



# Federal Register

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**Friday,  
September 20, 2002**

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## **Part VI**

# **Department of the Interior**

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**Fish and Wildlife Service**

**50 CFR Part 17**

**Endangered and Threatened Wildlife and  
Plants; Emergency Rule To Establish  
Seven Additional Manatee Protection  
Areas in Florida; Final Rule**

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

RIN 1018-AH80

**Endangered and Threatened Wildlife and Plants; Emergency Rule To Establish Seven Additional Manatee Protection Areas in Florida****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Emergency rule.

**SUMMARY:** We, the Fish and Wildlife Service (Service), take emergency action to establish seven additional manatee protection areas in Florida.

This action is authorized under the Endangered Species Act of 1973, as amended (ESA), and the Marine Mammal Protection Act of 1972, as amended (MMPA), based on our determination that there is now substantial evidence that imminent danger of taking one or more manatees at these sites and the emergency designation of refuges and sanctuaries is necessary to prevent taking. In evaluating the need for emergency designation of additional manatee protection areas, we considered the needs of the manatee, the current levels of mortality, and the likelihood of additional take of manatees due to human activity. We are establishing one manatee sanctuary in Citrus County, one manatee sanctuary and one manatee refuge in Pinellas County, and two manatee sanctuaries and two manatee refuges in Hillsborough County. All waterborne activities will be prohibited within the sanctuaries and watercraft will be required to proceed at "idle speed" or slow speed," as specified within the refuges on a seasonal basis.

**EFFECTIVE DATE:** September 20, 2002. This emergency rule will remain in effect through January 20, 2003. We anticipate making a final determination of these sites in a final rule for manatee refuges and sanctuaries on or before November 1, 2002.

**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.

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

**SUPPLEMENTARY INFORMATION:****Background**

The West Indian manatee is federally listed as an endangered species under the ESA (16 U.S.C. 1531 *et seq.*) (32 FR 4001) and the population is further protected as a depleted stock under the MMPA (16 U.S.C. 1361-1407). Manatees reside 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 waters of the State of Florida throughout the year, and nearly all manatees winter in peninsular Florida during the winter months. The manatee is a cold-intolerant species and requires warm water temperatures generally above 20 °Celsius (68 °Fahrenheit) to survive during periods of cold weather. During the winter months, most manatees rely on warm water from natural springs and industrial discharges for warmth. In warmer months, they expand their range and are seen rarely as far north as Rhode Island on the Atlantic Coast and as far west as Texas on the Gulf Coast.

Recent information indicates that the overall manatee population has grown since the species was listed (U.S. Fish and Wildlife Service 2001). However, in order for us to determine that an endangered species has recovered to a point that it warrants removal from the List of Endangered and Threatened Wildlife and Plants, the species must have improved in status to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the ESA. That is, threats to the species that caused it to be listed must be reduced or eliminated such that the species no longer fits the definitions of threatened or endangered. While indications of increasing population size are very encouraging, there has been no confirmation that significant threats to the species, including human-related mortality, injury, and harassment, have been reduced or eliminated to the extent that the Florida manatee may be reclassified from endangered to threatened status.

Human activities, and particularly waterborne activities, can result in the take of 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).

The MMPA sets a general moratorium, with certain exceptions, on the take and importation of marine mammals and marine mammal products and makes it unlawful for any person to take, possess, transport, purchase, sell, export, or offer to purchase, sell, or export, any marine mammal or marine mammal product unless authorized. Take, as defined by section 3(13) of the MMPA means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Harassment is defined under the MMPA as any act of pursuit, torment, or annoyance which—(i) has the potential to injure a marine mammal or marine mammal stock in the wild; 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.

Human use of the waters of the southeastern United States has increased dramatically as a function of residential growth and increased visitation. This phenomenon is particularly evident in the State of Florida. The population of Florida has grown by 124 percent since 1970 (6.8 million to 15.2 million, U.S. Census Bureau) and is expected to exceed 18 million by 2010, and 20 million by the year 2020. According to a report by the Florida Office of Economic and Demographic Research (2000), it is expected that, by the year 2010, 13.7 million people will reside in the 35 coastal counties of Florida. In a parallel fashion to residential growth, visitation to Florida has increased dramatically. It is expected that Florida will have 83 million visitors annually by the year 2020, up from 48.7 million visitors in 1998. In concert with this increase of human population growth and visitation is the increase in the number of watercraft that travel Florida waters. In 2001, 943,611 vessels were registered in the State of Florida. This represents an increase of 42 percent since 1993. The Florida Department of Community Affairs estimates that, in addition to boats belonging to Florida residents, between 300,000 and 400,000 boats registered in other States use Florida waters each year.

The large increase in human use of manatee habitat has had direct and indirect impacts on this endangered

species. Direct impacts include injuries and deaths from watercraft collisions, deaths and injuries from water control structure operations, lethal and sublethal entanglements with commercial and recreational fishing gear, and alterations of behavior due to harassment. Indirect impacts include habitat destruction and alteration, including decreases in water quality throughout some aquatic habitats, decreases in the quantity of warm water in natural spring areas, the spread of marine debris, and general disturbance from human activities.

Activities affecting manatees at warm water sites include boat operations, recreational fishing, directed interactions between humans and manatees (including pursuit by swimmers and boats), and other disturbances. Specifically, boats operating within manatee aggregations, anglers casting fishing lines into aggregations, boaters and/or swimmers pursuing manatees, and other disruptions cause animals to disperse and become displaced from warm water refuges. Displaced animals may be exposed to cold water temperatures below known physiological thresholds. Exposure to cold may cause hypothermia or cold stress, conditions known to kill manatees (Worthy 1999). In addition, prolonged, nonlethal exposure to cold may affect calving success and fecundity (Rommel 2002).

Tyson (1998) documented boating and fishing activity in warm water discharges. Observations included anglers maneuvering boats within manatee aggregations, boat operators looking for and petting manatees, boaters attempting to swim with manatees, anglers wading and casting into manatee aggregations, manatees being hooked and maneuvered while entangled, a manatee struck with an anchor, manatees being provided with water, etc. These activities resulted in the displacement of animals, manatees hooked or entangled in fishing line, possible boat strikes, and other adverse interactions. Swimmer interactions were further documented by Wooding (1997) at Three Sisters Springs, Citrus County, Florida. Some manatees left the then unprotected spring area when boats with swimmers approached at the start of the day. Other manatees left when the first swimmers entered the water. Those that remained either ignored swimmers or turned and swam out of reach; a small number sought out physical contact with swimmers. Gorzelany observed manatees being "crowded out" (displaced) by large numbers of swimmers searching out encounters

with wintering manatees (Mote Marine Laboratory, pers. comm. 2001).

Anglers have been observed casting into manatee aggregations at warm water sites, hooking and entangling manatees. Discarded fishing line, at times caught on water bottoms, plants, and structures, is also known to entangle manatees and is occasionally ingested by manatees. Entangled monofilament fishing line may cut into the manatees' skin; manatees are frequently scarred by these cuts and flippers are occasionally amputated through the cutting effect of the line. There are records of manatees having died from entanglements due to infection and septicemia associated with these injuries. Manatees ingesting fishing line and hooks are known to die from intestinal obstructions, tears in the gut, and other complications.

In 2001, fifteen manatees were rescued from fishing gear, including seven from monofilament line. The number of such incidents has been increasing over time; in the early phases of the program, no more than one or two incidents were documented per year. Recent annual totals have ranged between ten and fifteen reported incidents. Since 1973, a total of 124 gear-associated manatees has been rescued, including 50 from monofilament entanglement and ingestion (U.S. Fish and Wildlife Service, unpubl. data). In addition to these rescues, at least 14 deaths have been attributed to monofilament fishing line and others are suspected (Florida Fish and Wildlife Conservation Commission, unpubl. data.).

Boats operating within and adjacent to warm water aggregations of manatees pose an additional threat to wintering manatees, since manatees are killed or injured as a result of collisions with watercraft. In 2001, at least 25 percent (82 of 325) of known manatee deaths were caused by watercraft. This was the second highest year on record (out of more than 27 years of monitoring) for total number of watercraft-related manatee deaths. Nonlethal injuries are also documented by researchers who monitor the accumulation of scars from boat strikes on individual manatees on an annual basis. As documented by the U.S. Geological Survey's database, most animals that are known to have been struck are struck multiple times. Such nonlethal injuries may reduce calf production and survival in wounded females (O'Shea *et al.* 2002). The likelihood of adverse manatee encounters with watercraft increases in the vicinity of wintering sites because of the greater concentration of animals within these confined areas.

The State of Florida's manatee carcass salvage program has documented the presence of watercraft-killed manatees within the vicinity of warm water discharges. While the presence of a carcass does not necessarily indicate that a collision occurred at that site, there are a few cases where collisions have been documented at warm water sites. In one instance, a tug/barge maneuvering within the approach to a warm-water aggregation site ran over a manatee, crushing and killing the animal between the hull and the water bottom (Florida Fish and Wildlife Conservation Commission, unpubl. data.). In Lee County, two manatees using a secondary warm-water site located at the foot of a navigation lock were struck and killed by watercraft operating nearby (Florida Fish and Wildlife Conservation Commission, unpubl. data.). Researchers monitoring winter manatee aggregations have noted the frequent and regular occurrence of nonlethal, fresh cuts on animals using these sites, particularly at the outset of the winter season (Hartley, Florida Division of Parks and Recreation, pers. comm. 2001; Curtin, U.S. Geological Survey (USGS) Contractor, pers. comm. 2001).

To minimize disturbance at both industrial and natural warm water sites, we and the State of Florida have implemented a series of Federal sanctuaries and State protection areas at and near these sites to ensure that wintering manatees are minimally disturbed during this critical time of year. To date, the majority of known warm water sites used by manatees in Florida have been protected. However, the sites designated in this rule provide additional protection or enhance existing protection areas.

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 there is substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees. In accordance with 50 CFR 17.106, areas may be established on an emergency basis when such takings are imminent.

We may establish two types of manatee protection areas—manatee refuges and manatee sanctuaries. A manatee refuge, as defined in 50 CFR 17.102, is 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 activities must be restricted to prevent the taking of one or more

manatees, including but not limited to, a taking by harassment. 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. 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 dredge and fill activities.

#### Manatee Settlement Agreement

A settlement agreement between the Service, the U.S. Army Corps of Engineers, and a coalition of conservation organizations and individuals (*Save the Manatee Club v. Ballard*, Civil No. 00-00076 EGS (D.D.C.), January 5, 2001) included a requirement that we propose a rule for “new manatee refuges and sanctuaries throughout peninsular Florida \* \* \* to ensure that adequate protected areas are available \* \* \* to satisfy the biological requirements of the species, with a view towards the manatee’s recovery \* \* \*.” We further agreed to “evaluate the propriety of invocation of [our] emergency sanctuary/refuge authority.”

In a recent court ruling, dated August 16, 2002, related to the Settlement Agreement, the court directed that we conduct an evaluate sites for emergency designation. Based on that evaluation, we have now determined emergency designations of manatee refuges or manatee sanctuaries are warranted for seven sites.

#### Site Selection Process and Criteria

In our initial evaluation of “imminent” threat of take at sites that may warrant protection through our emergency sanctuary/refuge designation authority, which we conducted in 2000–2001, we did not identify any sites where takings met this standard. In evaluating whether these sites required emergency protection, we had to determine whether take would occur in a specific amount of time. For example, large numbers of animals concentrated in a relatively small area are much more likely to become an attraction for humans or may be unable to avoid the passage of boats. We also evaluated whether or not there was a history of harassment or other forms of take at the site and the likelihood of future take, including the type of recent mortality. We further considered whether there were existing protective measures in place to prevent manatee mortality. Finally, we looked at whether the type of take that had occurred would likely

be avoided by additional protective measures.

In preparation for making a decision on sites to propose as manatee protection areas, we met with representatives from local, State, and Federal agencies and organizations involved in manatee research, management, and law enforcement. These meetings helped us develop a list of sites throughout Florida and southeast Georgia that manatee experts believed should be considered for possible designation as manatee protection areas.

We published an advance notice of proposed rulemaking in the **Federal Register** on September 1, 2000 (65 FR 53222). The purpose of the advance notice was to inform the public that we were initiating the process of investigating areas for possible designation as manatee protection areas and to solicit initial public input. We received 1,752 responses to the advance notice. Of these, 1,737 supported our efforts to establish additional manatee protection areas, and 13 opposed them. The remaining two comments did not state a specific opinion.

We also conducted six public workshops throughout peninsular Florida to present the list of potential sites and to solicit public input. A total of 396 people attended the workshops, and 166 provided either oral or written comments. Of these, 79 were general in nature, either supporting our efforts to establish additional manatee protection areas (40) or opposing them (39); 28 participants specifically opposed and 8 specifically supported the areas. An additional 36 comments were not specific to the topic or discussed other items. Fifteen commentors provided specific information or comments, including recommendations to increase enforcement, increase education, use new technology including satellite tracking of manatees, and other rule-related topics.

We selected sites to propose as manatee protection areas from the list of sites developed through the preliminary meetings and from information gathered at the public workshops and responses to the advance notice. We based site selection on four factors—(1) evidence that the site is used by manatees; (2) historic evidence of take (harm or harassment) at the site due to waterborne human activities; (3) the potential for additional take based on manatee and human use of the site; and (4) a determination that we could implement effective measures at the site to address the identified problem.

In documenting manatee use and historic manatee harm and harassment,

we relied on the best available information, including aerial survey and mortality data and additional information from the Florida Marine Research Institute and the USGS Sirenia Project. These data were supplemented with information from manatee experts, the public, and our best professional judgment. In determining the potential effectiveness of our proposed actions, we considered the costs of managing and enforcing manatee protection areas and the benefits (or lack thereof) to manatee conservation. Costs associated with site management include installation and maintenance of appropriate signage, public education, and enforcement. In addition, designation of sanctuaries in the waters bordered by private property entail additional administrative burdens in terms of identifying and providing access to affected residents. Finally, we evaluated the effectiveness of our proposed actions against the likely effectiveness of anticipated similar actions by State and/or local governments. It was our goal to avoid sites that could be most effectively addressed by State or local government and we have made every effort to make our designations consistent with the existing adjacent State or local designations.

#### Previous Federal Action

On August 10, 2001, we published in the **Federal Register** a proposed rule to establish 16 additional manatee protection areas (66 FR 42318), including the seven areas designated in this emergency rule. In the proposed rule, we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. We sent direct notification of the proposal and public hearings to 3,258 institutions and individuals, including Federal and State agencies, county governments, scientific organizations, and interested parties. We published legal notices announcing the proposal, inviting public comment, and announcing the schedule for public hearings, on August 30, 2001, in the *Fort Myers News-Press*, *Citrus County Chronicle*, *Daytona Beach News-Journal*, and *Naples Daily News*, on August 31, 2001, in the *St. Petersburg Times*, *Miami Herald*, *Orlando Sentinel*, *Charlotte Sun-Herald*, and *Tallahassee Democrat*, and on September 4, 2001, in *Florida Today*. The comment period closed on October 9, 2001. We held the public hearings at the Plantation Inn and Conference Center in Crystal River, Florida, on September 10, 2001; Harborview Convention Center in Clearwater, Florida, on September 11,

2001; Holiday Inn in Venice, Florida, on September 12, 2001; and the Radisson Hotel & Conference Center in Melbourne, Florida, on September 13, 2001. Approximately 315 people were in attendance at the public hearings. We received oral comments from 121 individuals.

During the comment period, we received approximately 3,500 written and oral comments concerning the proposal. Most expressed opposition to, or concern about, the proposed designation; however, a number of individuals supported the proposed action. Opposition to the proposed designation primarily centered on perceived economic effects and potential inconvenience to boaters resulting from the action, and the adequacy of current State conservation actions to protect the manatee. We received comments from one State agency and the Governor of Florida. The remaining comments were from individuals or representatives of organizations or groups. The Governor of Florida stated support for the proposed action. On January 7, 2002, we published a final rule that established two additional manatee protection areas located within the water bodies commonly known as the Barge Canal and Sykes Creek, in Brevard County (67 FR 680). We will publish in the **Federal Register** a final decision on the manatee protection areas included in this emergency rule and the seven remaining manatee protection areas from the August 10, 2001, proposed rule no later than November 1, 2002. In addition to publishing this rule in the **Federal Register**, we will post it on our website and publish notice in the following newspapers: *Citrus County Chronicle*, *Orlando Sentinel*, *St. Petersburg Times*, *Sarasota Herald-Tribune*, *Tallahassee Democrat*, and *Tampa Tribune*.

#### Reasons for Emergency Determination

In deciding to implement this emergency rule, we have carefully assessed the best available information to evaluate manatee and human interactions at these seven sites. We now believe these 7 wintering sites, described in our August 10, 2001, proposed rule to establish 16 additional manatee protection areas in Florida (66 FR 42318), meet the criteria for emergency designation. We believe that there is imminent danger of a take of one or more manatees in these warm-water wintering sites because manatees congregate in these locations seasonally, there is a history of harassment at these and/or similar sites, future take is likely, current regulatory measures are inadequate, and anticipated State or

local actions will not have been finalized or implemented to be in effective for the winter season. Emergency designation is appropriate at this time because it will reduce the potential for take to occur before a final designation can be prepared, published and posted for these sites. The nature of taking manatees at these sites is through harassment and injury and/or mortality from human interactions, including boating and fishing within nearby manatee aggregation areas. This type of take has been documented in other warm-water wintering sites in Florida where people have access to congregated manatees without sufficient protective measures. Emergency designation of these warm water wintering sites is consistent with previous Service designations because all previous emergency designations have involved other winter aggregation sites.

Manatee presence at these sites has been closely documented by manatee researchers in more than 30 years of assessing manatee use of these sites (Hartman 1979, Weigle *et al.* 2001, and Wright *et al.* 2002). Researchers have visited the sites to photo-document the individual identities of manatees using these areas (Florida Fish and Wildlife Conservation Commission, unpubl. data). Manatees have been tagged and monitored to better understand use patterns associated with the sites (Weigle *et al.* 2001). Flamm summarized tagged manatee behavior and plotted common use sites and travel corridors. These summaries characterize the Bartow and Big Bend power plant sites as extensively used areas and portray travel corridors adjacent to and between all three power plant sites (pers. Comm., 2002). Also, researchers have surveyed the sites with airplanes and helicopters in an effort to come up with a minimum population estimate of the animals known to use these sites (Ackerman *et al.* 1995, Edwards, pers. comm. 2002). These estimates reveal that these areas are used by significant numbers of manatees during the winter. Researchers have observed 123 manatees at Blue Waters. Researchers have seen as many as 102 manatees using the Bartow effluent and a maximum count of 316 manatees at the Tampa Electric Company's Big Bend power plant (Florida Fish and Wildlife Conservation Commission, unpublished data 2002). Between 25 and 100 manatees have been observed at the Port Sutton site (U.S. Fish and Wildlife Service, 2001).

Harassment has been documented at two of these four sites (Blue Waters and the Tampa Electric Company's Big Bend power plant). At Blue Waters, people

and boats in the water have been observed pursuing manatees, and boat operations within the aggregation areas have disrupted resting manatees, causing them to flee (Wells, Mote Marine Laboratory, pers comm. 2000). Anglers have been seen at the Tampa Electric Company's Big Bend power plant, casting into and disrupting resting animals. Boat traffic within this area has also been observed to cause manatees to flee (Florida Fish and Wildlife Conservation Commission, unpubl. data). Researchers documented significant use of the Bartow power plant waters by boats (Flamm, pers. Comm. 2002). Harassment has been documented at other power plants (Tyson 1998). Given the similarities between the Big Bend power plant and the other two power plant sites at Bartow and Port Sutton, and other warm water discharges around the state, there it is highly likely that similar activities will take place at these sites as well.

Observed harassment has taken place despite current protections at these warm water sites. The Blue Waters and surrounding areas are protected under the authority of the State's Florida Manatee Sanctuary Act. This designation requires boat operators to reduce their speeds in proximity to the aggregation site, yet fails to prevent the public from interacting with manatees within the aggregation area. The State similarly protects the Big Bend site—a "No Entry" area and slow/idle speed zones have been designated within the area of the power plant. The extent of these protections fails to prevent the public from interacting with manatees and the area of the speed restrictions fails to provide manatees with an adequate protective buffer. Anglers are able to get close enough to cast into manatee aggregations and boats continue to operate at high speeds within manatee travel approaches. A seasonal "No Motorboat Entry" zone, designated by Pinellas County, is in effect at the Bartow site. This designation allows public access to the warm-water aggregation area, an area similar to other discharges where manatees have been harassed by anglers, boaters, and swimmers. Port Sutton is currently unprotected and manatees are vulnerable to similar pressures at this site. The State of Florida and other government entities have proposed supplemental protective measures for some of these sites; the State has proposed to better protect the Blue Waters and has included the Port Sutton site in its list of sites in need of protection. Hillsborough County has similarly promised to supplement

protection at the Big Bend site. However, agency implementation of these measures is not scheduled to occur prior to this winter.

Use of our emergency authority to designate manatee refuges and sanctuaries will allow us to expedite protection at these sites. We are working to finalize a rule on the August 10, 2001, proposed areas and we anticipate publication of our final determination on or before November 1, 2002. If we waited until the final rule announcing the agency's final determination were to be published on November 1 to designate the sites, the areas would not be posted until a significant part of the critical wintering period had passed. By using our emergency rulemaking authority, we will be able to expedite designation and posting of these areas. We have discretionary authority, 50 CFR 17.106, to take emergency action when there is "substantial evidence" that take of one or more manatees is "imminent" and such action "is necessary to prevent" this take. The emergency designation is limited to 120 days. The effect of this authority is to allow us to implement manatee protection measures on an accelerated schedule. We interpret "imminent" take to be that which would be reasonably certain to occur during the time it would take to propose and finalize a rule designating a site as a refuge or sanctuary. As winter approaches, we now believe the wintering sites in our August 10, 2001, **Federal Register** notice (proposed refuges and sanctuaries rule) qualify for emergency designation. We believe there is imminent danger of a take of one or more manatees in these warm-water wintering sites because manatees congregate in these locations; there is a history of harassment at these sites; future take is likely; there are no protective measures in place or the current protective measures are inadequate; and, the anticipated actions by the state or counties will not be implemented in time for this winter season. In addition higher manatee mortalities indicate that protecting these sites from activities that might affect productivity or survival is more critical than was believed in previous years. Emergency designation is appropriate at this time because it will reduce the potential for take to occur before a proposed and final designation can be prepared and published for these sites. The nature of the danger at these sites is taking of manatees through harassment and injury and/or mortality from human interaction. This interaction typically includes boating or fishing in areas used by the congregated

manatees. Therefore, we are establishing these seven manatee protection areas on an emergency basis to prevent the imminent taking of one or more manatees by providing maximum protection for manatees until permanent sanctuaries and refuges are put in place.

#### Effective Date

We are making this rule effective upon publication. In accordance with the Administrative Procedure Act, we find good cause as required by 5 U.S.C. 553 (d)(3) to make this rule effective immediately upon publication in the **Federal Register**. As discussed under "Reasons For Emergency Determination," we need to establish these manatee protection areas prior to the time when manatees will be seeking warmer waters for the winter. A 30-day delay in making these sites effective would result in further risks of manatee mortality, injury and harassment during the period of delay. In view of the finding of substantial evidence that taking of manatees at these seven sites is imminent, we believe good cause exists to make this rule effective upon publication. For the same reasons, we also believe that we have good cause under 5 U.S.C. 553 (b)(3)(B) to issue this rule without notice and public procedure. In a proposed rule of August 10, 2001 (66 FR 42318), we solicited public comment on the seven manatee protection areas established by this rule as required by 5 U.S.C. 553). The time required to complete the standard rule making process would be contrary to the public interest because of the imminent threat to manatees and the need to provide immediate protection through emergency action.

#### Definitions

"Idle speed" means the minimum speed needed to maintain watercraft steerage.

"Planing" means riding on or near the water's surface as a result of the hydrodynamic forces on a watercraft's hull, sponsons (projections from the side of a ship), foils, or other surfaces. A watercraft is considered on plane when it is being operated at or above the speed necessary to keep the vessel planing.

"Slow speed" means the speed at which a watercraft proceeds when it is fully off plane and completely settled in the water. Watercraft must not be operated at a speed that creates an excessive wake. Due to the different speeds at which watercraft of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to slow speed. A watercraft is not

proceeding at slow speed if it is: (1) On a plane, (2) in the process of coming up on or coming off of plane, or (3) creating an excessive wake. A watercraft *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)" designates a larger area where slow speed is required, through which a maintained, marked channel is exempt from the slow speed requirement.

"Slow speed (channel included)" means that the slow-speed designation applies to the entire marked area, including within the designated channel.

"Wake" means all changes in the vertical height of the water's surface caused by the passage of a watercraft, including a vessel's bow wave, stern wave, and propeller wash, or a combination of these.

#### Exceptions

Existing regulations provide regulatory relief for watercraft access to private residences, boat houses, and boat docks located in manatee sanctuaries (50 CFR 17.108). Sanctuaries described in this emergency rule are located in areas adjoining property owned by public and other private property owners. Public and private property owners will be permitted to access and maintain property within respective manatee sanctuaries. From October 1 through March 31, watercraft operations (conducted by appropriately identified vessels) will be restricted to idle speed. Maintenance activities necessary for maintaining property and waterways during this period of time are also allowed, subject to any applicable Federal, State, and/or local government permitting requirements. We believe that these exceptions will ensure that this rule has a minor impact on activities conducted by public and private property owners.

#### Areas Designated as Manatee Sanctuaries and Refuges by Emergency Rule

##### *Blue Waters Manatee Sanctuary*

We are establishing a seasonal manatee sanctuary, containing 1.7 hectares (ha) (4.1 acres) more or less, at the headwaters of the Homosassa River, adjacent to the Homosassa Springs State Wildlife Park, commonly referred to as the Blue Waters, in Citrus County. All waterborne activities will be prohibited from October 1 through March 31, inclusive.

The headwaters of the Homosassa River are an important wintering site for manatees (U.S. Fish and Wildlife

Service, unpublished data). The site is in close proximity to the Homosassa Spring, a Class 1 magnitude spring, which provides warm water from the Florida aquifer. This warm water is essential to the survival and well-being of a significant number of manatees during cold weather periods. In recent years, animals have been observed at this warm water site as early as October. As many as 123 manatees have been observed on-site during a single day (U.S. Fish and Wildlife Service, unpublished data). Homosassa Springs State Wildlife Park, located directly upstream from the site, is not accessible to the manatees wintering at Blue Waters because the spring head is used to confine and treat distressed manatees.

The presence of manatees, coupled with the shallow clear nature of the water, has attracted an increasingly large number of swimmers and divers to the site. These visitors come to the site to swim with and otherwise engage manatees. The waters of the Homosassa River are currently regulated as an idle speed zone, and the State Park maintains a no-entry zone from a line approximately 61 meters (200 feet) upstream of the confluence of the spring run and the northeast fork of the river. The number of visitors has grown to the point where manatees are observed leaving the site and swimming downstream into colder waters (Gorzelany, Mote Marine Laboratory, pers. comm. 2001). The establishment of a manatee sanctuary at this location will provide wintering manatees with an undisturbed area free from harassment. The public will continue to have opportunities to interact with manatees outside of the proposed sanctuary.

#### *Tampa Bay Manatee Sanctuaries and Refuges*

A significant number of manatees from the southwest Florida subpopulation rely on power plant discharges in the Tampa Bay area for warmth during the cold winter months (Florida Fish and Wildlife Conservation Commission, unpublished data). These sites include the Bartow Electric Generating Plant, and the Tampa Electric Company's Big Bend and Gannon electric generating stations. To prevent taking through mortality, injury, and harassment within the Tampa Bay region, we are designating a series of manatee sanctuaries and refuges at these warm water sites. The sanctuaries will minimize harassment within the warm water aggregation sites, specifically targeting adverse interactions between anglers and people wanting to interact with manatees. The designation of manatee refuges will reduce the

likelihood of boat collisions with manatees in common areas used to enter and leave the warm water sites. Minimizing disturbance of manatees at these warm water sites during winter months is important to the well-being of these animals and consistent with efforts to recover the Florida manatee.

#### *Bartow Electric Generating Plant Manatee Sanctuary*

We are establishing a seasonal manatee sanctuary, containing approximately 73.5 ha (181.5 acres), at the warm water discharge of the Bartow Electric Generating Plant in Tampa Bay, Pinellas County. This seasonal closure will prohibit all waterborne activity at this site from October 1 through March 31, inclusive. In addition, we are establishing a manatee refuge in the South Gandy Navigation Channel north of the site. We have designated this sanctuary based on observed manatee use patterns documented during cold weather periods (Hartman 1979, Wright *et al.* 2002, Weigle *et al.* 2001) and on observations of takings known to occur at warm water sites (Tyson 1998, Wooding 1997).

Warm water effluent from this plant attracts manatees during cold weather periods. The maximum manatee count at this site was 102 manatees on February 25, 1999 (Florida Fish and Wildlife Conservation Commission, unpublished data). Similar to other warm water discharges, large numbers of fish are also attracted to the heated effluent at this site. As a result, both anglers and manatee enthusiasts are attracted to the site, leading to increased potential for cases of harm and harassment to manatees.

Researchers have documented boat operators, anglers, and swimmers disrupting wintering manatees in outfall areas. Boat operators maneuvering within manatee aggregations, anglers hooking manatees, and people pursuing manatees, disturb and disperse these resting animals, at times forcing them into colder, life-threatening waters (Tyson 1998). Lethal takes are also known to occur—manatees have died from entanglement with fishing line and are vulnerable to boat collisions, especially in high speed unregulated areas (Florida Fish and Wildlife Conservation Commission, unpubl. data).

Pinellas County recently adopted, through a local ordinance, a no-motor zone, in which only nonmotorized watercraft are permitted in the immediate area of the outflow. While we are encouraged by this initial action, we believe that this designation does not address all types of harassment at

this important winter site. For example, anglers will continue to cast into manatee aggregations and people will continue to approach manatees. Establishing a sanctuary at this site will provide manatees with complete, undisturbed use of this warm water discharge site.

#### *South Gandy Navigation Channel Manatee Refuge*

We are establishing a seasonal manatee refuge, containing approximately 30.3 ha (74.8 acres), in the South Gandy Navigation Channel north of the Bartow Electric Generating Plant in Pinellas County, with the purpose of regulating watercraft operation to slow speed from October 1 through March 31, inclusive.

The likelihood of adverse manatee encounters with watercraft is increased in the vicinity of wintering sites, such as the discharge of the Bartow Electric Generating Plant, because of the greater concentration of animals within these confined areas. Regulating this area used by both manatees and boaters as a slow-speed zone rather than as a sanctuary will afford watercraft ingress and egress through the area with a minimum anticipated adverse impact to manatees.

#### *Tampa Electric Company's Big Bend Manatee Sanctuary*

We are establishing a seasonal manatee sanctuary, containing approximately 30.8 ha (76.2 acres), at the warm water discharge of the Tampa Electric Company's Big Bend Electric Generating Station in Tampa Bay, Hillsborough County. This seasonal closure will prohibit all waterborne activity at this site from October 1 through March 31, inclusive. In addition, we are establishing a manatee refuge in the area south of this sanctuary (see Tampa Electric Company's Big Bend Manatee Refuge below). We have decided to establish this sanctuary based on observed manatee use patterns documented during cold weather periods (Wright *et al.* 2002, Weigle *et al.* 2001, Hartman 1979) and on observations of takings known to occur at this (Florida Fish and Wildlife Conservation Commission, unpubl. data.) and other warm water sites (Tyson 1998, Wooding 1997).

Warm water effluent from this plant attracts manatees during cold weather periods. The maximum manatee count at this site was 316 manatees on January 6, 2001 (Florida Fish and Wildlife Conservation Commission, unpublished data). Similar to other warm water discharges, large numbers of fish are also attracted to the heated effluent at

this site. As a result, both anglers and manatee enthusiasts are attracted to the site, leading to increased potential for cases of harm and harassment of manatees.

Researchers have documented boat operators, anglers, and swimmers disrupting wintering manatees in outfall areas. Boat operators maneuvering within manatee aggregations, anglers hooking manatees, and people pursuing manatees, disturb and disperse these resting animals, at times forcing them into colder, life-threatening waters (Tyson 1998). Lethal takes are also known to occur—manatees have died from entanglement with fishing line and are vulnerable to boat collisions, especially in high speed unregulated areas (Florida Fish and Wildlife Conservation Commission, unpubl. data).

There is currently a seasonal no-entry zone in the immediate vicinity of the Big Bend discharge. The zone is too small, however, to prevent harassment of manatees by fishermen, who cast into the aggregation area. A sanctuary at this site will expand the existing protection area and should adequately protect manatees from harassing fishing activities during the winter months. We have selected this site based on manatee use patterns documented during the winter (Wright *et al.* 2002, Weigle *et al.* 2001, Hartman 1979, Florida Fish and Wildlife Conservation Commission, unpubl. data.).

#### *Tampa Electric Company's Big Bend Manatee Refuge*

We are establishing a manatee refuge, encompassing approximately 93.5 ha (231 acres), in the waters adjacent to and south of the manatee sanctuary at the Tampa Electric Company's Big Bend Electric Generating Station in Hillsborough County to provide watercraft ingress and egress to the lagoon and canals in North Apollo Beach. Watercraft activity within this refuge will be regulated to idle speed from October 1 through March 31, inclusive.

The likelihood of adverse manatee encounters with watercraft is increased in the vicinity of wintering sites, such as the warm water discharge of the Tampa Electric Company's Big Bend Electric Generating Station, because of the greater concentration of animals within these confined areas. Regulating this area as an idle-speed zone rather than as a sanctuary will afford watercraft ingress and egress through the area with a minimum anticipated adverse impact to manatees.

#### *Port Sutton Manatee Sanctuary*

We are establishing a seasonal manatee sanctuary, encompassing approximately 1.1 ha (2.7 acres), at the warm water discharge of the Tampa Electric Company's Gannon Electric Generating Station in Tampa Bay, Hillsborough County. This seasonal closure will prohibit all waterborne activity at this site from October 1 through March 31, inclusive. We have decided to establish this sanctuary based on observed manatee use patterns documented during cold weather periods when the plant was discharging warm water (Wright *et al.* 2002, Weigle *et al.* 2001, Hartman 1979) and on observations of takings known to occur at other warm water sites (Tyson 1998, Wooding 1997).

Warm water effluent from this plant has attracted manatees during cold weather periods. Between 25 and 100 manatees are known to use this site (Florida Fish and Wildlife Conservation Commission, unpublished data). Similar to other warm water discharges, large numbers of fish may be attracted to this heated effluent. As such, both anglers and manatee enthusiasts may be attracted to the site, leading to an increased potential for cases of harm and harassment to manatees.

Researchers have documented boat operators, anglers, and swimmers to disrupting wintering manatees in outfall areas. Boat operators maneuvering within manatee aggregations, anglers hooking manatees, and people pursuing manatees, disturb and disperse these resting animals, at times forcing them into colder, life-threatening waters (Tyson 1998). Lethal takes are also known to occur: manatees have died from entanglement with fishing line and are vulnerable to boat collisions, especially in high speed unregulated areas (Florida Fish and Wildlife Conservation Commission, unpubl. data).

#### *Port Sutton Manatee Refuge*

We are designating the Port Sutton area surrounding the proposed manatee sanctuary at the Tampa Electric Company's Gannon Electric Generating Station, in Hillsborough County, as a manatee refuge. The refuge area includes approximately 39.2 ha (96.9 acres). Watercraft will be required to proceed at idle speed within this refuge from October 1 through March 31, inclusive.

The likelihood of adverse manatee encounters with watercraft is increased in the vicinity of wintering sites, such as the warm water outfall of the Tampa Electric Company's Gannon Electric

Generating Station, because of the greater concentration of animals within these confined areas. Regulating this area as an idle-speed zone rather than as a sanctuary will afford watercraft ingress and egress through the area with a minimum anticipated adverse impact to manatees.

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

Send a copy of any comments that concern how we could make this emergency 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 rule is not a significant regulatory action. The Office of Management and Budget makes the final determination under Executive Order 12866.

a. This 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 establishment of four manatee sanctuaries (264.5 acres) in Citrus, Pinellas, and Hillsborough counties and three manatee refuges (402.7 acres) in Pinellas and Hillsborough counties in the State of Florida. The public support for manatee protection is substantial in Florida. Using a contribution continuum method reinforced by other empirical techniques, a study by Bendle and Bell in 1993 estimated that Floridians placed an asset value of \$3.2 billion (2001



dollars) on the protection of the manatee population. This amounts to a per-household value of \$18.12. The \$3.2 billion is an estimate of the benefit derived by Floridians from the existence of the manatee population.

The purpose of this rule is to establish seven additional manatee protection areas in Florida. We are proposing to reduce the level of take of manatees by controlling human activity in these seven areas. Affected waterborne activities include, but are not limited to, swimming, diving (including skin and scuba diving), snorkeling, water skiing, surfing, fishing, the use of water vehicles and dredging and filling activities. Designated areas include four no-entry areas, two idle-speed areas, and one slow-speed area. In all seven areas, waterborne activities will be restricted on a seasonal basis. The economic effect of these designations will be measured by the number of users who use alternative sites for their activity or have a reduced quality of the waterborne activity experience at the designated sites. The State of Florida includes 12,000 miles of rivers and streams and 3 million acres of lakes and ponds; the designation of 264.5 acres of sanctuaries and 402.7 acres for refuges is unlikely to prevent any waterborne activity because of this rule, although some individuals may need to modify slightly when, where, or how they pursue certain waterborne activities.

For some watercraft users, the inconvenience and extra time required to cross slow- and idle-speed areas will reduce the quality of the waterborne activity. The extra time required for commercial charter boats to reach fishing grounds will reduce on-site fishing time and could result in lower consumer surplus for the trip. The number of recreationists and charter boats using the designated sites is not known. The State of Florida has 943,611 registered boats, but only those boats and recreationists using the designated sites will potentially be affected.

Because Florida has 12 thousand miles of rivers and streams and 3 million acres of lakes and ponds, only a small percentage of boat users will likely be affected by this rule. Recreationists may be inconvenienced by having to travel to non-designated areas. Currently, no data sources estimate the amount of recreational activity in and around the designated areas. The current designation of these sites will cause some inconvenience, but alternative sites within the proximity of the sites are available for all waterborne activities. For these reasons, we believe some inconvenience to the public may occur because of reduced travel speeds but that the economic impact will not be significant.

b. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This 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. We have focused the current action on those sites in which we have determined that Federal action can effectively address the needs in the particular area. If comparable or similar protections are put in place in the future, we will consider removing those areas from Federal protection.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Minimal restrictions to existing human uses of the sites will result from this rule, and no entitlements, grants, user fees, loan programs or the rights and obligations of their recipients will be affected.

d. This rule will not raise novel legal or policy issues. We have previously established manatee protection areas.

#### *Regulatory Flexibility Act*

I 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.*). An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

We conducted public hearings and public notice and comment periods to determine activities that might be affected by the creation of these manatee protection areas. Based on the activities that we are aware of being conducted in these areas and the fact that some may be inconvenienced by the need to proceed at slower speeds or use alternate sites, we believe that this rule will not result in a significant economic dislocation.

To determine the potential effects of this rule on small entities, we looked at economic data from Citrus, Pinellas, and Hillsborough Counties. Table 1, below, depicts general economic characteristics, and Table 2 gives employment data. As can be seen in Table 1, the growth rate in per capita income is slower than the State average in Citrus County, but the rate of growth in total personal income is equal to or exceeds the State average except in Pinellas County, where it is slightly lower. Larger households account for the lower per capita income estimates in Citrus and Hillsborough Counties. The proportion of total industry earnings coming from the amusements and recreation sector ranges from 0.8 percent in Citrus and Pinellas Counties to 1.4 percent in Hillsborough County. All of these counties had the service sector as the largest economic contributor followed by retail trade and the real estate sectors. Overall, the affected counties had only a small proportion of earnings coming from the amusement and recreation sector. As a result, a small impact to the recreation sector would not result in a significant effect on county-level income.

TABLE 1.—ECONOMIC CHARACTERISTICS OF THE THREE AFFECTED COUNTIES IN FLORIDA—1997

Affected Florida counties	Employment	Per capita personal income (dollars)	10-year rate of growth (percent)	Personal income (\$000)	10-year rate of growth (percent)	Total industry earnings (\$000)	Services industry earnings for amusements and recreation (\$000)	Percent of total
Citrus .....	35,663	\$18,493	3.9	\$2,060,1672	6.9	\$793,347	\$6,650	0.8
Pinellas .....	506,946	28,367	4.9	24,770,929	5.5	13,876,518	114,826	0.8
Hillsborough .....	644,694	23,719	5.2	1,558,783	6.6	18,847,236	67,676	1.4
State of Florida .....	8,032,538	24,799	4.5	363,979,647	6.6	220,985,959	4,255,304	1.9

Source: <http://govinfo.library.orst.edu/cgi-bin/reis-list>.

TABLE 2.—EMPLOYMENT CHARACTERISTICS OF THE THREE AFFECTED COUNTIES IN FLORIDA—1997

[includes sic codes 09, 44, 59, 79, services, and nec] <sup>1</sup>

Affected Florida counties	Mid-March employment	Total establishments	Number of establishments (1–4 employees)	Number of establishments (5–9 employees)	Number of establishments (10–19 employees)	Number of establishments (20 and over employees)
Citrus .....	8,926	1,044	655	214	95	80
Pinellas .....	197,842	12,852	7,954	2,344	1,226	1,328
Hillsborough .....	232,128	12,363	7,316	2,261	1,308	1,478

Source: <http://govinfo.library.orst.edu/cgi-bin/reis-list>.<sup>1</sup> sic09—Fishing, hunting, and trapping.

sic 44—Water transportation.

sic 59—Miscellaneous retail service divisions.

sic 79—amusement and recreation services non-classifiable establishments division.

Table 2 provides employment data using Standard Industrial Classification (SIC) codes. The latest available published data pertained to 1997 for the total number of establishments in the SIC codes for fishing, hunting, trapping (SIC code 9), water transportation (SIC code 44), miscellaneous retail and services (SIC code 59), amusement and recreation services (SIC code 79), and nonclassifiable establishments. These are the establishments most likely to be directly associated with recreationists pursuing waterborne activities where manatees may be involved. As can be seen on Table 2, of the total number of establishments in these SIC codes, a large proportion employ fewer than 9 employees with the largest number of establishments employing fewer than 4 employees. If any economic impacts are associated with this rule, they will affect some proportion of these small entities.

Since the bulk of the acreage proposed (402.7 acres) by this rule is for manatee refuges, which would only require a reduction in speed, we do not believe the minor inconvenience caused by going slower in designated areas will cause more than an insignificant economic effect. The inconvenience may cause some recreationists and charter boats to go to alternative sites, which may cause some loss of income to some small businesses. However, the inconvenience is small so we believe that this will not be a significant economic dislocation. For the four areas designated as sanctuaries (264.5 acres), the restriction on human activity from October 1 to March 31 may cause some recreationists and charter boats to go to alternative sites. However, three of the areas designated are in front of power plants, and the fourth (Blue Waters) is only 4.145 acres. The designated areas are relatively small and part of large water bodies having large areas with no restrictions on human activity. Recreationists and charter boats can

pursue waterborne activities in close proximity to the manatee sanctuaries without entering the sanctuaries. For this reason, we believe that there will be an insignificant economic effect from the designation of the four areas as manatee sanctuaries. Without a significant change in recreationists' and charter boats' use patterns, there should be an equally insignificant change in business activity.

#### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2). This rule:

a. Does not have an annual effect on the economy of \$100 million or more. As shown above, this rule may cause some inconvenience to recreationists and charter boats, but this should not translate into any significant business reductions for the many small businesses in the potentially affected counties. Because the restrictions on recreational activity are believed to be no more than an inconvenience for recreationists and charter boats, we believe that any economic effect on small entities resulting from changes in recreational use patterns will be insignificant also.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Unforeseen changes in costs or prices for consumers stemming from this rule are unlikely. The charter boat industry may be affected by lower speed limits for some areas when traveling to and from fishing grounds. No specific information regarding potential costs to the charter boat industry was provided during the rulemaking process. We do not believe that reduced speed limits will result in a significant economic effect.

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 some level of inconvenience to recreationists and charter boats because of speed limits, but these effects are believed to be minor and will not interfere with the normal operation of other businesses in the affected counties. The added travel time to traverse some areas is not expected to be a major factor that will impact business activity.

#### *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. The designation of manatee refuges and sanctuaries imposes no new obligations on State or local governments.

b. This 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 rule does not have significant takings implications. A takings implication assessment is not required. The seven manatee protection areas are located over State- and privately-owned submerged bottoms. Any property owners in the vicinity will have navigational access and the opportunity to maintain property.

#### *Federalism*

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

#### *National Environmental Policy Act*

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment has been prepared and is available for review upon request by writing to the Jacksonville Field Office (see **ADDRESSES** section).

#### *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 this rule is not a significant regulatory action under Executive Order 12866 and it only requires vessels to seasonally avoid four areas (107.1 ha or 264.5 acres) or proceed at slow or idle speeds along three small segments (163 ha or 402.7 acres) of waterways in Florida, 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 final 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 record-keeping 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.

2. Amend § 17.108 as follows:

- a. Revise the introductory text of paragraph (a);
- b. Remove the Kings Bay map from the end of the section and reinsert it following paragraph (a)(7); and add a note to precede the map;
- c. Add paragraphs (a)(8) through (a)(11);
- d. Revise paragraph (b);
- e. Add paragraphs (c)(3) through (c)(5).

The revised and added text reads as follows:

#### **§ 17.108 List of designated manatee protection areas.**

(a) *Manatee sanctuaries.* The following areas are designated as manatee sanctuaries. For areas in paragraphs (a)(1) to (a)(7) of this section, all waterborne activities are prohibited during the period November 15 to March 31 of each year. For areas in paragraphs (a)(8) to (a)(11) of this section, all waterborne activities are prohibited during the period October 1 to March 31 of each year. The areas that will be posted as manatee sanctuaries are described as follows:

\* \* \* \* \*

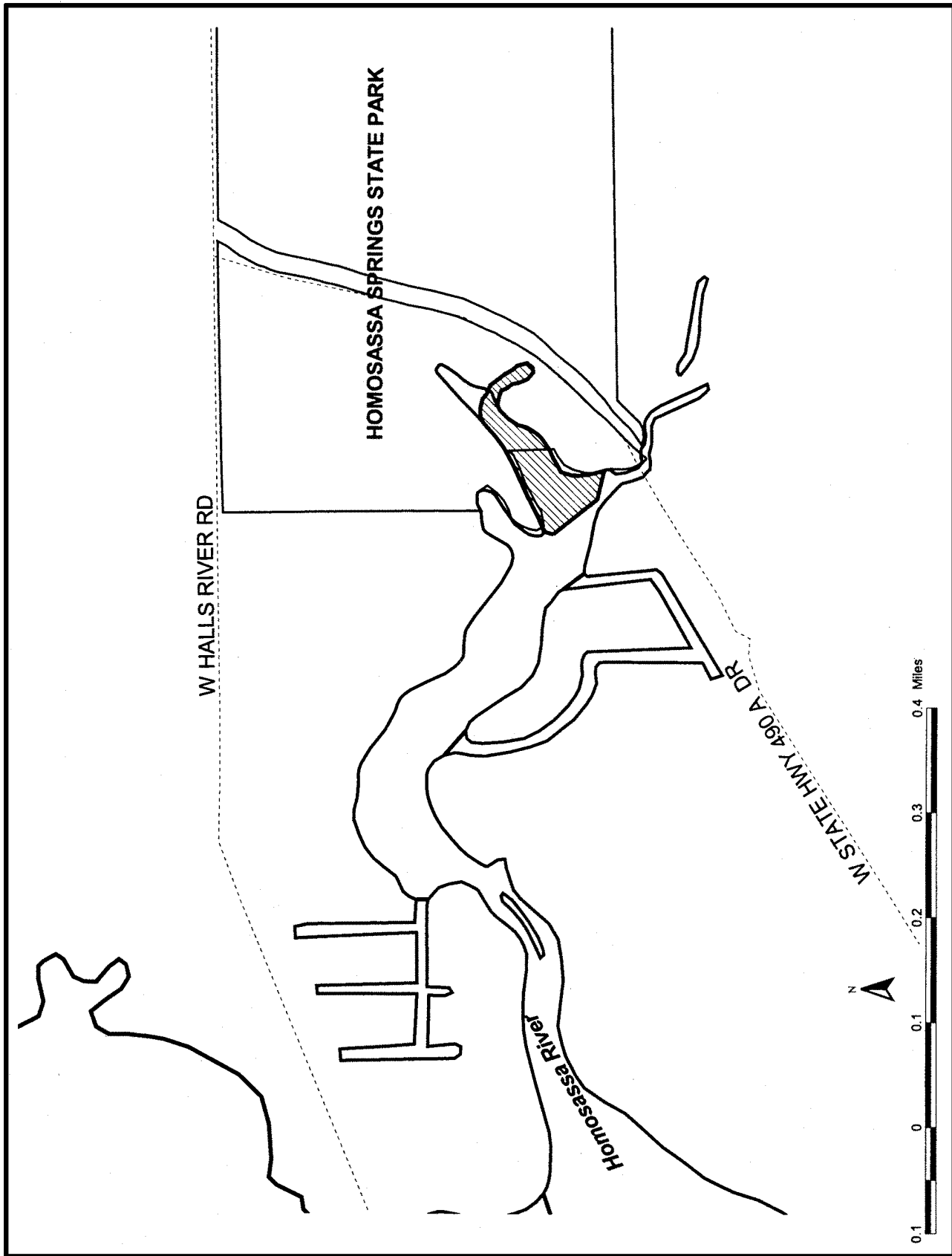
(7) \* \* \*

**Note:** Map for paragraphs (a)(1)–(a)(7) follows:

\* \* \* \* \*

(8) That part of the Homosassa River, Homosassa, Citrus County, Florida, within Section 28, Township 19 South, Range 17 East, described as the headwaters of the Homosassa River (adjacent to the Homosassa Springs State Wildlife Park), including the main spring and spring run to the point where the run enters the northeast fork of the river along the southeastern shore; to be known as the Blue Waters Manatee Sanctuary, containing approximately 1.7 ha (4.1 acres). Map follows:

**BILLING CODE 4310–55–P**



**Blue Waters Manatee Sanctuary**

(9) That part of Tampa Bay, St. Petersburg, Pinellas County, Florida,

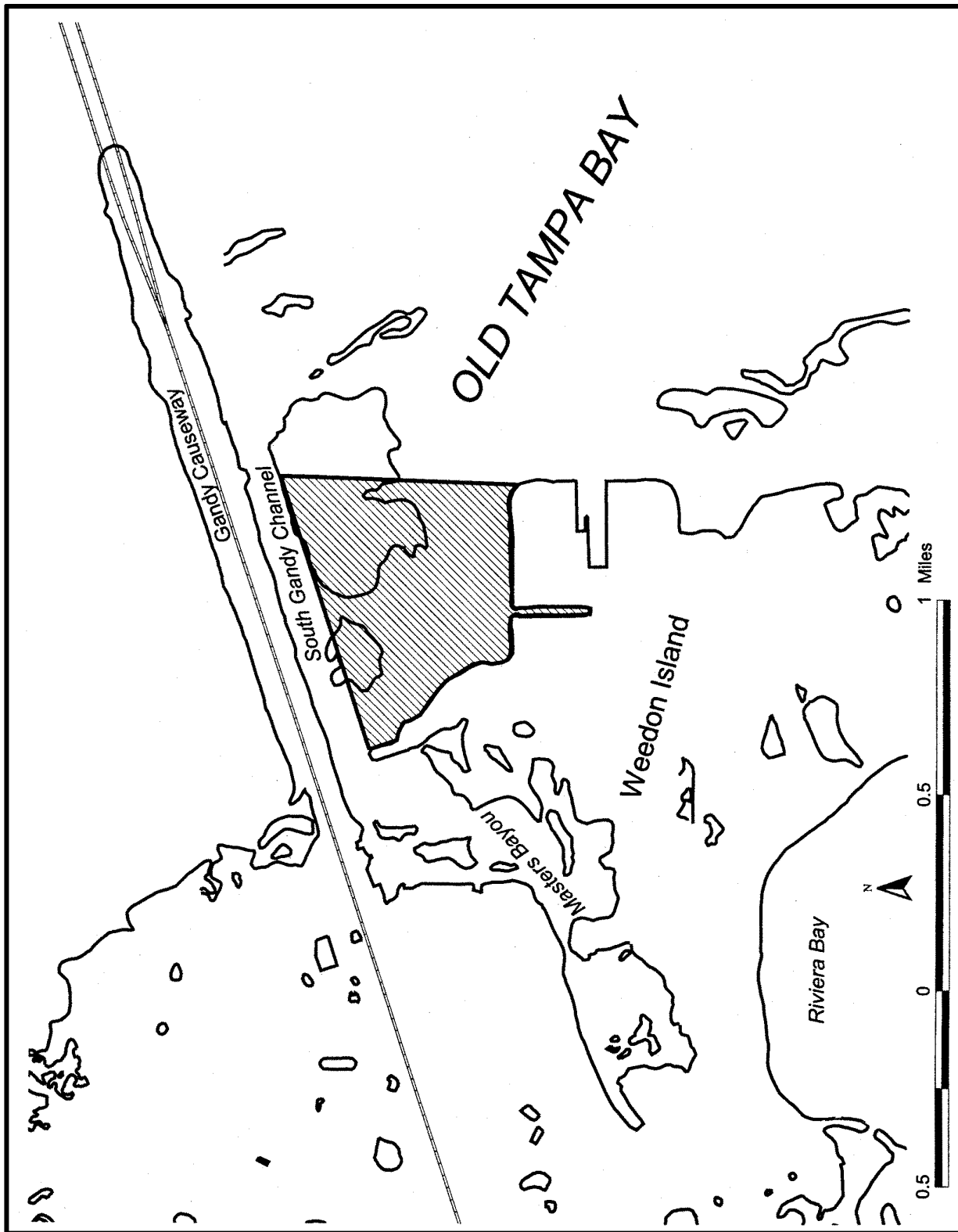
within Sections 16 and 21, Township 30 South, Range 17 East, described as the

warm-water outflow of the Bartow Electric Generating Plant located on the

northern shore of Weedon Island, lying along a north-south axis line from the shoreline to, but not including, the

South Gandy Navigation Channel on the western shore of Old Tampa Bay; to be known as the Bartow Electric

Generating Plant Manatee Sanctuary, containing approximately 73.5 ha (181.5 acres). Map follows:

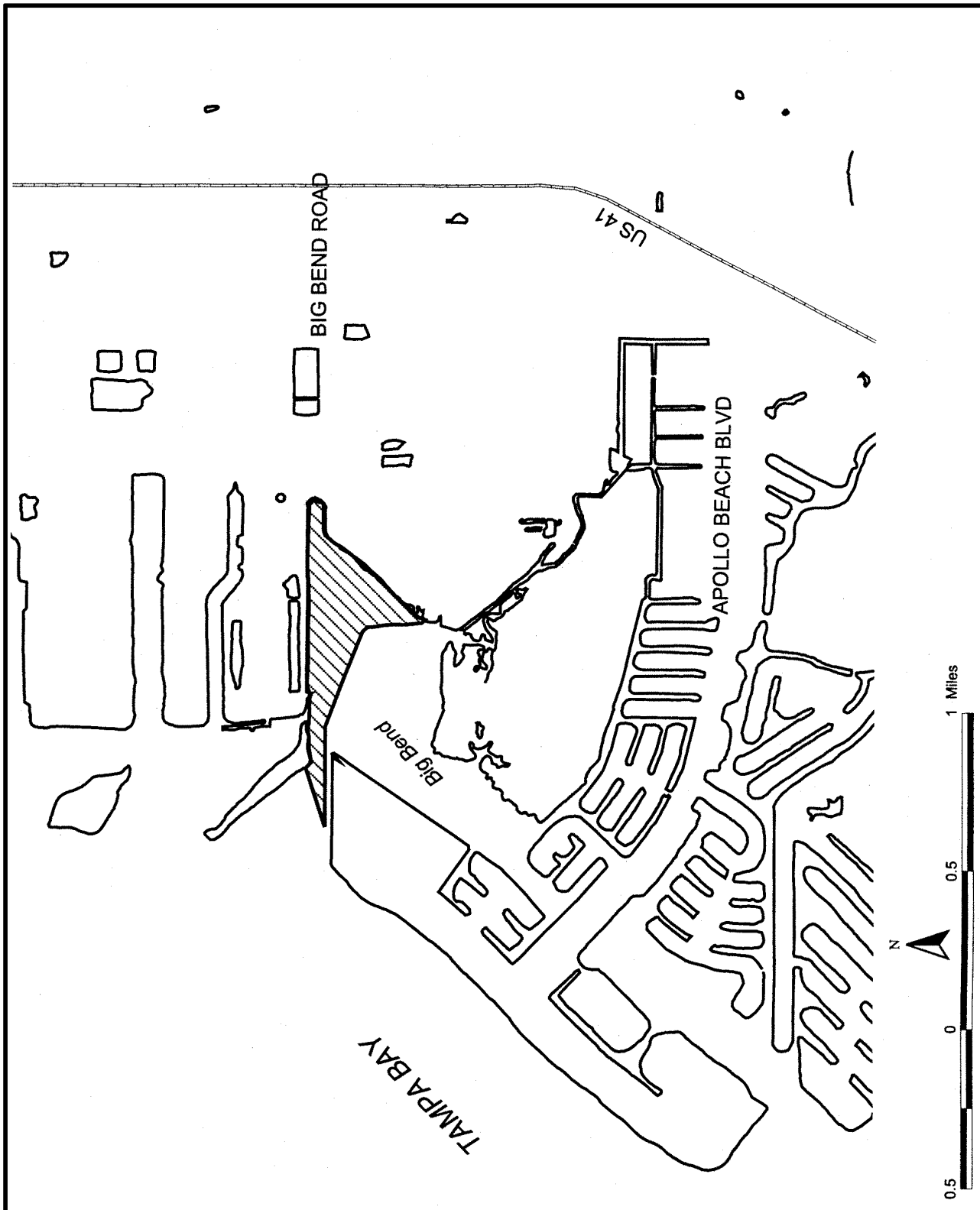


**Bartow Electric Generating Plant Manatee Sanctuary**

(10) That part of Tampa Bay, Tampa, Hillsborough County, Florida, within Sections 10 and 15, Township 31 South, Range 19 East, described as the waters in and around the warm-water outflow

of the Tampa Electric Company Big Bend Electric Generating Station located west of Jackson Branch and including the Big Bend area of eastern Tampa Bay, to be known as the Tampa Electric

Company Big Bend Manatee Sanctuary, containing approximately 30.8 ha (76.2 acres). Map follows:

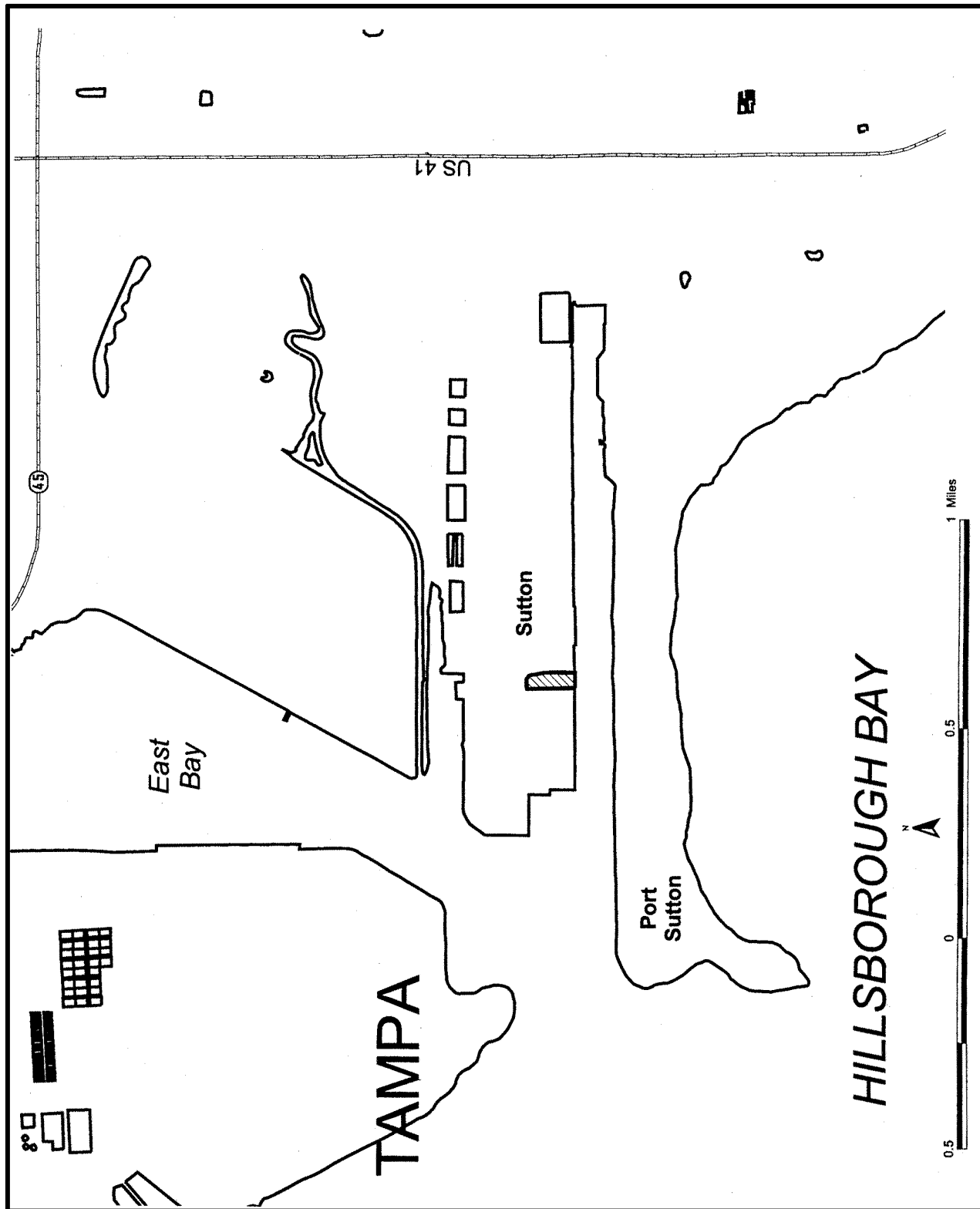


TECO Big Bend Manatee Sanctuary

(11) That part of Tampa Bay, Tampa, Hillsborough County, Florida, lying within Section 4, Township 30 South, Range 19 East, described as the warm-

water outflow of the Tampa Electric Company Gannon Electric Generating Station, to be known as the Port Sutton Manatee Sanctuary, containing

approximately 1.1 ha (2.7 acres). Map follows:



Port Sutton Manatee Sanctuary

(b) *Exceptions.*

(1) *Exception for residents adjoining the areas described in paragraphs (a)(1) to (a)(7) of this section.* Watercraft access to private residences, boat houses, and boat docks through these sanctuaries by the residents and their authorized guests is permitted. Any such authorized boating activity must be conducted by operating watercraft at idle speed/no wake. Residents' watercraft will be identified by the placement of a sticker provided by the Fish and Wildlife Service in a conspicuous location on each vessel. Use of the waters within the sanctuaries by watercraft will be only for the purpose of access to residences and the storage of such watercraft in waters adjacent to residences.

(2) *Exception for publicly and privately owned property adjoining the areas described in paragraphs (a)(8) to (a)(11) of this section.* Watercraft access and property maintenance activities within sanctuaries by property owners, their employees, and designees are permitted. Any such authorized boating activity must be conducted by operating watercraft at idle speed. Watercraft will be identified by the placement of a sticker provided by the Fish and Wildlife Service in a conspicuous location on each boat or by other means. Maintenance activities include those actions necessary to maintain property and waterways, subject to any Federal, State, and local government permitting requirements.

(c) \* \* \*

\* \* \* \* \*

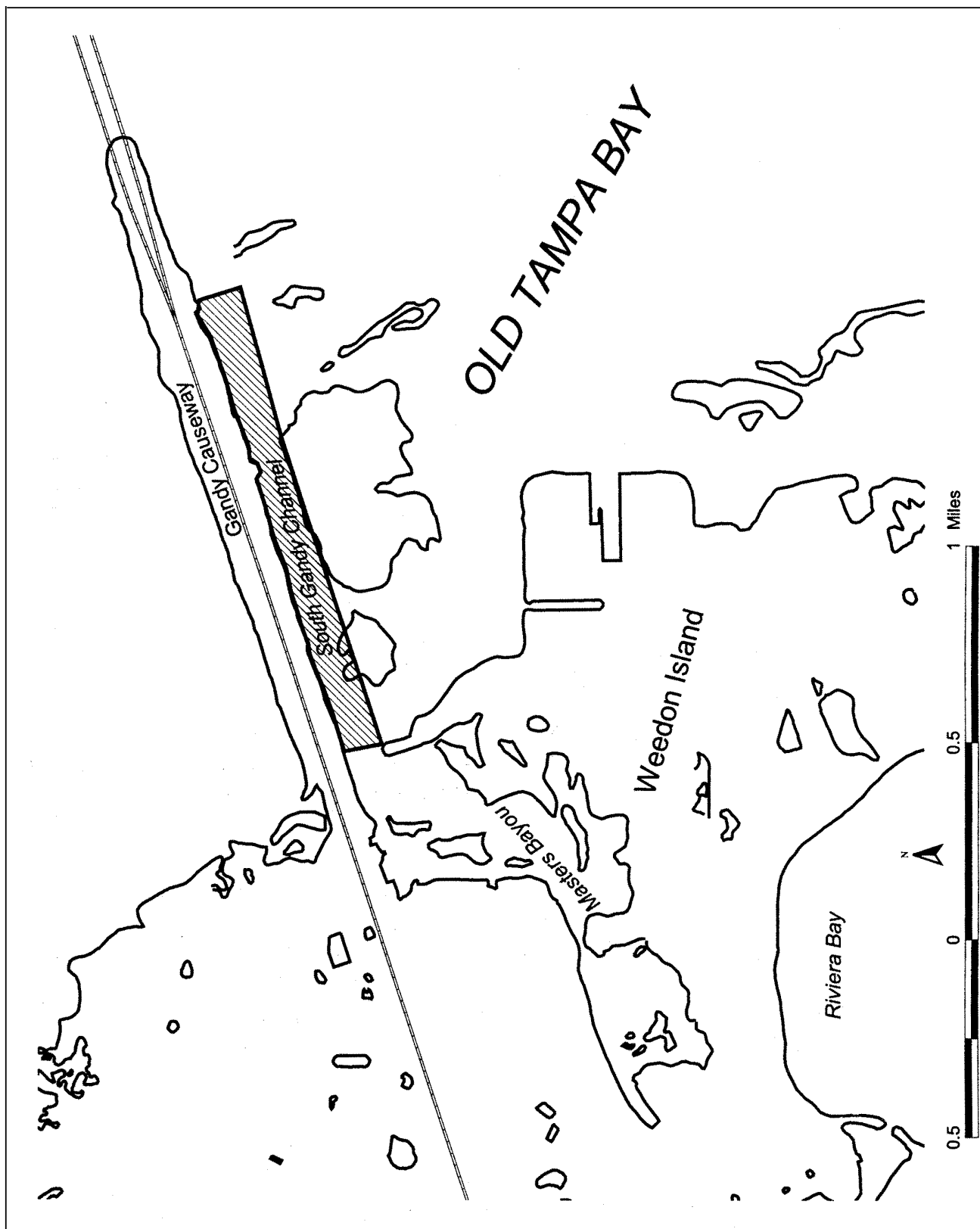
(3) The South Gandy Navigation Channel Manatee Refuge

(i) The South Gandy Navigation Channel Manatee Refuge is described as that portion of the South Gandy Navigation Channel in Pinellas County, Florida, between channel marker "1" and the point of land southwest of channel marker "5"; containing approximately 30.3 ha (74.8 acres).

(ii) Watercraft are required to operate at slow speed from October 1 through March 31 of each year, inclusive. Watercraft are prohibited from operating at speeds in excess of slow speed from October 1 through March 31 of each year, inclusive.

(iii) Map of South Gandy Navigation Channel Manatee Refuge follows:





**South Gandy Navigation Channel Manatee Refuge**

(4) The Tampa Electric Company's Big Bend Manatee Refuge

(i) The Tampa Electric Company's Big Bend Manatee Refuge is described as the

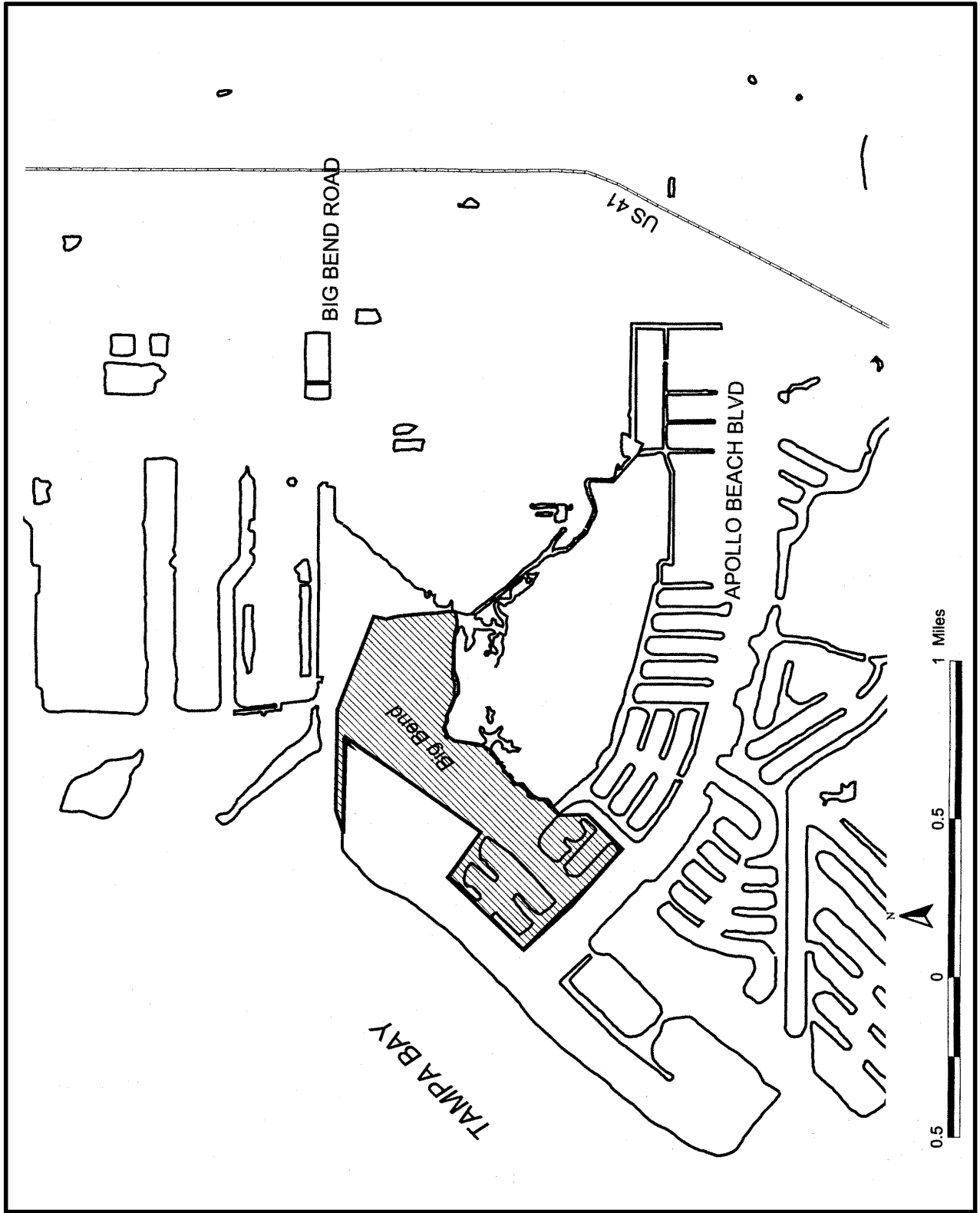
entrance channel and those waters south of the manatee sanctuary at the Tampa Electric Company's Big Bend Electric Generating Station within

Hillsborough County, Florida; containing approximately 93.5 ha (231 acres).

(ii) Watercraft are required to operate at idle speed from October 1 through March 31, inclusive. Watercraft are

prohibited from operating at speeds greater than idle speed from October 1 through March 31, inclusive.

(iii) Map of the Tampa Electric Company's Big Bend Manatee Refuge follows:



**TECO Big Bend Manatee Refuge**

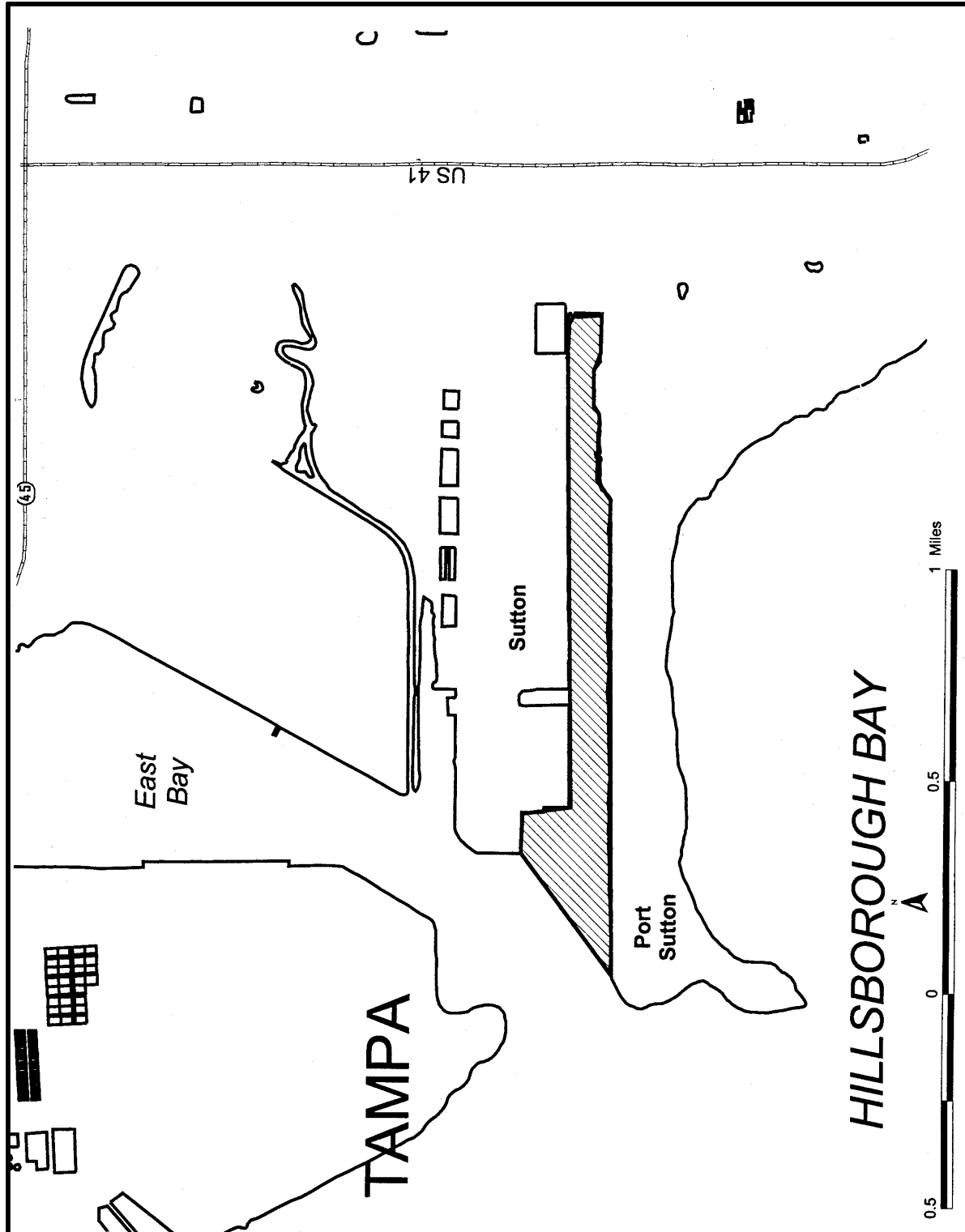
(5) The Port Sutton Manatee Refuge  
 (i) The Port Sutton Manatee Refuge is described as those waters surrounding the Port Sutton Manatee Sanctuary, including all waters within Port Sutton, Hillsborough County, Florida;

containing approximately 39.2 ha (96.9 acres).

(ii) Watercraft are required to operate at idle speed from October 1 through March 31, inclusive. Watercraft are prohibited from operating at speeds

greater than idle speed from October 1 through March 31, inclusive.

(iii) Map of Port Sutton Manatee Refuge follows:



**Port Sutton Manatee Refuge**

Dated: September 12, 2002.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and  
Parks.*

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