

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: October 29, 2010.

**Sandra K. Knight,**

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R4-ES-2010-0079; 92220-1113-0000-C3]

RIN 1018-AX27

#### Endangered and Threatened Wildlife and Plants; Emergency Rule To Establish a Manatee Refuge in Kings Bay, Citrus County, FL

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Emergency rule.

**SUMMARY:** This emergency rule establishes a manatee refuge in Citrus County, Florida, in the waters of Kings Bay, including its tributaries and connected waters because we, the U.S. Fish and Wildlife Service (Service), have determined that there is substantial evidence that there is imminent danger of a taking of one or more manatees (*Trichechus manatus*) in these waters. This emergency action is effective for 120 days. We will initiate the rulemaking process to establish a permanent manatee refuge in this area, including holding the first of several public meetings, within 10 days of the publication of this rule.

**DATES:** This action will be effective from November 15, 2010 through March 15, 2011, and the effective date for this action was also issued through a legal notice published in the *Citrus County Chronicle* on November 9, 2010, in accordance with 50 CFR 17.106. The dates for the public meetings are listed under the Public Participation section of this rule.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at North Florida Ecological Services Field Office, U.S. Fish and Wildlife Service, 7915 Baymeadows Way, Suite 200, Jacksonville, Florida 32256. Supplementary documents may be obtained via the Internet at <http://www.regulations.gov> in Docket No. FWS-R4-ES-2010-0079. The addresses

for the public meetings are listed under the Public Participation section of this rule.

**FOR FURTHER INFORMATION CONTACT:** Jim Valade, Florida Manatee Recovery Lead, (see **ADDRESSES** section), telephone 904/731-3336.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Crystal River is a tidal river on the west coast of Florida. Forming the headwaters of Crystal River is Kings Bay, a lake-like waterbody fed by numerous fresh-water springs. The Kings Bay springs constitute one of the most important natural warm-water refuges for manatees. The West Indian manatee (*Trichechus manatus*) is federally listed as an endangered species under the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531 *et seq.*) and the population is further protected as a depleted stock under the Marine Mammal Protection Act of 1972, as amended (MMPA) (16 U.S.C. 1361 *et seq.*). The West Indian manatee includes two subspecies: The Florida manatee (*Trichechus manatus latirostris*) and the Antillean manatee (*Trichechus manatus manatus*). The Florida manatee's range includes Kings Bay.

Kings Bay is actively used by a growing population of manatees that now numbers in the hundreds of individuals (reaching 565 individuals in 2010) (Kleen 2010, pers. com.). Manatees primarily use the area in Kings Bay as a wintering site, relying on the bay's natural springs and adjacent forage areas for warmth and sustenance. When Gulf of Mexico water temperatures drop to about 68 °F (20 °C), manatees looking for warmer water will begin showing up regularly in Kings Bay around November 15 and tend to stay until about March 31; this is the identified "manatee season" when local manatee sanctuaries are in effect. Occasionally, manatees will appear in the region earlier with the advent of an early winter and may remain in the region longer, following severe or extended winters. When the weather begins to warm around the end of March, manatees generally move away from the springs and Kings Bay, traveling to summer foraging areas along Florida's west coast.

Over the last 30 years (1980–2010), the Service and the State of Florida have created a network of manatee protection areas within the Kings Bay area. During the manatee season, this network includes seven Federal manatee sanctuaries (which are described in our regulations at 50 CFR 17.108(a)(1)–

(a)(7)) and five State manatee protection zones (as described in Chapter 68C–22, "The Florida Manatee Sanctuary Act" (2010)). This network of manatee protection areas is enforced by Service, State, and local law enforcement officers. Extensive outreach and education programs support the protection area network, encouraging the public who engage in manatee viewing activities to avoid harassing manatees.

This network of existing manatee protection areas was designed to prevent the take of manatees caused by waterborne activities, including but not limited to, boating and manatee viewing activities. It was established to allow manatees to continue to gain access to critical warm-water areas and important resting and foraging areas. Take, as defined by section 3(19) of the ESA, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. "Harm" is further defined by regulation at 50 CFR 17.3 to mean an act which actually kills or injures wildlife. "Harass" is also defined by regulation to mean any intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3). Take, as defined by section 3(13) of the MMPA, means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Under section 3(18) of the MMPA, harassment is defined to include 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. All takings, including takings by harassment, are prohibited.

The Service can minimize take through the designation of manatee protection areas in the form of either a manatee refuge or a manatee sanctuary. Regulations authorizing designation of manatee refuges and sanctuaries in areas where prohibitions or restrictions on certain waterborne activities are needed to prevent the take of manatees are codified in 50 CFR 17 subpart J. A manatee refuge is defined as an area in which the Director has determined that: (1) Certain waterborne activities will take one or more manatees; or (2) certain waterborne activities must be restricted

to prevent the take of one or more manatees, including but not limited to taking by harassment. A manatee sanctuary is an area where it has been determined that any waterborne activity will result in the taking of one or more manatees, including but not limited to a taking by harassment (50 CFR 17.102).

Waterborne activities that occur on the Service's Crystal River National Wildlife Refuge (NWR) property in Kings Bay that are known to take manatees are restricted pursuant to 50 CFR 17 subpart J and the National Wildlife Refuge Improvement Act (16 U.S.C. 668dd–668ee), which allows the Service to issue special-use permits for commercial and retail activities that occur on NWR property. The Banana Island Manatee Sanctuary, designated under 50 CFR part 17 subpart J, prohibits all waterborne activities from occurring on some submerged lands owned by this NWR. Commercial and retail activities that occur on NWR-owned land include manatee viewing, diving, snorkeling, videography, and others. Businesses wanting to engage in these activities on NWR property obtain special-use permits from Crystal River NWR. These permits are conditioned to require permittees to take those steps needed to make sure that their activities and those of their customers do not harass or otherwise take manatees.

Citrus County's coastal waters, including the waters of Kings Bay, are used for a variety of water-based recreational and commercial activities, including: Manatee viewing, snorkeling and scuba diving, boating, canoeing and kayaking, fishing, waterskiing, and other activities. Both Citrus County residents and visitors to the area engage in these activities. These activities are an important source of income for the area. Local eco-tour operators, dive shops, marinas, hotels and motels, restaurants, and other businesses benefit from these activities (Buckingham 1990b, p. 6). Kings Bay and its clear waters have catered to the scuba diving industry for decades (Kochman *et al.* 1983, p. 6). Beginning in the 1960s, the increasing presence of manatees generated a commercial interest in manatee viewing activities (Hartman 1979, pp. 126–131). Local dive shops and others in the community developed and now cater to individuals wanting to view manatees (Sorice *et al.* 2003, p. 327). Kings Bay is now a nationally and internationally recognized destination for winter-time manatee viewing. In 2001, more than 100,000 individuals were thought to visit the area to view manatees (MMC 2001, p. 125); the number of participants has likely increased since then.

Waterborne activities, including manatee viewing activities, and their effects on manatees have been investigated in Kings Bay (Hartman 1979, p. v; Packard 1983, p. i; Kochman *et al.* 1985, p. 921; Buckingham 1990b, p. 1; Buckingham *et al.* 1999, p. 514; Meigs-Friend 2003, p. 1; Sorice *et al.* 2003, p. 319; King and Heinen 2004, p. 227; Berger 2007, p. 1). Researchers described individual manatee responses to the presence of people in the water: Manatees generally avoided people; some approached people with curiosity and then left; and some manatees approached and solicited interactions with people (Hartman 1979, pp. 128–130; Buckingham 1990b, pp. 28–29). Some manatees appeared to become more tolerant of people through regular encounters. Researchers described swimmer encounters that disturbed manatees: Pursuit, riding, diving from the surface on to manatees, sounds from scuba regulators, bright lights from underwater videographers, and others (Hartman 1979, p. 131; Buckingham 1990b, p. 29; Sorice *et al.* 2003, pp. 328–333; King and Heinen 2004, pp. 228–232). On a more subtle level, manatees were observed to move from preferred use areas to other areas in response to increasing numbers of boats and people (Kochman *et al.* 1985, pp. 922–924; Buckingham 1990b, pp. 16–17; Buckingham *et al.* 1999, p. 514). In particular, manatees tended to move into sanctuary or no-entry areas in the presence of increasing numbers of boats and people (Kochman *et al.* 1985, pp. 922–924; Buckingham 1990b, pp. 16–17; Buckingham *et al.* 1999, pp. 514; King and Heinen 2004, pp. 231–232).

The number of people, boats, and manatees has been increasing in the west Florida coast region. In Citrus County, home to Kings Bay, the number of Citrus County residents increased by 19.8 percent, from 118,085 to 141,416, over the 2000–2008 period (U.S. Census Bureau 2010 Web site). Concurrent with this increase in number of residents, the number of boats registered in Citrus County increased by 36.2 percent. In 2009, there were 17,601 boats registered in Citrus County, an increase of 4,675 boats since 2000, when 12,926 vessels were registered there (FDHSMV 2010 Web site). While the number of visitor-owned watercraft that use Citrus County waterways, including Kings Bay, is unknown, this number is likely increasing, based on county revenue trends that describe an increasing number of visitors to the area. Revenue trends associated with businesses that cater to visitors, including Citrus County lodging and food service

revenues and tourist tax revenues, have increased by 178 percent and 214 percent, respectively, over the past 10 years, suggesting an increase in the number of visitors to the area (U.S. Census Bureau 2010 Web site). Tourism surveys suggest that about half of all visitors to the area come to Citrus County to enjoy water-based activities that include manatee viewing, snorkeling, and diving (Gold 2008, pp. 4–5).

In January 2010, Crystal River NWR researchers counted 646 manatees in Citrus County's coastal waters, including 565 manatees in Kings Bay. This is the highest number of manatees ever counted in this region and in Kings Bay (Kleen 2010, pers. com.). Wintering manatees have been counted by aerial survey in the region since the 1983–1984 winter, when 142 manatees, including 124 in Kings Bay and Crystal River, were first observed (Kleen 2010, pers. com.). The manatee population in Florida's Northwest Region grew at a rate of 4.0 percent per year through 2000, based on an assessment of adult survival rates (Runge *et al.* 2004, p. 371).

In the State's northwest region, adult manatee mortality is almost equally partitioned between human-related and natural causes, with watercraft collisions being the leading cause of human-induced mortality. For nonadults, perinatal mortality is the most common cause of death, with watercraft collisions ranked second. Each year, manatees are injured and/or killed by watercraft in Citrus County. From 1974–2009, 58 manatees died from collisions with watercraft in county waterways, including 15 manatees in Kings Bay. In 2008, the Florida Fish and Wildlife Conservation Commission (FWC) recorded the highest number (8) of manatees ever killed by watercraft in Citrus County (FWC FWRI Manatee Mortality Database 2010 Web site). Watercraft-related deaths occur throughout the year in this region, including Kings Bay. To reduce the number of watercraft-related collisions with manatees, boaters must adhere to State manatee-protection-zone speed restrictions, enforced by Service, State, and local law enforcement agencies. Additional no-entry areas created by this rulemaking will supplement efforts to reduce this source of mortality.

The impacts of encounters with manatees have been investigated in Citrus County for many years. Manatee responses to viewing participants and boats have been documented (Sorice *et al.* 2003, p. 324). Researchers noted increases in swimming, milling, and cavorting behaviors and decreases in resting, feeding, and nursing behaviors

when numbers of people and boats increased (Abernathy 1995, pp. 23–26; Wooding 1997, p. 1; King and Heinen 2004, pp. 230–231). They also observed that increases in numbers of boats and participants prompted manatees to use other areas (Kochman *et al.* 1985, pp. 922–924; Buckingham *et al.* 1999, p. 514). However, none of these studies' observations of manatee responses to viewing participants and boats suggest that harm (killing or injuring of manatees) has occurred or is occurring (Sorice *et al.* 2003, p. 320). Nor have there been any significant increases in the number of cold-related injuries and mortalities in the northwest Florida region, and manatee survival rates are among the highest in Florida (FWC FWRI Manatee Mortality Database 2010 Web site; Runge *et al.* 2007, p. 20).

Manatee harassment, largely associated with wintertime manatee viewing activities, is known to occur, and the Service, State, and other law enforcement agencies actively enforce harassment laws in Citrus County and in Kings Bay. Cited acts of harassment include trespass by individuals viewing manatees into manatee sanctuaries where the Service has determined that any waterborne activity occurring within these areas will result in take of manatees, including but not limited to take by harassment. Outside of these areas, the public disturbs and occasionally harasses manatees while engaged in viewing and other waterborne activities. When observed, violators are warned or cited. Given variations in enforcement practices and recordkeeping systems, numbers and trends in numbers of issued warnings and citations are difficult to interpret. As such, these records are not used to describe trends in harassment activity. Indirectly, the presence of large numbers of people in the vicinity of manatees may cause some animals to abandon the area, another form of harassment.

Increasing numbers of in-water visitors to Kings Bay and an absence of adequate space at wintering areas in which manatees can shelter free from harassment and other forms of take prompt the need for this emergency designation. Without sufficient space within the existing Kings Bay sanctuaries to shelter, rest, and feed free from harassment, manatees are at risk when exposed to cold temperatures for any length of time. The numbers of visitors and manatees have increased since 1998 when the last sanctuary was designated in Kings Bay (63 FR 55553; October 16, 1998), and researchers have documented dozens of manatees outside the boundaries of the seven existing

Kings Bay sanctuaries, already filled to capacity with wintering manatees (Kleen 2010, pers. com.). Manatees have been harassed in areas that are outside the boundaries of the existing sanctuaries (Aloise 2010, pers. com.), and acts of harassment are likely to increase in the absence of additional measures. Pursuant to our authorities to designate manatee protection measures whenever substantial evidence exists of an imminent danger of a taking, including harassment, of one or more manatees, we believe that this emergency rulemaking is needed to prevent such take.

Additional measures used to address manatee harassment, include, additional law enforcement, increasing and improved outreach and education efforts including on-water volunteer efforts to educate manatee viewers, improved coordination with local ecotour operators, special-use permits, and land acquisition and management activities.

Researchers believe that manatee protection areas, which can include sanctuaries or refuges, when combined with law enforcement, good outreach and education messages and efforts, and some limitations on activities and participant numbers, are an effective tool for reducing adverse effects associated with manatee viewing activities (Kraus 2003, pers. com.; Buckingham *et al.* 1990a, pp. 58–63). However, the effectiveness of these measures is diminished when: (1) Existing sanctuaries cannot provide enough space for all manatees seeking to use them; (2) limited numbers of enforcement officers are available to enforce regulations; (3) there are conflicting and inadequate education and outreach efforts and; (4) the Service's ability to control the number of people who come to view manatees is limited (Kraus 2003, pers. com.; Sorice *et al.* 2006, pp. 69–83).

At present, the current sanctuaries do not provide adequate space for all manatees wanting to use these sites. Observations from both aerial survey and on-water observers describe dozens of manatees unable to access overcrowded sanctuaries (Kleen 2010, pers. com.; Lusk 2010, pers. com.). This increase in the number of manatees unable to access the sanctuaries is consistent with the recent record high count of manatees (565) in Kings Bay in January 2010. Similarly, the number of residents, visitors, and boats in the area, including those who engage in manatee viewing activities, has increased. While not quantified, the number of public reports of purported manatee harassment received by Crystal River

NWR is increasing (Lusk 2010, pers. com.). The presence of increasing numbers of manatees just outside of sanctuary boundaries, where they are more accessible to increasing numbers of people who come to view manatees, provides increasing opportunities for harassment to occur. While the existing network does provide a level of protection for wintering manatees, the network, in its current condition, is unable to provide the level of protection needed to prevent increasing acts of harassment from occurring in the face of increasing numbers of manatees and manatee viewing participants.

To further prevent acts of harassment and other forms of take from occurring in Kings Bay, through this emergency rule, we designate the entire area as a manatee refuge. The areas covered by this emergency rule are shown in the map in the rule portion of this document. With this designation, we will implement measures that will improve our ability to address potential take associated with manatee viewing and other activities. These protection measures will establish, as needed, additional no-entry areas outside of and within specified distances from existing manatee sanctuaries where all waterborne activities, including swimming, diving (including skin and scuba diving), snorkeling, water skiing, surfing, fishing, and the use of water vehicles (including but not limited to boats powered by engine, wind or other means; ships powered by engine, wind or other means; barges, surfboards, personal watercraft, water skis, and any other devices or mechanisms capable of locomotion on, across, or underneath the surface of the water) are prohibited from November 15 to March 15. We will also restrict and/or prohibit specific actions known to take manatees in Kings Bay outside of existing manatee sanctuaries, like riding or attempting to ride a manatee.

Increasing numbers of manatees, increasing levels of human activities known to take manatees, and an outdated protected area network for addressing manatee harassment-related takings in Kings Bay prompts the need to implement additional measures now so that adequate protections will be in place in time for the start of the upcoming winter manatee season. The existing protected area network was last modified 14 years ago in 1998, when a high count of 250 manatees was observed in Kings Bay. Since that time, the number of manatees using Kings Bay has more than doubled, the number of Citrus County residents has increased by almost 20 percent, the number of locally registered boats has increased by

36 percent, and the number of people coming to view manatees in Crystal River exceeds the estimated 100,000 visitors who came to see manatees in 1998. Increasing numbers of manatees and members of the public engaged in manatee viewing activities are overwhelming the manatee protection area network. Additional protection measures need to be in place prior to the upcoming winter season (which starts on November 15, 2010) as described earlier in this document.

This emergency rule will give manatees protection from harassment at a time when they are unable to find refuge within the existing Federal manatee sanctuaries and are vulnerable to harassment due to the cold temperatures that confine them to Kings Bay. Designating manatee protection areas to prohibit the take of manatees in Kings Bay is consistent with our authorities under the ESA and the MMPA. The designation of a manatee refuge in Kings Bay is also consistent with the Service's Florida Manatee Recovery Plan (2001), which identifies the implementation of strategies to eliminate or minimize manatee harassment as an action needed to further the recovery of this species (USFWS 2001). Our authority to create manatee protection areas to prevent the take of manatees is codified in 50 CFR subpart J, which authorizes the Director to establish manatee refuges and sanctuaries. This authority also authorizes the Service to designate, on an emergency basis, manatee protection areas when it is determined that there is evidence of imminent danger of a taking of one or more manatees and that establishment of a manatee protection area is necessary to prevent such a taking.

#### Emergency Determination

This emergency rule establishes a manatee refuge in Kings Bay to prevent the imminent take of manatees resulting from manatee viewing and other activities known to occur in this area. To prevent the imminent take of manatees in Kings Bay, this emergency rule will (1) prohibit all waterborne activities from specified areas outside of existing sanctuaries where manatees that are unable to gain access and avoid harassment due to overcrowding are found; and (2) identify and restrict certain waterborne activities known to take manatees in Kings Bay, including actions taken by manatee viewing participants known to disturb manatees.

The emergency manatee refuge is located within the waters of Kings Bay and connecting waters and tributaries west of U.S. Highway 19 and upstream

of the confluence of the Crystal River and Kings Bay. This designation of an emergency manatee refuge will not change the boundaries of the existing manatee sanctuaries in Kings Bay. See map below in the rule portion of this document.

When we initiate proceedings to develop a proposed rule to establish the manatee refuge area as required by § 17.106 and during the rulemaking process, we will consider the possible issuance of permits in accordance with § 17.105 and section 104 of the MMPA. Regulations under 50 CFR 17.105 authorize the Service to issue permits allowing activities, otherwise prohibited under 50 CFR 17.106 or 50 CFR 17.108, for scientific purposes or for the enhancement of propagation or survival. We will also explore other means to authorize activities otherwise prohibited under 50 CFR 17.106 or 50 CFR 17.108.

To protect manatees until we can complete the proposed rule and final rule that will permanently establish additional manatee protections in Kings Bay, the Service believes it is critical to establish a manatee refuge on an emergency basis to prevent the imminent take of manatees in Kings Bay from waterborne activities during the upcoming winter months. Specifically, we are establishing this manatee refuge now on an emergency basis to prevent acts of take including manatee harassment associated with manatee viewing and other activities this winter. This refuge designation will remain in place for 120 days, from November 15, 2010, to March 15, 2011. Consistent with our authority under our regulations at 50 CFR 17.106 to designate manatee protection areas on an emergency basis, within 10 days of this emergency designation, we will initiate the proceedings to establish the manatee refuge area as required by our regulations at 50 CFR 17.106(e).

#### Public Participation

The proceedings to establish the manatee refuge area will include a series of four public meetings as described below. All four public meetings will be held at the Plantation Inn and Golf Resort, 9301 W. Fort Island Trail, Crystal River, FL 34429.

First, we will hold two informational public meetings. The purpose of these informational public meetings is to provide the public with an opportunity to learn more about the emergency designation of a manatee refuge in Kings Bay, why the Service took this action, and to ask questions about the emergency designation. These informational public meetings will be held on:

(1) Tuesday, November 16, 2010, from 6 to 9 p.m.; and

(2) Thursday, November 18, 2010, from 6 to 9 p.m.

Next, we will hold two, non-decision making, informal public meetings to discuss the process of formally establishing Kings Bay as a manatee refuge. The purpose of these informal public meetings is to provide the public with information on the next steps in the process, as well as for the exchange of useful information. These informal public meetings will be held on:

(1) Saturday, November 20, 2010, from 1 to 4 p.m.; and

(2) Thursday, December 2, 2010, from 6 to 9 p.m.

#### Effective Date

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 sooner than 30 days after publication in the **Federal Register**. As discussed above under "Emergency Determination," we need to establish this manatee protection area (Kings Bay refuge) prior to the time when manatees will be seeking warmer waters in Kings Bay 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 evidence that there is imminent danger that manatees will be taken in the waters of Kings Bay and in its tributaries and connected waters, we believe good cause exists to make this rule effective upon November 15, 2010. 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 prior notice and public procedure. We believe such emergency action is in the public interest because of the imminent threat to manatees and the additional time required to complete the standard rulemaking process. The lack of emergency action could result in additional take of manatees. This rule does not supersede any more stringent State or local regulations.

#### Required Determinations

During the process of preparing a proposed rule to establish this manatee protection area, which will commence through a public workshop as described above under "Emergency Determination," we will be evaluating this action in relation to possible economic impact, its effect on small businesses, and other required determinations. These required determinations will be included in the proposed rule.

**References Cited**

For a list of the references cited in this rule, see Docket No. FWS-R4-ES-2010-0079, available at <http://www.regulations.gov>.

**Author**

The primary author of this document is Jim Valade (see **ADDRESSES** section).

**Authority**

The statutory 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, as amended (16 U.S.C 1361 *et seq.*).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, Transportation.

**Regulation Promulgation**

■ Accordingly, we amend part 17, subchapter B of chapter 1, 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 (c)(14) to read as follows:

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

\* \* \* \* \*

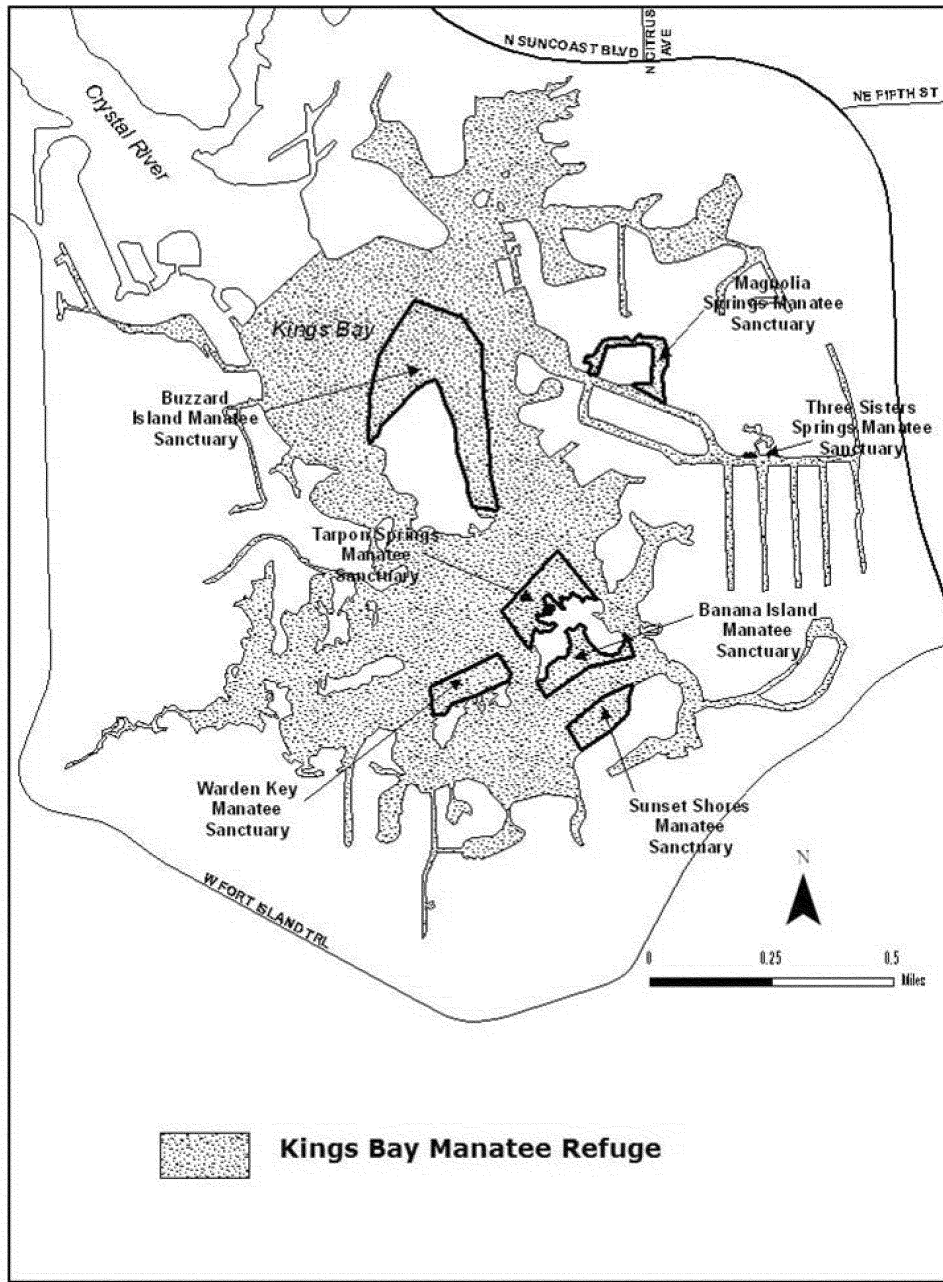
(c) \* \* \*

(14) *The Kings Bay Manatee Refuge.* A tract of submerged land that includes all

waters of Kings Bay, including all tributaries and adjoining waterbodies, upstream of the confluence of Kings Bay and Crystal River, described by a line that bears North 53°00'00" East (True) from the northeasternmost point of an island on the southwesterly shore of Crystal River (approximate latitude 28°53'32" North, approximate longitude 82°36'23" West) to the southwesternmost point of a peninsula of Magnolia Shores (approximate latitude 28°53'38" North, approximate longitude 82°36'16" West).

(i) The Kings Bay Manatee Refuge encompasses existing manatee protection areas as depicted on the map below and as described in paragraphs (a)(1) through (a)(7) of this section, and areas outside these sections as described in paragraph (c)(14)(ii)(A) of this section.

**BILLING CODE 4310–55–P**



**BILLING CODE 4310-55-C**

(ii) All waterborne activities, including swimming, diving (including skin and scuba diving), snorkeling, water skiing, surfing, fishing, and the use of water vehicles (including but not limited to boats powered by engine, wind or other means; ships powered by engine, wind or other means; barges, surfboards, personal watercraft, water skis, and any other devices or mechanisms capable of locomotion on, across, or underneath the surface of the water) are prohibited from November 15 to March 15 in areas as defined below that are outside of and within specified distances from the existing manatee

sanctuaries located in Kings Bay (defined in § 17.108(a)).

(A) When manatees exceed the capacity of an existing sanctuary or shift usage around an existing manatee sanctuary due to water or weather conditions, we will designate “No entry” areas within the Kings Bay manatee refuge and outside of existing manatee sanctuaries as follows:

(1) For the sanctuaries set forth in paragraphs (a)(1) through (a)(6) of this section, to a distance not to exceed 100 feet from the existing sanctuary boundary.

(2) For the sanctuary set forth in paragraph (a)(7) of this section, to a distance not to exceed 400 feet from the

existing boundary. We do not intend to completely mark off the manmade channel. Expansions could occur directly around the existing sanctuary and north into the area locally known as Three Sisters Springs.

(B) Designations of “no entry” areas around existing manatee sanctuaries as described above and within the Kings Bay manatee refuge will be made based on aerial survey observations of manatees using the existing sanctuary sites, current weather information, and other sources of credible, relevant information. We could designate “no entry” areas around one or all of the manatee sanctuaries depending on the winter season.

(C) Additional protection areas within the Kings Bay manatee refuge, but outside of the existing manatee sanctuaries set forth in paragraphs (a)(1) through (a)(7) of this section will be posted to distances as described in paragraph (c)(14)(ii)(A) of this section and identified by the following devices: buoys, float lines, signs, advisories from on-site Service employees and their designees, or other methods.

(iii) *Exceptions.* Private and public landowners who own property that adjoins designated no entry areas in Kings Bay are authorized to be in these areas for the purpose of accessing their property and local waterways, storing watercraft, and maintaining owned property and waterways. Authorized individuals include property owners, their guests, employees, and their designees. All watercraft operated by authorized individuals will be identified by a sticker placed on the watercraft in a conspicuous location; the Service will provide identifying stickers. All authorized watercraft must operate at idle speed when in adjoining waters. Maintenance activities include those actions necessary to maintain property and waterways, subject to any Federal, State, and local government permitting requirements.

(iv) *Notifications.* When waterborne activities pose an immediate threat to aggregations of manatees and are likely to take one or more manatees, additional protection areas outside of existing manatee sanctuaries set forth in paragraphs (a)(1) through (a)(7) of this section but within the Kings Bay manatee refuge will be posted to distances as described in paragraph (c)(14)(ii)(A) of this section. No-entry area designations will occur immediately. We will advise the public of designations through public notice(s) announcing and describing the measures in a local newspaper and other media, including but not limited to, local television and radio broadcasts, Web sites, and other news outlets, as soon as time permits. Onsite Service employees and their designees, when present, will also inform waterway users of designations.

(v) *Prohibitions.* Pursuant to the ESA and MMPA, all takings, including takings by harassment, are prohibited throughout the year and any manatee takings, wherever they may occur, are prohibited. To better prevent the take of manatees by individuals engaged in waterborne activities while in the water, in boats, or on-shore within the Kings Bay Manatee Refuge, we specifically identify and prohibit the following types of activities.

(A) Chasing or pursuing manatee(s).

(B) Disturbing or touching resting or feeding manatee(s).

(C) Diving from the surface on to resting or feeding manatee(s).

(D) Cornering or surrounding or attempting to corner or surround a manatee(s).

(E) Riding, holding, grabbing, or pinching or attempting to ride, hold, grab, or pinch manatee(s).

(F) Poking, prodding, or stabbing, or attempting to poke, prod, or stab manatee(s) with anything, including your hands and feet.

(G) Standing on or attempting to stand on manatee(s).

(H) Separating a mother and calf or attempting to separate a mother and calf.

(I) Separating manatee(s) from a group or attempting to separate manatee(s) from a group.

(J) Giving manatee(s) anything to eat or drink or attempting to give manatee(s) anything to eat or drink.

(K) Actively initiating contact with belted and/or tagged manatee(s) and associated gear, including any belts, harnesses, tracking devices, and antennae.

(L) The following waterborne activities are prohibited within Three Sisters Springs, from November 15 to March 15:

(1) Scuba diving.

(2) Fishing, including with hook and line, by cast net, or spear.

(vi) The area defined as Three Sisters Springs where scuba diving and fishing is prohibited is delineated as the following: The area known locally as Three Sisters Springs, which is located along the north shore of the canal that begins on the west side of the City of Crystal River's SE Cutler Spur Boulevard and runs west northwest to Kings Bay. The area includes at least three main spring vents and numerous smaller vents within the Three Sisters Springs complex, and the spring run that connects the springs to the canal.

Dated: October 25, 2010.

**Will Shafroth,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 300

[Docket No. 090130102-91386-02]

RIN 0648-XZ39

#### Western and Central Pacific Fisheries for Highly Migratory Species; 2010 Bigeye Tuna Longline Fishery Closure

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

**ACTION:** Temporary rule; fishery closure.

**SUMMARY:** NMFS is closing the U.S. pelagic longline fishery for bigeye tuna in the western and central Pacific Ocean as a result of the fishery reaching the 2010 catch limit.

**DATES:** Effective November 22, 2010, through December 31, 2010.

**FOR FURTHER INFORMATION CONTACT:** Tom Graham, NMFS Pacific Islands Region, 808-944-2219.

**SUPPLEMENTARY INFORMATION:** Pelagic longline fishing in the western and central Pacific Ocean is managed, in part, under the Western and Central Pacific Fisheries Convention Implementation Act (Act). Regulations governing fishing by U.S. vessels in accordance with the Act appear at 50 CFR part 300, subpart O.

NMFS established a limit (74 FR 63999, December 7, 2009, and codified at 50 CFR 300.224) for calendar year 2010 of 3,763 metric tons (mt) of bigeye tuna (*Thunnus obesus*) that may be caught and retained in the U.S. pelagic longline fishery in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention Area). NMFS monitored the retained catches of bigeye tuna using logbook data submitted by vessel captains and other available information, and determined that the 2010 catch limit is expected to be reached on November 22, 2010. In accordance with § 300.224(d), this rule serves as advance notification to fishermen, the fishing industry, and the general public that the U.S. longline fishery for bigeye tuna in the Convention Area will be closed starting on November 22, 2010, through the end of the 2010 calendar year. The 2011 fishing year is scheduled to open on January 1, 2011; the 2011 bigeye tuna catch limit will be 3,763 mt. This rule does not apply to the longline fisheries