

§ 4300.61 Can I sublease any part of the land in my permit?

No.

Closing Out Your Permit**§ 4300.70 May I relinquish my permit?**

Yes. You may relinquish the permit by filing advance written notice with BLM. Your relinquishment will be effective on the date you indicate, as long as it is at least 30 days after the date you file.

§ 4300.71 Under what circumstances can BLM modify, reduce or cancel my permit?

(a) BLM may cancel the permit if:

- (1) BLM issued it improperly through error as to a material fact;
- (2) You fail to comply with any of the provisions of the permit or the regulations of this part; or
- (3) Disposal, withdrawal, natural causes, such as drought or fire, or any other reason in § 4300.50 so requires.

(b) BLM will not cancel the permit for failure to comply until BLM has notified you in writing of the nature of your noncompliance, and you have been given at least 30 days to show why BLM should not cancel your permit.

(c) BLM may modify or reduce a permit in accordance with § 4300.50.

§ 4300.72 May I remove my personal property or improvements when the permit expires or terminates?

(a) Yes. Within 90 days of the expiration or termination of the grazing permit, or within any extension period, you may remove all your personal property and any removable range improvements you own, such as fences, corrals, and buildings.

(b) Property that is not removed within the time allowed will become property of the United States.

Reindeer Crossing Permits**§ 4300.80 How can I get a permit to cross reindeer over public lands?**

(a) BLM may issue a crossing permit free of charge when you file an application with BLM at least 30 days before the crossing is to begin. Lands crossed may include lands under a grazing permit.

(b) The application does not have to be on a BLM-approved form nor in a particular format, but it must show:

- (1) The number of reindeer to be driven;
- (2) The start date;
- (3) The approximate period of time required for the crossing; and
- (4) The land to be crossed.

(c) You must comply with applicable State and Federal laws on livestock quarantine and sanitation when crossing reindeer on public land.

Trespass**§ 4300.90 What is a trespass?**

(a) A trespass is any use of Federal land for reindeer grazing purposes without a valid permit issued under the regulations of this part; a trespass is unlawful and is prohibited.

(b) Any person who willfully violates the regulations in this part will be deemed guilty of a misdemeanor, and upon conviction is punishable by imprisonment for not more than one year, or by a fine of not more than \$500.

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

RIN 1018-AE47

Endangered and Threatened Wildlife and Plants; Final Rule to Establish an Additional Manatee Sanctuary in Kings Bay, Crystal River, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: With this final rule, the Fish and Wildlife Service (Service) establishes an additional West Indian manatee (*Trichechus manatus*) sanctuary in Citrus County, Florida, adjacent to Kings Bay/Crystal River at the confluence of the Three Sisters Spring run with a residential canal, and prohibits all waterborne activities in the sanctuary for a period of November 15 through March 31 of each year. This final action will prevent the taking of manatees by harassment resulting from waterborne activities "which 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" during the winter months. This increases the number of sanctuaries in Kings Bay from six to seven and has been initiated to prevent harassment caused by increasing public use at this site. This action is taken under the authority of the Endangered Species Act of 1973, as amended, and the Marine Mammal Protection Act of 1972, as amended.

DATES: This rule is effective November 16, 1998.

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

Southpoint Drive South, Suite 310, Jacksonville, Florida 32216-0912.

FOR FURTHER INFORMATION CONTACT:

Robert O. Turner at the above address, (904/232-2580, ext.117); or Vance Eaddy, Senior Resident Agent, U.S. Fish and Wildlife Service (813/893-3651); or Elizabeth Souheaver, Refuge Manager, Chassahowitzka National Wildlife Refuge, U.S. Fish and Wildlife Service (352/563-2088).

SUPPLEMENTARY INFORMATION:**Background**

Crystal River is a tidal river on the west coast of Florida. Forming the headwaters of Crystal River is Kings Bay, a lake-like body of water fed by numerous freshwater springs. The Kings Bay springs constitute one of the most important natural warm-water refuges for manatees, a federally listed endangered species. More than 250 animals may seek refuge in the Bay's warm waters during winter cold periods. With the winter presence of manatees and its sheltered, warm and clear waters. Kings Bay also attracts large numbers of waterborne users (boaters, recreational divers, snorkelers, and swimmers) most of whom seek out manatees for a close viewing experience. The influx of visitors, primarily there to see and interact with manatees, provides a major economic impact to the Crystal River community.

Large aggregations of manatees apparently did not exist in Kings Bay until recent times (Beeler and O'Shea 1988). The first careful counts were made in the late 1960s. Since then manatee numbers have increased significantly. In 1967-1968, Hartman (1979) counted 38 animals. By 1981-1982, the maximum winter count increased to 114 animals (Powell and Rathbun 1984). In December 1994, the count was 271 (U.S. Fish and Wildlife Service, unpublished data) and in January 1998, the count was 298. Both births and immigration of animals from other areas have contributed to the increases in manatee numbers at Crystal River.

The second revision of the Florida Manatee Recovery Plan (U.S. Fish and Wildlife Service, 1995) identifies the need to minimize disturbance and harassment of manatees in the wild. This concern for the welfare of manatees in Kings Bay has resulted in the establishment of a series of sanctuary areas to protect manatees from any potential negative impacts of human activities. The first three sanctuaries were created in 1980, encompassing a total of about 10 acres in Kings Bay. These were closed to all human access

each winter from November 15 to March 31 and provided manatees with areas where they could retreat from waterborne users. To better administer and protect the Bay's manatee habitat, the Service purchased several islands associated with the sanctuaries in 1983 and established the Crystal River National Wildlife Refuge. During the 1980's, the number of manatees and divers increased steadily, resulting in the need for additional manatee sanctuaries. In 1994, the Service established three additional sanctuaries and expanded an existing sanctuary. The six sanctuaries encompass approximately 39 acres within Kings Bay.

The Kings Bay manatee sanctuary system provides significant protection to the more than 250 manatees that use this area as a winter warm-water refuge. With the large number of manatees using Kings Bay and an increasing number of recreational divers and snorkelers coming to Crystal River to seek close encounters with manatees, another problem area outside the existing sanctuary system has been identified.

Since the establishment of the three most recent sanctuaries, reports of waterborne users harassing manatees and causing manatees to leave the Three Sisters Spring run area has been documented by researchers, refuge staff and concerned citizens. The Save the Manatee Club and the U.S. Marine Mammal Commission have urged the Service to act to protect manatees utilizing the Three Sisters Spring run area. Dive shop operations have acknowledged that there is a manatee harassment problem in the area around Three Sisters Spring.

Prior to the winter of 1996-97, the Service and local interest groups met separately with local dive shop owners to discuss the harassment issue and the feasibility of establishing a new sanctuary. There was a consensus that a sanctuary was needed and that it would be more effective if it was developed through a local city or county ordinance. Representatives of each of the local dive shops wrote letters recognizing the need for a small sanctuary near Three Sisters Spring and recommended that the regulations be promulgated locally. To date, the local government has not adopted regulation(s) to establish a sanctuary at this site.

The Service funded a manatee and human interaction study at Three Sisters Spring (January 23-February 17, 1997) which confirmed that harassment was occurring and documented instances in which manatees left the

warm waters at the confluence of the spring run and the residential canal when divers, snorkelers and/or swimmers arrived (Wooding 1997). The Service is concerned that these animals may be leaving earlier than if they were left undisturbed.

Reasons for Determination

In deciding to implement the emergency rule and proceed with a proposed rule, the Service carefully assessed the best available information, including the aforementioned study to evaluate manatee and human interactions at Three Sisters Spring. The study clearly documented a manatee harassment problem at the site. With more than 250 manatees using the sanctuary system along with an increasing number of visitors who seek close encounters with manatees, manatees are experiencing more frequent disturbance at Three Sisters Spring. Without sufficient space to rest free from harassment, a significant proportion of the manatees depending upon the Kings Bay springs could be at considerable risk should they be driven away from essential warm water areas. Based on this evaluation, the preferred action is to establish an additional sanctuary at the confluence of the Three Sisters Spring run and a residential canal in Kings Bay, Crystal River, Citrus County, Florida.

Due to insufficient time to complete preparations for establishing a permanent sanctuary before cold weather would arrive in November 1997, the Service proceeded with an emergency rule (November 26, 1997 (62 FR 63036)) that established an interim manatee sanctuary at Three Sisters Spring for the November 24, 1997, through March 23, 1998, time period. The emergency sanctuary was marked with a buoy system similar to the other sanctuaries. To date, weekly aerial surveys by refuge biologists have documented that manatee use of the sanctuary has remained consistent and public use has remained at high numbers. The public has respected the boundaries as is reflected by few enforcement violations at the sanctuary.

A proposed rule to establish a permanent manatee sanctuary at Three Sisters Spring was simultaneously published on November 26, 1997 (62 FR 63062) with the emergency rule. The proposed rule offered a public hearing, if requested, and announced a 60-day public comment period that ended January 28, 1998. Also, on November 17 and 28, 1997, legal notices were placed in the *Citrus County Chronicle* and *The St. Petersburg Times Citrus Edition*, respectively, advertising the emergency

and proposed rules and soliciting public comment.

The authority to establish manatee protection areas is provided by the Endangered Species Act of 1973, as amended, and the Marine Mammal Protection Act of 1972, as amended, and is codified in 50 CFR part 17, subpart J. Under subpart J, the Director may establish, by regulation, manatee protection areas whenever he/she determines there is substantial evidence that there is imminent danger of a taking (including harassment) of one or more manatees, and that such establishment is necessary to prevent such a taking.

The sanctuary is located on the west side of the confluence of Three Sisters Spring run and the residential canal, Kings Bay, Crystal River, Citrus County, Florida. The sanctuary is less than one quarter acre in size. A standard survey of the sanctuary area has been performed. The new area will be delineated with buoys, as are the existing sanctuaries.

Summary of Comments and Recommendations

We received a total of seven letters during the comment period. All were supportive and recommended that the Service establish a permanent sanctuary as proposed. The U.S. Marine Mammal Commission's letter supported the Service's proposal, but stated that they were concerned that establishing the sanctuary through local efforts (city, county) would create the potential for inconsistencies in rule provisions and enforcement actions, such as the amounts of penalties for violation. Although the Service indicated in the proposed rule that it would leave the option open for local government to establish a sanctuary at Three Sisters Spring, this did not occur and the Service has proceeded with this final rule. The Marine Mammal Commission letter also commended the Service for the progress it is making to address manatee harassment problems at Kings Bay and suggested several additional measures to address the harassment issue. To further reduce harassment, the Service has increased public outreach efforts designed to educate boaters, swimmers, and divers on how they can avoid harassing or disturbing manatees. The Service has established a Manatee Education Center located near Crystal River at the Homosassa Springs State Park. The Service, in cooperation with the Save the Manatee Club and the Professional Association of Diving Instructors, has developed a new educational brochure entitled *If You Love Me, Don't Disturb Me*. This brochure specifically addresses the

issue of swimmer interactions with manatees. It is expected that over 50,000 copies will be distributed to the public during 1998.

In light of the supportive comments received from the media, citizens, and local dive shops, and the fact that local city and county governments did not step forward to establish the sanctuary themselves, the Service has concluded that it is in the best interest of the manatee to make the emergency sanctuary permanent. This is needed to accommodate the increase in the number of manatees using the Three Sisters Spring area as a warm water refuge, and to offset harassment from the increasing public use. The sanctuary system is essential to ensure adequate undisturbed natural areas in Kings Bay, where manatees can meet their needs, including warm water, food, and areas for resting and socializing. No changes to the proposed rule are necessary or warranted and, since there was no request for a public hearing, the Service is proceeding with this final rule action.

National Environmental Policy Act

The Service has determined this action qualifies as a categorical exclusion in accordance with 516 DM 2, Appendix 1 and 516 DM 5, Appendix 1. No further National Environmental Policy Act documentation will, therefore, be made.

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action and was not subject to review by the Office of Management and Budget.

a. This rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. It is not expected that any significant impacts would result from the establishment of a sanctuary of less than one quarter acre in size at Three Sisters Spring. The dive shops, tour operators and public are supportive of the sanctuary and respected the boundaries of the emergency rule, as was reflected by few enforcement violations at the emergency sanctuary.

b. This rule will not create inconsistencies with other agencies' actions. The precedent to establish manatee sanctuaries in Kings Bay was established when the first three sanctuaries were created in 1980, encompassing a total of about 10 acres in Kings Bay. These were closed to all

human access each winter from November 15 to March 31 and provided manatees with areas where they could retreat from waterborne users. In 1994, the Service established three additional sanctuaries and expanded an existing sanctuary. The six sanctuaries encompass approximately 39 acres within Kings Bay. The Service does not believe that the establishment of a seventh manatee sanctuary at Three Sisters Spring, which will be less than one quarter acre in size, would conflict with existing or proposed human activities or hinder public utilization of the Three Sisters Spring area. Over 400 acres of waterways in Kings Bay are available for public use. The emergency sanctuary was marked with a buoy system similar to the other sanctuaries from November 26, 1997, until March 26, 1998. Weekly aerial surveys by refuge biologists documented that manatee use of the sanctuary remained consistent and that the public use also remained at high numbers. The public respected the boundaries as was reflected by few enforcement violations at the sanctuary.

c. This final rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. There are minimal restrictions to existing human uses of the Three Sisters Spring area as a result of this rule, but the restriction has been shown to enhance manatee viewing opportunities. No entitlements, grants, user fees, loan programs or the rights and obligations of their recipients are expected to occur.

d. This rule will not raise novel legal or policy issues. The Service has previously established six other manatee sanctuaries in Kings Bay—three in 1980, their expansion and the creation of the Crystal River National Wildlife Refuge in 1983 and three new sanctuaries and the expansion of an existing sanctuary in 1994. This final action will reduce the need for enforcement actions to prevent the taking of manatees by harassment resulting from human-related waterborne activities such as swimming, diving, snorkeling, fishing, the use of water vehicles and dredging and filling operations in the Three Sisters Spring area.

Regulatory Flexibility Act

The Department of the Interior certifies 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.*). Neither a Regulatory Flexibility Analysis nor a Small Entity Compliance Guide is

required. The additional manatee sanctuary in King's Bay will be less than one quarter acre in size, bringing the total area of seasonally-restricted manatee sanctuaries in King's Bay to approximately 40 acres. Over 400 acres of waterways in King's Bay are available for public use and local dive shops have expressed support for an additional manatee sanctuary at Three Sisters Spring.

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 will restrict waterborne activities seasonally in less than one quarter acre of waterway. This will bring the total acreage in seasonally restricted sanctuaries in Kings Bay to approximately 40 acres, leaving over 400 acres in Kings Bay available for public use. Thus, this rule should have little or no effect on local dive shops, etc. This rule:

a. Does not have an annual effect on the economy of \$100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

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.

Unfunded Mandates Reform Act

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

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. County and local governments abstained from developing a local sanctuary ordinance and opted for the Service to establish the sanctuary.

b. This rule will not produce a Federal mandate of \$100 million or greater in any year, i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. The sanctuary is located over state owned submerged bottoms. This sanctuary, as have the previous six manatee sanctuaries that are adjacent to private lands, allows property owners navigational access to their property

during the November 15 through March 31 closures.

Federalism

In accordance with Executive Order 12612, the rule does not have significant Federalism effects. A Federalism assessment is not required. This rule will not have substantial direct effects on the States, in their relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. The Service coordinated with the State of Florida on the development of a manatee sanctuary at Three Sisters Spring.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and does not meet 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 does not impose record keeping or reporting requirements on State or local governments, individuals, businesses, or organizations.

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) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian

tribes and have determined that there are no effects.

References Cited

- Beeler, E.I. and T.J. O'Shea. 1988. Distribution and mortality of the West Indian manatee (*Trichechus manatus*) in southeastern United States: a compilation and review of recent information. Prepared by the U.S. Fish and Wildlife Service for the U.S. Army Corps of Engineers. U.S. Natl. Tech. Info. Serv., Springfield, Virginia PB 88-207 980/AS. 613 pp.
- Hartman, D.S. 1979. Ecology and behavior of the manatee (*Trichechus manatus*) in Florida. Am. Soc. Mamm. Spec. Pub. No. 5. 153 pp.
- Powell, J.A. and G.B. Rathbun. 1984. Distribution and abundance of manatees along the northern coast of the Gulf of Mexico. Northeast Gulf Sci. 7:1-2.
- Wooding, J. 1997. An assessment of manatee behavior relative to interactions with humans at Three Sisters Springs, Crystal River, Florida. A report submitted to the U.S. Fish and Wildlife Service, Jacksonville, Florida. 65 pp.
- U.S. Fish and Wildlife Service. 1995. Florida Manatee Recovery Plan Second Revision. U.S. Fish and Wildlife Service, Atlanta, Georgia. 160 pp.

Author

The primary author of this final rule is Robert O. Turner, Manatee Coordinator (see **ADDRESSES** section above).

Authority

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

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, the Service amends part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

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

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

2. Amend § 17.108 by adding paragraph (a)(7) and revising the map at the end of the section to read as follows:

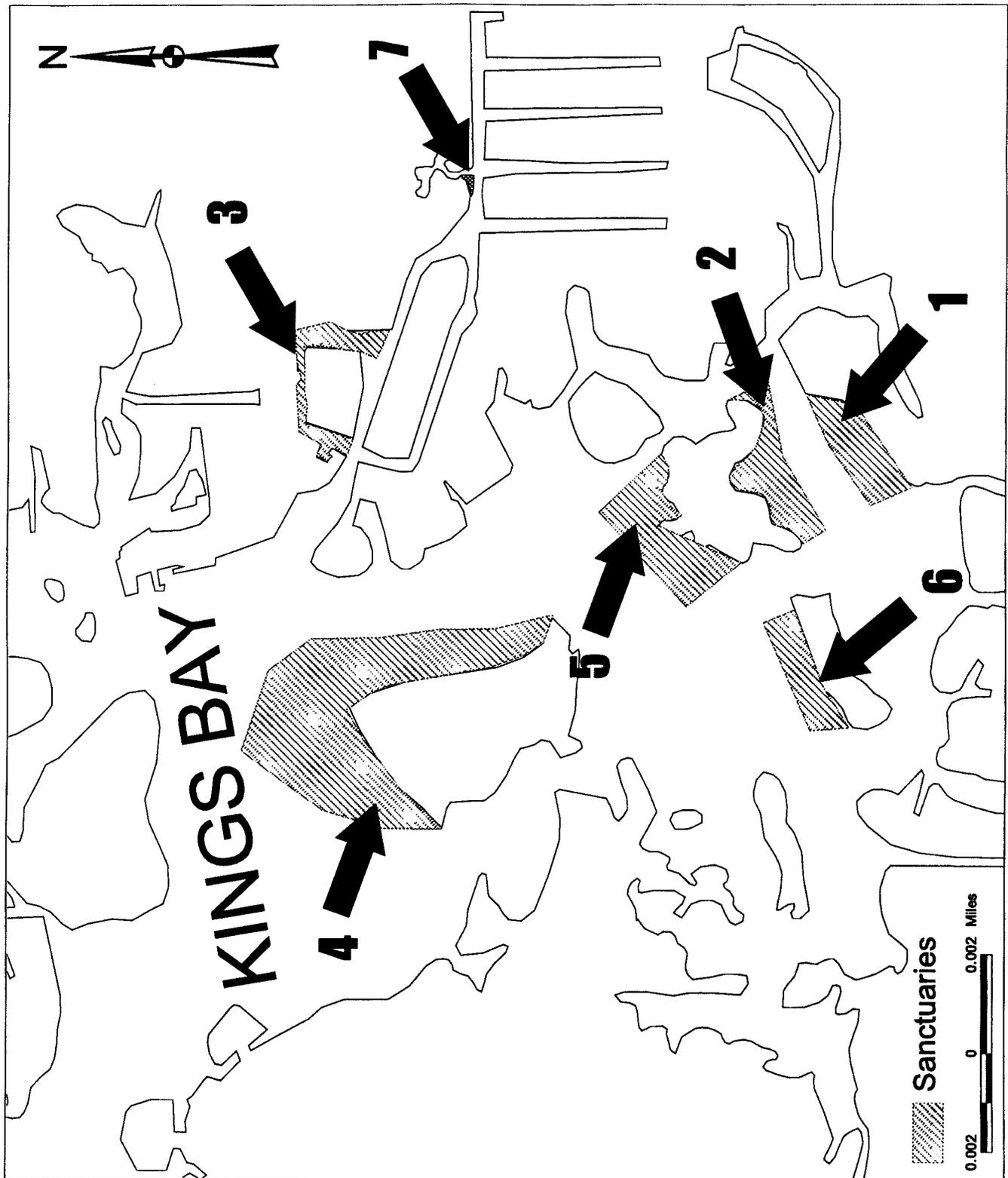
§ 17.108 List of designated manatee protection areas.

(a) * * *

(7) A tract of submerged land, lying in Section 28, Township 18 South, Range 17 East, Tallahassee Meridian, Citrus County, Florida, more particularly described as follows: For a point of reference, commence at the southwest corner of said Section 28 (N-1651797.56 E-463846.96) Florida Coordinate System, West Zone, NAD 1983, N.G.S. adjustment of 1990 (expressed in U.S. survey feet); thence N. 40°08'47" E., 5551.65 feet (5551.57 feet grid distance) to an aluminum monument stamped "PSM 3341 1998" (N1656009.01 E-467449.35) marking the Point of Beginning; thence N. 77°06'49" E., 71.84 feet to an aluminum monument stamped "PSM3341 1998" (N-1656025.04, N-467519.38); thence S. 04°37'09" W., 29.88 feet to an aluminum monument stamped "PSM 3341 1998" (N-1655995.26 E-467516.98); thence N. 78°29'57" W., 69.01 feet to the point of beginning; to be known as the Three Sisters Spring Sanctuary.

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BILLING CODE 4310-55-P



Dated: October 8, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

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