

that could reduce the paperwork burden on the OTRB industry, I hereby certify that this rule will not have significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995, the Department submitted an Information Collect Request to the Office of Management and Budget (OMB). We requested comments on our estimates in a Notice and Request for Comments published on February 5, 2002 (67 FR 5353). The Department received approval on the Information Collection Request from OMB and received an information collection number (OMB No. 2100-0019).

List of Subjects in 49 CFR Part 37

Buildings and facilities, Buses, Civil Rights, Individuals with Disabilities, Mass Transportation, Railroads, Transportation.

■ For the reasons set forth in the preamble, 49 CFR Part 37 is amended as follows:

PART 37—TRANSPORTATION SERVICES FOR INDIVIDUALS WITH DISABILITIES (ADA)

■ 1. The authority for Subpart H, Part 37 continues to read as follows:

Authority: 42 U.S.C. 12101-12213; 49 U.S.C. 322.

■ 2. Revise § 37.213 (a)(2) and (b)(2) as follows:

§ 37.213 Information collection requirements.

- (a) \* \* \*
(1) \* \* \*

(2) The passenger shall be required to make only one request, which covers all legs of the requested trip (e.g., in the case of a round trip, both the outgoing and return legs of the trip; in the case of a multi-leg trip, all connecting legs). The operator shall transmit a copy of the form to the passenger in one of the following ways:

- (i) By first-class United States mail. The operator shall transmit the form no later than the end of the next business day following the request;
(ii) By telephone or email. If the passenger can receive the confirmation by this method, then the operator shall provide a unique confirmation number to the passenger when the request is made and provide a paper copy of the form when the passenger arrives for the requested trip; or
(iii) By facsimile transmission. If the passenger can receive the confirmation by this method, then the operator shall

transmit the form within twenty-four hours of the request for transportation.

\* \* \* \* \*

- (b) \* \* \*

- (1) \* \* \*

(2) The passenger shall be required to make only one request, which covers all legs of the requested trip (e.g., in the case of a round trip, both the outgoing and return legs of the trip; in the case of a multi-leg trip, all connecting legs). The operator shall transmit a copy of the form to the passenger, and whenever the equivalent service is not provided, in one of the following ways:

(i) By first-class United States mail. The operator shall transmit the form no later than the end of the next business day following the request for equivalent service;

(ii) By telephone or email. If the passenger can receive the confirmation by this method, then the operator shall provide a unique confirmation number to the passenger when the request for equivalent service is made and provide a paper copy of the form when the passenger arrives for the requested trip; or

(iii) By facsimile transmission. If the passenger can receive the confirmation by this method, then the operator shall transmit the form within twenty-four hours of the request for equivalent service.

\* \* \* \* \*

Issued in Washington, DC, this 22nd day of June, 2004.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 04-15414 Filed 7-6-04; 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: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), take action to withdraw two areas in Florida from those designated as federally established manatee protection areas. We are taking this action under the Endangered Species Act (ESA) of 1973 and the Marine Mammal Protection Act

(MMPA) of 1972. The areas we are withdrawing 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 will not be diminished under this action because the sites will remain protected under State law.

DATES: This rule is effective August 6, 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 Dr, South, Suite 310, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: David Hankla, Peter Benjamin, Jim Valade, or Jeremy Simons (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. 1531-1544) (32 FR 4001), and 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). Recent years have been record years for the number of watercraft-related mortalities. From 1998 to 2002 (2003 data from the FWCC Florida Marine Research Institute are still preliminary), 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 help prevent injuries and deaths associated with watercraft, we and the State of Florida (State) 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 implemented in 50 CFR 17.100 *et seq.* 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, in the definition of take, 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, in the definition of take, 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 act of pursuit, torment, or annoyance which, (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B] (16 U.S.C 1362).

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 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 (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 network supports 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 decisions and settlements in State and Federal court cases and by the respective agencies and their ability to effectively post regulatory signage and enforce measures in a timely fashion. 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. 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. 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 is withdrawing its designations at these two sites. We are not withdrawing protections from other remaining Federal manatee refuges.

#### Relationship to Manatee Lawsuit

In *Save the Manatee Club v. Ballard*, Civil No. 00-00076 EGS (D.D.C., filed January 13, 2000), several organizations and individuals filed suit against the 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 68450). We entered into a Stipulated Order wherein the Service agreed to submit to the **Federal Register** for publication a proposed rule for the designation of additional manatee protection areas. The proposed rule published April 4, 2003 (68 FR 16602), and on August 6, 2003, we published a final rule that designated three additional manatee protection areas (68 FR 46870). The requirements of the Stipulated Order have been met.

#### **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. 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 for the Pansy Bayou Manatee Refuge and the Cocoa Beach Manatee Refuge, the Service believes it prudent to withdraw its Federal designation in these areas.

#### **Manatee Refuges De-Designation Final Action**

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 (68C-22.026, F.A.C., and 22.006, F.A.C., 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 (the roughly bounded area of the area being protected), duration, and type (year-round, slow speed), and each should prevent the taking of one or more manatees. In our November 8, 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 and we believe that Federal designation is not necessary to prevent the taking of manatees, we proposed to withdraw our designations for the Pansy Bayou Manatee Refuge

and the Cocoa Beach Manatee Refuge and defer to the State's regulations governing waterborne activities currently in effect in these areas (68C-22.026, F.A.C., and 22.006, F.A.C., respectively) on October 22, 2003 (68 FR 60316). In our proposed rule, we solicited public comments until November 21, 2003. The Service received a total of 11 comments on the proposed regulation: 9 comments in general support of this initiative and 2 opposed. Comments were received from the following: 3 peer reviewers; 2 State agencies; 3 conservation organizations; a marine industry association; a private business; and one private citizen.

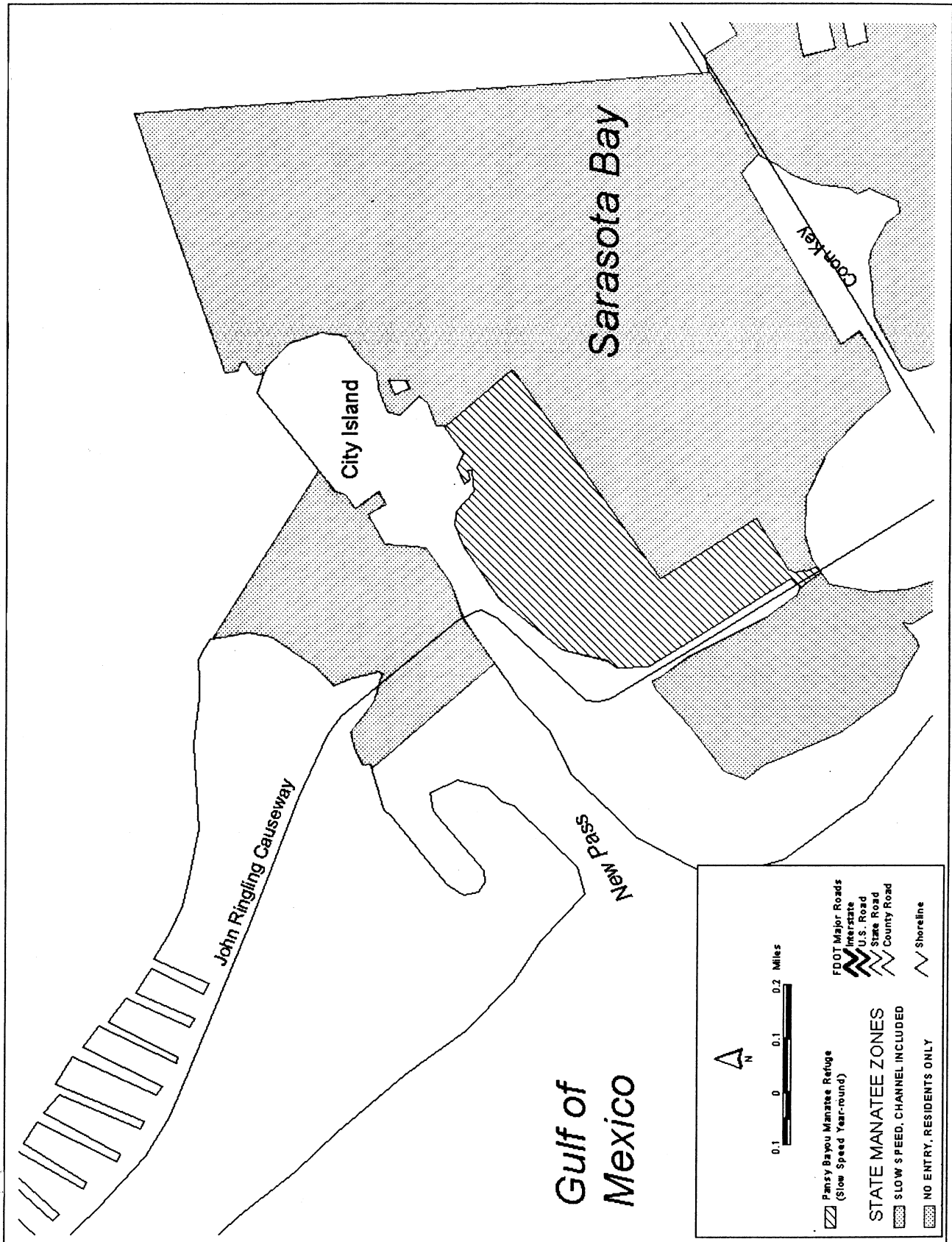
Because the manatee remains listed under the ESA, and protected by the MMPA, we have the authority and responsibility to reinstate Federal protective measures should it become necessary. We recognize that the existing system of speed zones and sanctuaries has been established primarily by State and local 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 (68C-22.026(2)(a)(4), F.A.C.).

**BILLING CODE 4310-55-P**

Pansy Bayou Manatee Refuge Map



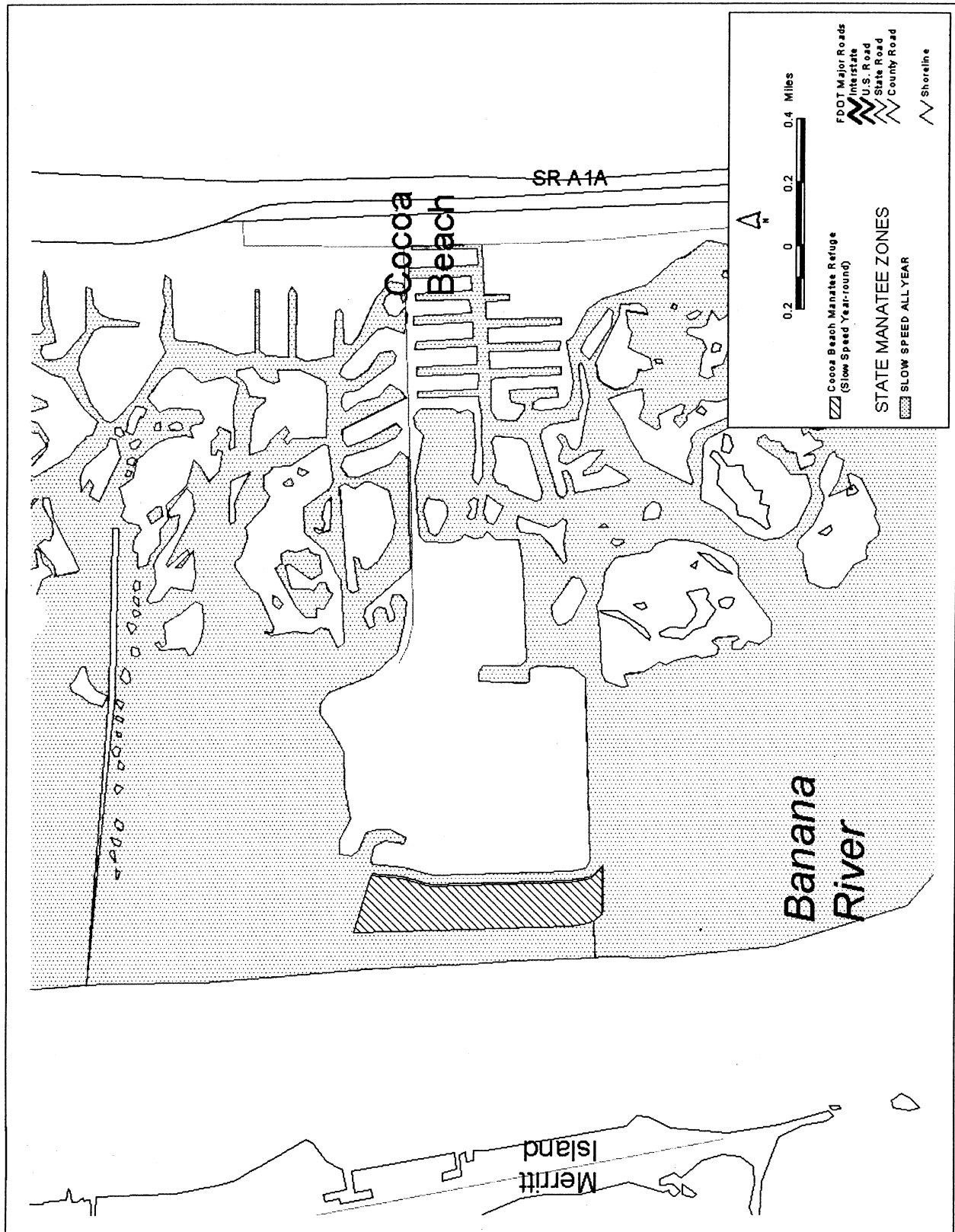
**Cocoa Beach Manatee Refuge**

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 (68C-22.006(2)(d)(16), F.A.C.).

Cocoa Beach Manatee Refuge Map



Summary of Comments Received on Our October 22, 2003, Proposed Rule (68 FR 60316):

*Comment 1:* Several commentors asked for clarification on what constitutes “comparable” protection.

*Response:* At 67 FR 6845 (November 8, 2002), we set out a number of factors that we would consider in determining when to withdraw or revise our designations. Specifically, we stated that we may withdraw or revise our designations if, in our view, State or local government(s) provide a comparable level of protection. We stated that we would rely upon the best professional judgment of our biologists to determine whether alternative State and local measures are comparable to ours. We acknowledged, and continue to acknowledge, that there may be more than one way to provide adequate manatee protection at any given location. In making our determination, we stated that we would consider factors such as areal extent of the measures, duration of the measures, and types of restrictions (e.g., no entry, motorboat prohibited, idle speed, slow speed, etc.). We stated that determination would be based on our judgment of whether a State and local management plan provides comparable protection by presenting take to the same or greater extent as our actions. After evaluating these factors, we have determined that the State’s management plan at the Pansy Bayou and Cocoa Beach manatee refuges provide a comparable level of protection.

*Comment 2:* Several peer reviewers and commentors commented on whether State protections were “identical.”

*Response:* We do not believe that State or local regulatory mechanisms must be identical to be comparable in effect. Federal and State restrictions are comparable in terms of areal extent, duration, and type (year-round slow speed). It is true that State regulations allow exemptions, by permit, that the Federal regulations do not. However, the State will not authorize take of manatees, and permittees will continue to be subject to applicable Federal, State, and local laws and regulations, including the ESA and the MMPA. Furthermore, State regulations require immediate reconsideration of the permit if the permittee is in violation of permit terms. The factors that we set out for determining when a Federal designation may be withdrawn or revised require a determination that replacement measures provide a comparable level of protection which will prevent the taking of one or more manatees.

*Comment 3:* One peer reviewer and several commentors asked whether the State’s variances and exemptions would compromise manatee safety or decrease protection of manatees at Pansy Bayou Manatee Refuge and Cocoa Beach Manatee Refuge.

*Response:* We believe that the variance and exemption regulations will not compromise manatee safety nor decrease manatee protection at these two specific sites. The State will not authorize take of manatees, and permittees will continue to be subject to applicable Federal, State and local laws and regulations, including the ESA and the MMPA. State regulations require immediate reconsideration of the permit if the permittee is in violation of permit terms.

*Comment 4:* One peer reviewer and several commentors asked for better clarification and explanation of what specific circumstances make it appropriate to withdraw protection in these refuges, but not elsewhere.

*Response:* In our response to comment 1, we set out the factors that we would consider in determining when it may be appropriate to withdraw or revise our designations. After considering these factors, we have determined that comparable protective measures now exist at the Pansy Bayou and Cocoa Beach manatee refuges, and Federal designation is unnecessary to prevent the taking of manatees. At this time, we are not of the opinion that comparable protective measures exist at other Federally designated manatee protection areas.

*Comment 5:* One peer reviewer noted that variances and exemptions cover more than just commercial fishermen, crabbers, and fishing guides.

*Response:* We concur. At 68C–22.003, F.A.C., the State allows variances and exemptions for commercial fishing and professional guiding, testing of motors or vessels by manufacturers, resident access, boat access, boat races, and general activities. We believe the State has implemented measures that are comparable to ours, and Federal protection is not necessary to prevent the taking of manatees. The State will not authorize take of manatees; State regulations require immediate reconsideration if take of a single manatee occurs, and require revocation of the permit if the permittee is in violation of permit terms.

*Comment 6:* One commentor encouraged the Service to assert its right to reinstate these Federal protected areas if State regulations prove insufficient to insure manatee survival and recovery.

*Response:* Within the “Coordination with State Actions” section of this rule and the proposed rule (68 FR 60316), we have stated that we have the authority and responsibility to reinstate Federal protective measures if necessary. This authority is derived from the ESA, the MMPA, and 50 CFR 17.

*Comment 7:* One commentor stated that the determination that protections are comparable is complex and requires continued involvement of the Service.

*Response:* We have concluded that State protection is comparable, and we concur that manatee protection requires the continued involvement of the Service.

*Comment 8:* One commentor stated that removing Federal protections in these two areas should not open the door to further rollbacks of Federal manatee protections in Florida.

*Response:* We will continue to take an active role in the management of the Florida manatee by assessing the adequacy of manatee protection measures. We may find it necessary to designate, re-designate, or de-designate sites in the State as necessary. We will conduct our analysis in a way that furthers the recovery of the Florida manatee while providing the most efficient use of limited resources.

*Comment 9:* One commentor stated that it is evident that the Federal Government is better suited to provide protection and has the greater authority and resources to do so. This is especially true, the commentor stated, as the Federal Government, unlike the State, has no economic interest in accommodating human users of the resource.

*Response:* We believe that the protection of the Florida manatee requires the active participation of Federal, State, and local government agencies. We are committed to continuing the protection of the manatee through a cooperative effort with our management partners at the Federal, State, and local levels, as well as efforts involving private entities and members of the public. Additionally, we will continue to take an active role in manatee protection and will exercise our authority, if necessary, to designate, re-designate, or de-designate sites in the State.

*Comment 10:* One commentor asserted that the Florida manatee is almost exclusively found within the internal waters of Florida and therefore is a natural resource of Florida and is entitled to protection from the State.

*Response:* We concur that the State should take an active role in the protection of its natural resources. We acknowledge that a State and Federal

cooperative partnership is an important component for the protection of the Florida manatee. Insofar as this comment may have been intended to imply that Federal protection should not infringe upon State efforts, we believe that the most effective means of protecting the Florida manatee is to have a partnership with our State and local partners. As State law requires State protective measures, Federal law under the MMPA and ESA requires us to actively participate in the protection of the Florida manatee.

### Required Determinations

#### *Regulatory Planning and Review*

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

a. This final 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 also require boat operators, depending on whether or not the operator has a variance or exemption and the terms of the variance or exemption, to operate at slow speed. In removing Federal protection, boat operator behavior in these areas will likely remain unchanged. Therefore, these activities will not be affected by this rule, and no substantive economic impacts should ensue.

b. This final rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This final rule 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.” The removal of Federal protection follows the implementation of comparable State protection.

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

d. This final 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. A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

The characteristics of the two areas (Pansy Bayou and Cocoa Beach) 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

*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 fishing destinations.

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 fishermen will remain in place. Residents in private homes are able to maintain their current activities and should experience no change in use of this site.

*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 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. The conditions placed upon the issuance of a permit and the terms under which it may be revoked will not likely increase the take of manatees.

#### Indirect Economic Effects

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. This rule to remove Federal designation from two manatee protection areas is expected to have an 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. 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. Any economic effects associated with this rule are believed to be minor and will not appreciably change competition, employment, investment, or productivity 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 final 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 final 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 final rule does not have significant takings implications. A takings implication assessment is not required.

#### *Federalism*

In accordance with Executive Order 13132, this final rule does not have significant Federalism effects. A Federalism assessment is not required. This final 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 final 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 recordkeeping or reporting requirements on State or local governments, individuals, and businesses, or organizations.

#### *National Environmental Policy Act*

We have analyzed this final rule in accordance with the criteria of the National Environmental Policy Act (NEPA) of 1969, Pub. L. 91–190, 83 Stat. 852 (codified in current form at 42 U.S.C. §§ 4321 *et seq.*) 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 Peter Benjamin (see **ADDRESSES** section).

#### **Authority**

The authority to establish manatee protection areas is provided by the Endangered Species Act (ESA) of 1973, Pub. L. 93–205, 87 Stat. 884 (codified as amended at 16 U.S.C. 1531–37, 1537a, 1538–44) and the Marine Mammal Protection Act (MMPA) of 1972, Pub. L. 92–522, 87 Stat. 1027 (codified as amended at 16 U.S.C. 1361–1407).

#### **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.

### § 17.108 [Amended]

■ 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)(15) as paragraphs (c)(10) through (c)(13), respectively.

■ d. Amend new paragraphs (c)(10)(i)–(ix) by removing the words “paragraph (12)(x)” each time they appear and adding the words “paragraph (10)(x)” in their place.

■ e. Amend new paragraphs (c)(11)(i)–(iv) by removing the words “paragraph (13)(v)” each time they appear and adding the words “paragraph (11)(v)” in their place.

■ f. Amend new paragraphs (c)(12)(i)–(xi) by removing the words “paragraph (14)(xii)” each time they appear and adding the words “paragraph (12)(xii)” in their place.

Dated: June 16, 2004.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 04–15273 Filed 7–6–04; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 031216314–3314–01; I.D. 0070104B]

### Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures; Inseason Adjustments

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

**ACTION:** Inseason adjustments to management measures and a request for comments.

**SUMMARY:** NMFS announces inseason adjustments to the Pacific Coast limited entry trawl and fixed gear groundfish fisheries. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), will allow fisheries access to more abundant groundfish stocks while

protecting overfished and depleted stocks.

**DATES:** Changes to management measures are effective 0001 hours (local time) on July 1, 2004, until the 2005–2006 specifications and management measures are effective, unless modified, superseded, or rescinded through a publication in the **Federal Register**. Comments on this rule will be accepted through August 2, 2004.

**ADDRESSES:** You may submit comments, identified by (i.d. #), by any of the following methods:

- E-mail:

*GroundfishInseason#5.nwr@noaa.gov.*

Include the I.D. number in the subject line of the message.

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE., Seattle, WA 98115–0070, Attn. Carrie Nordeen.

- Fax: 206–526–6736.

**FOR FURTHER INFORMATION CONTACT:**

Carrie Nordeen (Northwest Region, NMFS), phone: 206–526–6144; fax: 206–526–6736; and e-mail:

*carrie.nordeen@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

This **Federal Register** document is available on the Government Printing Office’s Web site at:

*www.gpoaccess.gov/fr/index.html.*

Background information and documents are available at the NMFS Northwest Region Web site at:

*www.nwr.noaa.gov/1sustfsh/*

*gdfsh01.htm* and at the Pacific Fishery

Management Council’s Web site at:

*www.pcouncil.org.*

**Background**

The Pacific Coast Groundfish FMP and its implementing regulations at 50 CFR part 660, subpart G, regulate fishing for over 80 species of groundfish off the coast of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Pacific Council) and are implemented by NMFS. The specifications and management measures for the 2004 fishing year (January 1–December 31, 2004) were initially published in the **Federal Register** as an emergency rule for January 1–February 29, 2004 (69 FR 1322, January 8, 2004) and as a proposed rule for March 1–December 31, 2004 (69 FR 1380, January 8, 2004). The emergency rule was amended at 69 FR 4084, January 28, 2004. The final

rule for March 1–December 31, 2004 was published in the **Federal Register** on March 9, 2004 (69 FR 11064) and amended at 69 FR 23440, April 29, 2004, at 69 FR 25013, May 5, 2004, at 69 FR 28086, May 18, 2004, and at 69 FR 38857, June 29, 2004.

The following changes to current groundfish management measures were recommended by the Pacific Council, in consultation with Pacific Coast Treaty Tribes and the States of Washington, Oregon, and California, at its June 13–18, 2004, meeting in Foster City, CA. Inseason adjustments to limited entry trawl and fixed gear management measures are in response to groundfish landings through the end of April and projected catch through the end of the year. Adjusted management measures are intended to: (1) Allow groundfish optimum yields (OYs) to be achieved but not exceeded, (2) reduce the discard of overfished species by providing for incidental catch allowances in target fisheries for abundant groundfish species, (3) clarify limited entry trawl differential trip limits, (4) adjust limited entry trawl gear requirements, and (5) revise both the 75 fm (137 m) and 150 fm (274 m) rockfish conservation area boundaries so that they more closely follow their respective depth contours. Pacific Coast groundfish landings will be monitored throughout the year, and further adjustments to trip limits or management measures will be made as necessary to allow the achievement of or to avoid exceeding the 2004 OYs.

### Limited Entry Trawl Differential Footrope Limits Coastwide

Differential limited entry trawl trip limits have been used as a fisheries management tool in the Pacific Coast groundfish fishery since 2000. Initially, higher trip limits were available if fishers used small footrope or midwater gear, as opposed to large footrope gear, during harvesting. Generally, neither small footrope or midwater gear are useful for trawling the ocean floor in areas of high relief, rocky habitat. Encouraging the use of these gear types was intended to decrease the catch of certain rockfish species associated with the ocean floor and to protect rocky habitat. When rockfish conservation areas (RCAs) were established in 2003, NMFS slightly modified the intent and application of differential trawl trip limits. As of 2003, the use of small footrope and/or midwater gear has been permitted both shoreward and seaward of the RCA coastwide, while the use of large footrope gear has only been permitted seaward of the RCA