

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17****RIN 1018-AT65****Endangered and Threatened Wildlife and Plants; Establishment of an Additional Manatee Protection Area in Lee County, FL****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule; availability of supplemental information.

**SUMMARY:** We, the Fish and Wildlife Service (Service), propose to establish an additional manatee protection area in Lee County, Florida (Pine Island-Estero Bay Manatee Refuge). We are proposing this action 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 substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees. In evaluating the need for the proposed designation of an additional manatee protection area, we considered the biological needs of the manatee, the level of take at these sites, and the likelihood of additional take of manatees due to human activity at these sites. These factors were the basis for designating this area as a manatee refuge by an emergency rule authorized under the ESA and MMPA on April 7, 2004. The emergency designation is temporary, lasting only 120 days, and will expire on August 5, 2004. We announced in the emergency rule that we would begin proceedings to establish these areas as a manatee refuge through rulemaking; this proposed rule is part of that process. In a federally designated manatee refuge, watercraft are required to proceed at either "slow speed" or at not more than 25 miles per hour, on an annual or seasonal basis, as marked. While adjacent property owners must comply with the speed restrictions, a designation does not preclude ingress and egress to private property. We also announce the availability of a draft environmental assessment for this action. A separate final rule concerning manatee protection in Lee County, FL, is published elsewhere in this issue of the **Federal Register**.

**DATES:** We will consider comments on both the proposed rule and the draft environmental assessment that are received by October 5, 2004. We will hold a public hearing on September 8, 2004, from 6:30 p.m. to 9:30 p.m. in Fort

Myers, Florida. See additional information on the public comment process in the **SUPPLEMENTARY INFORMATION** section.

**ADDRESSES:** A formal public hearing will be held at the Harborside Convention Hall, 1375 Monroe Street, in Fort Myers, Florida. The draft Environmental Assessment for this action is available for review upon written request to the Field Supervisor, South Florida Field Office, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, Florida 32960.

If you wish to comment on the proposed rule or draft environmental assessment, you may submit your comments by any one of several methods:

1. You may submit written comments and information by mail to the Field Supervisor, South Florida Field Office, U.S. Fish and Wildlife Service, Attn: Proposed Manatee Refuge, 1339 20th Street, Vero Beach, Florida 32960.
2. You may hand-deliver written comments to our South Florida Field Office, at the above address, or fax your comments to (772) 562-4288.
3. You may send comments by electronic mail (e-mail) to [verobeach@fws.gov](mailto:verobeach@fws.gov). For directions on how to submit electronic comment files, see the "Public Comments Solicited" section.

**FOR FURTHER INFORMATION CONTACT:** Jay Slack or Kalani Cairns (see **ADDRESSES** section), telephone (772) 562-3909; or visit our Web site at <http://verobeach.fws.gov>.

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

The West Indian manatee (*Trichechus manatus*) is Federally listed as an endangered species under the ESA (16 U.S.C. 1531 *et seq.*) (32 FR 4001), and is further protected 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 occasionally are seen 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.

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 section 3(18) of 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 as a function of residential growth and increased visitation. This increased use 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 also increased. 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 2003, 743,243 vessels were registered in the State of Florida. This represents an increase of 26 percent since 1993. These numbers differ from those in our recently published manatee rules because new data have since become available from the State of Florida. The apparent decline in number of vessels registered between 2001 and 2003 is due to a change in the way registrations are counted. The earlier (2001) numbers included all registrations occurring during the year and therefore double-counted vessels that were sold and re-registered during the same year.

The increase in and projected growth of 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.

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, manatee protection areas may be established on an emergency basis when such takings are imminent. Such was the case for the emergency designation of these areas within Lee County as a manatee refuge. The emergency rule was published in the **Federal Register** on April 7, 2004 (69 FR 18279). The emergency designation is temporary,

lasting only 120 days, and will expire on August 5, 2004. We announced in the emergency rule that, within 10 days after establishing the emergency protection area, in accordance with this section, the Service would begin proceedings to establish the area in accordance with 50 CFR 17.103.

As defined in 50 CFR 17.102, we may establish two types of manatee protection areas: manatee refuges and manatee sanctuaries. A manatee refuge 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.

#### Reasons for Proposing a Manatee Refuge

In deciding to propose this rule, we reviewed a recent State court ruling overturning State-designated manatee speed zones in Lee County (*State of Florida Fish and Wildlife Conservation Commission v. William D. Wilkinson, Robert W. Watson, David K. Taylor, James L. Frock* [2 cases], *Jason L. Fluharty, Kenneth L. Kretsch, Harold Stevens, Richard L. Eyler, and John D. Mills*, County Court of the 20th Judicial Circuit) as well as the best available information to evaluate manatee and human interactions in the former State-speed zones affected by the ruling.

In the *State of Florida Fish and Wildlife Conservation Commission (FFWCC) v. Wilkinson, et al.*, boaters, who were issued citations for alleging different violations of Rule 68C–22.005 (Rule), challenged the Rule adopted by the FFWCC regulating the operation and speed of motorboat traffic in Lee County waters to protect manatees. In its ruling the court determined that under Florida law the FFWCC can regulate the operation and speed of motorboats in order to protect manatees from harmful collisions with motorboats, however: (1) In the area to be regulated, manatee sightings must be frequently frequent and, based upon available scientific information, it has been determined that manatees inhabit these areas on a regular, periodic or continuous basis; and (2) when the FFWCC adopts rules

it must consider the rights of voters, fishermen and water-skiers and the restrictions adopted by the FFWCC must not unduly interfere with those rights. In this instance the court found that the Rule for four of the regulated areas did not meet the State standard for the frequency of sightings and the rule unduly interfered with the rights of voters. Thus, the designated manatee protection zones were invalidated and the citations were dismissed. The absence of zones and enforcement in these areas increases the potential for manatees to suffer injury and death from watercraft collisions. The Court's ruling does not affect Federal speed zones in Lee County. The Service established Shell Island as a manatee refuge in November 2002 (67 FR 68450) and the Caloosahatchee River–San Carlos Bay as a manatee refuge in August 2003 (68 FR 46870).

The legal basis for the action to be taken by the Service differs markedly from that in the *FFWCC v. Wilkinson case*. The Service's action is not based on state law but rather is based upon a federal regulation, 50 CFR 17.103 which provides the standard for designation of a manatee protected area. Specifically, this regulation provides that the Director may establish a manatee protection area “\* \* \* whenever there is substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees.

Manatees are especially vulnerable to fast-moving power boats. The slower a boat is traveling, the more time a manatee has to avoid the vessel and the more time the boat operator has to detect and avoid the manatee. Nowacek *et al.* (2000) documented manatee avoidance of approaching boats. Wells *et al.* (1999) confirmed that, at a response distance of 20 meters, a manatee's time to respond to an oncoming vessel increased by at least 5 seconds if the vessel was traveling at slow speed. Therefore, the potential for take of manatees can be greatly reduced if boats are required to travel at slow speed in areas where manatees can be expected to occur.

The waterbodies encompassed in this proposed designation receive extensive manatee use either on a seasonal or year-round basis as documented in radio telemetry and aerial survey data (FWC 2003). The areas contain feeding habitats and serve as travel corridors for manatees (FWC 2003). Although residents are likely accustomed to the presence of speed zones in the area, which existed as State regulations since 1999, some of those regulations are no longer in effect. Therefore, without this proposed Federal designation,

watercraft can be expected to travel at high speeds in areas frequented by manatees, which would result in the take of one or more manatees. Also, while the State court invalidated State-designated speed limits in the areas adjacent to navigation channels, it did not invalidate the 25-mile-per-hour speed limit in the navigation channels that traverse the affected area. Therefore, the speed limit in the navigation channel is now lower than that of the surrounding, shallower areas. As a result, shallow-draft high-speed boats capable of traveling outside the navigation channels can be expected to be operated at high speeds (greater than 25 miles per hour) in the areas more likely to be frequented by manatees. In the areas encompassed by this proposed designation that receive more seasonal use by manatees, the slow speed requirements would begin on April 1.

There is a history of manatee mortalities in the area as a result of collisions with watercraft. At least 14 carcasses of manatees killed in collisions with watercraft have been recovered in or immediately adjacent to the designated areas since 1999 (FWC 2003), and two more carcasses have been recovered recently from sites that were former State speed zones eliminated by the Court's ruling. Necropsies revealed that these animals died of wounds from a boat collision.

Manatees make extensive use of these areas; there is a history of take at these sites; future take will occur without the protection measures; protection measures will be insufficient upon expiration of the emergency designation; and we do not anticipate any alternative protection measures being enacted by State or local government in sufficient time to reduce the likelihood of take occurring. For these reasons, we believe that substantial evidence shows that establishment of a manatee refuge is necessary to prevent the take of one or more manatees in these areas. The proposed refuge covers the exact same areas as those set forth in the April 7, 2004, emergency rule (69 FR 18279).

#### Definitions

The following terms are defined in 50 CFR 17.102. We present them here to aid in understanding this proposed rule.

"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. 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.

"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.

"Water vehicle, watercraft," and "vessel" include, but are not limited to, boats (whether powered by engine, wind, or other means), ships (whether powered by engine, wind, or other means), barges, surfboards, personal watercraft, water skis, or any other device or mechanism the primary or an incidental purpose of which is locomotion on, or across, or underneath the surface of the water.

#### Area Proposed for Designation as a Manatee Refuge

##### *Pine Island-Estero Bay Manatee Refuge*

The Pine Island-Estero Bay Manatee Refuge encompasses waterbodies in Lee County including portions of Matlacha Pass and San Carlos Bay south of Green Channel Marker 77 and north of the Intracoastal Waterway, portions of Pine Island Sound in the vicinity of York and Chino Islands, portions of Punta Rassa Cove and Shell Creek in San Carlos Bay and the mouth of the Caloosahatchee River, and portions of Estero Bay and associated waterbodies. These waterbodies are designated, as posted, as either slow speed or with a speed limit of 25 miles per hour, on either a seasonal or annual basis. Legal descriptions and maps are provided in the "Regulation Promulgation" section of this notice.

##### *Public Comments Solicited*

We solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

1. The reasons why this area, particularly the waters known as Long Cut and Short Cut as well as any

shallow water embayments within the proposed area, should or should not be designated as manatee refuges, including data in support of these reasons;

2. Current or planned activities in the subject areas and their possible effects on manatees;

3. Any foreseeable economic or other impacts resulting from the proposed designations;

4. Potential adverse effects to the manatee associated with designating manatee protection areas for the species; and

5. Any actions that could be considered in lieu of, or in conjunction with, the proposed designations that would provide comparable or improved manatee protection.

We request that you identify whether you are commenting on the proposed rule or draft environmental assessment. Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours from 8 a.m. to 4:30 p.m., at the above address. You may obtain copies of the draft environmental assessment from the above address or by calling (772) 562-3909 or from our Web site at <http://verobeach.fws.gov>.

Comments submitted electronically should be embedded in the body of the e-mail message itself or attached as a text-file (ASCII) and should not use special characters and encryption. Please also include "Attn: RIN 1018-AT65," your full name, and return address in your e-mail message. Comments submitted to [verobeach@fws.gov](mailto:verobeach@fws.gov) will receive an automated response confirming receipt of your message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our South Florida Field Office (see ADDRESSES section).

Our practice is to make all comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold also from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or

businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

We will consider all comments and information received during the 60-day comment period on this proposed rule prior to a determination and will refine this proposal, if and when appropriate. Accordingly, the final decision may differ from this proposal.

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

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240.

#### **Required Determinations**

##### *Regulatory Planning and Review*

In accordance with the criteria in Executive Order 12866, the Office of Management and Budget (OMB) has determined that this proposed rule is a significant regulatory action, as it may raise novel legal or policy issues. OMB has reviewed this rule.

a. Based on experience with similar rulemakings in this area, this proposed rule will not have an annual economic impact of over \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. It is not expected that any significant economic impacts would result from the establishment of a manatee refuge (approximately 30 miles of waterways) in Lee County in the State of Florida.

The purpose of this proposed rule is to establish a manatee refuge in Lee County, Florida. We are proposing to prevent the take of manatees by controlling certain human activity in

this county. For the proposed manatee refuge, the areas are year-round or seasonal slow speed, or year-round or seasonal speed limits of 25 miles per hour. Affected waterborne activities include, but are not limited to, transiting, cruising, water skiing, fishing, marine construction, and the use of all water vehicles. This proposed rule will impact recreational boaters, commercial charter boats, and commercial fishermen, primarily in the form of restrictions on boat speeds in specific areas. We will experience increased administrative costs due to this proposed rule. Conversely, the proposed rule may also produce economic benefits for some parties as a result of increased manatee protection and decreased boat speeds in the manatee refuge areas.

Regulatory impact analysis requires the comparison of expected costs and benefits of the proposed rule against a "baseline," which typically reflects the regulatory requirements in existence prior to the rulemaking. For purposes of this analysis, the baseline assumes that the Pine Island-Estero Bay area has no regulating speed limits other than the 25 miles per hour in the navigation channels. The State-designated speed zones, other than in the navigation channels, have been voided by a State Court decision. However, residents and other water users have lived with speed restrictions in this area since 1999 and have established business and recreational patterns on the water to accommodate their needs and desires for water-based recreation. Even though the baseline is set at no speed zones, the actual economic effects may very well be insignificant because almost all users have been previously subject to these restrictions. Thus, the proposed rule is expected to have only an incremental effect. As discussed below, the net economic impact is not expected to be significant, but cannot be monetized given available information.

The economic impacts of this proposed rule would be due to the changes in speed zone restrictions in the manatee refuge area. These speed zone changes are summarized in the proposed rule.

In addition to speed zone changes, the proposed rule no longer allows for the speed zone exemption process in place under State regulations. Florida's Manatee Sanctuary Act allows the State to provide exemptions from speed zone requirements for certain commercial activities, including fishing and events such as high-speed boat races. Under State law, commercial fishermen and professional fishing guides can apply for permits granting exemption from speed

zone requirements in certain counties. Speed zone exemptions were issued to 27 permit holders (one permit holder did not renew during the last cycle) in the former State zones that comprise the proposed manatee refuge area.

In order to gauge the economic effect of this proposed rule, both benefits and costs must be considered. Potential economic benefits related to this proposed rule include increased manatee protection and tourism related to manatee viewing, increased fisheries health, and decreased seawall maintenance costs. Potential economic costs are related to increased administrative activities related to implementing the proposed rule and affected waterborne activities. Economic costs are measured primarily by the number of recreationists who use alternative sites for their activity or have a reduced quality of the waterborne activity experience at the designated sites. In addition, the proposed rule may have some impact on commercial fishing because of the need to maintain slower speeds in some areas. The extension of slower speed zones in this proposed rule is not expected to affect enough waterborne activity to create a significant economic impact (*i.e.*, an annual impact of over \$100 million).

#### *Economic Benefits*

We believe that the proposed designation of the Pine Island-Estero Bay Manatee Refuge in this proposed rule will increase the level of manatee protection in these areas. A potential economic benefit is increased tourism resulting from an increase in manatee protection. To the extent that some portion of Florida's tourism is due to the existence of the manatee in Florida waters, the protection provided by this proposed rule may result in an economic benefit to the tourism industry. We are not able to make an estimate of this benefit given available information.

In addition, due to reductions in boat wake associated with speed zones, property owners may experience some economic benefits related to decreased expenditures for maintenance and repair of shoreline stabilization structures (*i.e.*, seawalls along the water's edge). Speed reductions may also result in increased boater safety. Another potential benefit of slower speeds is that fisheries in these areas may be more productive because of less disturbance. These types of benefits cannot be quantified with available information.

Based on previous studies, we believe that this proposed rule produces some economic benefits. However, given the

lack of information available for estimating these benefits, the magnitude of these benefits is unknown.

#### *Economic Costs*

The economic impact of the designation of a manatee refuge results from the fact that, in certain areas, boats are required to go slower than under current conditions. Some impacts may be felt by recreationists who have to use alternative sites for their activity or who have a reduced quality of the waterborne activity experience throughout the designated site because of the proposed rule. For example, the extra time required for anglers to reach fishing grounds could reduce onsite fishing time and could result in lower consumer surplus for the trip. Other impacts of the proposed rule may be felt by commercial charter boat outfits, commercial fishermen, and agencies that perform administrative activities related to implementing the proposed rule. We hope to gather more information on the economic costs during the public comment period.

#### *Affected Recreational Activities*

For some boating recreationists, the inconvenience and extra time required to cross additional slow speed areas may reduce the quality of the waterborne activity, or cause them to forgo the activity. This will manifest in a loss of consumer surplus to these recreationists. In addition, to the extent that recreationists forgo recreational activities, this could result in some regional economic impact. In this section, we examine the waterborne activities taking place in each area and the extent to which they may be affected by designation of the proposed manatee refuge. The resulting potential economic impacts are discussed below. These impacts cannot be quantified because the number of recreationists and anglers using the designated sites is not known.

Recreationists engaging in cruising, fishing, and waterskiing may experience some inconvenience by having to go slower or use undesignated areas; however, the extension of slow speed zones is not likely to result in a significant economic impact.

Currently, not enough data are available to estimate the loss in consumer surplus that water skiers will experience. While some may use substitute sites, others may forgo the activity. The economic impact associated with these changes on demand for goods and services is not known. However, given the number of recreationists potentially affected, and the fact that alternative sites are available, it is not expected to amount

to a significant economic impact. Until recently, speed zones were in place in this area, and recreationists have adjusted their activities to accommodate them.

#### *Affected Commercial Charter Boat Activities*

Various types of charter boats use the waterways in the affected counties, primarily for fishing and nature tours. The number of charter boats using the Pine Island–Estero Bay area is currently unknown. For nature tours, the extension of slow speed zones is unlikely to cause a significant impact, because these boats are likely traveling at slow speeds. The extra time required for commercial charter boats to reach fishing grounds could reduce onsite fishing time and could result in fewer trips. The fishing activity is likely occurring at a slow speed and will not be affected. Added travel time may affect the length of a trip, which could result in fewer trips overall, creating an economic impact. According to one professional guide with a State speed zone exemption permit, the exemption is important to him financially. The exemption allows him to take clients to areas where they spend more time fishing instead of traveling to fish, an important requirement for paying customers. Without the exemption, he doesn't take clients on a half-day charter to fish an area with an idle or slow speed zone at the risk of losing the charter. As his primary source of income, the loss of a charter has a significant affect on his ability to make a living. Instead, he will travel to areas where there are no speed zones in order for his clients to fish.

#### *Affected Commercial Fishing Activities*

Several commercial fisheries will experience some impact due to the regulation. To the extent that the regulation establishes additional speed zones in commercial fishing areas, this will increase the time spent on the fishing activity, affecting the efficiency of commercial fishing. While limited data are available to address the size of the commercial fishing industry in the manatee refuges, county-level data generally provide an upper bound estimate of the size of the industry and potential economic impact.

Given available data, the impact on the commercial fishing industry of extending slow speed zones in the Pine Island–Estero Bay area cannot be quantified. The designation will likely affect commercial fishermen by way of added travel time, which can result in an economic impact. Some of the 27 active permit holders with speed limit

exemptions are commercial fishermen. According to one commercial mullet fisherman with a State permit, the exemption is worthless to him. The State's permit exempts him from the speed zones restrictions in Matlacha Pass; however, the schools of mullet which he targets are primarily in the Caloosahatchee River, an area where he cannot get an exemption because of the Caloosahatchee River Manatee Refuge established in 2003. Nevertheless, because a manatee refuge designation will not prohibit any commercial fishing activity and because there is a channel available for boats to travel up to 25 miles per hour in the affected areas, the Service believes that it is unlikely that the proposed rule will result in a significant economic impact on the commercial fishing industry. It is important to note that, in 2001, the total annual value of potentially affected fisheries was approximately \$8.3 million (2001\$); this figure represents the economic impact on commercial fisheries in these counties in the unlikely event that the fisheries would be entirely shut down, which is not the situation associated with this proposed rule.

#### *Agency Administrative Costs*

The cost of implementing the proposed rule has been estimated based on historical expenditures by the Service for manatee refuges and sanctuaries established previously. The Service expects to spend approximately \$600,000 (2002\$) for posting and signing 15 previously designated manatee protection areas (an average of \$40,000 per area). This represents the amount that the Service will pay contractors for creation and installation of manatee refuge signs. While the number and location of signs needed to post the Pine Island–Estero Bay manatee refuge is not known, the cost of manufacturing and posting signs to delineate the manatee refuge in this proposed rule is not expected to exceed the amount being spent to post previously designated manatee protection areas (Service 2003a). Furthermore, there are unknown additional costs associated with the semi-annual requirement for seasonal conversion (flipping) of regulatory signs as well as routine maintenance of these posts and signs. In addition, the Service anticipates that it will spend additional funds for enforcement of a newly designated manatee refuge if a final rule is published. These costs, including the cost of fuel, cannot be accurately estimated at this time. The costs of enforcement may also include hiring and training new manatee enforcement

officers and special agents as well as the associated training, equipment, upkeep, and clerical support (Service 2003b). Finally, there are some costs for education and outreach to inform the public about this new manatee refuge area.

While the State of Florida has 12,000 miles of rivers and 3 million acres of lakes, this proposed rule will affect approximately 30 waterway miles. The speed restrictions in this proposed rule will cause inconvenience due to added travel time for recreationists and commercial charter boats and fishermen. As a result, the proposed rule will impact the quality of waterborne activity experiences for some recreationists and may lead some recreationists to forgo the activity. This proposed rule does not prohibit recreationists from participating in any activities. Alternative sites are available for all waterborne activities that may be affected by this proposed rule. The distance that recreationists may have to travel to reach an undesignated area varies. The regulation will likely impact some portion of the charter boat and commercial fishing industries in these areas as well. The inconvenience of having to go somewhat slower in some areas may result in changes to commercial and recreational behavior, resulting in some regional economic impacts. Given available information, the net economic impact of designating the manatee refuge is not expected to be significant (*i.e.*, an annual economic impact of over \$100 million). While the level of economic benefits that may be attributable to the manatee refuge is unknown, these benefits would cause a reduction in the economic impact of the proposed rule.

b. This rule will not create inconsistencies with other agencies' actions. The precedent to establish manatee protection areas has been established primarily by State and local governments in Florida. We recognize the important role of State and local partners and continue to support and encourage State and local measures to improve manatee protection. We are designating the Pine Island–Estero Bay area, where previously existing State

designations have been eliminated, to prevent the taking of one or more manatees in that area.

c. This proposed rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Minimal restriction to existing human uses of the sites would result from this proposed rule. No entitlements, grants, user fees, loan programs or effects on the rights and obligations of their recipients are expected to occur.

d. OMB has determined that this rule may raise novel legal or policy issues. Therefore, OMB has reviewed this proposed rule pursuant to E.O. 12866.

#### *Regulatory Flexibility Act*

We certify that this proposed 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.

In order to determine whether the proposed rule will have a significant economic effect on a substantial number of small entities, we utilize available information on the industries most likely to be affected by the designation of the manatee refuge. Currently, no information is available on the specific number of small entities that are potentially affected. However, 27 active permit holders (one applicant did not renew his/her exemption during the last cycle) were exempt from the State speed limits in the proposed refuge area. Because these zones have been in place since 1999, people have adjusted to them, and there were no other permit holders, it is reasonable to expect that the proposed rule will impact only the 27 permit holders in the former State speed zones. They are primarily commercial fishing boats and fishing guides. Both would be considered small businesses. The 27 permit holders had State exemptions from the speed restrictions based on an application that stated they would suffer at least a 25 percent income loss without the permit. The usual income level for these

businesses is not known, however a 25 percent loss of business income is significant regardless of the level of business income. We acknowledge that there could be a significant loss of income to those permit holders who rely on speed to carry out their business activities; however, the Service believes that the 27 permit holders do not constitute a substantial number.

This proposed rule will add to travel time for recreational boating and commercial activities resulting from extension of existing speed zones. Because the only restrictions on recreational activity result from added travel time, and alternative sites are available for all waterborne activities, we believe that the economic effect on small entities resulting from changes in recreational use patterns will not be significant. The economic effects on most small businesses resulting from this proposed rule are likely to be indirect effects related to reduced demand for goods and services if recreationists choose to reduce their level of participation in waterborne activities. Similarly, because the only restrictions on commercial activity result from the inconvenience of added travel time, and boats can continue to travel up to 25 mph in the navigation channels, we believe that any economic effect on small commercial fishing or charter boat entities (other than the 27 permit holders) will not be significant. Also, the indirect economic impact on small businesses that may result from reduced demand for goods and services from commercial entities is likely to be insignificant.

The employment characteristics of Lee County are shown in Table 1 for the year 1997. We included the following SIC (Standard Industrial Classification) categories, because they include businesses most likely to be directly affected by the designation of a manatee refuge:

Fishing, hunting, trapping (SIC 09)  
Water transportation (SIC 44)  
Miscellaneous retail (SIC 59)  
Amusement and recreation services (SIC 79)  
Non-classifiable establishments (NCE)

TABLE 1.—EMPLOYMENT CHARACTERISTICS OF LEE COUNTY IN FLORIDA—1997 (INCLUDES SIC CODES 09, 44, 59, 79, AND NCE<sup>a</sup>)

County	Total mid-March employment (all industries)	Mid-March employment <sup>b</sup> (select SIC codes)	Total establishments (all industries)	Select SIC codes (Includes SIC codes 09, 44, 59, 79, and NCE <sup>a</sup> )				
				Total establishments	Number of establishments (1–4 employees)	Number of establishments (5–9 employees)	Number of establishments (10–19 employees)	Number of establishments (20+ employees)
Lee .....	135,300	7,734	11,386	974	602	193	92	87

<sup>a</sup> Descriptions of the SIC codes included in this table as follows: SIC 09—Fishing, hunting, and trapping; SIC 44—Water transportation; SIC 59—Miscellaneous retail service division; SIC 79—Amusement and recreation services; and NCE—Non-classifiable establishments division.

<sup>b</sup> Table provides the high-end estimate whenever the Census provides a range of mid-March employment figures for select counties and SIC codes.

Source: U.S. Census County Business Patterns (<http://www.census.gov/epcd/cbp/view/cbpview.html>).

As shown in Table 1, the vast majority (over 80 percent) of these business establishments in Lee County have fewer than ten employees, with the largest number of establishments employing fewer than four employees. Any economic impacts associated with this proposed rule will affect some proportion of these small entities.

Since the proposed designation is for a manatee refuge, which only requires a reduction in speed, we do not believe the designation would cause significant economic effect on a substantial number of small businesses. Currently available information does not allow us to quantify the number of small business entities such as charter boats or commercial fishing entities that may incur direct economic impacts due to the inconvenience of added travel times resulting from the proposed rule, but certainly the 27 current permit holders have potential for inclusion in this category for this proposed rule. The Service does not believe the 27 permit holders constitute a substantial number. Public comments on this proposed rule will be used for further refinement of the impact on small entities and the general public, should the final rule establish this area as a permanent manatee refuge. In addition, the inconvenience of slow speed zones may cause some recreationists to change their behavior, which may cause some loss of income to some small businesses. The number of recreationists who will change their behavior, and how their behavior will change, is unknown; therefore, the impact on potentially affected small business entities cannot be quantified. However, because boaters will experience only minimal added travel time in most affected areas and the fact that speed zones were in place until recently, we believe that this designation will not cause a significant economic impact on a substantial number of small entities.

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

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

a. Does not have an annual effect on the economy of \$100 million or more. As shown above, this proposed rule may cause some inconvenience in the form of added travel time for recreationists and commercial fishing and charter boat businesses because of speed restrictions in manatee refuge areas, but this should not translate into any significant business reductions for the many small businesses in the affected county. An unknown portion of the establishments shown in Table 1 could be affected by this proposed rule. Because the only restrictions on recreational activity result from added travel time, and alternative sites are available for all waterborne activities, we believe that the economic impact on small entities resulting from changes in recreational use patterns will not be significant. The economic impacts on small business resulting from this proposed rule are likely to be indirect effects related to reduced demand for goods and services if recreationists choose to reduce their level of participation in waterborne activities. Similarly, because the only restrictions on commercial activity result from the inconvenience of added travel time, and boats can continue to travel up to 25 miles per hour in the navigational channels, we believe that any economic impact on most small commercial fishing or charter boat entities will not be significant. Also, the indirect economic impact on small businesses that may result from reduced demand for goods and services from commercial entities is likely to be insignificant.

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

there are unforeseen changes in costs or prices for consumers stemming from this proposed rule. The recreational charter boat and commercial fishing industries may be affected by lower speed limits for some areas when traveling to and from fishing grounds. However, because of the availability of 25-miles-per-hour navigational channels, this impact is likely to be limited. Further, only 27 active permit holders were exempt from the former State speed zones. The impact will most likely stem from only these permit holders.

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 proposed rule may generate some level of inconvenience to recreationists and commercial users due to added travel time, but the resulting economic impacts are believed to be minor and will not interfere with the normal operation of businesses in the affected counties. 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 proposed rule will not “significantly or uniquely” affect small governments. A Small Government Agency Plan is not required. The designation of manatee refuges and sanctuaries will not impose obligations that have not previously existed on State or local governments.

b. This proposed 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 proposed rule does not have significant takings implications. A takings implication assessment is not required. The manatee protection areas are located over publicly-owned submerged water bottoms.

### Federalism

In accordance with Executive Order 13132, this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. This proposed 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 proposed rule.

### Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this proposed 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 proposed regulation does not contain collections of information that require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

### National Environmental Policy Act

We have analyzed this proposed rule in accordance with criteria of the National Environmental Policy Act. This proposed 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 by written request to the Field Supervisor (*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

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 proposed rule is not a significant regulatory action under Executive Order 12866 and it only requires vessels to continue their operation as they have in the past, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

### References Cited

A complete list of all references cited in this proposed rule is available upon request from the South Florida Field Office (*see ADDRESSES* section).

### Author

The primary author of this document is Kalani Cairns (*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.

### Proposed Regulation Promulgation

Accordingly, we propose to 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 by revising paragraph (c)(13) to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(13) *The Pine Island–Estero Bay Manatee Refuge.* (i) Watercraft are required to proceed at slow speed all year in all waters of Matlacha Pass, south of a line that bears 90° and 270° from Matlacha Pass Green Channel Marker 77 (approximate latitude 26°40'00" North, approximate longitude 82°06'00" West), and north of Pine Island Road (State Road 78), excluding:

(A) The portion of the marked channel otherwise designated in paragraph (c)(15)(iii) of this section;

(B) All waters of Buzzard Bay east and northeast of a line beginning at a point (approximate latitude 26°40'00" North, approximate longitude 82°05'20" West) on the southwest shoreline of an unnamed mangrove island east of Matlacha Pass Green Channel Marker 77 and bearing 219° to the northeasternmost point (approximate latitude 26°39'58" North, approximate longitude 82°05'23" West) of another unnamed mangrove island, then running along the eastern shoreline of said island to its southeasternmost point (approximate latitude 26°39'36" North, approximate longitude 81°05'09" West), then bearing 115° to the westernmost point (approximate latitude 26°39'34" North, approximate longitude 82°05'05" West) of the unnamed mangrove island to the southeast, then running along the western shoreline of said island to its southwesternmost point (approximate latitude 26°39'22" North, approximate longitude 82°04'53" West), then bearing 123° to the northwesternmost point (approximate latitude 26°39'21" North, approximate longitude 82°04'52" West) of an unnamed mangrove island, then running along the western shoreline of said island to its southeasternmost point (approximate latitude 26°39'09" North, approximate longitude 82°04'44" West), then bearing 103° to the northwesternmost point (approximate latitude 26°39'08" North, approximate longitude 82°04'41" West) of a peninsula on the unnamed mangrove island to the southeast, then running along the southwestern shoreline of said island to its southeasternmost point (approximate latitude 26°38'51" North, approximate longitude 82°04'18" West), then bearing 99° to the southernmost point (approximate latitude 26°38'50" North, approximate longitude 82°04'03" West) of the unnamed mangrove island to the east, then bearing 90° to the line's terminus at a point (approximate latitude 26°38'50" North, approximate longitude 82°03'55" West) on the eastern shoreline of Matlacha Pass; and

(C) All waters of Pine Island Creek and Matlacha Pass north of Pine Island Road (State Road 78) and west and



southwest of a line beginning at a point (approximate latitude 26°39'2m29" North, approximate longitude 82°06'29" West) on the western shoreline of Matlacha Pass and bearing 160° to the westernmost point (approximate latitude 26°39'25" North, approximate longitude 82°06'28" West) of an unnamed island, then running along the western shoreline of said island to its southernmost point (approximate latitude 26°39'18" North, approximate longitude 82°06'24" West), then bearing 128° to the northernmost point (approximate latitude 26°39'12" North, approximate longitude 82°06'17" West) of an unnamed mangrove island to the south, then running along the eastern shoreline of said island to its southeasternmost point (approximate latitude 26°39'00" North, approximate longitude 82°06'09" West), then bearing 138° to a point (approximate latitude 26°38'45" North, approximate longitude 82°05'53" West) on the northern shoreline of Bear Key, then running along the northern shoreline of Bear Key to its easternmost point (approximate latitude 26°38'44" North, approximate longitude 82°05'46" West), then bearing 85° to the westernmost point (approximate latitude 26°38'45" North, approximate longitude 82°05'32" West) of Deer Key, then running along the northern shoreline of Deer Key to its easternmost point (approximate latitude 26°38'46" North, approximate longitude 82°05'22" West), then bearing 103° to the northwesternmost point (approximate latitude 26°38'45" North, approximate longitude 82°05'17" West) of the unnamed mangrove island to the east, then running along the western shoreline of said island to its southernmost point (approximate latitude 26°38'30" North, approximate longitude 82°05'04" West), then bearing 106° to the westernmost point (approximate latitude 26°38'30" North, approximate longitude 82°04'57" West) of the unnamed island to the southeast, then running along the northern and eastern shorelines of said island to a point (approximate latitude 26°38'23" North, approximate longitude 82°04'51" West) on its eastern shoreline, then bearing 113° to the northernmost point of West Island (approximate latitude 26°38'21" North, approximate longitude 82°04'37" West), then running along the western shoreline of West Island to the point where the line intersects Pine Island Road (State Road 78).

(ii) Watercraft are required to proceed at slow speed all year in all waters of Matlacha Pass, St. James Creek, and San Carlos Bay, south of Pine Island Road (State Road 78), north of a line 500 feet

northwest of and parallel to the main marked channel of the Intracoastal Waterway, west of a line that bears 302° from Intracoastal Waterway Green Channel Marker 99 (approximate latitude 26°31'00" North, approximate longitude 82°00'52" West), and east of a line that bears 360° from Intracoastal Waterway Red Channel Marker 10 (approximate latitude 26°29'16" North, approximate longitude 82°03'35" West), excluding:

(A) The portions of the marked channels otherwise designated in paragraphs (c)(15) (iv) and (v) of this section;

(B) All waters of Matlacha Pass south of Pine Island Road (State Road 78) and west of the western shoreline of West Island and a line beginning at the southernmost point (approximate latitude 26°37'25" North, approximate longitude 82°04'17" West) of West Island and bearing 149° to the northernmost point (approximate latitude 26°37'18" North, approximate longitude 82°04'12" West) of the unnamed mangrove island to the south, then running along the eastern shoreline of said island to its southernmost point (approximate latitude 26°36'55" North, approximate longitude 82°04'02" West), then bearing 163° to the line's terminus at a point (approximate latitude 26°36'44" North, approximate longitude 82°03'58" West) on the eastern shoreline of Little Pine Island;

(C) All waters of Matlacha Pass, Pontoon Bay, and associated embayments south of Pine Island Road (State Road 78) and east of a line beginning at a point (approximate latitude 26°38'12" North, approximate longitude 82°03'46" West) on the northwestern shoreline of the embayment on the east side of Matlacha Pass, immediately south of Pine Island Road and then running along the eastern shoreline of the unnamed island to the south to its southeasternmost point (approximate latitude 26°37'30" North, approximate longitude 82°03'22" West), then bearing 163° to the northwesternmost point of the unnamed island to the south, then running along the western shoreline of said island to its southernmost point (approximate latitude 26°37'15" North, approximate longitude 82°03'15" West), then bearing 186° to the line's terminus at a point (approximate latitude 26°37'10" North, approximate longitude 82°03'16" West) on the eastern shoreline of Matlacha Pass;

(D) All waters of Pine Island Creek south of Pine Island Road (State Road 78); and all waters of Matlacha Pass, Rock Creek, and the Mud Hole, west of a line beginning at a point (approximate

latitude 26°33'52" North, approximate longitude 82°04'53" West) on the western shoreline of Matlacha Pass and bearing 22° to a point (approximate latitude 26°34'09" North, approximate longitude 82°04'45" West) on the southern shoreline of the unnamed island to the northeast, then running along the southern and eastern shorelines of said island to a point (approximate latitude 26°34'15" North, approximate longitude 82°04'39" West) on its northeastern shoreline, then bearing 24° to a point (approximate latitude 26°34'21" North, approximate longitude 82°04'36" West) on the southern shoreline of the large unnamed island to the north, then running along the southern and eastern shorelines of said island to a point (approximate latitude 26°34'31" North, approximate longitude 82°04'29" West) on its eastern shoreline, then bearing 41° to the southernmost point (approximate latitude 26°34'39" North, approximate longitude 82°04'22" West) of another unnamed island to the northeast, then running along the eastern shoreline of said island to its northwesternmost point (approximate latitude 26°35'22" North, approximate longitude 82°04'07" West), then bearing 2° to the southernmost point (approximate latitude 26°35'32" North, approximate longitude 82°04'07" West) of the unnamed island to the north, then running along the eastern shoreline of said island to its northernmost point (approximate latitude 26°35'51" North, approximate longitude 82°03'59" West), then bearing 353° to the line's terminus at a point (approximate latitude 26°36'08" North, approximate longitude 82°04'01" West) on the eastern shoreline of Little Pine Island; and

(E) All waters of Punta Blanca Bay and Punta Blanca Creek, east of the eastern shoreline of Matlacha Pass and east and north of the eastern and northern shorelines of San Carlos Bay.

(iii) Watercraft may not exceed 25 miles per hour, all year, in all waters within the main marked channel in Matlacha Pass south of Green Channel Marker 77 (approximate latitude 26°40'00" North, approximate longitude 82°06'00" West) and north of a line perpendicular to the channel at a point in the channel ¼ mile northwest of the Pine Island Road Bridge (State Road 78).

(iv) Watercraft may not exceed 25 miles per hour, all year, in all waters within the main marked channel in Matlacha Pass south of a line perpendicular to the channel at a point in the channel ¼ mile southeast of the Pine Island Road Bridge (State Road 78), and north of a line 500 feet northwest of and parallel to the main marked

channel of the Intracoastal Waterway (just north of Green Channel Marker 1).

(v) Watercraft may not exceed 25 miles per hour, all year, in all waters within the marked channel in Matlacha Pass that intersects the main Matlacha Pass channel near Green Channel Marker 15 (approximate latitude 26°31'57" North, approximate longitude 82°03'38" West) and intersects the main marked channel of the Intracoastal Waterway near Green Channel Marker 101 (approximate latitude 26°30'39" North, approximate longitude 82°01'00" West).

(vi) Watercraft are required to proceed at slow speed from April 1 through November 15 in all canals and boat basins of St. James City and the waters known as Long Cut and Short Cut; and all waters of Pine Island Sound and San Carlos Bay south of a line beginning at the southernmost tip (approximate latitude 26°31'28" North, approximate longitude 82°06'19" West) of a mangrove peninsula on the western shore of Pine Island approximately 2,200 feet north of Galt Island and bearing 309° to the southeasternmost point (approximate latitude 26°31'32" North, approximate longitude 82°06'25" West) of another mangrove peninsula, then running along the southern shoreline of said peninsula to its southwesternmost point (approximate latitude 26°31'40" North, approximate longitude 82°06'38" West), then bearing 248° to a point (approximate latitude 26°31'40" North, approximate longitude 82°06'39" West) on the eastern shoreline of an unnamed mangrove island, then running along the southern shoreline of said island to its southwesternmost point (approximate latitude 26°31'39" North, approximate longitude 82°06'44" West), then bearing 206° to the line's terminus at the northernmost point of the Mac Keever Keys (approximate latitude 26°31'09" North, approximate longitude 82°07'09" West), east of a line beginning at said northernmost point of the Mac Keever Keys and running along and between the general contour of the western shorelines of said keys to a point (approximate latitude 26°30'27" North, approximate longitude 82°07'08" West) on the southernmost of the Mac Keever Keys, then bearing 201° to a point (approximate latitude 26°30'01" North, approximate longitude 82°07'19" West) approximately 150 feet due east of the southeasternmost point of Chino Island, then bearing approximately 162° to Red Intracoastal Waterway Channel Marker 22 (approximate latitude 26°28'57" North, approximate longitude 82°06'55" West), then bearing approximately 117° to the line's terminus at Red Intracoastal Waterway Channel Marker 20

(approximate latitude 26°28'45" North, approximate longitude 82°06'38" West), north of a line beginning at said Red Intracoastal Waterway Channel Marker 20 and bearing 86° to a point (approximate latitude 26°28'50" North, approximate longitude 82°05'48" West) ¼ mile south of York Island, then running parallel to and ¼ mile south of the general contour of the southern shorelines of York Island and Pine Island to the line's terminus at a point on a line bearing 360° from Red Intracoastal Waterway Channel Marker 10 (approximate latitude 26°29'16" North, approximate longitude 82°03'35" West), and west and southwest of the general contour of the western and southern shorelines of Pine Island and a line that bears 360° from said Red Intracoastal Waterway Channel Marker 10, excluding the portion of the marked channel otherwise designated in paragraph (c)(15)(vii) of this section.

(vii) Watercraft may not exceed 25 miles per hour from April 1 through November 15 in all waters of the marked channel that runs north of the power lines from the Cherry Estates area of St. James City into Pine Island Sound, east of the western boundary of the zone designated in paragraph (c)(15)(vi) of this section, and west of a line perpendicular to the power lines that begins at the easternmost point (approximate latitude 26°30'25" North, approximate longitude 82°06'15" West) of the mangrove island on the north side of the power lines approximately 1,800 feet southwest of the Galt Island Causeway.

(viii) Watercraft are required to proceed at slow speed all year in all waters of San Carlos Bay and Punta Rassa Cove east of a line that bears 352° from the northernmost tip of the northern peninsula on Punta Rassa (approximate latitude 26°29'44" North, approximate longitude 82°00'33" West), and south of a line that bears 122° from Intracoastal Waterway Green Channel Marker 99 (approximate latitude 26°31'00" North, approximate longitude 82°00'52" West), including all waters of Shell Creek and associated waterways.

(ix) Watercraft are required to proceed at slow speed all year in all waters of San Carlos Bay and the Caloosahatchee River, including the residential canals of Cape Coral, northeast of a line that bears 302° and 122° from Intracoastal Waterway Green Channel Marker 99 (approximate latitude 26°31'00" North, approximate longitude 82°00'52" West), west of a line that bears 346° from Intracoastal Waterway Green Channel Marker 93 (approximate latitude 26°31'37" North, approximate longitude 81°59'46" West), and north and

northwest of the general contour of the northwestern shoreline of Shell Point and a line that bears approximately 74° from the northernmost tip (approximate latitude 26°31'31" North, approximate longitude 81°59'57" West) of Shell Point to said Intracoastal Waterway Green Channel Marker 93, excluding the Intracoastal Waterway between markers 93 and 99 (which is already designated as a Federal manatee protection area, requiring watercraft to proceed at slow speed, and is not impacted by this proposed rulemaking).

(x) Watercraft are required to proceed at slow speed from April 1 through November 15 and at not more than 25 miles per hour the remainder of the year in all waters of Hell Peckney Bay southeast of Hurricane Bay, northeast of the northern shorelines of Julies Island and the unnamed island immediately northwest of Julies Island and a line that bears 312° from the northwesternmost point of Julies Island (approximate latitude 26°26'37" North, approximate longitude 81°54'57" West), northwest of Estero Bay, and southwest of a line beginning at the southernmost point (approximate latitude 26°27'23" North, approximate longitude 81°55'11" West) of an unnamed mangrove peninsula in northwest Hell Peckney Bay and bearing 191° to the northernmost point (approximate latitude 26°27'19" North, approximate longitude 81°55'11" West) of an unnamed mangrove island, then running along the northern shoreline of said island to its southeasternmost point (approximate latitude 26°27'11" North, approximate longitude 81°55'05" West), then bearing 115° to a point (approximate latitude 26°27'03" North, approximate longitude 81°54'47" West) on the northwest shoreline of an unnamed mangrove island, then running along the northern shoreline of said island to its northeasternmost point (approximate latitude 26°27'02" North, approximate longitude 81°54'33" West), and then bearing 37° to the line's terminus at the westernmost point of an unnamed mangrove peninsula in eastern Hell Peckney Bay.

(xi) Watercraft are required to proceed at slow speed from April 1 through November 15 and at not more than 25 miles per hour the remainder of the year in all waters of Hendry Creek south of a line that bears 270° from a point (approximate latitude 26°28'40" North, approximate longitude 81°52'56" West) on the eastern shoreline of Hendry Creek; and all waters of Estero Bay southeast and east of Hell Peckney Bay, a line that bears 340° from a point (approximate latitude 26°25'56" North, approximate longitude 81°54'25" West) on the northern tip of an unnamed

mangrove peninsula on the northeastern shoreline of Estero Island, and the northern shoreline of Estero Island, south of Hendry Creek and a line that bears 135° and 315° from Red Channel Marker 18 (approximate latitude 26°27'46" North, approximate longitude 81°52'00" West) in Mullock Creek, and north of a line that bears 72° from the northernmost point (approximate latitude 26°24'22" North, approximate longitude 81°52'34" West) of Black Island, including the waters of Buccaneer Lagoon at the southern end of Estero Island, but excluding:

(A) The portions of the marked channels otherwise designated in paragraph (c)(15)(xiii) of this section;

(B) The Estero River; and

(C) To waters of Big Carlos Pass east of a line beginning at a point (approximate latitude 26°24'34" North, approximate longitude 81°53'05" West) on the eastern shoreline of Estero Island and bearing 36° to a point (approximate latitude 26°24'40" North, approximate longitude 81°53'00" West) on the southern shoreline of Coon Key, south of a line beginning at a point (approximate latitude 26°24'36" North, approximate longitude 81°52'30" West) on the eastern shoreline of Coon Key and bearing 106° to a point (approximate latitude 26°24'39" North, approximate longitude 81°52'34" West) on the southwestern shoreline of the unnamed mangrove island north of Black Island, and west of a line beginning at a point (approximate latitude 26°24'36" North, approximate longitude 81°52'30" West) on the southern shoreline of said unnamed mangrove island north of Black Island and bearing 192° to the northernmost point (approximate latitude 26°24'22" North, approximate longitude 81°52'34" West) of Black Island.

(xii) Watercraft are required to proceed at slow speed from April 1 through November 15 and at not more than 25 miles per hour the remainder of the year in all waters of Estero Bay and Big Hickory Bay south of a line that bears 72° from the northernmost point (approximate latitude 26°24'22" North, approximate longitude 81°52'34" West) of Black Island, east of the centerline of State Road 865 (but including the waters of the embayment on the eastern side of Black Island and the waters inshore of the mouth of Big Hickory Pass that are west of State Road 865), and north of a line that bears 90° from a point (approximate latitude 26°20'51" North, approximate longitude 81°50'33" West)

on the eastern shoreline of Little Hickory Island, excluding Spring Creek and the portions of the marked channels otherwise designated under paragraph (c)(15)(xiii) of this section and the portion of Hickory Bay designated in paragraph (c)(15)(xiii) of this section.

(xiii) Watercraft may not exceed 25 miles per hour all year in:

(A) All waters of Big Hickory Bay north of a line that bears 90° from a point (approximate latitude 26°20'51" North, approximate longitude 81°50'33" West) on the eastern shoreline of Little Hickory Island, west of a line beginning at a point (approximate latitude 26°20'38" North, approximate longitude 81°50'24" West) on the southern shoreline of Big Hickory Bay and bearing 338° to a point (approximate latitude 26°21'39" North, approximate longitude 81°50'48" West) on the water in the northwestern end of Big Hickory Bay near the eastern end of Broadway Channel, south of a line beginning at said point on the water in the northwestern end of Big Hickory Bay and bearing 242° to the northernmost point (approximate latitude 26°21'39" North, approximate longitude 81°50'50" West) of the unnamed mangrove island south of Broadway Channel, and east of the eastern shoreline of said mangrove island and a line beginning at the southernmost point of said island (approximate latitude 26°21'07" North, approximate longitude 81°50'58" West) and bearing 167° to a point on Little Hickory Island (approximate latitude 26°21'03" North, approximate longitude 81°50'57" West);

(B) All waters of the main marked North-South channel in northern Estero Bay from Green Channel Marker 37 (approximate latitude 26°26'02" North, approximate longitude 81°54'29" West) to Green Channel Marker 57 (approximate latitude 26°25'08" North, approximate longitude 81°53'29" West);

(C) All waters of the main marked North-South channel in southern Estero Bay south of a line beginning at a point (approximate latitude 26°24'36" North, approximate longitude 81°52'30" West) on the southern shoreline of the unnamed mangrove island north of Black Island and bearing 192° to the northernmost point (approximate latitude 26°24'22" North, approximate longitude 81°52'34" West) of Black Island, and north and east of Red Channel Marker 62 (approximate latitude 26°21'31" North, approximate longitude 81°51'20" West) in Broadway Channel;

(D) All waters within the portion of the marked channel leading to the Gulf of Mexico through New Pass, west of the North-South channel and east of State Road 865; all waters of the marked channel leading to Mullock Creek north of a line beginning at a point (approximate latitude 26°24'36" North, approximate longitude 81°52'30" West) on the eastern shoreline of Coon Key and bearing 106° to a point (approximate latitude 26°24'39" North, approximate longitude 81°52'34" West) on the southwestern shoreline of the unnamed mangrove island north of Black Island, and south of Red Channel Marker 18 (approximate latitude 26°27'46" North, approximate longitude 81°52'00" West);

(E) All waters of the marked channel leading from the Mullock Creek Channel to the Estero River, west of the mouth of the Estero River. (This designation only applies if a channel is marked in accordance with permits issued by all applicable State and Federal authorities. In the absence of a properly permitted channel, this area is as designated under paragraph (c)(15)(xi) of this section);

(F) All waters of the marked channel commonly known as Alternate Route Channel, with said channel generally running between Channel Marker 1 (approximate latitude 26°24'29" North, approximate longitude 81°51'53" West) and Channel Marker 10 (approximate latitude 26°24'00" North, approximate longitude 81°51'09" West);

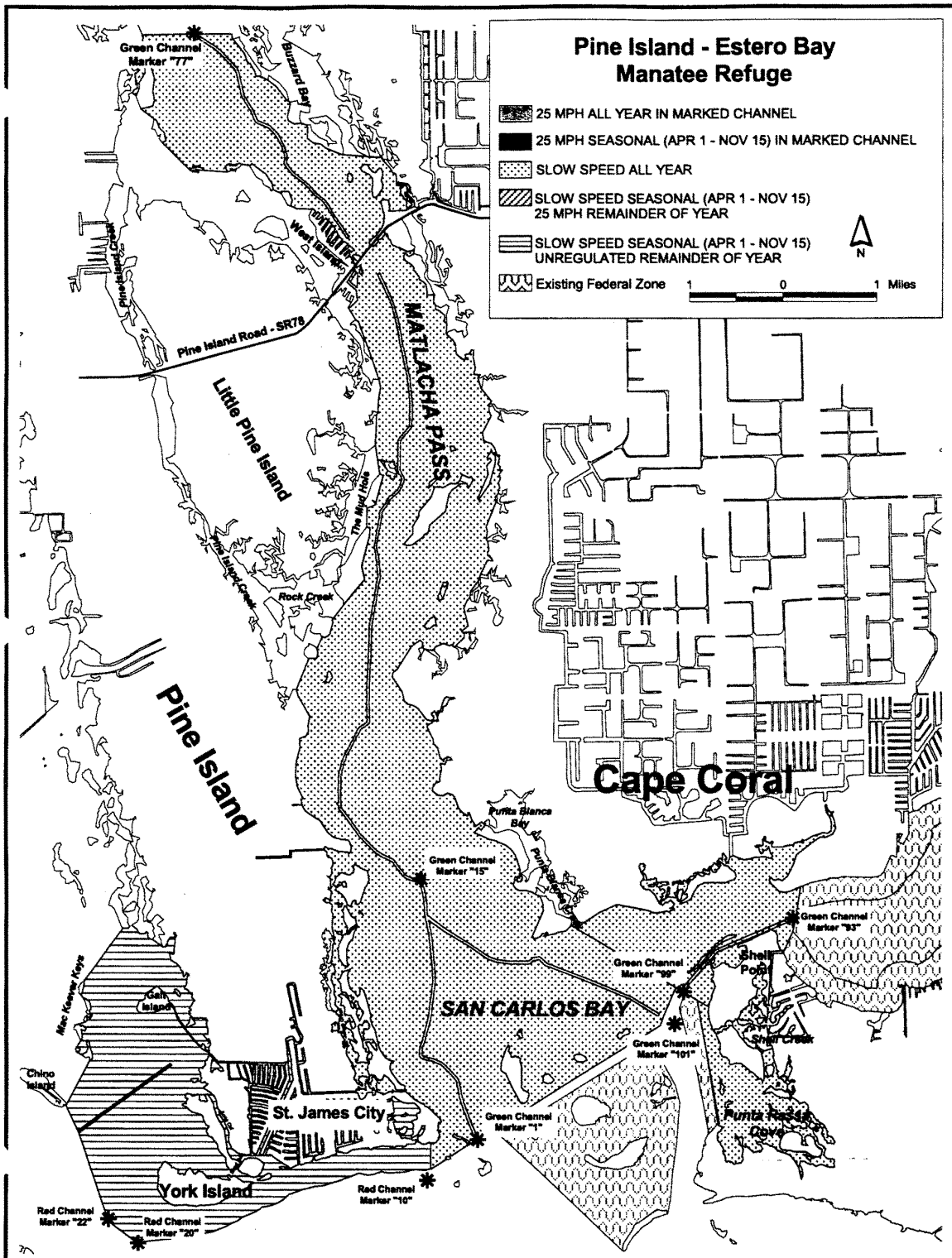
(G) All waters of the marked channel commonly known as Coconut Channel, with said channel generally running between Channel Marker 1 (approximate latitude 26°23'44" North, approximate longitude 81°50'55" West) and Channel Marker 23 (approximate latitude 26°24'00" North, approximate longitude 81°50'30" West);

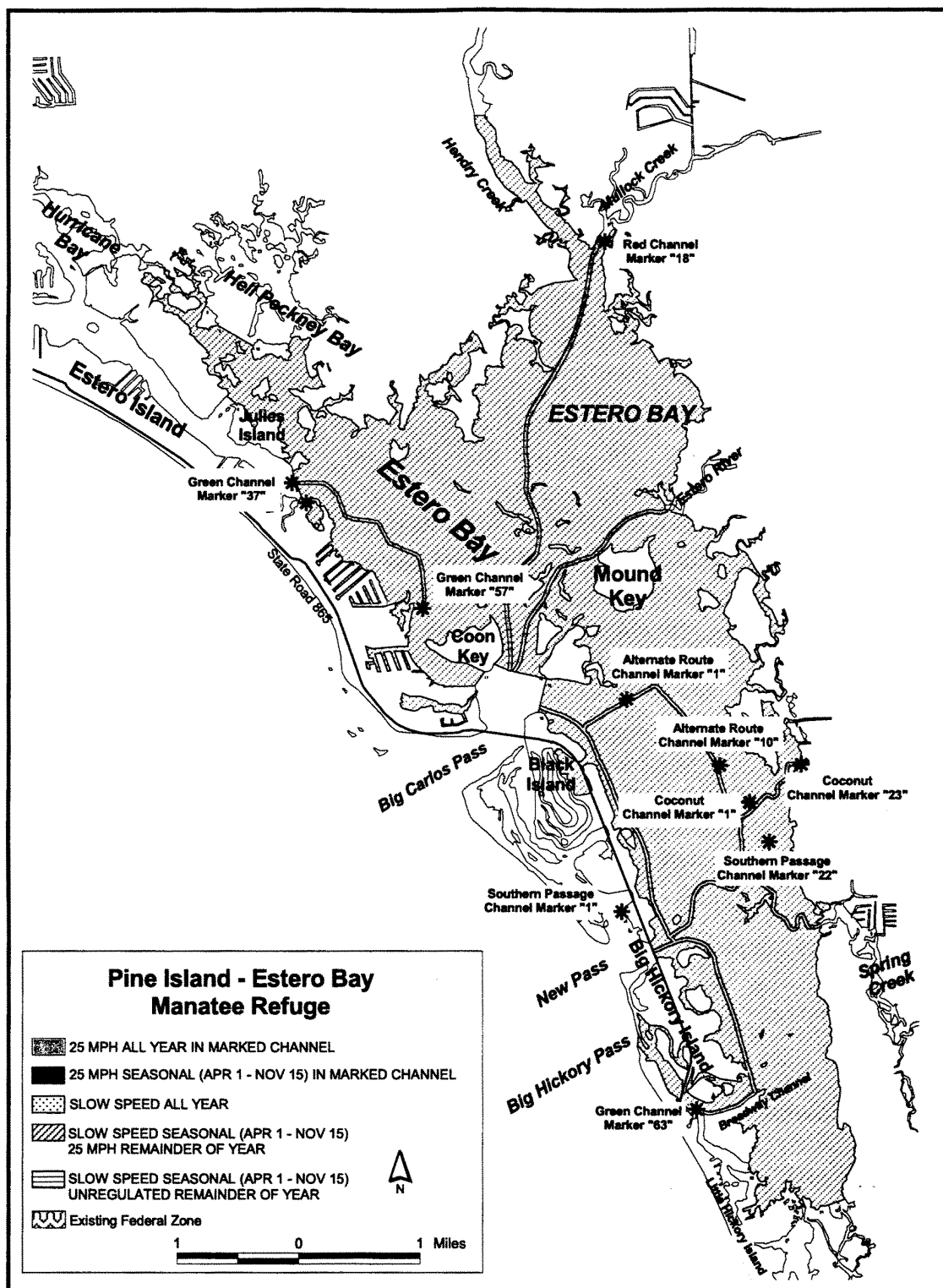
(H) All waters of the marked channel commonly known as Southern Passage Channel, with said channel generally running between Channel Marker 1 (approximate latitude 26°22'58" North, approximate longitude 81°51'57" West) and Channel Marker 22 (approximate latitude 26°23'27" North, approximate longitude 81°50'46" West); and

(I) All waters of the marked channel leading from the Southern Passage Channel to Spring Creek, west of the mouth of Spring Creek.

(xiv) Maps of the Pine Island–Estero Bay Manatee Refuge follow:

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Dated: July 15, 2004.

Paul Hoffman,

For Assistant Secretary for Fish and Wildlife  
and Parks.

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