

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose any information collection requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This action is necessary to implement Section 8083 of the Fiscal Year 1998 Defense Appropriations Act (Pub. L. 105-56), which was effective upon enactment on October 8, 1997. However, comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Part 231

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 231 is amended as follows:

1. The authority citation for 48 CFR Part 231 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 231.205-6 is amended by revising paragraph (f)(1) to read as follows:

§ 231.205-6 Compensation for personal services.

(f)(1) In accordance with Section 8122 of Pub. L. 104-61, and similar sections in subsequent Defense appropriations acts, costs for bonuses or other payments in excess of the normal salary paid by the contractor to an employee, that are part of restructuring costs associated with a business combination, are unallowable under DoD contracts funded by fiscal year 1996 or subsequent appropriations. This limitation does not apply to severance payments or early retirement incentive payments. (See 231.205-70(b) for the definitions of "business combination" and "restructuring costs.")

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

RIN 1018-AE47

Endangered and Threatened Wildlife and Plants; Emergency Rule To Establish an Additional Manatee Sanctuary in Kings Bay, Crystal River, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: This emergency rule establishes an additional West Indian manatee (*Trichechus manatus*) sanctuary in Citrus County, Florida, adjacent to Kings Bay/Crystal River at the confluence of the Three Sisters Spring run with a residential canal, and prohibits all waterborne activities in the sanctuary for a period of 120 days. This emergency action will help prevent the taking of manatees by harassment resulting from waterborne activities during upcoming winter months. This increases the number of sanctuaries in Kings Bay to seven and has been initiated to prevent harassment from increasing public use at this site. A proposed rule to establish this sanctuary is published elsewhere in today's **Federal Register**. The proposed rule provides for public comment and a hearing (if requested). The emergency action is effective for 120 days and is taken under the authority of the Endangered Species Act of 1973, as amended, and the Marine Mammal Protection Act of 1972, as amended. **DATES:** Effective November 24, 1997, through March 23, 1998, unless terminated sooner by publication in the **Federal Register**. In accordance with 50 CFR 17.106, the effective date for this action was established through a legal notice published in the St. Petersburg Times, Citrus County Edition and the Citrus County Chronicle on November 24, 1997.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216-0912.

FOR FURTHER INFORMATION CONTACT: Robert O. Turner at the above address, (904/232-2580 ext. 117); or Vance Eaddy, Senior Resident Agent, U.S. Fish and Wildlife Service, 9721 Executive Center Drive, Suite 206, St. Petersburg, Florida 33702, (813/570-5398).

SUPPLEMENTARY INFORMATION:**Background**

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

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

The Second Revision of the Florida Manatee Recovery Plan (U.S. Fish and Wildlife Service 1995) identifies the need to minimize disturbance and harassment of manatees in the wild. This concern for the welfare of manatees in Kings Bay has resulted in the establishment of a series of sanctuary areas to protect manatees from any potential negative impacts of human activities. The first three sanctuaries were created in 1980, encompassing a total of about 10 acres in Kings Bay. These were closed to all human access each winter from November 15 to March 31 and provided manatees with areas where they could retreat from waterborne users. To better administer and protect the bay's manatee habitat, the Service purchased several islands associated with the sanctuaries in 1983 and established the Crystal River National Wildlife Refuge. During the 1980's, the number of manatees and divers increased steadily, resulting in the need for additional manatee sanctuaries. In 1994, the Service

established three additional sanctuaries and expanded an existing sanctuary. The six sanctuaries now encompass approximately 39 acres within Kings Bay.

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

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

Prior to last winter, the Service and local interest groups met separately with local dive shop owners to discuss the harassment issue and the feasibility of establishing a new sanctuary. There was a consensus that a sanctuary was needed and that it would be more effective if it was developed through a local city or county ordinance. Representatives of each of the local dive shops wrote letters recognizing the need for a small sanctuary near Three Sisters Spring and recommended that the regulations be promulgated locally. Local efforts have been made to address the problem and the Service will continue to encourage local officials to create a permanent refuge. However, the Service is taking this interim measure to protect manatees, already beginning to seek the warmer waters of Kings Bay springs, from harassment.

The Service funded a manatee and human interaction study at Three Sisters Spring (January 23–February 17, 1997) which confirmed that harassment was occurring and documented instances in which manatees left the warm waters at the confluence of the spring run and the residential canal when divers, snorkelers and/or swimmers arrived (Wooding, 1997). The Service is concerned that these animals may be leaving earlier than if they were left undisturbed.

Reasons for Emergency Determination

In deciding to implement this rule, the Service has carefully assessed the best available information, and conducted a study to evaluate manatee and human interactions at Three Sisters Spring. The study clearly documented a manatee harassment problem at the site. With more than 250 manatees utilizing the sanctuary system along with an increasing number of visitors who seek close encounters with manatees, manatees are experiencing more frequent disturbance at Three Sisters Spring. Without sufficient space to rest, free from harassment, a significant proportion of the manatees depending upon the Kings Bay springs could be at considerable risk should they be driven away from essential warm-water areas. Based on this evaluation, the preferred appropriate action is to establish an additional sanctuary at the confluence of the Three Sisters Spring run and a residential canal in Kings Bay, Crystal River, Citrus County, Florida. At present, there is currently insufficient time to complete preparations for implementing a permanent sanctuary before cold weather arrives. Therefore, the Service is establishing a seventh manatee sanctuary on an emergency basis to provide maximum protection for manatees until a permanent sanctuary is put in place, either by a local ordinance or by final rule by the Service.

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

The emergency sanctuary is located on the west side of the confluence of Three Sisters Spring run and the residential canal, Kings Bay, Crystal River, Citrus County, Florida. The sanctuary will be less than one quarter acre in size.

References Cited

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

Author. The primary author of this emergency rule is Robert O. Turner, Manatee Coordinator (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 recordkeeping requirements, Transportation.

Regulation Promulgation

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

PART 17—[AMENDED]

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

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

2. Amend section 17.108 by adding paragraph (a)(7) to read as follows:

§ 17.108 List of designated manatee protection areas.

(a) * * *

(7) A tract of submerged land on the west side of the confluence of Three Sisters Spring run and the residential canal off the eastern

shore of Kings Bay, Crystal River, lying in the
northeast corner of Section 28, Township 18,
South Range 17 East in Citrus County,
Florida; containing less than one quarter
acre.

* * * * *

Dated: November 20, 1997.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

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