

### Subpart J—Manatee Protection Areas

SOURCE: 44 FR 60964, Oct. 22, 1979, unless otherwise noted.

#### § 17.100 Purpose.

This subpart provides a means for establishing manatee protection areas without waters under the jurisdiction of the United States, including coastal waters adjacent to and inland waters within the several States, within which certain waterborne activities will be restricted or prohibited for the purpose of preventing the taking of manatees.

#### § 17.101 Scope.

This subpart applies to the West Indian manatee (*Trichechus manatus*), also known as the Florida manatee and as the sea cow. The provisions of this subpart are in addition to, and not in lieu of, other regulations contained in this chapter I which may require a permit or prescribe additional restrictions on the importation, exportation, transportation, or taking of wildlife, and the regulations contained in title 33, CFR, which regulate the use of navigable waters.

#### § 17.102 Definitions.

In addition to definitions contained in the Acts, part 10 of this subchapter, and § 17.3 of this part, and unless the context otherwise requires, in this subpart:

*Acts* means the Endangered Species Act of 1973, as amended (87 Stat. 884, 16 U.S.C. 1531–1543) and the Marine Mammal Protection Act of 1972, as amended (86 Stat. 1027, 16 U.S.C. 1361–1407);

*Authorized officer* means any commissioned, warrant, or petty officer of the U.S. Coast Guard, or any officer or agent designated by the Director of the U.S. Fish and Wildlife Service, the Secretary of the Interior, the Secretary of Commerce, or the Secretary of the Treasury, or any officer designated by the head of a Federal or State agency which has entered into an agreement with the Secretary of the Interior, Secretary of Commerce, Secretary of the Treasury, or Secretary of Transportation to enforce the Acts, or any Coast Guard personnel accompanying

and acting under the direction of a person included above in this definition;

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

*Manatee protection area* means a manatee refuge or a manatee sanctuary;

*Manatee refuge* means an area in which the Director has determined that certain waterborne activity 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;

*Manatee sanctuary* means an area in which the Director has determined that any waterborne activity would result in a taking of one or more manatees, including but not limited to a taking by harassment;

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

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

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

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

*Wake* means all changes in the vertical height of the water's surface caused by the passage of a water vehicle, including a vessel's bow wave,

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stern wave, and propeller wash, or a combination thereof;

*Waterborne activity* includes, but is 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;

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

[44 FR 60964, Oct. 22, 1979, as amended at 67 FR 693, Jan. 7, 2002]

### § 17.103 Establishment of protection areas.

The Director may, by regulation issued in accordance with 5 U.S.C. 553 and 43 CFR part 14, establish manatee protection areas whenever there is substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees. Any regulation establishing a manatee protection area shall state the following information:

(a) Whether the area is to be a manatee sanctuary or refuge.

(1) If the area is to be a manatee sanctuary, the regulation shall state that all waterborne activities are prohibited.

(2) If the area is to be a manatee refuge, the regulation shall state which, if any, waterborne activities are prohibited, and it shall state the applicable restrictions, if any, on permitted waterborne activities.

(b) A description of the area sufficient enough so that its location and dimensions can be readily ascertained without resort to means other than published maps, natural or man-made physical reference points, and posted signs.

(c) Whether the designation is to remain in effect year-round, and if not, the time of year it is to remain in effect.

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### § 17.104 Prohibitions.

Except as provided in § 17.105,

(a) *Manatee sanctuary*. It is unlawful for any person to engage in any waterborne activity within a manatee sanctuary.

(b) *Manatee refuge*. It is unlawful for any person within a particular manatee refuge to engage in any waterborne activity which has been specifically prohibited within that refuge, or to engage in any waterborne activity in a manner contrary to that permitted by regulation within that area.

(c) *State law*. It is unlawful for any person to engage in any waterborne activity prohibited by, or to engage in any waterborne activity in a manner contrary to that permitted by, any State law or regulation the primary purpose of which is the protection of manatees: *Provided:* that such State law or regulation has been issued as part of a program which is determined to be in accordance with the Endangered Species Act of 1973, pursuant to section 6(c) of that Act (16 U.S.C. 1535(c)) or has been approved as consistent with the Marine Mammal Protection Act of 1972 in accordance with section 109 of that Act (16 U.S.C. 1379) and 50 CFR 18.53.<sup>1</sup>

### § 17.105 Permits and exceptions.

(a) The Director may issue permits allowing the permittee to engage in any activity otherwise prohibited by this subpart. Such permits shall be issued in accordance with the provisions of § 17.22 of this part. Such permits shall be issued only for scientific purposes or for the enhancement of propagation or survival. All of the provisions of § 17.22 shall apply to the issuance of such permits, including those provisions which incorporate other sections by reference. Compliance with this paragraph does not by itself constitute compliance with any applicable requirements of part 18.

(b) Any authorized officer may engage in any activity otherwise prohibited by this subpart if:

<sup>1</sup>EDITORIAL NOTE: Section 18.53 was removed at 48 FR 22456, May 18, 1983. See the note at part 18, subpart F.