filed 10-21-03; 8:45 am]

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**DEPARTMENT OF THE INTERIOR**
**Fish and Wildlife Service**
**50 CFR Part 17**

RIN 1018 -AJ23

**Endangered and Threatened Wildlife and Plants; Removal of Federal Protection Status from Two Manatee Protection Areas in Florida**

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the Fish and Wildlife Service (Service), propose to withdraw two areas in Florida from those designated as federally established manatee protection areas. We are proposing this action under the Endangered Species Act of 1973, as amended (ESA), and the Marine Mammal Protection Act of 1972, as amended (MMPA). The areas we propose to withdraw from designation are manatee refuges, in which watercraft operators are required to operate at slow speeds throughout the year. Specifically, the sites are the Pansy Bayou Manatee Refuge in Sarasota County and the Cocoa Beach Manatee Refuge in Brevard County. Manatee protection would not be diminished under this proposal because the sites will remain protected under State law.

**DATES:** We will consider comments on the proposed rule if received by November 21, 2003. See additional information on the public comment process in the "Public Comments Solicited" section.

**ADDRESSES:** If you wish to comment, you may submit your comments by any one of several methods:

1. You may submit written comments and information by mail to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, Attn: Proposed Removal of Federal Protection Status of Two Manatee Refuges, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216.

2. You may hand-deliver written comments to our Jacksonville Field Office, at the above address, or fax your comments to 904/232-2404.

3. You may send comments by electronic mail (e-mail) to [manatee@fws.gov](mailto:manatee@fws.gov). For directions on how to submit electronic comment files, see the "Public Comments Solicited" section.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours from 8 a.m. to 4:30 p.m., at the above address.

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

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The West Indian manatee (*Trichechus manatus*) is federally listed as an endangered species under the ESA (16 U.S.C. 1531 *et seq.*) (32 FR 4001), and the species is further protected as a depleted stock under the MMPA (16 U.S.C. 1361-1407). The Florida manatee (*Trichechus manatus latirostris*), a subspecies of the West Indian manatee (Domning and Hayek 1986), lives 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 Florida waters throughout the year, and nearly all manatees use the waters of peninsular Florida during the winter months. During the winter months, most manatees rely on warm water from industrial discharges and natural springs for warmth. In warmer months, they expand their range and are occasionally seen as far north as Rhode Island on the Atlantic Coast and as far west as Texas on the Gulf Coast.

##### **Watercraft Collisions**

Collisions with watercraft are the largest cause of human-related manatee deaths. Data collected during manatee carcass salvage operations conducted in

Florida from 1978 to 2002 indicate that a total of 1,145 manatees (from a total carcass count of 4,545) are confirmed victims of collisions with watercraft. This number may underestimate the actual number of watercraft-related mortalities, since many of the mortalities listed as "undetermined causes" show evidence of collisions with vessels. Collisions with watercraft comprise approximately 25 percent of all manatee mortalities since 1978. Approximately 75 percent of all watercraft-related manatee mortality has taken place in 11 Florida counties: Brevard, Lee, Collier, Duval, Volusia, Broward, Palm Beach, Charlotte, Hillsborough, Citrus, and Sarasota (Florida Fish and Wildlife Conservation Commission (FWCC) 2003). The last 5 years have been record years for the number of watercraft-related mortalities. From 1998 to 2002, 409 watercraft-related manatee deaths were recorded (36 percent of all watercraft-related deaths documented during the 1978 to 2002 period) (FWCC 2003).

##### **Manatee Protection Areas**

To minimize the number of injuries and deaths associated with watercraft, we and the State of Florida have designated manatee protection areas at sites throughout coastal Florida where conflicts between boats and manatees have been well documented and where manatees are known to frequently occur. Signs are posted in these areas to inform the boating public about restrictions and prohibitions.

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 substantial evidence shows that the establishment of such an area is necessary to prevent the taking of one or more 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).

Take, as defined by the MMPA, means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Harassment, as defined by the MMPA, means any active 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].

We may establish two types of manatee protection areas—manatee refuges and manatee sanctuaries. A manatee refuge is defined as 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 activity must be restricted to prevent the taking of one or more manatees, including but not limited to a taking by harassment (50 CFR 17.102). 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 (50 CFR 17.102). A waterborne activity is defined as including, but not limited to, swimming, diving (including skin and scuba diving), snorkeling, water skiing, surfing, fishing, the use of water vehicles, and dredging and filling operations (50 CFR 17.102).

An extensive network of manatee speed zones and sanctuaries has been established throughout peninsular Florida by Federal, State, and local governments (Service 2001). This existing structure works toward our goal of providing adequate protected areas throughout peninsular Florida to satisfy the biological requirements of the species.

The timing and implementation of State and Federal manatee protection area designations have been influenced by State and Federal courts and by the respective agencies and their ability to effectively post regulatory signage and enforce measures in a timely fashion. The Pansy Bayou Manatee Refuge was identified by both the State and Federal governments as an area in need of protection. Neither agency was able to coordinate or communicate its intent to designate because such plans were part of confidential legal negotiations then in progress. As a result, we designated this site in November 2002, and the State subsequently designated this site in December 2002. The Cocoa Beach Manatee Refuge was designated by the State in June 2002 and was

subsequently designated by the Service in November 2002. The Service pursued its designation because the State had not yet posted regulatory signage at the site and we wanted to expeditiously protect manatees using this site. Because the State has now designated and posted both sites as manatee protection areas, and is enforcing the protective regulations, and because the Service believes that State protection for both sites is now comparable to Federal protection, the Service plans to withdraw its designations at these two sites. We are not proposing to withdraw protections from the remaining Federal manatee refuges and sanctuaries at this time. In general, the State does not provide protection or does not provide comparable protection within the remaining areas.

#### Relationship to Manatee Lawsuit

In *Save the Manatee Club, et al. v. Ballard, et al.*, Civil No. 00-00076 EGS (D.D.C., filed January 13, 2000), several organizations and individuals filed suit against the Fish and Wildlife Service and the U.S. Army Corps of Engineers (Corps) alleging violations of the ESA, MMPA, National Environmental Policy Act, and the Administrative Procedure Act. Four groups representing development and boating interests intervened. Following extensive negotiations, a settlement agreement was approved by the court on January 5, 2001. In this settlement agreement, we agreed to submit a proposed rule for new refuges and sanctuaries to the **Federal Register** by April 2, 2001, and to submit a final rule by September 28, 2001.

Subsequent to the Federal settlement, the FWCC voted to settle *Save the Manatee v. Egbert*, Case No. 90-00-400CIV17-WS (N.D. Fla., filed January 13, 2000) (the State case). That settlement, which was entered into by the court on November 7, 2001, calls for very similar protective measures in many of the locations included in our proposed rule. As a result of these simultaneous processes, the parties in the Federal lawsuit agreed to extend the April 2 deadline in an attempt to negotiate a means to avoid duplication of effort and better serve the public. Subsequent negotiations resulted in additional extensions, which resulted in the proposed rule being submitted to the **Federal Register** on August 3, 2001. (An advance notice of proposed rulemaking had been published in the **Federal Register** on September 1, 2000 [65 FR 53222], and six public workshops were

held in December 2000, prior to approval of the Settlement Agreement.) The proposed rule was published in the **Federal Register** on August 10, 2001 (66 FR 42318). On January 7, 2002, we published a final rule designating two sites in Brevard County, the Barge Canal and Sykes Creek, as Federal manatee refuges (67 FR 680).

On July 9, 2002, the United States District Court for the District of Columbia ruled that the Federal Government violated the Settlement Agreement by failing to designate a sufficient number of refuges and sanctuaries throughout peninsular Florida. On August 1, 2002, the Court issued a remedial order requiring the Service to publish, by November 1, 2002, a final rule for new manatee refuges and sanctuaries throughout peninsular Florida. On September 20, 2002, we published an emergency rule designating seven sites as manatee refuges and sanctuaries on Florida's west coast for a period of 120 days (67 FR 59408). We submitted a final rule to the **Federal Register** on November 1, 2002, designating 13 manatee protection areas in Florida, including the sites previously designated under the emergency rule. The final rule was published on November 8, 2002 (67 FR 68540).

#### Coordination With State Actions

The sites that were designated in our final rule on November 8, 2002 (67 FR 68450), were selected prior to the disclosure of the terms of the proposed settlement in the State case, *Save the Manatee v. Egbert*, Case No. 90-00-400CIV17-WS (N.D. Fla.). After the terms of the State settlement were disclosed, it became apparent that there would be overlap between potential State and Federal actions. However, prior to a final determination on potential State designations, the Service was required by Court Order to move forward with its final rule for the designation of additional manatee protection areas throughout peninsular Florida. We designated protection areas at these sites in accordance with the site selection process and criteria identified in our final rule (67 FR 68456) because State protections had not been implemented at these sites. Because the State has subsequently designated and/or implemented comparable measures in these areas, the Service believes it prudent to withdraw its Federal designations for the Pansy Bayou Manatee Refuge and the Cocoa Beach Manatee Refuge.

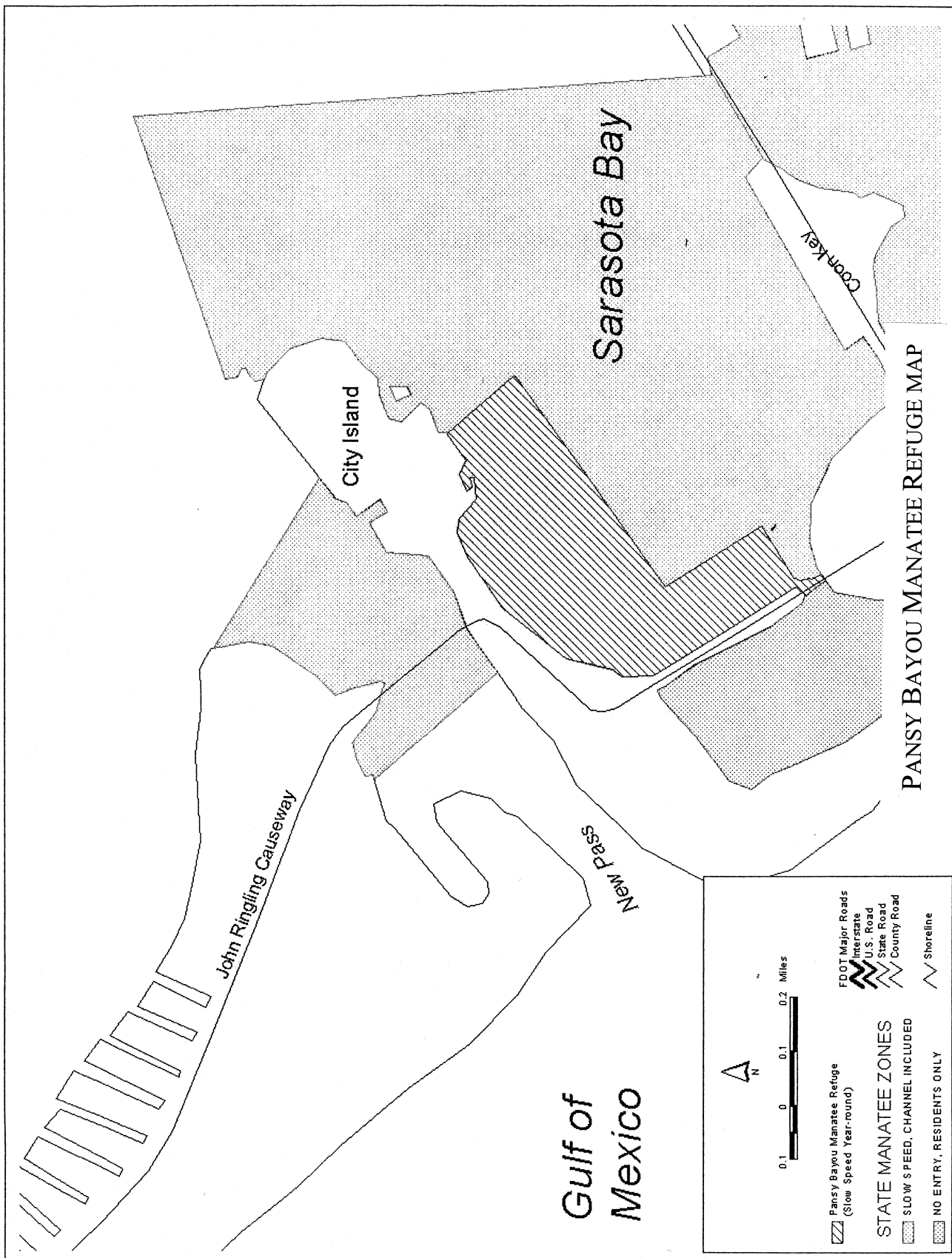
#### Manatee Refuges Proposed for Removal

On November 8, 2002, we designated 13 manatee protection areas in Florida, including the Pansy Bayou Manatee Refuge in Sarasota County and the Cocoa Beach Manatee Refuge in Brevard County (67 FR 68450). The State has now designated both sites as manatee protection areas, has posted them, and enforces the protective regulations (F.A.C. 68C-22.026 and 22.006, respectively). As such, both sites are currently protected under both Federal and State authorities. Federal and State restrictions are comparable in terms of areal extent, duration, and type (year-round, slow speed), and each should prevent the taking of one or more manatees. In our November 2, 2002, rule (67 FR 68450), we stated that "if the State or counties implement measures at these sites that, in our view, provide comparable protection for manatees, we will consider withdrawing or modifying established designations through the rulemaking process." Because the State has now implemented measures that provide comparable protection, we propose to withdraw our designations for the Pansy Bayou Manatee Refuge and the Cocoa Beach Manatee Refuge, and to defer to the State's regulations governing waterborne activities currently in effect in these areas (F.A.C. 68C-22.026 and 22.006, respectively). We reserve the right to reinstate Federal measures should they become necessary. We recognize that the existing system of speed zones and sanctuaries has been established primarily by State and local governments. We also recognize the important role of our State and local partners, and we continue to support and encourage State and local measures to improve manatee protection.

#### Pansy Bayou Manatee Refuge

The federally designated Pansy Bayou Manatee Refuge includes approximately 47 hectares (ha) (116.1 acres) in the northern Pansy Bayou area between City Island and the John Ringling Parkway Bridge on Sarasota Bay in Sarasota County, and regulates vessel traffic to slow speed year-round (67 FR 68450) (see Pansy Bayou Manatee Refuge map). This refuge is located within a State manatee protection area in which all vessels are required by State law to operate at slow speed year-round (F.A.C. 68C-22.026(2)(a)(4)).

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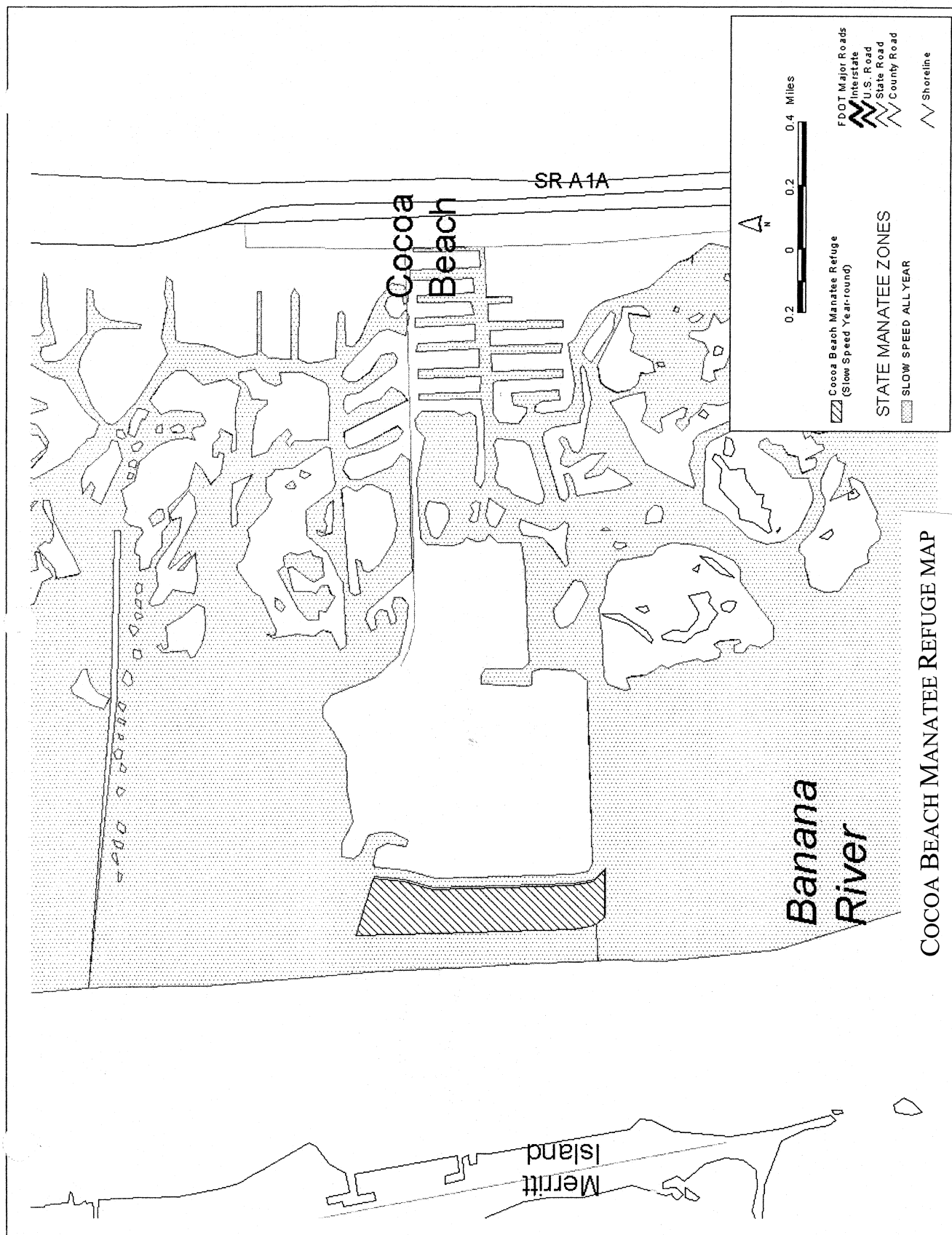
**Cocoa Beach Manatee Refuge**

The federally designated Cocoa Beach Manatee Refuge includes approximately 23.9 ha (59.1 acres) in an area adjacent to Municipal Park, just west of Cocoa

Beach in the Banana River, in Brevard County and regulates vessel traffic to slow speed year-round (67 FR 68450) (see Cocoa Beach Manatee Refuge map). This refuge is located within a State

manatee protection area in which all vessels are required by State law to operate at slow speed year-round (F.A.C. 68C-22.006(2)(d)(16)).

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### Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

1. Reasons why any of these areas should be maintained as Federal manatee refuges, including any data supportive of these reasons;
2. Current or planned activities in the subject areas and their possible effects on manatees;
3. Any foreseeable economic or other impacts, positive or negative, resulting from the proposed removal of the Federal designations;
4. Potential adverse effects to the manatee associated with the proposed removal of the Federal designations; and
5. Any actions that could be considered instead of, or in conjunction with, the actions in this proposed rule.

Comments submitted electronically should be embedded in the body of the e-mail message itself or attached as a text-file (ASCII), and should not use special characters and encryption. Please also include "Attn: RIN 1018-AJ23," your full name, and return address in your e-mail message. Comments submitted to [manatee@fws.gov](mailto:manatee@fws.gov) will receive an automated response confirming receipt of your message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Jacksonville Field Office (see **ADDRESSES** section).

Our practice is to make all comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold also from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

### Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such a review is to ensure that our decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the comment period, on the specific assumptions and conclusions regarding the proposed removal of the Federal designations of these manatee refuges.

We will consider all comments and information received during the 30-day comment period on this proposed rule during preparation of a final rulemaking and will refine this proposal if and when appropriate. Accordingly, the final decision may differ from this proposal.

### 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 proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain unnecessary technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may e-mail your comments to the following address: [Execsec@ios.doi.gov](mailto:Execsec@ios.doi.gov).

### Required Determinations

#### Regulatory Planning and Review

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

a. This proposed rule will not have an annual economic impact of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit analysis is not required. We do not expect that any significant economic impacts would result from the removal of Federal designation of these two manatee refuges in Sarasota and Brevard Counties in the State of Florida. We do not expect any significant effects because comparable State protection would remain in place following the removal of Federal protection.

Activities affected by the designation of manatee protection areas include waterborne activities conducted by recreational boaters, commercial charter boats, and commercial fishermen (including transiting, cruising, water skiing, and fishing activities). Federal measures in place at the Pansy Bayou Manatee Refuge and the Cocoa Beach Manatee Refuge require boat operators to operate at slow speeds throughout the year. State measures require boat operators to operate in a comparable fashion. In removing Federal protection, boat operator behavior in these areas will remain unchanged. Therefore, these activities will not be affected by this rule, and no substantive economic impacts should ensue.

b. This proposed rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This proposal is consistent with the approach used by State and local governments to protect manatees in Florida. We recognize the important role of State and local partners, and we continue to support and encourage State and local measures to improve manatee protection. In previous rule-makings, we stated that "[i]f comparable or similar protections are put in place in the future, we will consider removing those areas from Federal protection." This proposed removal of Federal protection follows the implementation of comparable State protection.

c. This proposed rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. This proposed rule will not raise novel legal or policy issues.

#### 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.*) for the reasons cited below. An initial/final Regulatory Flexibility Analysis is not required.

Accordingly, a Small Entity Compliance Guide is not required.

The characteristics of the two areas (Cocoa Beach and Pansy Bayou) affected by this rule are described below. The economic effects considered include the direct effects, primarily on homeowners, and the indirect effects on businesses in the removal of speed zones.

*Direct Economic Effects:*

—*Cocoa Beach Manatee Refuge.* The Cocoa Beach Manatee Refuge is located along the eastern shore of the Banana River in Brevard County, Florida. The refuge is surrounded by water on all sides, and the nearest adjoining land is occupied by a municipal golf course with no marine facilities. Immediately to the north and south of the Cocoa Beach site lie residential areas composed of approximately 500 single-family houses. Approximately one-half of the houses have boat docks. Residents must pass through Refuge waters in order to reach more open waters. Refuge waters are also used by commercial fishing guides to reach more open waters and by a small number of commercial fishermen for crabbing, which for the purposes of this analysis are considered to be small businesses.

The removal of the Federal “slow speed” designation will not affect direct use activities because the State of Florida is implementing an identical speed limit in its place. Resident boaters will be able to continue passing through Refuge waters at the currently posted speed. Furthermore, the State allows for speed exemptions for commercial fishermen. Those small businesses (commercial fishers and crabbers, and fishing guides) with State exemptions may be able to reduce their time to and from fishing sites and enjoy a small benefit from this rule.

—*Pansy Bayou Manatee Refuge.* The Pansy Bayou Manatee Refuge is located on the northwestern shore of Roberts Bay in Sarasota County, Florida. Adjoining land uses are primarily residential. Approximately 50 to 75 homes are in the vicinity of the Refuge and most of these residences have private docks. The city/county owns a parcel in the vicinity of the Refuge that is leased to a marine lab, sailing club, and ski club. Principal use of Refuge waters is for transit to open waters (*i.e.*, traveling to and from docks out to the adjoining Intracoastal Waterway) and for waterskiing. A small number of commercial fishermen may also use the site for crabbing, and some fishing guides may transit the site when traveling to and from off-shore fishing destinations.

As with the Cocoa Beach site, the removal of the Federal “slow speed”

designation will not affect residential activities. Users will continue to be restricted in their operations by the State “slow speed” restrictions currently in place, and State exemptions for fishers will remain in place. As such, residents in private homes are able to maintain their current activities and should experience no change in use of this site. Those small businesses (commercial fishers and crabbers, and fishing guides) with State exemptions may be able to reduce their time to and from fishing sites and enjoy a small benefit from this rule.

*Indirect Economic Effects:*

With the exception of commercial fishers and crabbers and fishing guides who qualify for State exemptions and may receive a small benefit in reduced travel time to and from fishing sites, any indirect small business economic effects would be limited to those activities supported by residents of the two sites proposed for removal and visitors to these sites. Since this rule deals solely with speed restrictions on water, it is reasonable to look at the effect of speed restrictions on the demand for boats in the affected areas. In a study by Bendle and Bell (1995), four economic models were estimated to determine the effect of speed zones in a county on the demand for boats. In each of the models the coefficient on the speed zones was not statistically different from zero. This indicates that the presence or absence of speed zones does not affect the demand for boats in Florida counties. In a study by Parker (1989), “The bulk of boaters (91%) supported protecting the manatee even if it meant reducing the speed allowed on some waterways.” These studies indicate that it is valid to say that a large majority of Florida residents support manatee protection and the presence or absence of speed zones does not influence the demand for boats. As a result, it then seems to follow that most Florida residents will not change their spending patterns because of the presence or absence of speed zones, and any indirect economic effects on small businesses will not be significant.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of \$100 million or more. As discussed above, this rule to remove Federal designation from two manatee protection areas may have a positive but insignificant economic benefit for some small businesses in the two affected counties. However, the substitution of

State speed zones for Federal speed zones may very well negate any economic changes resulting from this rule. Without changes in recreational use patterns, the economic effects will 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. Commercial fishers, crabbers, and guides who qualify for State exemptions will benefit from this rule when traveling to and from fishing grounds. However, the substitution of State speed zones for Federal ones will not affect the vast majority of boaters who use the two former Federal manatee protection areas.

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 a small amount of additional economic activity, but these economic effects are believed to be minor and will not appreciably change normal operation of businesses in the affected counties. The commercial enterprises who qualify for a State exemption may receive some benefit from the reduced amount of travel time to business sites; however, the Service does not believe this will be economically significant.

*Unfunded Mandates Reform Act*

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

a. This proposed rule will not “significantly or uniquely” affect small governments. A Small Government Agency Plan is not required. Removal of Federal Protection Status from manatee refuges imposes no new obligations on State or local governments.

b. This proposed 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 proposed rule does not have significant takings implications. A takings implication assessment is not required.

*Federalism*

In accordance with Executive Order 13132, this proposed rule does not have significant Federalism effects. A



Federalism assessment is not required. This proposed 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 proposed rule.

#### *Civil Justice Reform*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this proposed 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 proposed 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 proposed regulation will not impose new recordkeeping or reporting requirements on State or local governments, individuals, and businesses, or organizations.

#### *National Environmental Policy Act*

We have analyzed this proposed rule in accordance with the criteria of the National Environmental Policy Act (NEPA) and have determined that this action is categorically excluded from review under NEPA (516 DM 2, Appendix 1.10). An environmental assessment was prepared for the establishment of all 13 manatee refuges designated in November, 2002, including these refuges. Since the first action was not implemented, Federal signage has not yet been installed for these two refuges, and removal of Federal refuge designation will leave comparable state requirements in place, little or no change in the environment has occurred that will be reversed as a result of the removal of Federal refuge designation. Thus, no environmental assessment or environmental impact statement for the removal of Federal refuge designation is required.

#### *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 (Executive Order 13211)*

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because comparable State requirements will remain in effect, this rule is not anticipated to result in any change in activities and, therefore, 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 proposed rule is available upon request from the Jacksonville Field Office (*see ADDRESSES* section).

#### *Author*

The primary author of this document is Jim Valade (*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.

#### **Proposed Regulation Promulgation**

Accordingly, we propose to 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 as follows:

a. Remove paragraphs (c)(5), including the map "Pansy Bayou Manatee Refuge," and (c)(11), including the map "Cocoa Beach Manatee Refuge."

b. Redesignate paragraphs (c)(6) through (c)(10) as paragraphs (c)(5) through (c)(9), respectively.

c. Redesignate paragraphs (c)(12) through (c)(14) as paragraphs (c)(10) through (c)(12), respectively.

d. Revise newly redesignated paragraphs (c)(10)(i)–(ix) by removing the words "paragraph (12)(x)" each time they appear and adding the words "paragraph (c)(10)(x)" in their place.

e. Revise newly redesignated paragraphs (c)(11)(i)–(iv) by removing the words "paragraph (13)(v)" each time they appear and adding the words "paragraph (c)(11)(v)" in their place.

f. Revise newly redesignated paragraphs (c)(12)(i)–(xi) by removing the words "paragraph (14)(xii)" each time they appear and adding the words "paragraph (c)(12)(xii)" in their place.

Dated: October 10, 2003.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 03–26668 Filed 10–21–03; 8:45 am]

**BILLING CODE 4310–55–P**

## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

[Docket No. 031015257–3257–01; I.D. 092503C]

**RIN 0648–AQ79**

### **Fisheries of the Northeastern United States; Proposed 2004 Fishing Quotas for Atlantic Surfclams, Ocean Quahogs, and Maine Mahogany Ocean Quahogs**

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

**ACTION:** Proposed rule - 2004 fishing quotas for Atlantic surfclams, ocean quahogs, and Maine mahogany ocean quahogs; request for comments.

**SUMMARY:** NMFS proposes quotas for the Atlantic surfclam, ocean quahog, and Maine mahogany ocean quahog fisheries for 2004. Regulations governing these fisheries require NMFS to publish the proposed specifications for the 2004 fishing year and seek public comment on such proposed measures. The intent of this action is to propose allowable harvest levels of Atlantic surfclams and ocean quahogs from the Exclusive Economic Zone and an allowable harvest level of Maine mahogany ocean