

§ 17.103

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.

50 CFR Ch. I (10-1-05 Edition)

§ 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 18.53.¹

§ 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:

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

(1) The officer is acting in the performance of his or her official duties; and

(2) The activity is being conducted to directly protect any manatees, to enhance the propagation or survival of manatees, or is reasonably required to enforce the other provisions of this subpart.

(c) Any person may engage in any activity otherwise prohibited by this subpart if such activity is reasonably necessary to prevent the loss of life or property due to weather conditions or other reasonably unforeseen circumstances, or to render necessary assistance to persons or property.

(d) Any waterborne activity which would otherwise be prohibited by this subpart may be engaged in if it is conducted by or under a contract with a Federal agency and if the Secretary of Defense, in accordance with section 7(j) of the Endangered Species Act of 1973 (16 U.S.C. 1536(j)) makes a finding that such activity is necessary for reasons of national security. Such a finding must be made prior to the beginning of the activity or the designation of the protection area, whichever occurs later; except that in the case of an emergency establishment of a protection area under §17.106, the finding must be made within 10 days after the beginning of the activity or the designation of the protection area, whichever occurs later.

§17.106 Emergency establishment of protection areas.

(a) The Director may establish a manatee protection area under the provisions of paragraphs (b) and (c) of this section at any time he determines there is substantial evidence that there is imminent danger of a taking of one or more manatees, and that such establishment is necessary to prevent such a taking.

(b) The establishment of a manatee protection area under this section shall become effective immediately upon completion of the following requirements:

(1) Publication of a notice containing the information required by §17.103 of this section in a newspaper of general circulation in each county, if any, in which the protection area lies; and

(2) Posting of the protection area with signs clearly marking its boundaries.

(c) Simultaneously with the publication required by paragraph (b) of this section, the Director shall publish the same notice in the FEDERAL REGISTER. If simultaneous publication is impractical, because of the time involved or the nature of a particular emergency situation, failure to publish notice in the FEDERAL REGISTER simultaneously shall not delay the effective date of the emergency establishment. In such a case, notice shall be published in the FEDERAL REGISTER as soon as possible.

(d) No emergency establishment of a protection area shall be effective for more than 120 days. Termination of an emergency establishment of a protection area shall be accomplished by publishing notice of the termination in the FEDERAL REGISTER and in a newspaper of general circulation in each county, if any, in which the protection area lies.

(e) Within 10 days after establishing a protection area in accordance with this section, the Director shall commence proceedings to establish the area in accordance with §17.103.

§ 17.107 Facilitating enforcement.

Water vehicles operating in manatee sanctuary or refuge waters are subject to boarding and inspection for the purpose of enforcing the Acts and these regulations.

(a) The operator of a water vehicle shall immediately comply with instructions issued by authorized officers to facilitate boarding and inspection of the water vehicle.

(b) Upon being approached by an authorized officer, the operator of a water vehicle shall be alert for signals conveying enforcement instructions.

(c) A water vehicle signaled for boarding shall:

(1) Guard channel 16, VHF-FM, if equipped with a VHF-FM radio;

(2) Stop immediately and lay to or maneuver in such a manner as to facilitate boarding by the authorized officer and his or her party;

(3) When necessary to facilitate the boarding, provide a safe ladder, manrope, safety line and illumination of the ladder; and