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Part II

Deparment of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Establishment of Three Additional Manatee Protection Areas in Florida; Proposed Rule

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RIN 1018–AJ06

Endangered and Threatened Wildlife and Plants; Establishment of Three Additional Manatee Protection Areas in Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of supplemental information.

SUMMARY: We, the Fish and Wildlife Service (Service), propose to establish three additional manatee protection areas in Florida. 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), to further recovery of the Florida manatee (*Trichechus manatus latirostris*) by reducing the number of takings. We are proposing to designate areas in Lee, Duval, Clay, St. Johns, and Volusia Counties as manatee refuges in which certain waterborne activities would be regulated. Specifically, watercraft would be required to operate at idle, slow speed, 40 kilometers per hour (25 mph), or 48 kilometers per hour (30 mph) in areas described in the proposed rule. We also announce the availability of a draft environmental assessment for this action.

DATES: We will consider comments on both the proposed rule and the draft environmental assessment that are received by June 3, 2003. We will hold public hearings on Tuesday, May 13, in Ft. Myers, FL; Wednesday, May 14, in Daytona Beach, FL; and Thursday, May 15, in Jacksonville, FL. See additional information on the public comment process in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Formal public hearings will be held from 6:30 p.m. to 9 p.m. at the following locations:

Ft. Myers, FL, on Tuesday, May 13, at the Harborside Convention Hall, 1375 Monroe St.; Daytona Beach, FL, on Wednesday, May 14, at the Ocean Center, 101 N. Atlantic Ave.; Jacksonville, FL, on Thursday, May 15, at The University Center, University of North Florida campus, 4567 St. Johns Bluff Rd. South.

If you wish to comment, 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, Jacksonville Field Office, U.S. Fish and Wildlife Service, Attn: Proposed Manatee Refuges, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216.

2. You may hand-deliver written comments to our Jacksonville Field Office, at the above address, or fax your comments to 904/232–2404.

3. You may send comments by electronic mail (e-mail) to *manatee@fws.gov.* For directions on how to submit electronic comment files, see the ''Public Comments Solicited'' section.

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 904/232–2580, or from our Web site at *http://northflorida.fws.gov.*

FOR FURTHER INFORMATION CONTACT: David Hankla, Peter Benjamin, or Jim Valade (see **ADDRESSES** section), telephone 904/232–2580; or visit our Web site at *http://northflorida.fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

The West Indian manatee is federally listed as an endangered species under the ESA (16 U.S.C. 1531 *et seq.*) (32 FR 4001) and the species is further protected as a depleted stock under the MMPA (16 U.S.C. 1361–1407). Florida manatees, a subspecies of the West Indian manatee (Domning and Hayek, 1986), live 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 Florida waters throughout the year, and nearly all manatees use the waters of 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 industrial discharges and natural springs 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.

Status of the Florida Manatee

Long-term studies, as described below, suggest that there are four relatively distinct regional populations of manatees in Florida—(a) the Northwest Region, along the Gulf of Mexico from Escambia County east and south to Hernando County; (b) the Upper St. Johns River Region, consisting of Putnam County from Palatka south to Lake and Seminole counties; (c) the Atlantic Region, consisting of counties along the Atlantic coast from Nassau County south to Miami-Dade County and that portion of Monroe County adjacent to the Florida Bay and the Florida Keys; and counties along the lower portion of the St. Johns River north of Palatka, including Putnam, St Johns, Clay and Duval counties; and (d) the Southwest Region, consisting of counties along the Gulf of Mexico from Pasco County south to Whitewater Bay in Monroe County.

Despite significant efforts dating back to the late 1970s and early 1980s, scientists have been unable to develop a useful means of estimating or monitoring trends in the size of the overall manatee population in the southeastern United States (O'Shea, 1988; O'Shea *et al.,* 1992; Lefebvre *et al.,* 1995). Even though many manatees aggregate at warm-water refuges in winter and most, if not all, such refuges are known, direct counting methods (*i.e.,* by aerial and ground surveys) are unable to account for uncertainty in the number of animals that may be away from these refuges at any given time, the number of animals not seen because of turbid water, and other factors. The use of mark-resighting techniques to estimate manatee population size based on known animals in the manatee photo-identification database has also been impractical, as the proportion of unmarked manatees cannot be estimated.

The only data on population size include un-calibrated indices based on maximum counts of animals at winter refuges made within one or two days of each other. Based on such information in the late 1980s, the total number of manatees throughout Florida was originally thought to include at least 1,200 animals (Service, 2001). Because aerial and ground counts at winter refuges are highly variable depending on the weather, water clarity, manatee behavior, and other factors (Packard *et al.,* 1985; Lefebvre *et al.,* 1995), interpretation of these data to assess short-term trends is difficult (Packard and Mulholland, 1983; Garrott *et al.,* 1994).

Beginning in 1991, the State of Florida initiated a statewide, synoptic, aerial survey program to count manatees in potential winter habitat during periods of severe cold weather

(Ackerman, 1995). These surveys are much more comprehensive than those used to estimate a minimum population during the 1980s. The highest statewide, minimum count from these surveys was 3,276 manatees in January 2001; the highest count on the east coast of Florida included 1,814 animals (January 2003) and the highest on the west coast included 1,756 (January 2001).

Due to the problems mentioned above, we do not know what proportion of the total manatee population is counted in these surveys. These uncorrected counts do not provide a basis for assessing population trends, although trend analyses of temperature-adjusted aerial survey counts may provide insight to general patterns of population growth in some regions (Garrott *et al.,* 1994, 1995; Craig *et al.,* 1997; Eberhardt *et al.,* 1999).

It is possible, however, to monitor the number of manatees using the Blue Spring (Volusia County) and Crystal River (Citrus County) warm-water refuges. At Blue Spring (in the Upper St. Johns River Region), with its unique combination of clear water and confined spring area, it has been possible to count the number of resident animals by identifying individual manatees from scar patterns. The data indicate that this group of animals has increased steadily since the early 1970s when it was first studied. During the 1970s the number of manatees using the spring increased from 11 to 25 (Bengtson, 1981). In the mid-1980s about 50 manatees used the spring (Service, 2001), and by the winter of 1999–2000, the number had increased to 147 (Hartley, 2001).

In the Northwest Region, the clear, shallow waters of Kings Bay (Citrus County) have made it possible to monitor the number of manatees using this warm-water refuge at the head of Crystal River. Large aggregations of manatees apparently did not exist there until recent times (Service, 2001). The first careful counts were made in the late 1960s. Since then, manatee numbers have increased significantly. From 1967 to 1968, Hartman (1979) counted 38 animals in Kings Bay. By 1981–1982, the maximum winter count had increased to 114 manatees (Powell and Rathbun, 1984), and in November 2000, the maximum count was 301 (Service, 2003).

Both births and immigration of animals from other areas have contributed to the increases in manatee numbers at Crystal River and Blue Spring. Animals may be further attracted to these areas because of local manatee protection areas. Three manatee sanctuaries (areas in which waterborne activities are prohibited) in Kings Bay were established in 1980; an additional three were added in 1994, and a seventh in 1998. The increases in counts at Blue Spring and Crystal River are accompanied by estimates of adult survival and population growth that are higher than those determined for the Atlantic coast (Eberhardt and O'Shea, 1995; Langtimm *et al.,* 1998; Eberhardt *et al.,* 1999).

While aircraft synoptic surveys provide a ''best estimate'' of the minimum Florida manatee population size, there are no confidence intervals (derived through reliable, statistically based, population-estimation techniques) for these estimates. With the exception of a few places where manatees may aggregate in clear, shallow water, not all manatees can be seen from aircraft because of water turbidity, depth, surface conditions, variable times spent submerged, and other considerations. Thus, results obtained during typical manatee synoptic surveys yield unadjusted partial counts. While these results are of value in providing information on where manatees occur, likely relative abundance in various areas, and seasonal shifts in manatee abundance, they do not provide good population estimates, nor can they reliably measure trends in the manatee population. Consequently, the Florida Manatee Recovery Plan (Service, 2001) concludes that ''despite considerable effort in the early 1980s, scientists have been unable to develop a useful means of estimating or monitoring trends in size of the overall manatee populations in the southeastern United States.''

Population models employ mathematical relationships based on survival and reproduction rates to estimate population growth and trends in growth. A deterministic model (a model in which there are no random events) that uses classical mathematical approaches and various computational procedures with data on reproduction and survival of living, identifiable manatees suggests a maximum population growth rate of about 7 percent per year, excluding emigration or immigration (Eberhardt and O'Shea, 1995). This maximum was based on studies conducted between the late 1970s and early 1990s in the well-protected winter aggregation area at Crystal River and did not require estimation of the population size. The analysis showed that the chief factor affecting the potential for population growth is survival of adults.

Estimated adult survival in the Atlantic Region (a larger region with less protection) has suggested slower or no population growth between the late 1970s and early 1990s. This modeling shows the value of using survival and reproduction data obtained from photo-identification studies of living manatees to compute population growth rates with confidence intervals, providing information that can be used to infer long-term trends in the absence of reliable population size estimates. Collection of similar data has been initiated only recently in that area of Florida from Tampa Bay to the Caloosahatchee River (beginning in the mid-1990s) and none is available for many of the remaining areas used by manatees in southwestern Florida (Southwest Region).

A population viability analysis (PVA), in which random events, such as red tide and extremely cold winters, are incorporated into a model, was carried out for manatees based on age-specific mortality rates estimated from the age distribution of manatees found dead throughout Florida from 1979 through 1992 (Marmontel *et al.,* 1997). This method of estimating survival relied on certain assumptions that were not fully testable; despite this, the results again pointed out the importance of adult survival to population persistence. Given a population size that reflected a 1992 minimum population estimate, the PVA showed that if adult mortality as estimated for the study period were reduced by a modest amount (for example, from 11 percent down to 9 percent), the Florida manatee population would likely remain viable for many years. However, the PVA also showed that slight increases in adult mortality would result in extinction of manatees within the next 1,000 years.

The above review demonstrates that using statewide population size ''estimates'' of any kind is scientifically weak for estimating population trends in manatees. The weight of scientific evidence suggests that the potential for population increases over the last two decades is strong for two protected aggregation areas. New population analyses, based on more recent (since 1992) information, are not yet available in the peer-reviewed literature.

In 2001, the Manatee Population Status Working Group (MPSWG) provided a statement summarizing what they believed to be the status of the Florida manatee at that time (Wildlife Trust, 2001). The MPSWG stated that, for the Northwest and Upper St. Johns River regions, available evidence indicated that there had been a steady increase in animals over the last 25 years. The statement was less optimistic for the Atlantic Region due to an adult survival rate that was lower than the rate necessary to sustain population

growth. The MPSWG believed that this region had likely been growing slowly in the 1980s, but then may have leveled off or even possibly declined. They considered the status of the Atlantic Region to be ''too close to call.'' Such finding was consistent with high levels of human-related and, in some years, cold-related deaths in this region. Regarding the Southwest Region, the MPSWG acknowledged that further data collection and analysis would be necessary to provide an assessment of the manatee's status in this region. Preliminary estimates of adult survival available to the MPSWG at that time indicated that the Southwest Region was similar to the Atlantic Region and ''substantially lower than [the adult survival estimates] for the Northwest and Upper St. Johns Regions.'' The Southwest Region was cited as having had high levels of watercraft-related deaths and injuries and natural mortality events (*i.e.,* red tide and severe cold).

Recent information suggests that the overall manatee population has grown since the species was listed in 1967 (50 CFR 17.11). Based on data provided at the April 2002 Manatee Population Ecology and Management Workshop, we believe that the Northwest and Upper St. Johns River regions and are approaching demographic benchmarks established in the Florida Manatee Recovery Plan (Service, 2001) for reclassification from endangered to threatened status. We also believe that the Atlantic Region is close to meeting the downlisting benchmark for adult survival, at a minimum, and is close to meeting or exceeding other demographic criteria. We are less optimistic, however, regarding the Southwest Region. Although data are still insufficient or lacking to compare the Southwest Region's status to the downlisting/delisting criteria, preliminary data for adult survival indicate that this Region is below the benchmarks established in the recovery plan.

Although we are optimistic about the potential for recovery in three out of the four regions, it is important to clarify that in order to downlist or delist the manatee, pursuant to the ESA, all four regions must simultaneously meet the appropriate criteria as described in the Florida Manatee Recovery Plan (Service, 2001). Additionally, either action would necessarily be based on a status assessment for the species throughout its range (including the United States and Caribbean) and would consider the factors, as described in section 4(a)(1) of the ESA, that determine whether any species is categorized as endangered or threatened.

In order for us to determine that an endangered species has recovered to a point that it warrants removal from the List of Endangered and Threatened Wildlife and Plants, the species must have improved in status to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the ESA. That is, threats to the species must be reduced or eliminated such that the species no longer fits the definitions of threatened or endangered. While suggestions of increasing population size are very encouraging, there has been no confirmation that significant threats to the species, including human-related mortality, injury, and harassment, and habitat alteration, have been reduced or eliminated to the extent that the Florida manatee may be reclassified from endangered to threatened status. Pursuant to our mission, we continue to assess this information with the goal of meeting our manatee recovery objectives.

Threats to the Species

Human activities, and particularly waterborne activities, are resulting 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 (section 101(a)) and makes it unlawful for any person to take, possess, transport, purchase, sell, export, or offer to purchase, sell, or export, any marine mammal or marine mammal product unless authorized. Take, as defined by section 3(13) of the MMPA means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Harassment is defined under the MMPA as any act of pursuit, torment, or annoyance which—(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Human use of the waters of the southeastern United States has increased dramatically as a result of residential growth and increased visitation. This phenomenon is particularly evident in the State of Florida. The human population of Florida has grown by 246 percent since 1970, from 6.8 million to 16.7 million residents (U.S. Census Bureau, 2003), and is expected to exceed 18 million by 2010, and 20 million by the year 2020. According to a report by the Florida Office of Economic and Demographic Research (2000), it is expected that, by the year 2010, 13.7 million people will reside in the 35 coastal counties of Florida. In a parallel fashion to residential growth, visitation to Florida has increased dramatically. It is expected that Florida will have 83 million visitors annually by the year 2020, up from 48.7 million visitors in 1998. In concert with this increase of human population growth and visitation is the increase in the number of watercraft that travel Florida waterways. In 2002, 961,719 vessels were registered in the State of Florida (Division of Highway Safety and Motor Vehicles, 2003). This represents an increase of 59 percent since 1993. The Florida Department of Community Affairs estimates that, in addition to boats belonging to Florida residents, between 300,000 and 400,000 boats registered in other States use Florida waters each year.

Increases in the human population and the concomitant increase in human activities in manatee habitat compound the effect of such activities on manatees. Human activities in manatee habitat include direct and indirect effects. Direct impacts include injuries and deaths from watercraft collisions, deaths from water control structure operations, lethal and sublethal entanglements with recreational and commercial fishing gear, and alterations of behavior due to harassment. Indirect effects include habitat alteration and destruction, which include such activities as the creation of artificial warm water refuges, decreases in the quantity and quality of warm water in natural spring areas, changes in water quality in various parts of the State, the introduction of marine debris, and other, more general disturbances.

Manatee mortality has continued to climb steadily. Average annual total mortality in the 1990s (227.9) was

nearly twice that of the 1980s (118.2). In 2002, 305 manatee deaths were documented in Florida. Total deaths over the past 5 years are almost three times greater than they were in the first half of the 1980s. Although a large part of this increase may be due to an increase in manatee abundance, rapid growth in human activities and development may also be significant factors. Over the past 5 years, human-related manatee mortality has accounted for 33 percent of all manatee deaths, with watercraft-related deaths accounting for 28 percent of the total. These rates are about 5 to 7 percent higher than the early 1980s, when about 28 percent of all deaths were human-related and 21 percent were due to watercraft.

The continuing increase in the number of recovered dead manatees throughout Florida has been interpreted as evidence of increasing mortality rates (Ackerman *et al.,* 1995). Between 1976 and 1999, the number of carcasses collected in Florida increased at a rate of 5.8 percent per year, and deaths caused by watercraft strikes increased by 7.2 percent per year (Service, 2002). Because the manatee has a low reproductive rate, a decrease in adult survivorship due to watercraft collisions could contribute to a long-term population decline (O'Shea *et al.,* 1985). It is believed that a 1 percent change in adult survival likely results in a corresponding change in the rate of population growth or decline (Marmontel *et al.,* 1997).

Collisions with watercraft are the largest cause of human-related manatee deaths. Data collected during manatee carcass salvage operations in Florida indicate that a total of 1,145 manatees (from a total carcass count of 4,545) are confirmed victims of collisions with watercraft (1978 to 2002). This number may underestimate the actual number of watercraft-related mortalities, since many of the mortalities listed as ''undetermined causes'' show evidence of collisions with vessels. Collisions with watercraft comprise approximately 25 percent of all manatee mortalities since 1978. Approximately 75 percent of all watercraft-related manatee mortality has taken place in 11 Florida counties (Brevard, Lee, Collier, Duval, Volusia, Broward, Palm Beach, Charlotte, Hillsborough, Citrus, and Sarasota) (FWCC: Florida Marine Research Institute (FMRI) Manatee Mortality Database, 2003). The last 5 years have been record years for the number of watercraft-related mortalities.

The second largest cause of human-related manatee mortality is entrapment in water control structures and navigation locks (FWCC: FMRI Manatee Mortality Database, 2003). Manatees may be crushed in gates and locks or may be trapped in openings where flows prevent them from surfacing to breathe. Locks and gates were responsible for 164 manatee deaths between 1978 and 2002, or approximately 4 percent of all deaths during this period. While there are no well-defined patterns characterizing these mortalities, it is believed that periods of low rainfall increase the likelihood of manatees being killed in these structures. These periods require more frequent, large-scale movements of water, which require more frequent gate openings and closings in areas that attract manatees searching for fresh water. We have been working, through an interagency task force, with various Federal and State agencies to retrofit these structures with reversing mechanisms that prevent manatee crushings.

Manatees are also affected by other human-related activities. Impacts resulting from these activities include deaths caused by entrapment in pipes and culverts; entanglement in ropes, lines, and nets; ingestion of fishing gear or debris; vandalism; and poaching. These activities have accounted for 124 manatee deaths since 1978, an average of more than 4 deaths per year. As with watercraft-related mortalities, these deaths also appear to be increasing, with 40 of these deaths occurring between 1998 and 2002 (an average of 8 deaths per year over the last 5 years).

Manatee Protection Areas

To minimize the number of injuries and deaths associated with watercraft activities, we and the State of Florida have designated manatee protection areas at sites throughout coastal Florida where conflicts between boats and manatees have been well documented and where manatees are known to frequently occur. These areas include posted signs to inform the boating public about restrictions and prohibitions. We propose to enhance existing protection areas by establishing three additional manatee refuges in five Florida counties.

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 (that is, to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct). In accordance with 50 CFR 17.106, areas may be established on an emergency basis when such takings are imminent.

We may establish two types of manatee protection areas—manatee refuges and manatee sanctuaries. A manatee refuge, as defined in 50 CFR 17.102, is an area in which we have determined that certain waterborne activities would result in the taking of one or more manatees, or that certain waterborne activities must be restricted to prevent the taking of one or more manatees, including but not limited to, a taking by harassment. A manatee sanctuary is an area in which we have determined that any waterborne activity would result in the taking of one or more manatees, including but not limited to, a taking by harassment. A waterborne activity is defined as including, but not limited to, swimming, diving (including skin and scuba diving), snorkeling, water skiing, surfing, fishing, the use of water vehicles, and dredge and fill activities.

Relationship to Manatee Lawsuit

On January 13, 2000, several organizations and individuals filed suit against the Service and the U.S. Army Corps of Engineers alleging violations of the ESA, the MMPA, the National Environmental Policy Act, and the Administrative Procedure Act. Four groups representing development and boating interests intervened. Following extensive negotiations, the suit was resolved by a Settlement Agreement dated January 5, 2001. On October 24, 2001, the plaintiffs filed a Formal Notice of Controversy alleging that the Service had violated provisions of the Settlement Agreement. On April 17, 2002, the plaintiffs filed an Expedited Motion to enforce the Settlement Agreement, and on July 9, 2002, the Court found that the Service had not fulfilled its settlement requirements to designate refuges and sanctuaries throughout peninsular Florida. On August 1, 2002, and November 7, 2002, the Court ordered the Federal defendants to show cause why they should not be held in contempt for violating the Court's orders of January 5, 2002, January 17, 2002, and August 1, 2002.

To resolve these controversies, the plaintiffs and Federal defendants entered into a Stipulated Order wherein the Service agreed to submit to the **Federal Register** for publication a proposed rule for the designation of additional manatee protection areas. The areas in this notice represent those areas that the Service has determined, based on the current, best available data,

should be considered for designation as manatee refuges.

Site Selection Process and Criteria

In order to establish a site as a manatee protection area, we must determine that there is substantial evidence showing such establishment is necessary to prevent the take of one or more manatees. In documenting historic manatee use and harm and harassment, we relied on the best available information (although some data are admittedly sparse), including aerial survey and mortality data and additional information from FMRI and the U.S. Geological Survey's Sirenia Project, manatee experts, as well as the public, and our best professional judgment.

Definitions

The following terms are used in 50 CFR 17.108. We present them here to aid in understanding this proposed rule.

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

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

Slow speed means the speed at which a watercraft proceeds when it is fully off plane and completely settled in the water. Watercraft must not be operated at a speed that creates an excessive wake. Due to the different speeds at which watercraft of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to slow speed. A watercraft is *not* proceeding at slow speed if it is—(1) on a plane, (2) in the process of coming up on or coming off of plane, or (3) creating an excessive wake. A watercraft is proceeding at slow speed if it is fully off plane and completely settled in the water, not plowing or creating an excessive wake.

Slow speed (channel exempt) designates a larger area where slow speed is required, through which a maintained, marked channel is exempt from the slow speed requirement.

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

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

Areas Proposed for Designation as Manatee Refuges

Caloosahatchee River—San Carlos Bay Manatee Refuge

We are proposing to establish a manatee refuge in the Caloosahatchee River and San Carlos Bay in Lee County (in the Southwest Region) for the purpose of regulating vessel speeds, from the Seaboard Coastline Railroad trestle, downstream to Channel Marker ''93,'' and from Channel Marker ''99'' to the Sanibel Causeway. Except as provided in 50 CFR 17.105, watercraft will be required to proceed as follows:

a. from the Seaboard Coastline Railroad trestle at Beautiful Island, downstream to a point 152 meters (500 feet) east of the Edison Bridge, a distance of approximately 7.2 km (4.5 miles), slow speed in the marked navigation channel from November 15 to March 31 and not more than 40 kilometers (km) per hour (25 miles per hour (mph)) in the channel from April 1 to November 14;

b. from a point 152 meters (500 feet) east of the Edison Bridge downstream to a point 152 meters (500 feet) west of the Caloosahatchee Bridge, approximately 1.1 km (0.7 miles) in length, slow speed year-round, shoreline-to-shoreline including the marked navigation channel;

c. from a point 152 meters (500 feet) west of the Caloosahatchee Bridge downstream to a point 152 meters (500 feet) northeast of the Cape Coral Bridge, a distance of approximately 10.9 km (6.8 miles), year-round, slow speed shoreline buffers extending out to a distance of approximately 91 meters (300 feet) from the marked navigation channel. (In any location where the distance from the shoreline to within approximately 91 meters (300 feet) of the near side of the channel is less than 0.4 km (0.25 mile), the slow speed buffer will extend to the edge of the marked navigation channel.) Vessel speeds between these buffers (including the marked navigation channel) are limited to not more than 40 km per hour (25 mph) throughout the year;

d. from a point 152 meters (500 feet) northeast of the Cape Coral Bridge downstream to a point 152 meters (500) feet southwest of the Cape Coral Bridge, a distance of approximately 0.3 km (0.2 mile), slow speed, channel included, year-round;

e. from a point 152 meters (500 feet) southwest of the Cape Coral Bridge to Channel Marker ''72,'' a distance of approximately 1.9 km (or 1.2 miles), slow speed year-round, shoreline buffers extending out to a distance of approximately 91 meters (300 feet) from the marked navigation channel. (In any location where the distance from the shoreline to within approximately 91 meters (300 feet) of the near side of the channel is less than ¼ mile, the slow speed buffer will extend to the edge of the marked navigation channel.) Vessel speeds between these buffers (including the marked navigation channel) are limited to not more than 40 km per hour (25 mph);

f. from Channel Marker ''72'' to Channel Marker ''82'' (in the vicinity of Redfish Point), for a distance of approximately 3.1 km (1.9 miles) in length, slow speed year-round shoreline-to-shoreline, including the marked navigation channel;

g. from Channel Marker ''82'' to Channel Marker ''93,'' a distance of approximately 3.9 km (2.4 miles), in length, slow speed year-round, shoreline buffers extending out to a distance of approximately 91 meters (300 feet) from the marked navigation channel. (In any location where the distance from the shoreline to within approximately 91 meters (300 feet) of the near side of the channel is less than 0.4 km (0.25 mile), the slow speed buffer will extend to the edge of the marked navigation channel.) Vessel speeds between these buffers, including the marked navigation channel, are limited to not more than 40 km per hour (25 mph);

h. from Channel Marker ''99'' to the Sanibel Causeway, slow speed year-round in San Carlos Bay within the following limits: a northern boundary described by the southern edge of the marked navigation channel, a line approximately 2.9 km (1.8 miles) in length; a southern boundary described by the Sanibel Causeway (approximately 1.9 km or 1.2 miles in length); a western boundary described by a line that connects the western end of the eastern most Sanibel Causeway island and extending northwest to the western shoreline of Merwin Key (approximately 3.1 km or 1.9 miles in length); the eastern boundary includes the western limit of the State-designated manatee protection area (68C–22.005) near Punta Rassa (approximately 2.9 km or 1.8 miles in length). Speeds are unrestricted in the channel and bay waters to the west of this area.

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program (Florida Fish and Wildlife Conservation Commission (FWCC, 2000). Per these studies, it is apparent the Caloosahatchee River is used throughout its length throughout the year by manatees. Primary winter-use

areas include the Florida Power and Light Company's Fort Myers Power Plant and Matlacha Pass, upstream and downstream (respectively) of the proposed refuge. The power plant is a major winter refuge for manatees. On January 6, 2001, 434 manatees were observed wintering in this region (FWCC: FMRI Aerial Survey Database, 2003).

In warmer months, manatees use the river as a travel corridor between upstream fresh water, foraging, and resting sites and downstream foraging areas. Manatees use the canal systems in Fort Myers and Cape Coral (between the Edison Bridge upstream and Shell Point) to rest and drink fresh water (Weigle, *et al.,* 2002). Manatees travel west of Shell Point to feed in the seagrass beds in San Carlos Bay and adjacent waterways.

An analysis of the telemetry data indicates that manatees appear to travel along shallow areas relatively close to shore and cross the river in narrow areas near Redfish Point and Shell Point. The Redfish and Shellfish Point sections of the river represent specific areas where manatees and boats overlap during their travels (Weigle *et al.,* 2002). The funneling of high speed watercraft and manatees through these narrow areas increases the likelihood of manatee-watercraft collisions in this area. Four watercraft-related manatee mortalities occurred in this area since January 2001 (FWCC: FMRI Manatee Mortality Database, 2003). Given this history, we designated Shell Island (the area around Shell Point) as a manatee refuge on November 8, 2002 (67 FR 68450).

The number of registered vessels in Lee County has increased by 25 percent over the past 5 years (from 36,255 vessels in 1998 to 45,413 in 2002) (FWCC, 2002). According to the FWCC's recent study of manatee mortality, manatee habitat, and boating activity in the Caloosahatchee River (FWCC, 2002), vessel traffic increases as the day progresses and doubles on the weekends compared to weekdays. The highest volumes of traffic were recorded in the spring and lowest volume in the winter. Highest vessel traffic densities occurred at Shell Point where the Caloosahatchee River and San Carlos Bay converge. Many of the boats in the lower Caloosahatchee River originate from the Cape Coral canal system and head toward the Gulf of Mexico.

Presently, there are State-designated, manatee speed zones throughout most of Lee County. Seasonal speed zones were established in the Caloosahatchee and Orange rivers around the Fort Myers power plant in 1979 (68C–22.005 FAC). Additional speed zones were established in the Caloosahatchee River downstream of the power plant in November 1989 (68C–22.005 FAC). Speed zones were established countywide in November 1999 (68C–22.005 FAC). The majority of these zones include shoreline buffers that provide protection in nearshore areas frequented by manatees. All zones were to be posted with the appropriate signage by July 2001 (68C–22.004 and 68C–22.005 FAC). Compliance with speed zones in the Caloosahatchee averaged only 57 percent (FWCC, 2002).

According to FWCC: FMRI's manatee mortality database, 764 manatee carcasses were recorded in Lee County from 1974 to 2002 (FWCC: FMRI Manatee Mortality Database, 2003). Of this total, 163 manatee deaths were watercraft-related (21 percent of the total number of deaths in Lee County). Over the past 13 years, the County's rate of increase in watercraft-related manatee mortality is higher than the rates of increase in watercraft-related mortality in southwest Florida and in watercraft-related deaths statewide. Areas east of the Edison Bridge and west of Shell Point are areas with recent increases in watercraft-related mortality; eight watercraft-related deaths have occurred east of the railroad trestle and seven have occurred in San Carlos Bay since 2000, including two watercraft-related deaths in San Carlos Bay since July 2001, when State speed zones were marked (FWCC: FMRI Manatee Mortality Database, 2003).

We believe the measures in this proposed regulation will improve manatee protection and are necessary to prevent the take of at least one manatee by harassment, injury, and/or mortality by extending coverage to currently unprotected areas used by manatees. The increased width of the shoreline buffers downstream of the Caloosahatchee Bridge will provide a greater margin of safety for manatees in this important manatee area.

Lower St. Johns River Manatee Refuge

We are proposing to establish a manatee refuge for the purpose of regulating waterborne vessel speeds in portions of the St. Johns River (in the Atlantic Region) and adjacent waters in Duval, Clay, and St. Johns Counties from Reddie Point upstream to the mouth of Peter's Branch (including Doctors Lake) in Clay County on the western shore, and to the southern shore of the mouth of Julington Creek in St. Johns County on the eastern shore. Except as provided in 50 CFR 17.105, watercraft will be required to proceed as follows:

a. From Reddie Point upstream to the Main Street Bridge, a distance of approximately 11.6 km (or 7.2 miles), slow speed, year-round, outside the navigation channel and not more than 40 km per hour (25 mph) in the channel (from Channel Marker ''81'' to the Main Street Bridge, the channel is defined as the line of sight extending west from Channel Markers ''81'' and ''82'' to the center span of the Main Street Bridge);

b. From the Main Street Bridge to the Fuller Warren Bridge, a distance of approximately 1.6 km (or 1.0 miles) slow speed, channel included, year-round;

c. Upstream of the Fuller Warren Bridge, a 305-meter (1,000-foot), slow speed, year-round, shoreline buffer to the south bank of the mouth of Peter's Branch in Clay County along the western shore (approximately 31.1 km or 19.3 miles); and in Doctors Lake in Clay County, slow speed, year-round, along a 274-meter (900-foot) shoreline buffer (approximately 20.8 km or 12.9 miles); and a 305-meter (1,000-foot), slow speed, year-round, shoreline buffer to the south bank of the mouth of Julington Creek in St. Johns County along the eastern shore (approximately 32.5 km or 20.2 miles) to a line north of a western extension of the Nature's Hammock Road North.

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program. Manatees occur throughout the proposed manatee protection area; the extent of use varies by habitat type and time of year (White *et al.,* 2002). Telemetry and aerial survey data indicate that peak numbers occur between March and June with heaviest use along the St. Johns River shorelines upstream of the Fuller Warren Bridge and along the southeast shoreline of Doctors Lake. The latter appears to correlate with the highest quality feeding habitat. Recent studies demonstrate little use during the December through February period (White *et al.,* 2002). While there were warm water discharges (*i.e.,* power plant and industrial effluents) located within the area of the proposed refuge, these man-made attractants no longer exist.

Vessel speeds are currently restricted throughout the proposed manatee protection area. In 1989, boating restricted areas were adopted by Duval County and established by the State of Florida for portions of the St. Johns River. These include a bank-to-bank, slow-speed zone between the Florida East Coast Railroad Bridge and the Main Street Bridge and a ''slow down/minimum wake when flashing'' zone

between the Main Street and Hart Bridges, activated during special events at the discretion of the Jacksonville Sheriff's Office (16N–24.016 Duval County Boating Restricted Areas). The first manatee protection areas were adopted in 1989 by Duval County and in 1994 by the State of Florida. These measures included a slow-speed, channel exempt zone from Reddie Point to the Main Street Bridge and a 91-meter (300-foot) shoreline buffer in portions of the St. Johns River upstream of the Fuller Warren Bridge. The manatee protection areas were reconfigured in 2001. Current protection measures consist of shoreline buffers that vary in width from 91 to 274 meters (300 to 900 feet). There are provisions downstream of the Fuller Warren Bridge that include a shoreline buffer of 152 meters (500 feet) or 61 meters (200 feet) from the end of docks, whichever is greater (an expansion of the 1989 91-meter (300-foot) buffer) (68C–22.027 FAC). We believe that the variable shoreline buffers are not adequately posted, which makes these areas hard to enforce and difficult for the boating public to understand and comply with these measures.

Overall, 270 manatee deaths were recorded in Duval County between 1974 and 2002 (FWCC: FMRI Manatee Mortality Database, 2003). Ninety-four of these deaths included deaths caused by watercraft collision. Fifty-one watercraft-related manatee deaths occurred within the proposed manatee protection area. Of these, 24 were recovered between Reddie Point and the Matthews Bridge, 10 were recovered between the Hart and Acosta bridges, 6 were recovered between the Fuller Warren and Buckman bridges, and 11 were recovered upstream of the Buckman Bridge. Most of these deaths have occurred in that portion of the river where manatees and boats are most constricted (FWCC, 2000). From 1994 to 2001, when the area was protected under the initial State rule, manatee deaths averaged two per year between Reddie Point and the Fuller Warren Bridge. In 2002, subsequent to adoption of the current rule, one watercraft-related death was documented in this area; a single watercraft-related death was documented upstream of the Fuller Warren Bridge in 2001.

We believe the proposed measures in this regulation will improve manatee protection and are necessary to prevent the taking of at least one manatee through harassment, injury, and/or mortality by extending coverage to currently unprotected areas used by manatees, by improving the ability of the public to understand and, thus, comply with the vessel operation restrictions, and by improving the ability of law enforcement personnel to enforce the restrictions. The proposed configuration should be less complicated, easier to post, and will reduce reliance on waterway users to judge distances from the shoreline or the ends of docks and piers. The increased width of the shoreline buffers upstream of the Fuller Warren Bridge will also provide a greater margin of safety for manatees between areas of high speed boating activity and highest manatee use. The proposal will not detract from operation of the boater safety zone downstream of the Main Street Bridge during special events.

Halifax and Tomoka Rivers Manatee Refuge

We are proposing to establish a manatee refuge in the Halifax River and associated waterbodies in Volusia County (in the Atlantic Region) for the purpose of regulating vessel speeds, from the Volusia/Flagler county line to New Smyrna Beach. Except as provided in 50 CFR 17.105, watercraft will be required to proceed as follows:

a. From the Volusia County/Flagler County line at Halifax Creek south to Channel Marker ''9'', a distance of approximately 11.3 km (7.0 miles) in length, slow speed, year-round outside the marked channel with not more than 40 km per hour (25 mph) in the channel;

b. From Channel Marker ''9'' to a point 152 meters (500 feet) north of the Granada Bridge (State Road 40) (including the Tomoka Basin), a distance of approximately 5.0 km (3.1 miles) in length, slow speed, year-round, 305-meter (1,000-foot) minimum buffers along shorelines with not more than 40 km per hour (25 mph) in areas between the buffers (and including the marked navigation channel);

c. In the Tomoka River, all waters upstream of the U.S. 1 bridge, a distance of approximately 7.2 km (4.5 miles) in length, slow speed, year-round, shoreline to shoreline; from the U.S. 1 bridge downstream to Latitude 29°19′00″, a distance of approximately 2.1 km (1.3 miles) in length, idle speed, year-round, shoreline to shoreline; from Latitude 29°19′00″ downstream to the confluence of Strickland Creek and the Tomoka River, and including Strickland, Thompson, and Dodson creeks, a combined distance of approximately 9.7 km (6 miles) in length, slow speed, year-round, shoreline to shoreline; from the confluence of Strickland Creek and the Tomoka River downstream to the mouth of the Tomoka River, a distance of approximately 1.4 km (0.9 miles) in length, idle speed, year-round, shoreline to shoreline;

d. From 152 meters (500 feet) north to 305 meters (1,000 feet) south of the Granada Bridge (State Road 40), a distance of approximately 0.5 km (0.3 miles) in length, slow speed, year-round, channel included;

e. From a point 305 meters (1,000 feet) south of the Granada Bridge (State Road 40) to a point 152 meters (500 feet) north of the Seabreeze Bridge, a distance of approximately 6.4 km (4.0 miles) in length, slow speed, year-round, 305-meter (1,000-foot) minimum buffers along shorelines with not more than 40 km per hour (25 mph) in areas between the buffers, and including the marked navigation channel;

f. From 152 meters (500 feet) north of the Seabreeze Bridge, to Channel Marker ''40,'' a distance of approximately 3.7 km (2.3 miles) in length, slow speed, year-round, channel included;

g. From Channel Marker ''40'' to a point 152 meters (500 feet) north of the Dunlawton Bridge, a distance of approximately 14.5 km (9 miles) in length, slow speed, year-round, 305-meter (1,000-foot) minimum buffers along shorelines with not more than 40 km per hour (25 mph) in areas between the buffers, and including the marked navigation channel;

h. From 152 meters (500 feet) north to 152 meters (500 feet) south of the Dunlawton Bridge, a distance of approximately 0.3 km (0.2 miles) in length, slow speed, year-round, channel included;

i. From 152 meters (500 feet) south of the Dunlawton Bridge to Ponce Inlet, a distance of approximately 10.5 km (6.5 miles) in length, slow speed, year-round outside of marked channels with not more than 40 km per hour (25 mph) in the channel; in Wilbur Bay, a distance of approximately 2.7 km (1.7 miles) in length, slow speed, year-round, shoreline to shoreline; along the western shore of the Halifax River, a distance of approximately 3.1 km (1.95 miles), slow speed, year-round, with not more than 40 km per hour (25 mph) in the marked channels; in Rose Bay, a distance of approximately 2.7 km (1.7 miles), slow speed, year-round, with not more than 40 km per hour (25 mph) in the marked channels; in all waters of Mill Creek, Tenmile Creek, and Dead End Creek, a combined distance of approximately 5.1 km (3.2 miles) in length, slow speed, year-round, shoreline to shoreline; in Turnbull Bay, a distance of approximately 3.9 km (2.4 miles), slow speed, year-round, with not more than 40 km per hour (25 mph) in the marked channels; in Spruce Creek, for a distance of approximately 5.6 km (3.5

miles), shoreline to shoreline, April 1 to August 31, slow speed, and from September 1 through March 31, not more than 40 km per hour (25 mph);

j. In waters north of Ponce Inlet, between Live Oak Point and Channel Marker ''2,'' a distance of approximately 2.9 km (1.8 miles), slow speed, year-round, shoreline to shoreline; in waters adjacent to Ponce Inlet, slow speed, year-round outside of the marked navigation channel and other marked access channels, with not more than 40 km per hour (25 mph) in the marked channels; in waters within Ponce Inlet, speeds are restricted to not more than 48 km per hour (30 mph);

k. In the Intracoastal Waterway from Redland Canal to the A1A Bridge (New Smyrna Beach), for a distance of approximately 5.3 km (3.3 miles) in length, slow speed, year-round, channel included.

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program (FWCC, 2000). In general, manatees primarily use the Halifax River as a travel corridor (Deutsch, 1998, 2000); manatees use the downtown Daytona Beach area marinas as a source of drinking water and may calve here. The Tomoka River system is a known calving area, as evidenced by observations of calving manatees (McNerney, 1982) and aerial observations of significant numbers of cow and calf pairs (FWCC, 2000). Other activities observed throughout these systems include playing and/or engaging in sexual activity, feeding, and resting. Manatees are known to occur in these areas throughout the year (Deutsch, 1998, 2000), although they are more abundant during the warmer months of the year (FWCC, 2000).

Two hundred and eight manatee deaths occurred in Volusia County between 1974 and 2002 (FWCC: FMRI Manatee Mortality Database, 2003). This number includes 60 watercraft-related deaths. Of these, 30 watercraft-related deaths occurred in coastal Volusia County, (including 6 deaths in the Tomoka River system and 16 in the Halifax River). Twenty of these deaths have occurred over the past 10 years and seven of these over the past 2 years. Three of the watercraft-related deaths occurred in the Tomoka River in 2001. Carcass recovery sites for manatees known to have died as a result of watercraft collision include the lower Tomoka River and tributaries, the Halifax River in downtown Daytona Beach, areas to the south of Channel Marker ''40'' and the Dunlawton Bridge, and areas to the south of Ponce Inlet. Watercraft-related deaths occur between the months of March and October, with most occurring in May, June, and July.

The existing, State-designated manatee protection areas in coastal Volusia County were adopted by the State of Florida in 1994 (68C–22.012 FAC). These measures include slow and idle speed restrictions in the Tomoka River and associated waterbodies (except for in those areas upstream and downstream of Alligator Island), 91-meter (300-foot) shoreline buffers along most of the Halifax River (with maximum speeds varying between 40 and 48 km per hour (25 and 30 mph) outside of the buffers), slow speeds in the downtown Daytona Beach area (except for a watersports area to the south of Seabreeze Bridge), and a complex of varying restrictions between the Dunlawton Bridge and New Smyrna Beach. The existing State measures include 10 different types of restrictions that are used to restrict 30 discrete areas within the area of the proposed refuge. Fifteen watercraft-related manatee deaths were documented within the area of the proposed refuge since the protection areas were first adopted. Seven of these deaths occurred in 2001, and no watercraft-related deaths were known to have occurred in 2002.

We believe the proposed measures in this regulation will improve manatee protection and will prevent the take of at least one manatee through harassment, injury, and/or mortality by extending coverage to currently unprotected areas used by manatees, and by improving the ability of the public to understand and thus, comply, with protection measures through simplification of restrictions. The increased width of the shoreline buffers along the Halifax River will provide a greater margin of safety for manatees.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, 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 any of these areas 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.

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–AJ06,'' your full name, and return address in your e-mail message. Comments submitted to *manatee@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 Jacksonville 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.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such a review is to ensure that our decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the comment period, on the specific assumptions and conclusions regarding the proposed designation of these manatee protection areas.

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

Public Hearings

We have scheduled three formal public hearings to receive oral comments on the proposed Federal manatee protection areas. Each hearing will run from 6:30 p.m. to 9 p.m. These hearings will afford the general public and interested parties an opportunity to hear information and make formal comments.

Formal public hearings will be held at the following locations:

Tuesday, May 13, in Ft. Myers, FL, at the Harborside Convention Hall, 1375 Monroe St.

Wednesday, May 14, in Daytona Beach, FL, at the Ocean Center, 101 N. Atlantic Ave.

Thursday, May 15, in Jacksonville, FL, at The University Center, University of North Florida campus, 4567 St. Johns Bluff Rd. South.

Persons needing reasonable accommodations in order to attend and participate in the public hearing should contact Chuck Underwood of the Jacksonville Field Office at 904/232–2580, extension 109, or via e-mail to *chuck_underwood@fws.gov,* as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing.

Written comments submitted during the comment period receive equal consideration with those comments presented at a public hearing.

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. You may e-mail your comments to the following address: *Execsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. The Office of Management and Budget makes the final determination under Executive Order 12866.

a. This 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. A cost-benefit analysis is not required. It is not expected that any significant economic impacts would result from the establishment of three manatee refuges (approximately 185 river km (115 river miles)) in five counties in the State of Florida.

The purpose of this rule would be to establish three manatee protection areas in Florida. The three areas are located in the Caloosahatchee River in Lee County, the St. Johns River in Duval, Clay and St. Johns Counties, and the Halifax River and Tomoka River in Volusia County. We are proposing to reduce the level of take of manatees by controlling certain human activity in these three areas. For the three manatee refuges, the areas would be year-round slow speed with certain site-specific exceptions, including 40 km per hour (25 mph) in most channels. Affected waterborne activities would include transiting, cruising, water skiing, fishing, and the use of all water vehicles. This rule could result in impacts on recreational boaters, commercial charter boats, and commercial fishermen, primarily in the form of restrictions on boat speeds in specific areas. We could experience increased administrative costs due to this proposed rule. In addition, the rule would be expected to 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 we take no additional regulatory actions to protect the manatee. In fact, even with no further activity by us, an extensive system of State-designated manatee protection areas is already in place in each of the proposed manatee refuges. Thus, the proposed rule will 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 rule would be due to the changes in speed zone restrictions in the proposed manatee refuge areas. These speed zone changes are summarized below.

In Lee County, in the Caloosahatchee River area, the designation of the proposed Caloosahatchee-San Carlos Bay Manatee Refuge would result in the following changes:

- The portion of the channel upstream of the Edison Bridge (to Beautiful Island) would change from a 40 km per hour (25 mph) limit to seasonal slow speed (*i.e.,* 6.4 to 12.9 km per hour (4 to 8 mph) depending on hull design) from November 15 to March 31.
- The portion of the channel 152 meters (500 feet) east and west of the Edison/ Caloosahatchee Bridge complex would change from 40 km per hour (25 mph) to slow speed year-round.
- Between the Edison/Caloosahatchee Bridge complex and Cape Coral Bridge, shoreline buffers would change from slow speed within 0.4 km (0.25 mile) of shore to variable width, approximating within 91 meters (300 feet) of the marked navigation channel at varying locations. This change eliminates two unprotected shoreline areas along the north shore at and below the Edison/ Caloosahatchee Bridge complex.
- The shore to shore, channel-included buffer, 152 meters (500 feet) east and west of Cape Coral Bridge would change from 40 km per hour (25 mph) year-round to slow speed year-round.
- Between the Cape Coral Bridge and the Shell Island Manatee Refuge, the slow speed, shoreline buffer, year-round would change from 0.4 km (0.25 mile) in width to a variable width, generally approximating within 91 meters (300 feet) of the marked navigation channel at varying locations. The channel is included in portions of this area, between channel markers ''72'' and ''82.''
- The area to the west of the Shell Island Manatee Refuge, south of the Intracoastal Waterway, north of the Sanibel Causeway, to a line extending southwest from the southern tip of Merwin Key, would change from unregulated to slow speed year-round.

Speed zones have been in existence in the Caloosahatchee River since 1979. Since 1989, almost all of the near shore waters of the Caloosahatchee have been under a slow speed restriction year-round. The proposed Caloosahatchee River Manatee Refuge would affect approximately 35.4 km (22 river miles) overall. For the most part, the proposed regulation would widen existing slow speed areas by varying widths, dependent upon various factors. The greatest width of the affected area is approximately 2.4 km (1.5 miles), along the western shore north of Fourmile Point.

In Duval, Clay, and St. Johns Counties, in the St. Johns River and tributaries (including Doctor's Lake), the proposed designation of the Lower St. Johns River Manatee Refuge would result in the following changes from the current speed restrictions:

• In the downtown Jacksonville area, between Reddie Point and the Main Street Bridge, slow speed zones would be extended out to the channel from 91 to 274 meter (300- to 900-foot) shoreline buffers. The channel would be changed from unrestricted speed to a 40 km per hour (25 mph) limit.

• Between the Main Street Bridge and the Fuller Warren Bridge, slow speed shoreline buffers would change from variable width, slow speed (currently variable width along the western and northern shore and 183 meters (600 feet) on the eastern shore) to bank to bank, channel included, slow speed.

• South of the Fuller Warren Bridge to the southern bank of the mouth of Julington Creek (St. Johns County) on the eastern shore and to the mouth of Peter's Creek (Clay County) along the western shore, slow speed shoreline buffers would change from variable width (152 meters (500 feet) from shore or 61 meters (200 feet) from the end of docks) to 305 meters (1,000 feet), minimum. Boat speed remains unregulated outside of the buffer.

• In Doctors Lake and Inlet, slow speed shoreline buffers would be extended from variable width (152 meter (500 feet) minimum or 61 meters (200 feet) beyond docks), to a 274 meter (900-foot) minimum buffer along both shorelines.

Overall, the proposed St. Johns River Manatee Refuge would affect approximately 66 km (41 miles) of the St. Johns River and adjacent waters. In areas upstream of the Fuller Warren Bridge, newly protected areas would include extending existing slow speed areas out an additional 91 to 152 meters (300 to 500 feet). Downstream of the Fuller Warren Bridge, shoreline buffers would be extended from their variable widths to the channel. The greatest width of the shoreline buffer in this area is approximately 1.6 km (1 mile).

In Volusia County, for the Halifax and Tomoka Rivers Manatee Refuge including the Halifax River and tributaries (including Halifax Creek and the Tomoka River Complex), the Ponce Inlet area, and Indian River North, the proposed rule would result in the following changes from current speed restrictions:

• The channel in Halifax Creek would change to 40 km per hour (25 mph) from 48 km per hour (30 mph) (40 km per hour (25 mph) at night).

The two reaches of the Tomoka River upstream of U.S. Highway 1, where the speed restriction was 40 km per hour (25 mph) for part or all of the year, would change to a year-round slow speed restriction.

• In the Halifax River from the Tomoka River Basin and the southern extent of Halifax Creek to Seabreeze Bridge, the 91-meter (300-foot) slow speed shoreline buffer would be extended to 305 meters (1,000 feet), and the speed limit would change from 48 km per hour (30 mph) (40 km per hour (25 mph) at night) outside the buffer and marked navigation channel to 40 km per hour (25 mph).

• In the vicinity of the Granada Bridge, the current shore to shore, channel-included buffer, 152 meters (500 feet) north and 305 meters (1,000 feet) south of the SR 40 Bridge (Granada Bridge) would change from a 91-meter (300-foot) slow speed buffer (56 km per hour (35 mph) outside of buffer) to slow speed.

• The area between Seabreeze and Channel Marker ''40'' would change from slow speed channel included (excepting a watersports area south of Seabreeze Bridge) to slow speed channel included (including the watersports area south of Seabreeze Bridge).

• The shoreline buffers in the Halifax River from Channel Marker ''40'' to the Dunlawton Bridge would change from 91 meters (300 feet) to 305 meters (1,000 feet). The speed limit would change from 48 km per hour (30 mph) (40 km per hour (25 mph) at night) outside the buffer and marked navigation channel to 40 km per hour (25 mph).

• The shore to shore, channel-included buffer, 152 meters (500 feet) north and south of the Dunlawton Bridge would change from a 91-meter (300-foot) slow speed buffer 56 km per hour (35 mph outside of buffer) to slow speed. Waters between the Dunlawton Bridge and Ponce Inlet will change from variable zones with 48 km per hour (30 mph) within the channel to slow speed year-round outside the channel, 40 km per hour (25 mph) within the channel.

• The waters within Ponce Inlet and adjacent waterbodies would change from variable zones with 48 km per hour (30 mph) within the channel to year-round, slow speed shoreline to shoreline zones outside of marked channels (except for maintenance of the existing seasonal slow speed zone in the headwaters of Spruce Creek), including 40 km per hour (25 mph) within the marked channels. The existing 48 km per hour (30 mph) limit within Ponce Inlet would remain unchanged.

• The waters within the Indian River North, running north to south along the eastern shore of the river immediately south of Ponce Inlet would change from 48 km per hour (30 mph) to slow speed.

Overall, the Halifax River and Tomoka River Manatee Refuge would affect approximately 85 km (53 miles) of Volusia County's waterways. The majority of the changes would include extending the shoreline buffers within the Halifax River from 91 meters (300) to 305 meters (1,000 feet). Given the confusing nature of the existing State restrictions in this area, the overall impact of the proposed changes would be to make the speed restrictions more consistent and clear.

In addition to speed zone changes, the proposed rule would no longer allow for the speed zone exemption process in place under State regulations. Currently, Florida's Manatee Sanctuary Act allows the State to provide exemptions from speed zone requirements for certain 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. However, speed zone exemptions have not been authorized in most of the areas affected by the proposed rule. Speed zone exemption permits for commercial fishing and professional fishing guides are not available for affected areas in Duval County, coastal Volusia County, and in the Caloosahatchee River (except along a small portion of San Carlos Bay/Matlacha Pass, at the mouth of the river) (FWCC, 2003g). Exceptions to these proposed Federal speed zones would require a formal rulemaking (including publishing the proposed rule in the **Federal Register**, public review, and comment) prior to the Service making a final decision. Based on available information, there have been very few events permitted in the affected areas in the past 5 years (Service, 2003c; Lee County, 2003). Therefore, the lack of a process for speed zone exemptions is not likely to have much impact.

In order to gauge the economic effect of this proposed rule, both benefits and costs must be considered. Potential economic benefits related to this rule would include increased manatee protection and tourism related to manatee viewing, increased property values, increased boater safety, increased fisheries health, and decreased seawall maintenance costs. Potential economic costs are related to increased administrative activities related to implementing the rule and affected waterborne activities. Economic costs will be 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, there may be some impact on commercial fishing because of the need to maintain slower speeds in some areas. While the State of Florida has 19,312 km (12,000 miles) of rivers and 1.21 million hectares (3 million acres) of lakes, this rule would affect less than 185 km (115 river miles). The extension of slower speed zones as proposed in this rule would not be 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 designation of the three manatee refuges proposed in this rule would increase the level of manatee protection in these areas. Two studies have examined the public's willingness to pay for protection of the manatee (Bendle and Bell, 1995; Fishkind & Associates, 1993). Based on these contingent valuation studies, it is believed that there is large public support for manatee protection regulations such as this proposed rule.

It is difficult to apply the results of these studies to this proposed rule, because neither study measures an impact similar to that associated with this rulemaking. For example, the Fishkind study was designed to gauge the economic impact of the Florida Manatee Sanctuary Act. First, the estimates of economic benefit are predicated on a different baseline in terms of both the manatee population being protected at that time versus now and the regulatory conditions in existence, such as current manatee protection areas. Second, the Fishkind study is not clear about the type and extent of manatee protection. The study does not clearly state if protection refers simply to the establishment of speed zones, or whether implementation and enforcement are included. Nor does the study clearly state whether residents are providing a willingness to pay for manatee protection for a specific region or for the entire manatee population in the State of Florida. While neither of these studies are specific enough to apply to this proposed rule, they provide an indication that the public holds substantial value for the protection of the manatee.

Another potential economic benefit is increased tourism that could result 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 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.

Florida waterfront property owners may benefit from manatee protection areas such as the three proposed manatee refuges. Bell and McLean (1997) showed that speed zone enforcement may provide an economic benefit to adjacent landowners. Bell and McLean studied the impact of posted manatee speed zones on the property values of waterfront homes in Fort Lauderdale, Broward County, Florida. The authors found a strong relationship between property values and slow speed zones, and found evidence that slow speed zones may have a positive impact on home sale price. Slow speed zones were found to correlate with as much as a 15 to 20 percent increase in sale price, although this result has not been corroborated by other studies. The authors speculated that speed zones may increase property values by reducing noise and fast traffic, as well as making it easier for boats to enter and leave primary waterways. In each of the three manatee refuge areas there are stretches of river where residential property owners may experience these benefits.

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 rule would produce 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 three manatee protection areas would result from the fact that in certain areas, boats will be required to go slower than under current conditions. As discussed above, an extensive system of manatee speed zones promulgated by the State exists in each of the areas covered under this rule. The rule would add to these areas by extending shoreline buffers and reducing speed limits slightly in some channels. Some impacts may be felt by recreationists who would have to use alternative sites for their activity or who would have a reduced quality of the waterborne activity experience at the designated sites 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 rule may be felt by commercial charter boat outfits, commercial fishermen, and agencies that perform administrative activities related to implementing the rule.

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 for each manatee refuge area. These impacts cannot be quantified because the number of recreationists and anglers using the designated sites is not known.

Caloosahatechee River Area: In the proposed Caloosahatchee River Manatee Refuge, affected waterborne activities include transiting, fishing, sailing, waterskiing, and personal watercraft use. The number of registered recreational vessels in Lee County in 2002 was 45,413 (Division of Highway Safety and Motor Vehicles, 2003). Based on aerial surveys and boat traffic surveys conducted in 1997 and 1998, the highest number of vessels observed on the Caloosahatchee River sites on a given day was 477 vessels. Based on

aerial, boat traffic, and boater compliance surveys of the Caloosahatchee River, over 60 percent of vessels observed were small powerboats, while less than seven percent were personal watercraft (*e.g.,* jet skis) (Gorzelany, 1998). Waterskiing and personal watercraft use in the Caloosahatchee primarily occurs between the Caloosahatchee and Cape Coral Bridges (Lee County, 2003). Shell Point and Redfish Point are also popular access areas where personal watercraft use may be affected (FWCC, 2002). The Caloosahatchee River area is also a popular location for recreational guiding for snook and redfish fishing, particularly at night (FWCC, 2003c). 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. The number of anglers on the Caloosahatchee, and their origins and destinations are currently unknown. One study indicates that approximately 70 percent of the boat traffic on the Caloosahatchee originates from the Cape Coral Canal system (FWCC, 2002). Another boat traffic survey indicated that the majority of boat traffic exits the Caloosahatchee River in the morning and enters the river in the afternoon. The majority of vessels leaving the Caloosahatchee River travel south toward the Sanibel Causeway and Gulf of Mexico. Approximately 94 percent of vessel traffic on the Caloosahatchee was reported as ''traveling,'' while less than one percent was engaged in ''skiing'' based on boater compliance observations at 10 sites along the Caloosahatchee River (Gorzelany, 1998).

Based on these trends, it appears that most recreational waterborne activity on the Caloosahatchee River will be affected by the proposed manatee refuge. While the proposed designation will cause an increase in travel time, it is unlikely that the increase will be great enough to cause a significant economic dislocation. Much of the boat traffic on the Caloosahatchee likely originates from the Cape Coral Canal system (FWCC, 2002), and would experience added travel time of approximately 25 minutes (from Cape Coral Bridge to Sanibel Causeway) for a trip that currently lasts 50 minutes. At most, a boat traveling from Beautiful Island to the Sanibel Causeway will experience added travel time of 40 minutes to 1 and a half hours (depending on time of the year) due to the proposed designation; currently this trip would take approximately 1 and one-quarter hours.

The small percentage of recreational boaters using the river for waterskiing or personal watercraft use will choose either to go to alternative sites such as San Carlos Bay or Pine Island Sound or to forgo the activity. The amount of added travel time to get to an alternative site will depend on the origin of the trip and whether the trip originates from a dock or a ramp. For example, ramp users may choose to trailer their boats to a different location, closer to the alternative site and may experience little added travel time. For dock users, under the proposed rule, travel time on the Caloosahatchee from the Cape Coral Bridge to the Sanibel Causeway could be approximately 1 and one-quarter hours. The amount of added travel time and the expected quality of the experience will likely influence the recreationists' choice of whether to travel to an alternative site or forgo the activity. The number of recreationists who will use alternative sites or forgo recreational activities is unknown, but it is not expected to be a large enough number to result in a significant economic impact.

St. Johns River Area: In the proposed St. Johns River Manatee Refuge, the affected recreational waterborne activities are likely to include cruising, fishing, and waterskiing. Based on a survey of boat ramp users in Duval County, these three activities were the most popular reasons cited as the primary purpose of the trip. Recreational fishing was cited as the primary purpose by 62 percent of those surveyed, while cruising was cited by 19 percent and waterskiing was cited by 7 percent (Jacksonville University, 1999). The total number of recreational vessels registered in Duval, Clay, and St. Johns counties in 2002 is 57,388 (Division of Highway Safety and Motor Vehicles, 2003). The portion of these vessels using the St. Johns River area covered by the proposed designation is unknown. Recreational fishing for bass, redfish, sea trout, croaker, and flounder, as well as shrimping with nets, are popular activities in the near shore waters of the St. Johns River south of the Fuller Warren Bridge. Because the submerged aquatic vegetation near shore provides food, and docks provide protection for the fish, this is where the fishing activity primarily takes place (FWCC, 2003c). Because recreational fishing is likely occurring primarily in existing slow speed areas, the extension of slow speed zones out 152 meters (500 feet) further will not have a significant effect. Recreationists engaging in fishing or cruising are unlikely to experience much impact due to the proposed regulation. The expanded/extended buffers are not expected to increase travel times by any more than about 8 minutes (one way). The proposed designation will cause some inconvenience in travel time, but alternative sites within the proximity of proposed designated areas are available for all waterborne activities. Because the designated areas are part of larger waterbodies where large areas remain unrestricted, the impact of the proposed designation on recreational waterborne activities in the St. Johns River and adjacent waterbodies will be limited. Recreationists engaging in cruising, fishing, and waterskiing may experience some inconvenience by having to go slower or use un-designated areas; however, the extension of slow speed zones is not likely to result in a significant economic impact.

Halifax River and Tomoka River Area: In the proposed Halifax River and Tomoka River Manatee Refuge, affected waterborne activities include fishing, traveling, cruising, waterskiing, and personal watercraft use. Based on a boating activity study that relied on a variety of survey mechanisms, the two most popular activities in the Intracoastal Waterway in Volusia County were recreational fishing and traveling (Volusia County Environmental Management Services, 1996). Recreationists engaging in fishing or traveling are unlikely to experience much impact due to the proposed regulation. Rather, these boaters will be able to utilize the channel for transiting the river or moving to the next fishing ground. The two most popular destinations are the Mosquito Lagoon and the Ponce Inlet area (Volusia County Environmental Management, 2002). Recreationists engaging in fishing or traveling may experience some inconvenience by having to go slower or use marked channels; however, small changes in boater behavior due to the extension of slow speed zones should not result in a significant economic impact.

For the Tomoka River, the primary activity that will be affected by the designation is waterskiing. A ski club uses the river in an area currently designated at 40 km per hour (25 mph). Under the proposed designation, this will be changed to slow speed. The nearest alternative site where these recreationists can water ski is at least 11 to 16 km (7 to 10 miles) away (Volusia County, 2003). It is estimated that the on-the-water travel time for the skiers to reach the nearest alternative site could be up to 2½ hours. The proposed regulation may cause some water skiers to forgo this activity, or may reduce the quality of their experience. The number of skiers that may be affected and the number of trips per year are not

currently known. With additional information on the number of affected individuals, we could estimate the impact of lost or diminished skiing days given the value of a waterskiing day published in the literature. One study by Bergstrom and Cordell (1991) suggested the lost surplus value may be $38/day (2002$) for a day of waterskiing. They applied a multi-community, multi-site travel cost model to estimate demand equations for 37 outdoor recreational activities and trip values, including water skiing. The analysis was based on nationwide data from the Public Area Recreational Visitors Study collected between 1985 and 1987 and several secondary sources.

In the Halifax River, one of the activities that may be affected by the proposed designation is personal watercraft (PWC) use. These activities are primarily taking place in the recreational zones located south of the Seabreeze Bridge and north of the Dunlawton Bridge. PWC likely represent a very small portion of vessels on the Intracoastal Waterway in Volusia County. Based on a boating activity study from 1994 to 1995, less than two percent of observations in the Intracoastal Waterway area were PWCs (based on 12,000 observations during aerial, boat ramp and shoreline, and mailing surveys) (Volusia County Environmental Management Services, 1996). The number of pleasure PWC in Volusia County in 2000 was 2,432, with 204 rental PWC (FWCC, 2000a). The nearest alternative site for using personal watercraft is near the Dunlawton Bridge, where an area remains unrestricted between the channel and the shoreline buffer, or in the Ponce Inlet vicinity, approximately 20 km (12.5 miles) downriver. Under the proposed rule, travel time from the Daytona Beach watersports area (south of Seabreeze Bridge) to the Ponce Inlet area would be approximately one hour. Added travel time to reach alternative sites would depend on the origin of the trip, which is currently unknown. The proposed regulation may cause some personal watercraft users to forgo this activity, or may reduce the quality of their experience. The number of PWC users that may be affected and the number of trips per year are not currently known. To the extent that these recreationists choose to forgo the activity, this could also impact local businesses that rent personal watercraft.

Currently, not enough data are available to estimate the loss in consumer surplus that water skiers in the Tomoka River or PWC users in the Halifax River 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.

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 Caloosahatchee, Halifax, and St. Johns Rivers, and their origins and destinations are currently unknown. For nature tours, the extension of slow speed zones is unlikely to cause a significant impact, because they 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. In the Caloosahatchee and St. Johns Rivers, fishing charters may experience some impact from the extension of slow speed zones, depending on their origins and destinations. Added travel time may affect the length of a trip, which could result in fewer trips overall, creating an economic impact. In the Halifax River, it is likely that most fishing charters are heading offshore or to the Mosquito Lagoon, and will experience little impact from the proposed rule (Volusia County, 2003).

Affected Commercial Fishing Activities

Several commercial fisheries may experience some impact due to the proposed regulation. Specifically, the blue crab fishery and, to a lesser extent, mullet fishing, along the Caloosahatchee River; the crab and shrimp industries in the St. Johns River; and the crab and mullet fishing industries in Volusia County may experience some economic impact. To the extent that the proposed regulation establishes additional speed zones in commercial fishing areas, this may 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 proposed manatee refuges, county-level data generally provide an upper bound estimate of the size of the industry and potential economic impact. This section first provides some background on the blue crab industry in Florida, and then addresses the impact of the proposed rule on the commercial fishing industry for each manatee refuge area.

One industry in particular that may be affected by the proposed rule is the blue crab fishery, which represents a sizeable industry in the State of Florida. Based on a study done for the Florida Fish and Wildlife Commission, Division of Marine Fisheries (Murphy *et al.,* 2001), between 1986 and 2000 the average annual catch statewide was 6.4 million kilograms (14.1 million pounds) (39.7 million crabs). However, year to year fluctuation is significant, including highs of 8.2 million kilograms (18 million pounds) statewide in 1987 and 1996 and a low of 2.5 million kilograms (5.5 million pounds) statewide in 1991. In the last 3 years, blue crab landings have been depressed throughout the East Coast and Gulf of Mexico, though specific reasons for this are unknown at this time (FWCC, 2003d). Landings in 2001 were approximately 3.4 million kilograms (7.4 million pounds) statewide. Based on a 2001 weighted average price of $1.06 per 0.5 kilograms (pound) of crab, this represents just under $8 million (FWCC: FMRI, 2003). Data from 2001 on marine fisheries landings from FWCC: FMRI is preliminary and subject to revision.

Caloosahatchee River Area: Lee County, where the proposed Caloosahatchee River Manatee Refuge is located, had 157 licensed blue crab boat operators in 2001 (FWCC: FMRI, 2003). Crabbing in the Caloosahatchee is likely to be impacted by the extension of slow speed areas because crab boats may have to travel at slower speeds between crab pots, thereby potentially reducing the number of crabs landed on a daily basis. For example, to the extent that crab boat operators frequently change fish pot locations in search of optimal fishing grounds, this activity could be affected by extension of existing slow speed zones (FWCC, 2003a). The extension of slow speed zones will likely cause fishermen to have to travel out to the channel and back rather than travel in direct lines across and throughout the river. The affected crabbing area in the Caloosahatchee River is approximately 27 km (17 miles) long (from the Edison Bridge to Merwin Key in San Carlos Bay) and just under 2.4 km (1.5 miles) wide at its widest point.

In 2001, blue crab landings in Lee County were 175,805 kilograms (387,585 pounds), and the weighted average price was $1.06 per 0.5 kilograms (pound) for blue crab statewide. The entire value of the blue crab fishery in Lee County is estimated to be $411,167 (FWCC: FMRI, 2003). Only a small portion of this value is likely to be affected, as the activity will still occur but with some changes due

to additional speed zones. In addition, this figure includes landings for all of Lee County. The number of crab boats operating and the amount of blue crab landings occurring in areas that would be newly designated speed zones under this proposed rule is unknown. Crabbing likely occurs in parts of Lee County outside of the Caloosahatchee River, including Charlotte Harbor, San Carlos Bay, Estero Bay, etc. (FWCC, 2003e). The county-wide figures provide an upper bound estimate of the economic impact on this fishery; this would assume that the proposed regulation closed down the entire fishery, which is not the case.

In Lee County, commercial mullet fishing is also occurring in the proposed Caloosahatchee River Manatee Refuge area. These fishermen may also be impacted by slower commuting times from boat launch (*e.g.,* dock or ramp) to fishing grounds. However, fishing activity associated with mullet fishing generally includes slow net casting within a relatively small geographic area (FWCC, 2003e). Therefore, speed limits are less likely to affect mullet fishing, relative to the blue crab fishery. In 2001, based on mullet landings in Lee County of 997,903 kilograms (2.2 million pounds), and the weighted average price of $0.66 for mullet statewide, the value of the mullet fishery in Lee County is estimated to be $1.4 million (FWCC: FMRI, 2003). Only a small portion of these values is likely to be affected, as the activity will still occur but with some changes due to additional speed zones. In addition, this figure includes landings for all of Lee County. The amount of mullet fishing occurring in areas that would be newly designated speed zones under this proposed rule is unknown.

St. Johns River Area: In the St. Johns River Manatee Refuge, most of which is in Duval County, current commercial fishing can be divided into activity south and north of the Fuller Warren Bridge. Commercial fishing north (*i.e.,* downstream) of the bridge consists primarily of shrimping, while commercial fishing activity south of the bridge consists primarily of blue crab fishing. Commercial net shrimping is not allowed south of the Fuller Warren Bridge (Jacksonville Port Authority, 2003).

Commercial blue crab fishing occurs both north and south of the Fuller Warren Bridge. Crab fishing is likely to be impacted by the proposed manatee refuge. The extension of the shoreline buffer zone may impact fishing operations because the majority of crabbing activity takes place in the submerged aquatic vegetation, which is located along the immediate shoreline (FWCC, 2003b). Therefore, when crabbers enter and exit these shoreline areas, they will be required to travel slowly (*i.e.,* 6.4 to 12.9 km per hour (4 to 8 mph)) for approximately 152 additional meters (500 feet) (incremental to the existing variable width shoreline buffer). In addition, travel between pots within the buffer will also be slowed, thereby potentially reducing the number of crabs landed on a daily basis. However, once outside the shoreline buffer, boats can travel up to 40 km per hour (25 mph) in areas downstream of the Fuller Warren Bridge, and at unrestricted speeds upstream.

There were 61 commercial licences for blue crab issued in Duval County in 2001 (FWCC: FMRI, 2003). In 2001, based on blue crab landings in Duval County of 506,401 pounds, and the weighted average price of $1.06 per 0.5 kilogram (pound) for blue crab statewide, the value of the blue crab fishery in Duval County is estimated to be $537,213 (FWCC: FMRI, 2003). Only a small portion of this value is likely to be affected, as the activity will still occur but with some changes due to additional speed zones. In addition, this figure includes landings for all of Duval County. The number of crab boats operating and the amount of blue crab landings occurring in areas that would be newly designated speed zones under this proposed rule is unknown. The county-wide figures provide an upper bound estimate of the economic impact on this fishery; this would assume that the proposed regulation closed down the entire fishery, which is not the case.

Commercial shrimping north of the Fuller Warren Bridge in the St. Johns River is likely to receive minimal impact due to the extension of year-round slow speed areas outside of the marked channels. Impacts to this industry are likely to be minimal because shrimp boats tend to trawl at a slow speed. Nonetheless, shrimp boats will still be required to travel at slower speeds between fishing grounds, thereby potentially increasing the time it takes to access fishing areas and reducing shrimp landed on a daily basis (Jacksonville Port Authority, 2003).

The majority of commercial shrimping activity in the St. Johns River occurs between the mouth of Trout River and the Fuller Warren Bridge, which closely approximates the proposed northern limit of the St. Johns Manatee Refuge (Jacksonville Port Authority, 2003). Commercial shrimping activity in Duval County also occurs along the Nassau River, which represents the border between Duval and Nassau County, and, to a lesser extent, along the Intracoastal Waterway (FWCC, 2003f). Shrimp landings in Clay County are negligible, based on the fact that commercial shrimping is not allowed upriver of the Fuller Warren Bridge. Shrimp landings in St. Johns County most likely represent activity along the Intracoastal Waterway and not in the St. Johns River area. While there is some limited commercial bait shrimping activity along this stretch of river, the vast majority of commercial shrimping in this area is related to the harvest of shrimp for food production (FWCC, 2003e). In 2001, based on shrimp landings in Duval County of 997,903 kilograms (2.2 million pounds), and the weighted average price of $2.33 for shrimp statewide, the value of the shrimp fishery in Duval County is estimated to be about $5.2 million (FWCC: FMRI, 2003). Less than one percent of commercial shrimp landings in 2001 in Duval County are related to bait shrimp (FWCC: FMRI, 2003); therefore, these figures represent only food shrimp harvest. Only a small portion of this value is likely to be affected, as the activity will still occur but with some changes due to additional speed zones. In addition, this figure includes landings for all of Duval County. The number of shrimp boats operating and the amount of shrimp landings occurring in areas that would be newly designated speed zones under this proposed rule is unknown. The county-wide figures provide an upper bound estimate of the economic impact on this fishery; this would assume that the proposed regulation closed down the entire fishery, which is not the case.

Halifax River and Tomoka River Area: In Volusia County, the proposed Halifax River and Tomoka River Manatee Refuge includes a variety of waterways, including the Tomoka River, the Tomoka Basin, Halifax Creek, the Halifax River, Ponce de Leon Inlet, and Spruce Creek. In these areas, it is likely that blue crab and mullet fishing activities will be impacted by the proposed expanded speed zones. As discussed above for Lee County, crab boats will have to travel at slower speeds in some locations between crab pots, thereby potentially reducing the number of crabs landed on a daily basis. The speed limits may also slow transit speeds between fishing grounds for both crab and mullet fishing boats. As noted above, mullet fishing activity generally includes slow net casting and, therefore, such activities are unlikely to receive much impact. Note also that along the Halifax River, a channel is available for boats to travel up to 25 mph. The

proposed manatee refuge area along the Halifax River stretches from the Flagler-Volusia County line in Halifax Creek past the Ponce de Leon Inlet to the South Causeway Bridge (New Smyrna Beach), a distance of approximately 43.5 km (27 miles). The waterbody ranges from 0.5 km (0.3 miles) to just over 1.6 km (1 mile) in width. The manatee refuge also includes tributaries and river basins of varying length and width. The number of fishing boats operating and the amount of blue crab and mullet landings occurring in areas that will be newly designated speed zones under this proposed rule is unknown.

There were 128 licensed blue crab operators in Volusia County in 2001. In 2001, based on blue crab landings in Volusia County of 230,577 kilograms (508,337 pounds), and the weighted average price of $1.06 for blue crab statewide, the value of the blue crab fishery in Volusia County is estimated to be $539,266 (FWCC: FMRI, 2003). In 2001, based on mullet landings in Volusia County of 188,675 kilograms (415,958 pounds), and the weighted average price of $0.66 for mullet statewide, the value of the mullet fishery in Volusia County is estimated to be $272,591 (FWCC: FMRI, 2003). Only a small portion of these values is likely to be affected, as the crabbing and fishing activities will still occur but with some changes due to additional speed zones. In addition, crabbing and mullet fishing occur in parts of Volusia County outside of the proposed manatee refuge area, including Mosquito Lagoon, St. Johns River, Lake George, etc. (Ponce Inlet Authority, 2003). The county-wide figures provide an upper bound estimate of the economic impact on these fisheries; this would assume that the proposed regulation closed down the entire fishery, which is not the case.

Given available data, the impact on the commercial fishing industry of extending slow speed zones in portions of the Caloosahatchee, St. Johns, and Halifax Rivers cannot be quantified. The proposed designation will likely affect commercial fishermen by way of added travel time, which may result in an economic impact. However, because the proposed manatee refuge designations will not prohibit any commercial fishing activity, and because there is a channel available for boats to travel up to 40 km per hour (25 mph) in most affected areas, 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 is 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 rule.

Agency Administrative Costs

The cost of implementing the 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. This represents the amount that the Service will pay contractors for creation and installation of manatee signs. While the number and location of signs needed to post the proposed manatee refuges is not known, the cost of manufacturing and posting signs to delineate the manatee refuges proposed in this rule are not expected to exceed the amount being spent to post previously designated manatee protection areas (Service, 2003a). In addition, the Service anticipates that it will spend $1.7 million (2002$) for enforcement of newly designated manatee refuges annually. These costs are overstated because they represent the cost of enforcing 13 new manatee refuges and sanctuaries designated earlier on November 8, 2002, as well as the 3 manatee refuges included in this rule. The costs of enforcement include hiring and training five new law enforcement agents and two special agents, and the associated training, equipment, upkeep and clerical support (Service, 2003b). Finally, there may be some costs for education and outreach to inform the public about these new manatee refuge areas.

While the State of Florida has 19,312 km (12,000 miles) of rivers and 1.21 hectares (3 million acres) of lakes, the proposed rule will affect less than 185 kilometers (115 river miles). The speed restrictions on approximately 185 km (115 miles) proposed as manatee refuges in this rule will cause inconvenience due to added travel time for recreationists and commercial charter boats and fishermen. As a result, the rule will impact the quality of waterborne activity experiences for some recreationists, and may lead some recreationists to forgo the activity. The extension of existing State speed zones for 185 km (115 miles) is not expected to affect waterborne activity to the extent that it would have a significant economic impact. The 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 rule. The distance that recreationists may have to travel to reach an un-designated area varies. Waterskiers in the Tomoka River will likely experience the greatest inconvenience in terms of added travel time, as travel to the nearest alternative site would take approximately 2½ hours. 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 outside of marked channels 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 three manatee refuges 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 refuges is unknown, these benefits would cause a reduction in the economic impact of the rule.

b. 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 proposing to designate areas where existing State and local designations are considered minimal protection and where existing designations are confusing and/or unenforceable.

c. This 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 proposed sites would result from this rule, but the restriction is believed to enhance manatee viewing opportunities. No entitlements, grants, user fees, loan programs or the rights and obligations their recipients are expected to occur.

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

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions) (5 U.S.C. 601 *et seq.*). However, no

regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' *See* 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. This section presents a screening level analysis of the potential effects of the proposed designation of three manatee protection areas on small entities. We certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

In order to determine whether the 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 proposed designation of three manatee refuges. Currently no information is available on the specific number of small entities that are potentially affected. This rule will add travel time to boating recreationists 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 small business resulting from this 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 40 km per hour (25 mph) in marked channels in most areas, we believe that any economic effect on 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. Based on an analysis of public comment, further refinement of the impact on small entities may be possible.

In order to determine whether small entities will be affected significantly, we examined county-level earnings data. We compared personal income data for the counties potentially affected to statewide averages to provide some background information about each county's economic situation. Because specific information about earnings of small entities potentially affected (both the total level and the amount of earnings potentially affected by the rule) is not available, we examined county-level earnings for industries potentially impacted by the proposed designation. We further analyzed county business patterns data to examine the numbers of establishments in the affected counties that have a small number of employees. As stated above, economic impacts are believed to be minor and mostly will not interfere with the existing operation of small businesses in the affected counties.

Selected economic characteristics of the five affected counties are shown in Table 1. As demonstrated in the table, all counties except St. Johns have a lower per capita income than the State average. Growth in total personal income is slower than the statewide average in Duval, Lee, and Volusia counties. St. Johns County greatly exceeds the statewide average in growth in both total and per capita personal income. For all five counties, the services sector represents the industry with the greatest earnings. The proportion of industry earnings attributable to amusement and recreation (a subcategory of the services industry potentially impacted by the rule) was relatively low for each county, ranging from one to five percent of total industry earnings. As a result, a small impact to the recreation sector is unlikely to have a significant effect on county-level income. Similarly, the proportion of industry earnings related to the fishing sector was less than 0.2 percent for each county. Thus, a small impact to the fishing sector is unlikely to adversely affect county-level income.

TABLE 1.—ECONOMIC CHARACTERISTICS OF THE FIVE AFFECTED COUNTIES IN FLORIDA—2000

Counties	Per capita personal income 2000 ($)	10-year annual growth of per capita income [1] (percent)	Total Personal income 2000 (000$)	10-year annual growth of total personal income [1] (percent)	Total earnings by industry—all industries (000$)	Amusement and recreation industry earnings		Fishing industry earnings	
						Thousands of $'s	Percent of total	Thousands of $'s	Percent of total
Clay	25,421	3.8	3,601,576	8.4	1,225,569	18,565	1.5	73	0.01
Duval	27,084	4.1	21,118,751	6.3	19,916,074	194,900	1.0	3,440	0.02
Lee	26,655	3.0	11,833,528	7.0	6,379,956	106,875	1.7	10,619	0.17
St Johns	40,635	7.7	5,057,864	15.9	1,553,900	82,280	5.3	581	0.04
Volusia	22,574	3.6	10,046,808	6.2	4,748,268	128,280	2.7	([2])	NA
State of Florida	27,764	4.0	445,739,968	7.2	282,260,357	5,392,786	1.9	85,609	0.03

[1] Growth rates were calculated from 1990 and 2000 personal income data.
[2] BEA has withheld this information in order to avoid disclosure of confidential information.
Source: Bureau of Economic Analysis (BEA), Regional Economic Information System, Regional Accounts Data, Local Area Personal Income *(http://www.bea.doc.gov/bea/regional/reis/)*

The employment characteristics of the five affected counties are shown in Table 2. The latest available published data for the total number of establishments broken down by industry and county are from 1997. We included the following SIC (Standard Industrial Classification) categories, because they include businesses most likely to be directly affected by the designation of the proposed manatee refuges:

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

• Non-classifiable establishments (NCE)

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

[(includes SIC Codes 09, 44, 59, 79, and NCE [1]]

Counties	Total mid-March employment [2] (all industries)	Mid-March employment [2] (select SIC codes)	Total establishments (all industries)	Select SIC codes (includes SIC codes 09, 44, 59, 79, and NCE) [1]				
				Total establishments	No. of establishments (1–4 employees)	No. of establishments (5–9 employees)	No. of establishments (10–19 employees)	No. of establishments (20+ employees)
Clay	28,106	1,940	2,747	255	158	48	30	19
Duval	361,302	14,459	21,016	1,510	877	330	164	139
Lee	135,300	7,734	11,386	974	602	193	92	87
St Johns	33,173	1,971	3,127	273	177	58	24	14
Volusia	127,948	7,116	10,716	989	643	188	73	85

[1] 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; NCE—non-classifiable establishments division.

[2] 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 2, the vast majority (over 80 percent) of these business establishments in each of the five affected counties have less than ten employees, with the largest number of establishments employing less than four employees. In addition, in 1997, only four to seven percent of total mid-March employment for industries in the affected counties was in the industries likely to be affected by the proposed rule. Any economic impacts associated with this rule will affect some proportion of these small entities.

Since the proposed designation is for the development of manatee refuges, which only require a reduction in speed, we do not believe the designation would cause significant economic effect on small businesses. For example, because the manatee refuge designations will not prohibit any commercial fishing activity, and because there is a channel available for boats to travel at up to 40 km per hour (25 mph) in most areas, it is unlikely that the rule will result in a significant economic impact on commercial fishing entities. 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 rule. An examination of county level information indicates that these economic impacts will not be significant for the affected counties. Based on an analysis of public comment, further refinement of the impact on small entities may be possible. 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 that 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, we believe that this proposed designation will not cause a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

This 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 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 five affected counties. An unknown portion of the establishments shown in Table 2 could be affected by this 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 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 40 km per hour (25 mph) in marked channels in most areas, we believe that any economic impact on 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. Based on an analysis of public comment, further refinement of the impact on small entities may be possible.

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 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 40 km per hour (25 mph) channels in most areas, this impact is likely to be limited.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As stated above, this rule may generate some level of inconvenience to recreationists 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.

Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule is not a significant regulatory action under Executive Order 12866 and it only requires vessels to proceed at slow or idle speeds in 185 km (115 miles) of waterways in Florida, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act

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

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The designation of manatee refuges imposes no substantial new obligations on State or local governments.

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

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. The proposed manatee protection areas are located over State- or privately-owned submerged bottoms. Any property owners in the vicinity will have navigational access to and the wherewithal to maintain their property.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. This rule will not have substantial direct effects on the State, in the relationship between the Federal Government and the State, or on the distribution of power and responsibilities among the various levels of government. We coordinated with the State of Florida to the extent possible on the development of this proposed rule.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The regulation would not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A draft environmental assessment has been prepared and is available for review upon request by writing 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), E.O. 13175 and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects.

References Cited

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

Author

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

Authority

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

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and 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 adding paragraphs (c)(12) through (c)(14) as follows:

§ 17.108 List of designated manatee protection areas.

* * * * *

(c) * * *

(12) *The Caloosahatchee River—San Carlos Bay Manatee Refuge.*

(i) The Caloosahatchee River—San Carlos Bay Manatee Refuge is described as all waters of the Caloosahatchee River and San Carlos Bay downstream of the Seaboard Coastline trestle at Beautiful Island to Channel Marker ''93'' and from Channel Marker ''99'' to the Sanibel Causeway, in Lee County. A map showing the refuge and four maps showing specific areas in the refuge are at paragraph (12)(x) of this section.

(ii) From the Seaboard Coastline Railroad trestle at Beautiful Island, downstream to a point 152 meters (500 feet) east of the Edison Bridge, a distance of approximately 7.2 kilometers (4.5 miles), watercraft are required to proceed at slow speed in the marked navigation channel from November 15 to March 31 and at not more than 40 kilometers per hour (25 miles per hour) in the channel from April 1 to November 14. *See* map of ''Edison Bridge Area'' in paragraph (12)(x) of this section.

(iii) From a point 152 meters (500 feet) east of the Edison Bridge downstream to a point 152 meters (500 feet) west of the Caloosahatchee Bridge, approximately 1.1 kilometers (0.7 mile) in length, shoreline-to-shoreline (including the marked navigation channel), watercraft are required to proceed at slow speed channel included, year-round. *See* map of ''Edison Bridge Area'' in paragraph (12)(x) of this section.

(iv) From a point 152 meters (500 feet) west of the Caloosahatchee Bridge downstream to a point 152 meters (500 feet) northeast of the Cape Coral Bridge, a distance of approximately 10.9 kilometers (6.8 miles), watercraft are required to proceed year-round at slow speed, while traveling within shoreline buffers extending out from the shore to a distance of approximately 91 meters (300 feet) from the marked navigation channel. In any location where the distance from the shoreline to within approximately 91 meters (300 feet) of the near side of the channel is less than

0.4 kilometers (0.25 mile), the slow speed buffer will extend to the edge of the marked navigation channel. Watercraft are required to proceed at not more than 40 kilometers per hour (25 miles per hour) throughout the year between these buffers (including the marked navigation channel). *See* map of ''Cape Coral Bridge Area'' in paragraph (12)(x) of this section.

(v) From a point 152 meters (500 feet) northeast of the Cape Coral Bridge downstream to a point 152 meters (500 feet) southwest of the Cape Coral Bridge, a distance of approximately 0.4 kilometer (0.25 mile), shoreline-to-shoreline (including the marked navigation channel), watercraft are required to proceed at slow speed, channel included, year-round. *See* map of ''Cape Coral Bridge Area'' in paragraph (12)(x) of this section.

(vi) From a point 152 meters (500 feet) southwest of the Cape Coral Bridge to Channel Marker ''72,'' a distance of approximately 1.9 kilometers (1.2 miles), watercraft are required to proceed at slow speed year-round, within shoreline buffers that extend out to a distance of approximately 91 meters (300 feet) from the marked navigation channel. In any location where the distance from the shoreline to within approximately 91 meters (300 feet) of the near side of the channel is less than 0.4 kilometers (0.25 mile), the slow speed buffer will extend to the edge of the marked navigation channel. Watercraft are required to proceed at not more than 40 kilometers per hour (25 miles per hour) when operating in between these buffers. *See* map of ''Redfish Point Area'' in paragraph (12)(x) of this section.

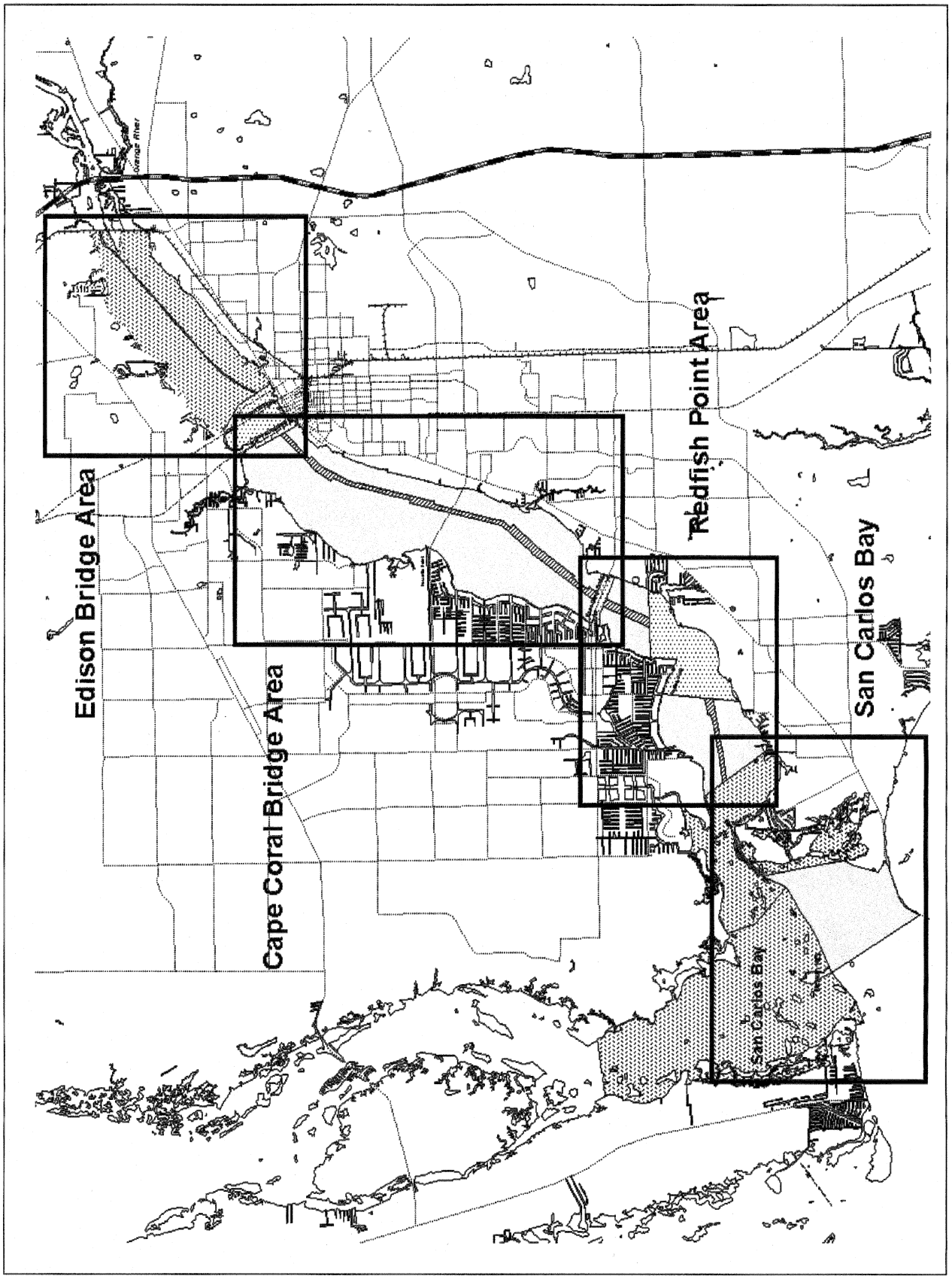
(vii) From Channel Marker ''72'' to Channel Marker ''82'' (in the vicinity of Redfish Point), for a distance of approximately 3.1 kilometers (1.9 miles) in length, shoreline-to-shoreline (including the marked navigation channel), watercraft are required to proceed at slow speed, year-round. *See* map of ''Redfish Point Area'' in paragraph (12)(x) of this section.

(viii) From Channel Marker ''82'' to Channel Marker ''93,'' a distance of approximately 3.9 kilometers (2.4 miles) in length, watercraft are required to proceed at slow speed year-round, when operating within shoreline buffers that extend out to a distance of approximately 91 meters (300 feet) from the marked navigation channel. In any location where the distance from the shoreline to within approximately 91 meters (300 feet) of the near side of the channel is less than 0.4 kilometers (0.25 mile), the slow speed buffer will extend to the edge of the marked navigation channel. Watercraft are required to proceed at not more than 40 kilometers per hour (25 miles per hour) when operating between these buffers. *See* map of ''Redfish Point Area'' in paragraph (12)(x) of this section.

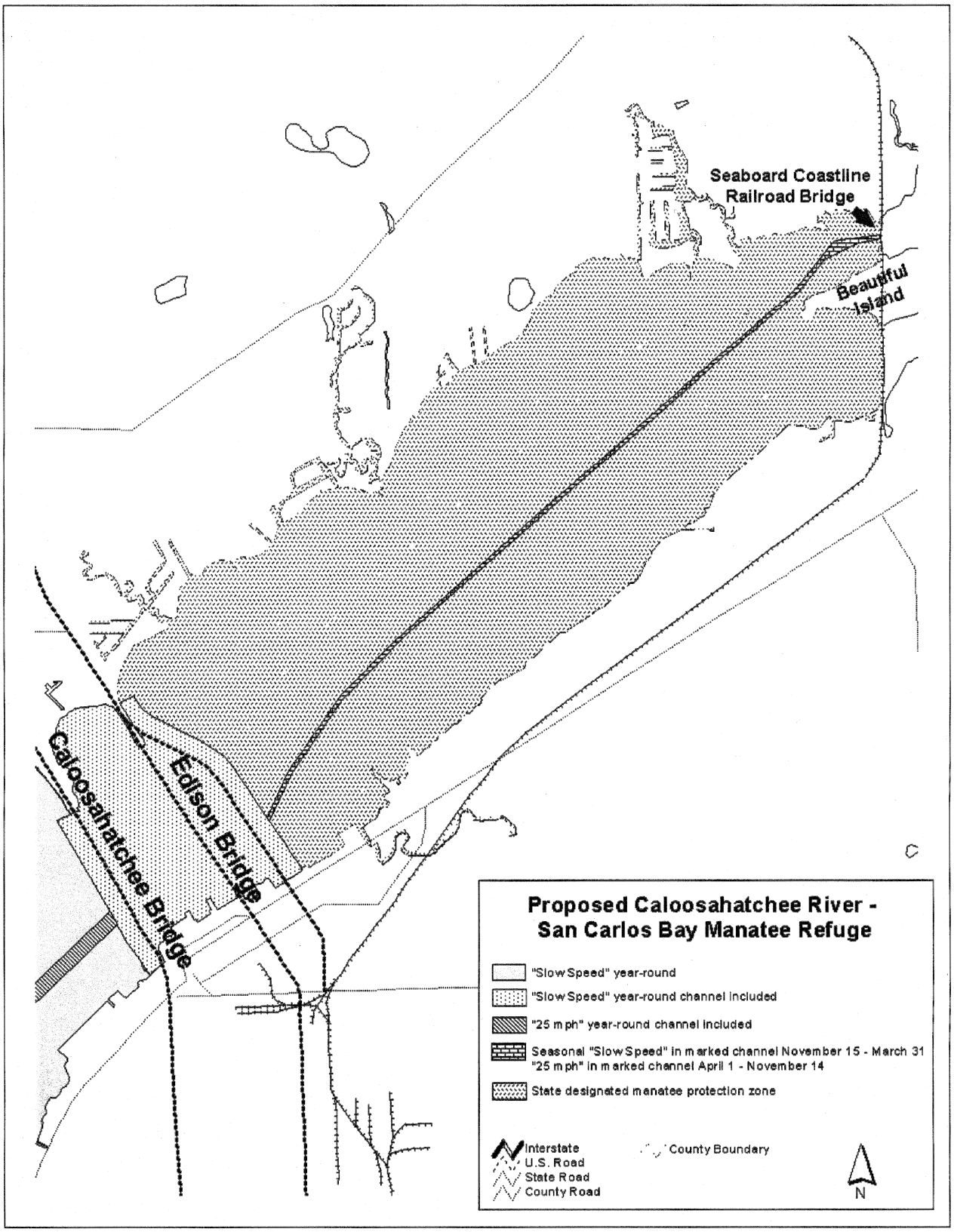
(ix) From Channel Marker ''99'' to the Sanibel Causeway, watercraft are required to proceed at slow speed year-round in San Carlos Bay within the following limits: a northern boundary described by the southern edge of the marked navigation channel, a line approximately 2.9 kilometers (1.8 miles) in length; a southern boundary described by the Sanibel Causeway (approximately 1.9 kilometers (1.2 miles) in length); a western boundary described by a line that connects the western end of the easternmost Sanibel Causeway island and extending northwest to the western shoreline of Merwin Key (approximately 3.1 kilometers (1.9 miles) in length); the eastern boundary includes the western limit of the State-designated manatee protection area (68C–22.005) near Punta Rassa (approximately 2.9 kilometers (1.8 miles) in length). Speeds are unrestricted in the channel and bay waters to the west of this area. *See* map of ''San Carlos Bay'' in paragraph (12)(x) of this section.

(x) Five maps of the Caloosahatchee River—San Carlos Bay Manatee Refuge follow:

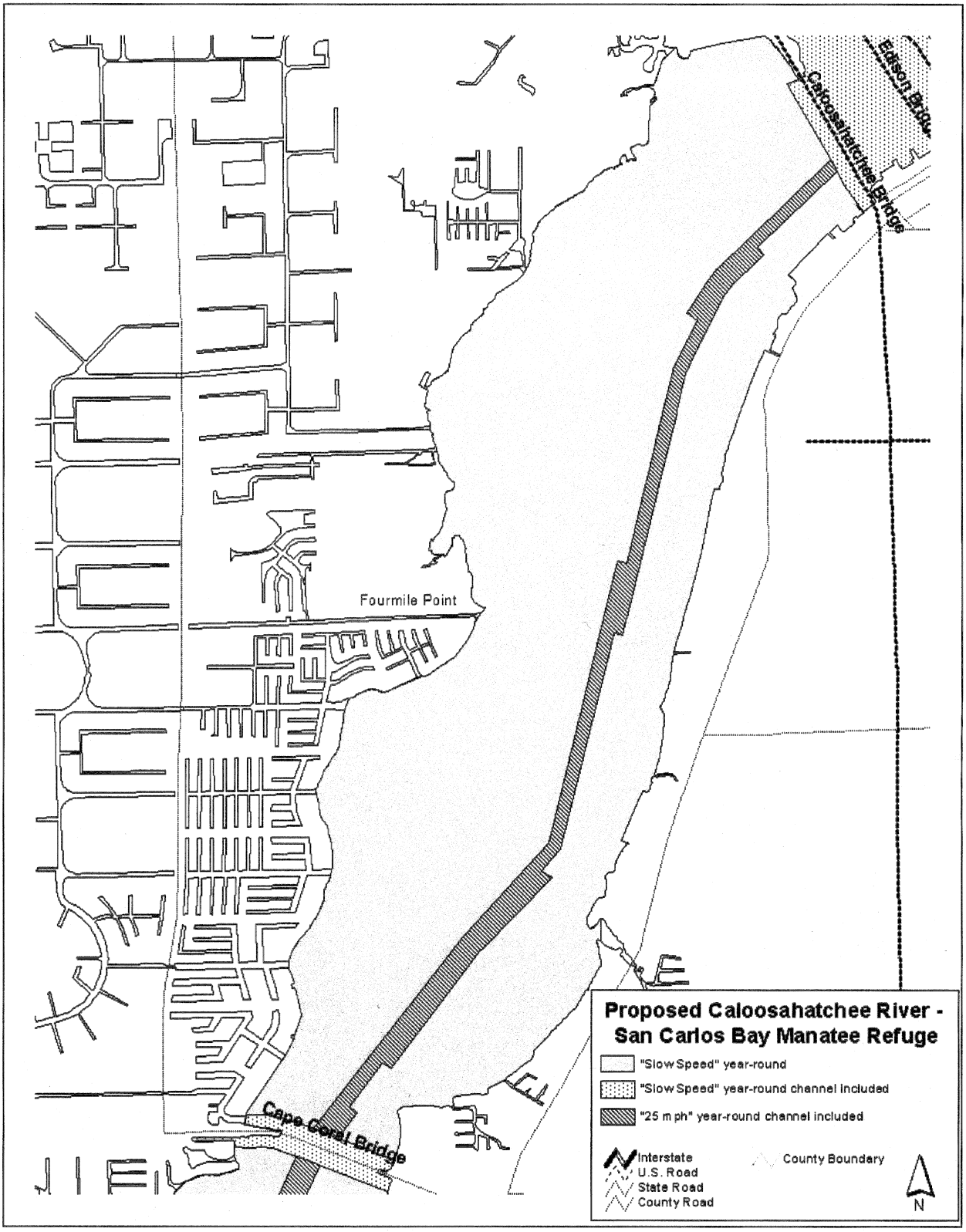
BILLING CODE 4310–55–P



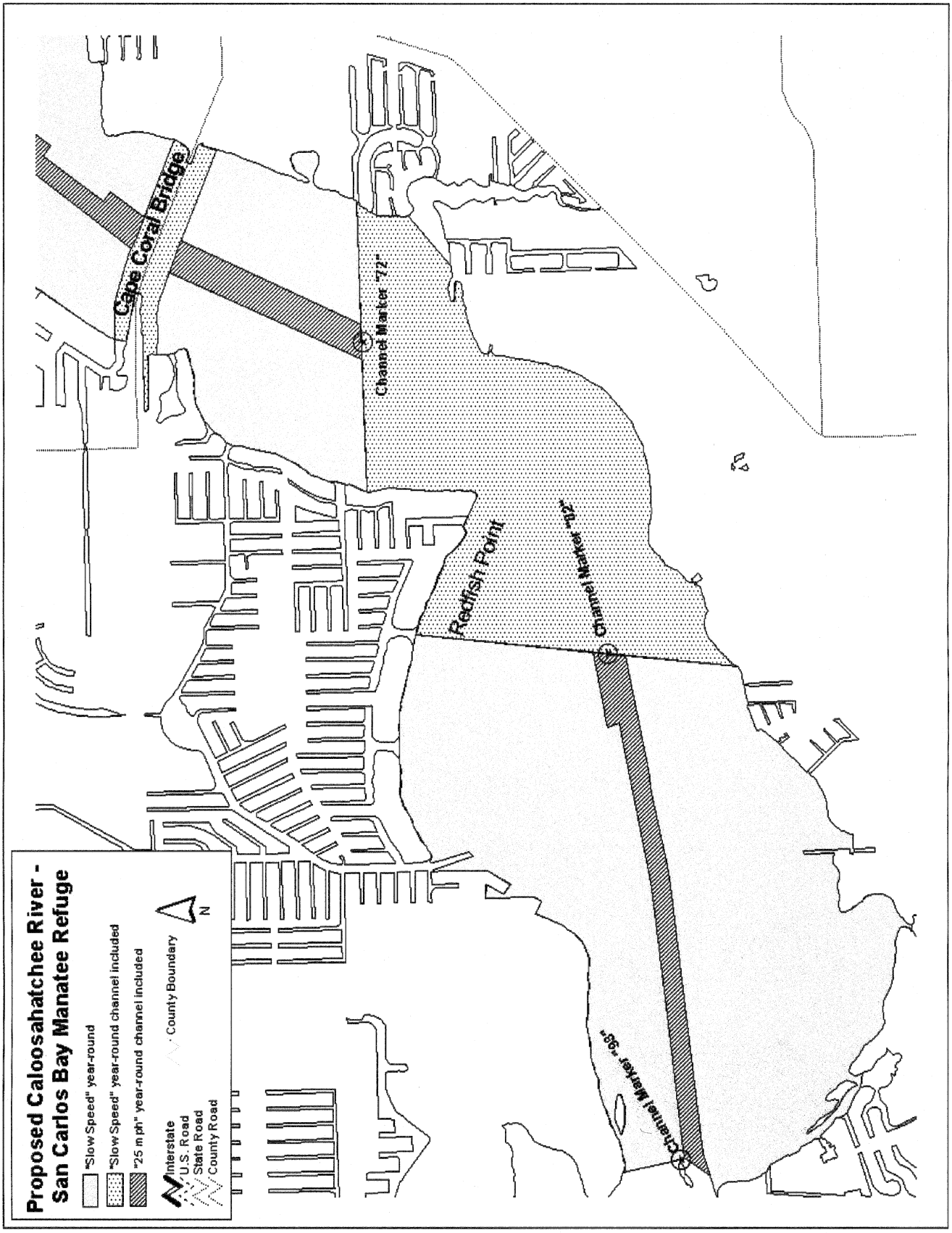
Proposed Caloosahatchee River - San Carlos Bay Manatee Refuge



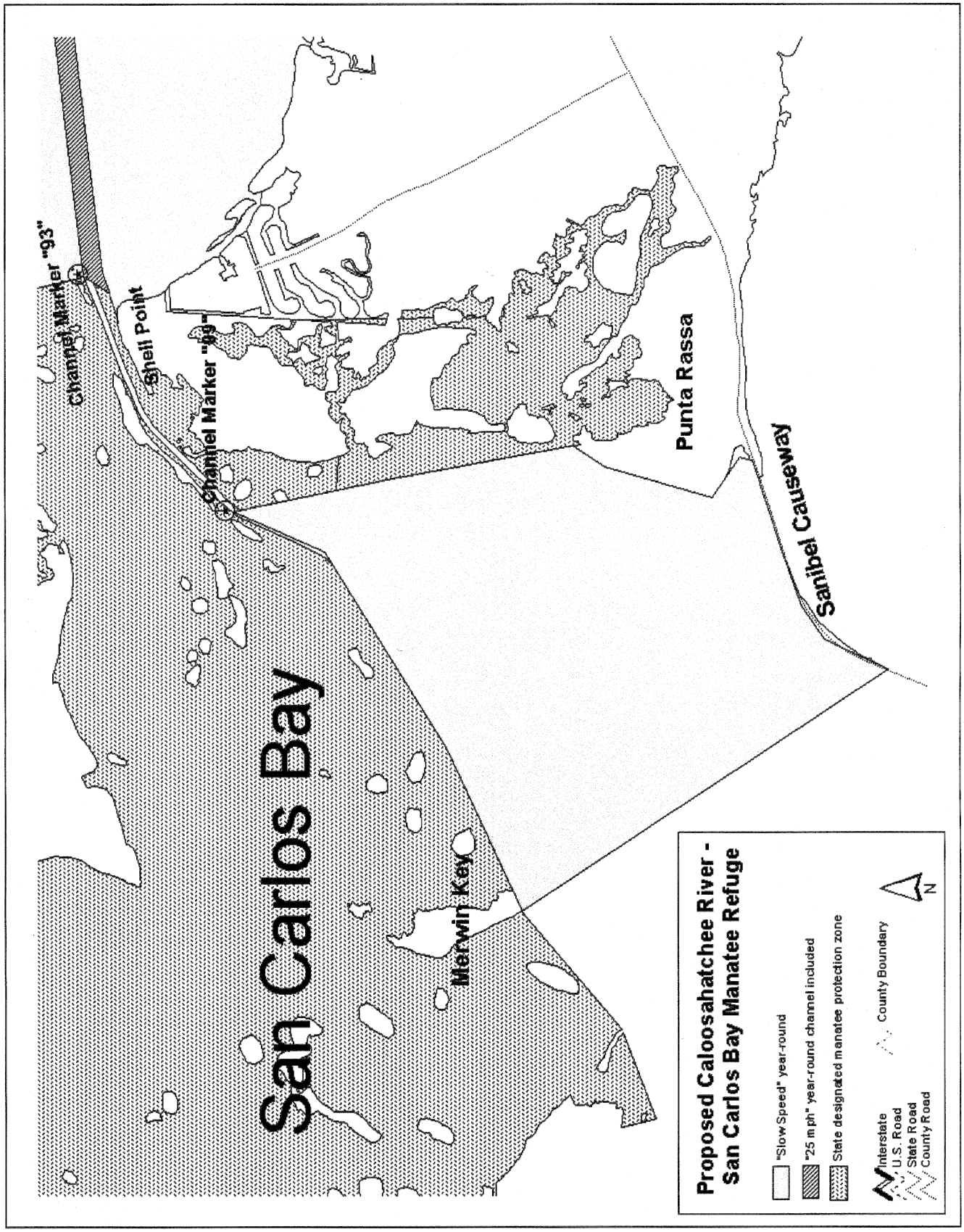
Edison Bridge Area



Cape Coral Bridge Area



Redfish Point Area



(13) *The Lower St. Johns River Manatee Refuge.*

(i) The Lower St. Johns River Manatee Refuge is described as portions of the St. Johns River and adjacent waters in Duval, Clay, and St. Johns Counties

from Reddie Point upstream to the mouth of Peter's Branch, including Doctors Lake, in Clay County on the western shore, and to the southern shore of the mouth of Julington Creek in St. Johns County on the eastern shore. A map showing the refuge and two maps showing specific areas of the refuge are at paragraph (13)(v) of this section.

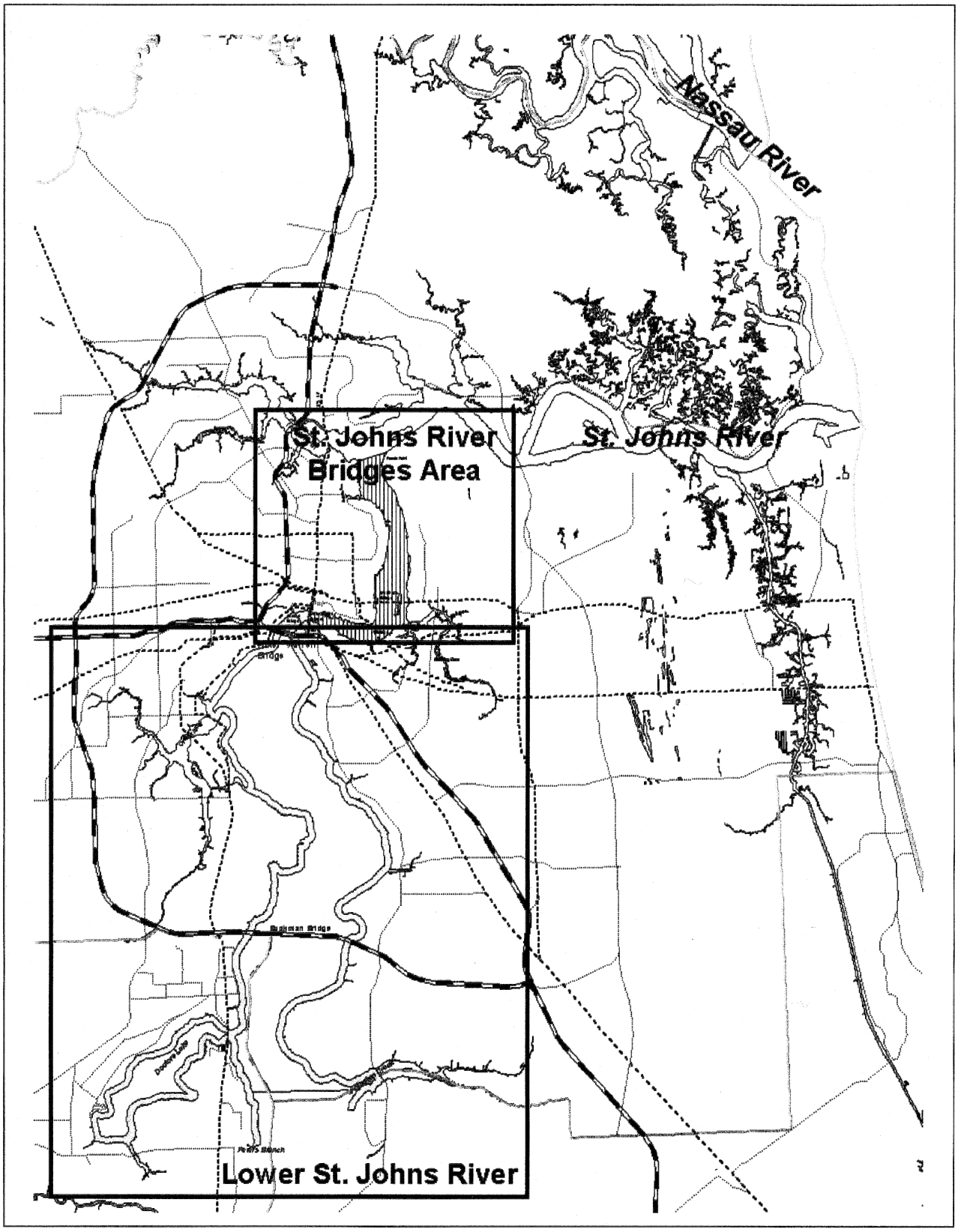
(ii) From Reddie Point upstream to the Main Street Bridge, a distance of approximately 11.6 kilometers (or 7.2 miles), watercraft are required to proceed at slow speed, year-round, outside the marked navigation channel and at speeds of not more than 40 kilometers per hour (25 miles per hour) in the marked channel (from Channel Marker ''81'' to the Main Street Bridge, the channel is defined as the line of sight extending west from Channel Markers ''81'' and ''82'' to the center span of the Main Street Bridge). *See* map of ''St. Johns River Bridges Area'' in paragraph (13)(v) of this section.

(iii) From the Main Street Bridge to the Fuller Warren Bridge, a distance of approximately 1.6 kilometers (1.0 mile), shore-line to shore-line, watercraft are required to proceed at slow speed (channel included), year-round. *See* map of ''St. Johns River Bridges Area'' in paragraph (13)(v) of this section.

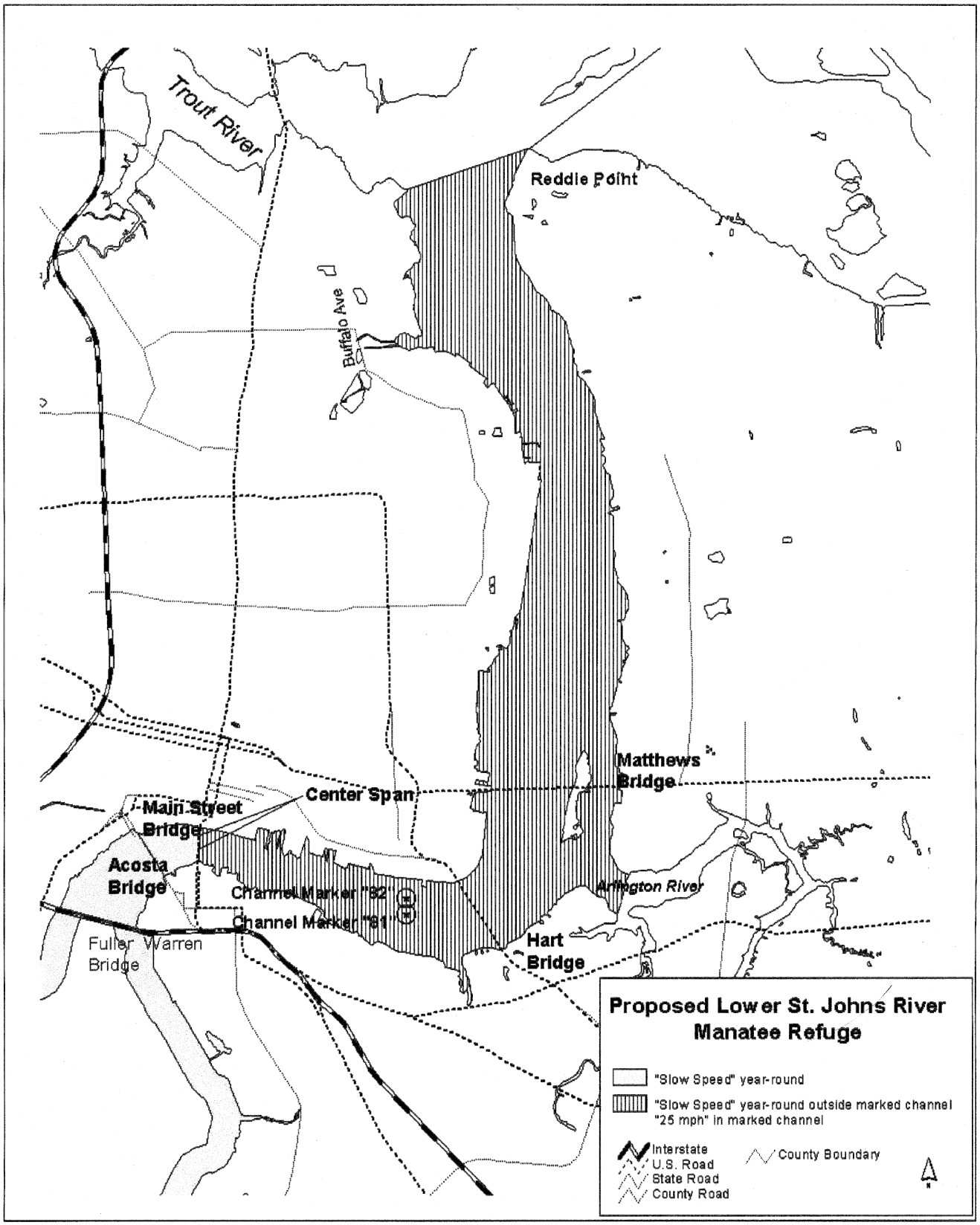
(iv) Upstream of the Fuller Warren Bridge, a 305-meter (1,000-foot), slow speed, year-round, shoreline buffer to the south bank of the mouth of Peter's Branch in Clay County along the western shore (approximately 31.1 kilometers (19.3 miles)); and in Doctors Lake in Clay County, slow speed, year-round, along a 274-meter (900-foot) shoreline buffer (approximately 20.8 kilometers (12.9 miles)); and a 305-meter (1,000-foot), slow speed, year-round, shoreline buffer to the south bank of the mouth of Julington Creek in St. Johns County along the eastern shore (approximately 32.5 kilometers (20.2 miles)) to a line north of a western extension of the Nature's Hammock Road North. Watercraft are required to proceed at slow speed within these buffer areas. *See* map of ''Lower St. Johns River'' in paragraph (13)(v) of this section.

(v) Three maps of the Lower St. Johns River Manatee Refuge follow:

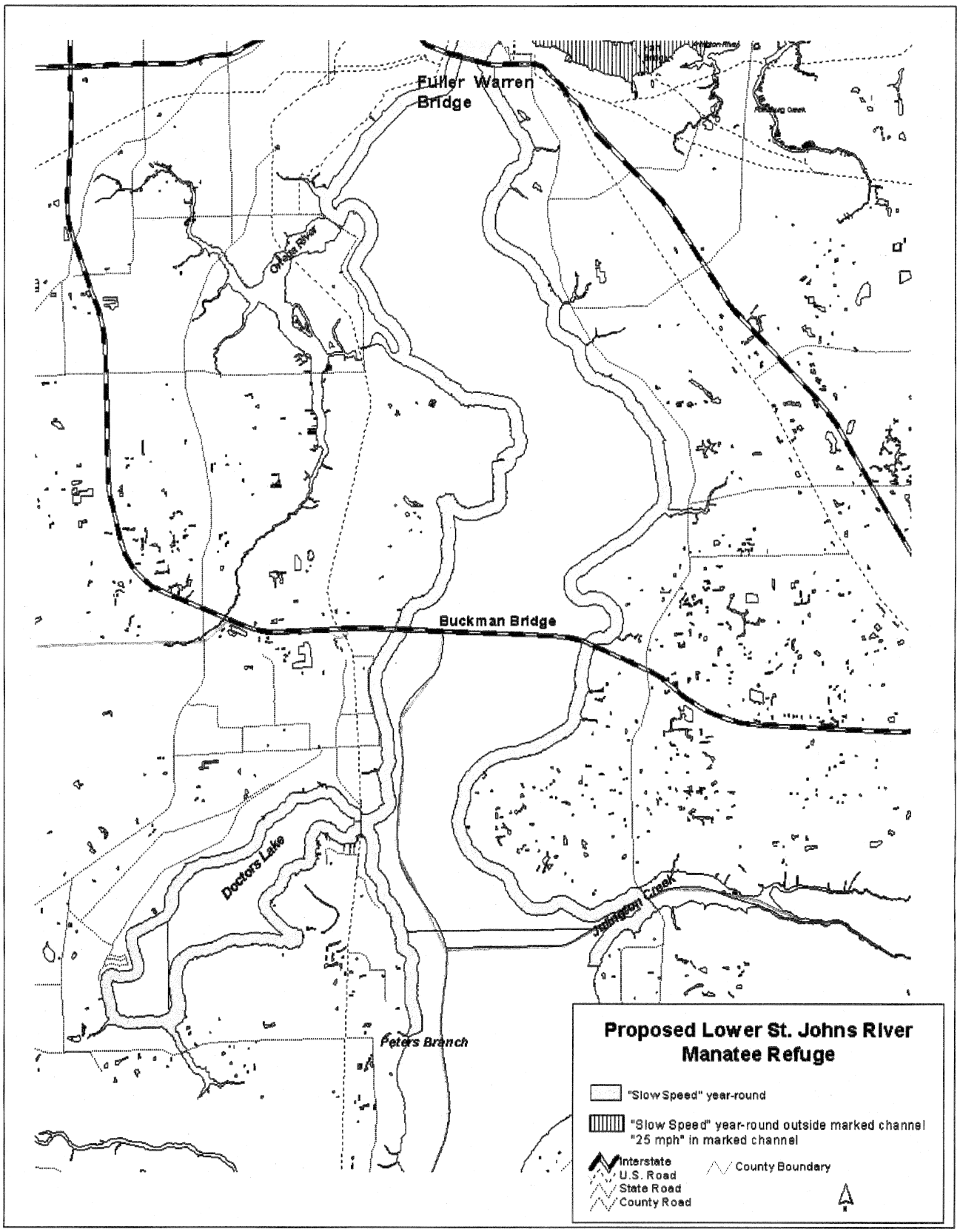
BILLING CODE 4310–55–P



Proposed Lower St. Johns River Manatee Refuge



St. Johns River Bridges Area



Lower St. Johns River

(14) *The Halifax and Tomoka Rivers Manatee Refuge.*

(i) The Halifax and Tomoka Rivers Manatee Refuge is described as the Halifax River and associated waterbodies in Volusia County, from the

Volusia County—Flagler County line to New Smyrna Beach. A map showing the refuge and eight maps showing specific areas in the refuge are at paragraph (14) (xiii) of this section.

(ii) From the Volusia County/Flagler County line at Halifax Creek south to Channel Marker ''9,'' a distance of approximately 11.3 kilometers (7.0 miles) in length, watercraft are required to proceed at slow speed, year-round outside the marked channel and at not more than 40 kilometers per hour (25 miles per hour) in the channel. *See* maps of ''Halifax Creek'' and ''Tomoka River Basin'' in paragraph (14) (xiii) of this section.

(iii) From Channel Marker ''9'' to a point 152 meters (500 feet) north of the Granada Bridge (State Road 40) (including the Tomoka Basin), a distance of approximately 5.0 kilometers (3.1 miles) in length, slow speed, year-round, 305-meter (1,000-foot) minimum buffers along shorelines with not more than 40 kilometers per hour (25 miles per hour) in areas between the buffers (and including the marked navigation channel). Watercraft are required to proceed at slow speed within the buffers and not more than 40 kilometers per hour (25 miles per hour) in areas between the buffers (and including the marked navigation channel). *See* maps of ''Tomoka River Basin'' and ''Tomoka River'' in paragraph (14) (xiii) of this section.

(iv) In the Tomoka River, all waters upstream of the U.S. 1 bridge, a distance of approximately 7.2 kilometers (4.5 miles) in length, slow speed, year-round, shoreline to shoreline; from the U.S. 1 bridge downstream to Latitude 29° 19′ 00″, a distance of approximately 2.1 kilometers (1.3 miles) in length, idle speed, year-round, shoreline to shoreline; from Latitude 29° 19′ 00″ downstream to the confluence of Strickland Creek and the Tomoka River, and including Strickland, Thompson, and Dodson creeks, a combined distance of approximately 9.7 kilometers (6 miles) in length, slow speed, year-round, shoreline to shoreline; from the confluence of Strickland Creek and the Tomoka River downstream to the mouth of the Tomoka River, a distance of approximately 1.4 kilometers (0.9 miles) in length, idle speed, year-round, shoreline to shoreline. Watercraft are required to proceed at idle speed within the described idle speed areas and at slow speed within the described slow speed areas. *See* map of ''Tomoka River'' in paragraph (14) (xiii) of this section.

(v) From 152 meters (500 feet) north to 305 meters (1,000 feet) south of the Granada Bridge (State Road 40), a distance of approximately 0.5 kilometers (0.3 miles) in length, slow speed, year-round, shoreline to shoreline. Watercraft are required to proceed at slow speed when operating within these areas. *See* map of ''Halifax River A'' in paragraph (14) (xiii) of this section.

(vi) From a point 305 meters (1,000 feet) south of the Granada Bridge (State Road 40) to a point 152 meters (500 feet) north of the Seabreeze Bridge, a distance of approximately 6.4 kilometers (4.0 miles) in length, slow speed, year-round, 305-meter (1,000-foot) minimum buffers along shorelines with not more than 40 kilometers per hour (25 miles per hour) in areas between the buffers, and including the marked navigation channel. Watercraft are required to proceed at slow speed within the buffers and not more than 40 kilometers per hour (25 miles per hour) in areas between the buffers (and including the marked navigation channel). *See* map of ''Halifax River A'' in paragraph (14) (xiii) of this section.

(vii) From 152 meters (500 feet) north of the Seabreeze Bridge, to Channel Marker ''40,'' a distance of approximately 3.7 kilometers (2.3 miles) in length, slow speed, channel included, year-round. Watercraft are required to proceed at slow speed when operating within these areas. *See* map of ''Halifax River B'' in paragraph (14) (xiii) of this section.

(viii) From Channel Marker ''40'' to a point 152 meters (500 feet) north of the Dunlawton Bridge, a distance of approximately 14.5 kilometers (9 miles) in length, slow speed, year-round, 305-meter (1,000-foot) minimum buffers along shorelines with not more than 40 kilometers per hour (25 miles per hour) in areas between the buffers, and including the marked navigation channel. Watercraft are required to proceed at slow speed within the buffers and not more than 40 kilometers per hour (25 miles per hour) in areas between the buffers (and including the marked navigation channel). *See* map ''Halifax River B'' in paragraph (14) (xiii) of this section.

(ix) From 152 meters (500 feet) north to 152 meters (500 feet) south of the Dunlawton Bridge, a distance of approximately 0.3 kilometers (0.2 miles) in length, slow speed, channel included, year-round, shoreline to shoreline. Watercraft are required to proceed at slow speed when operating within these areas. *See* map of ''Halifax River B'' in paragraph (14) (xiii) of this section.

(x) From 152 meters (500 feet) south of the Dunlawton Bridge to Ponce Inlet, a distance of approximately 10.5 kilometers (6.5 miles) in length, slow speed, year-round outside of marked channels with not more than 40 kilometers per hour (25 miles per hour) in the channel; in Wilbur Bay, a distance of approximately 2.7 kilometers (1.7 miles) in length, slow speed, year-round, shoreline to shoreline; along the western shore of the Halifax River, a distance of approximately 3.1 kilometers (1.95 miles), slow speed year-round, with not more than 40 kilometers per hour (25 miles per hour) in the marked channels; in Rose Bay, a distance of approximately 2.7 kilometers (1.7 miles), slow speed year-round, with not more than 40 kilometers per hour (25 miles per hour) in the marked channels; in all waters of Mill Creek, Tenmile Creek, and Dead End Creek, a combined distance of approximately 5.1 kilometers (3.2 miles) in length, slow speed, year-round, shoreline to shoreline; in Turnbull Bay, a distance of approximately 3.9 kilometers (2.4 miles), slow speed year-round, with not more than 40 kilometers per hour (25 miles per hour) in the marked channels; in Spruce Creek, for a distance of approximately 5.6 kilometers (3.5 miles), shoreline to shoreline, April 1 to August 31, slow speed, and from September 1 through March 31, not more than 40 kilometers per hour (25 miles per hour). Watercraft are required to proceed at slow speed within the buffers and not more than 40 kilometers per hour (25 miles per hour) in areas between the buffers (including within marked channels). *See* maps of ''Ponce Inlet Area A,'' ''Ponce Inlet Area B,'' and ''Ponce Inlet Area C'' in paragraph (14) (xiii) of this section.

(xi) In waters north of Ponce Inlet, between Live Oak Point and Channel Marker ''2,'' a distance of approximately 2.9 kilometers (1.8 miles), slow speed, channel included, year-round; in waters adjacent to Ponce Inlet, slow speed, year-round outside of the marked navigation channel and other marked access channels, with not more than 40 kilometers per hour (25 miles per hour) in the marked channels. Watercraft are required to proceed at slow speed within the buffers and not more than 40 kilometers per hour (25 miles per hour) in areas between the buffers (including within marked channels). In the waters of Ponce Inlet, watercraft are required to proceed at speeds of not more than 48 kilometers per hour (30 miles per hour). *See* map of ''Ponce Inlet Area B'' in paragraph (14) (xiii) of this section.

(xii) In the Intracoastal Waterway from Redland Canal to the A1A Bridge (New Smyrna Beach, for a distance of approximately 5.3 kilometers (3.3 miles) in length, slow speed, channel included, year-round. Watercraft are required to

proceed at slow speed when operating within this area. *See* map of ''Ponce Inlet Area B'' in paragraph (14) (xiii) of this section.

(xiii) Nine maps of the Halifax and Tomoka Rivers Manatee Refuge follow:

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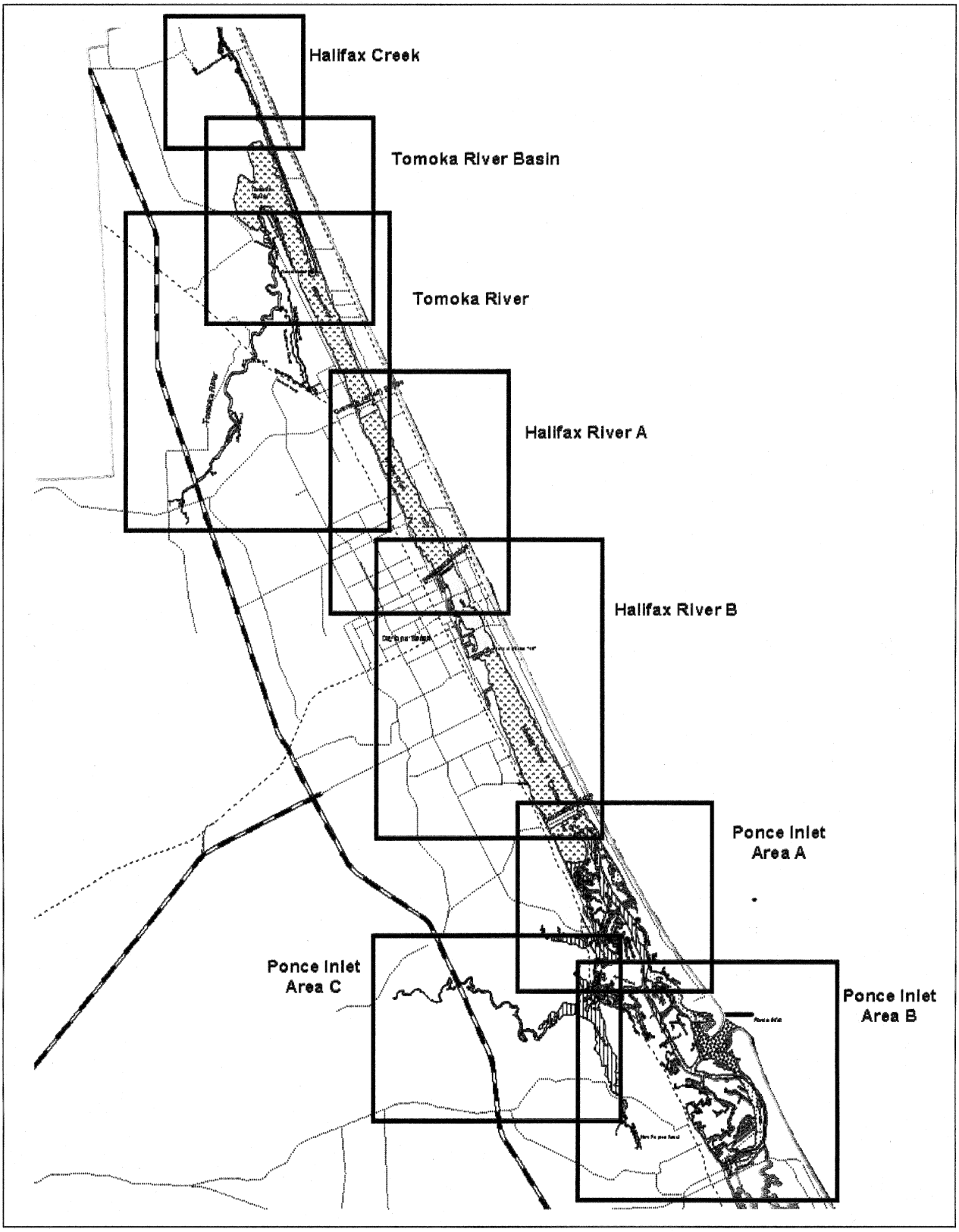
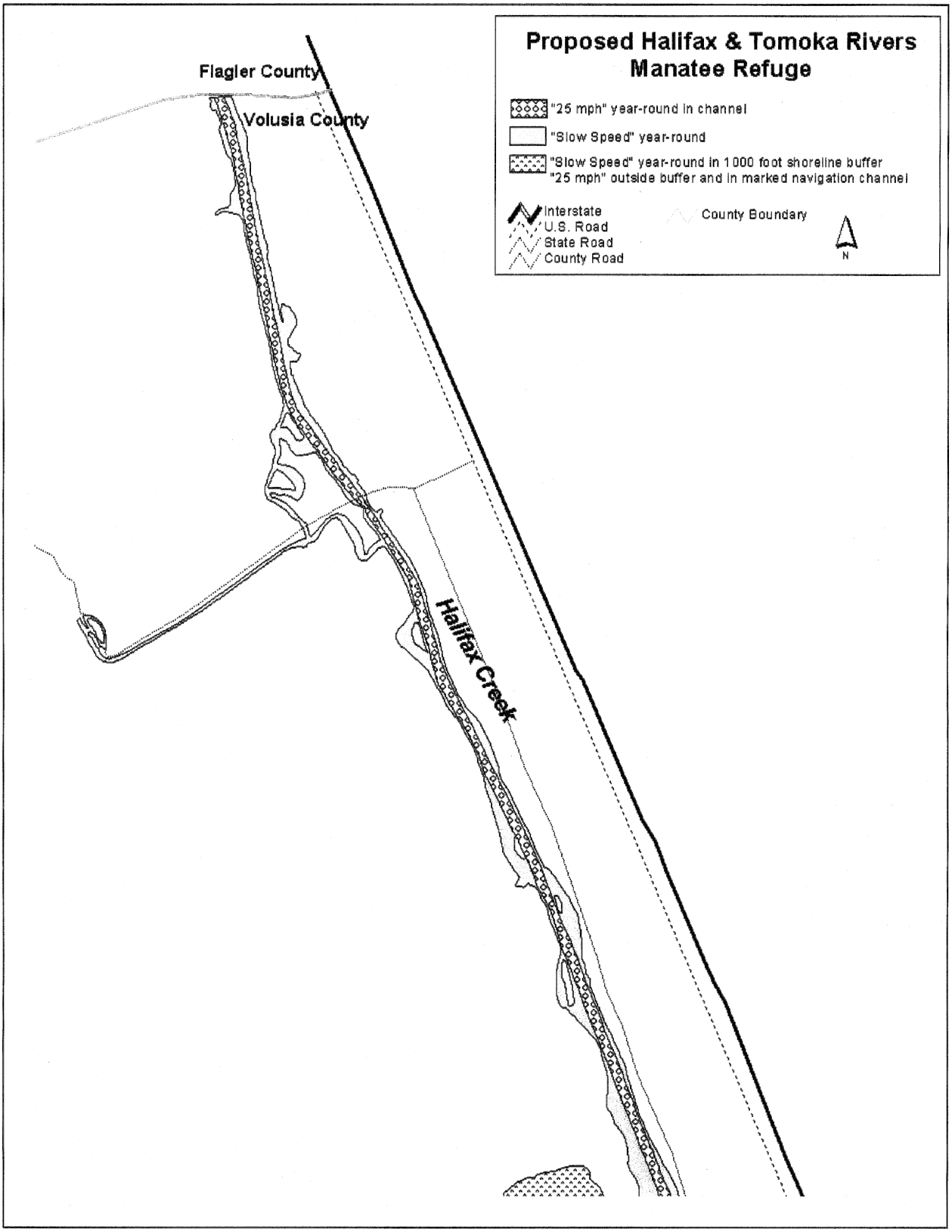
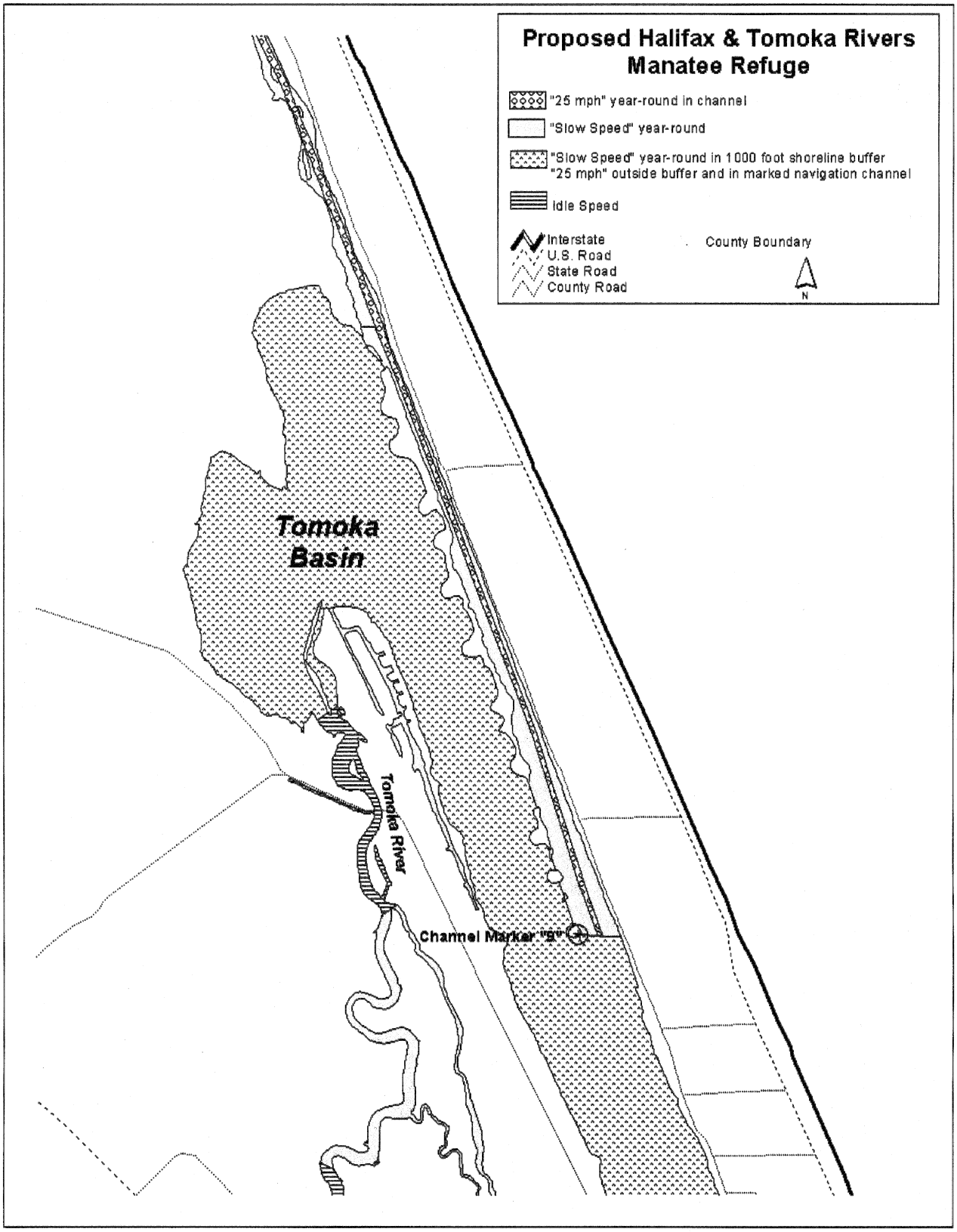


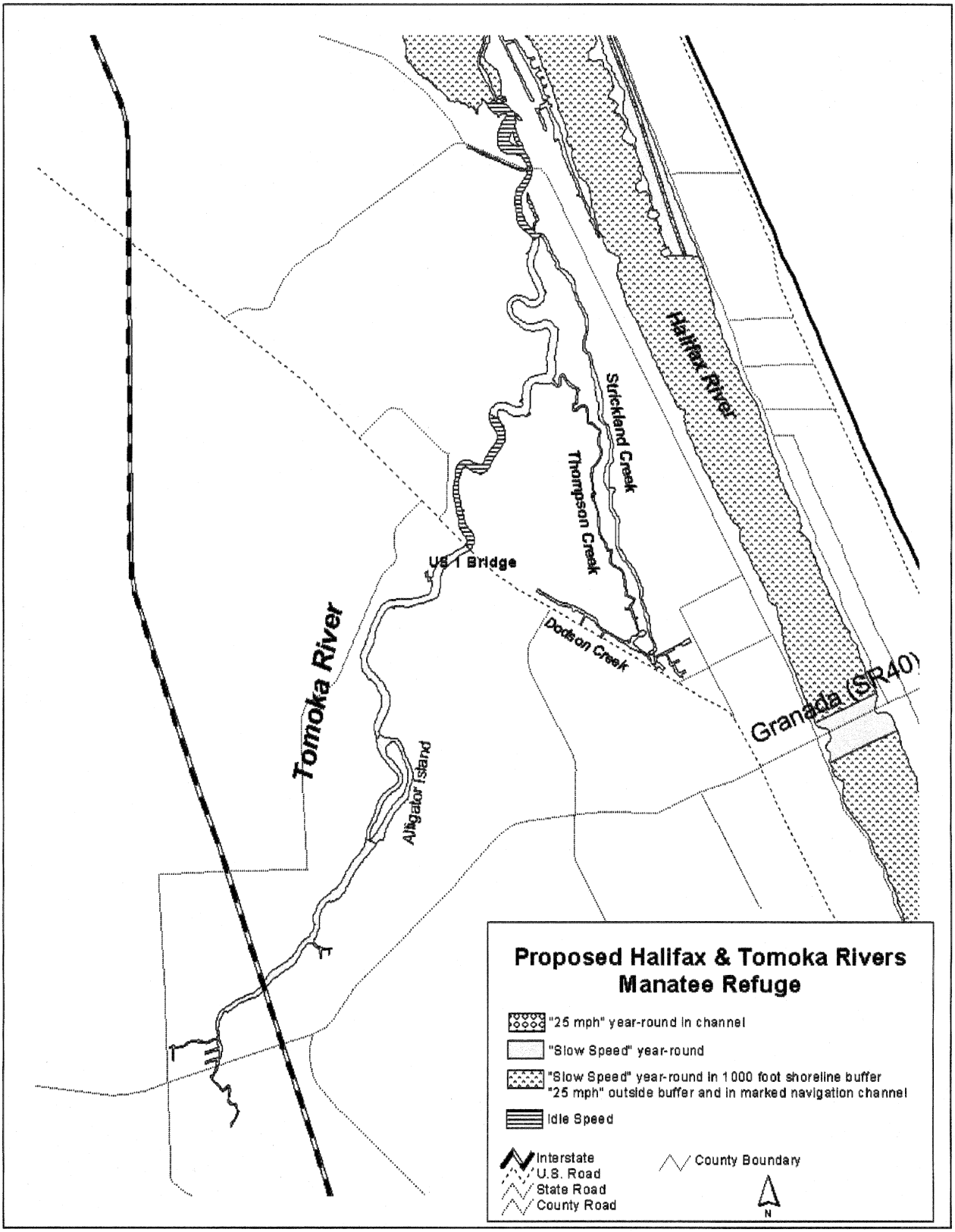
Proposed Halifax & Tomoka Rivers Manatee Refuge



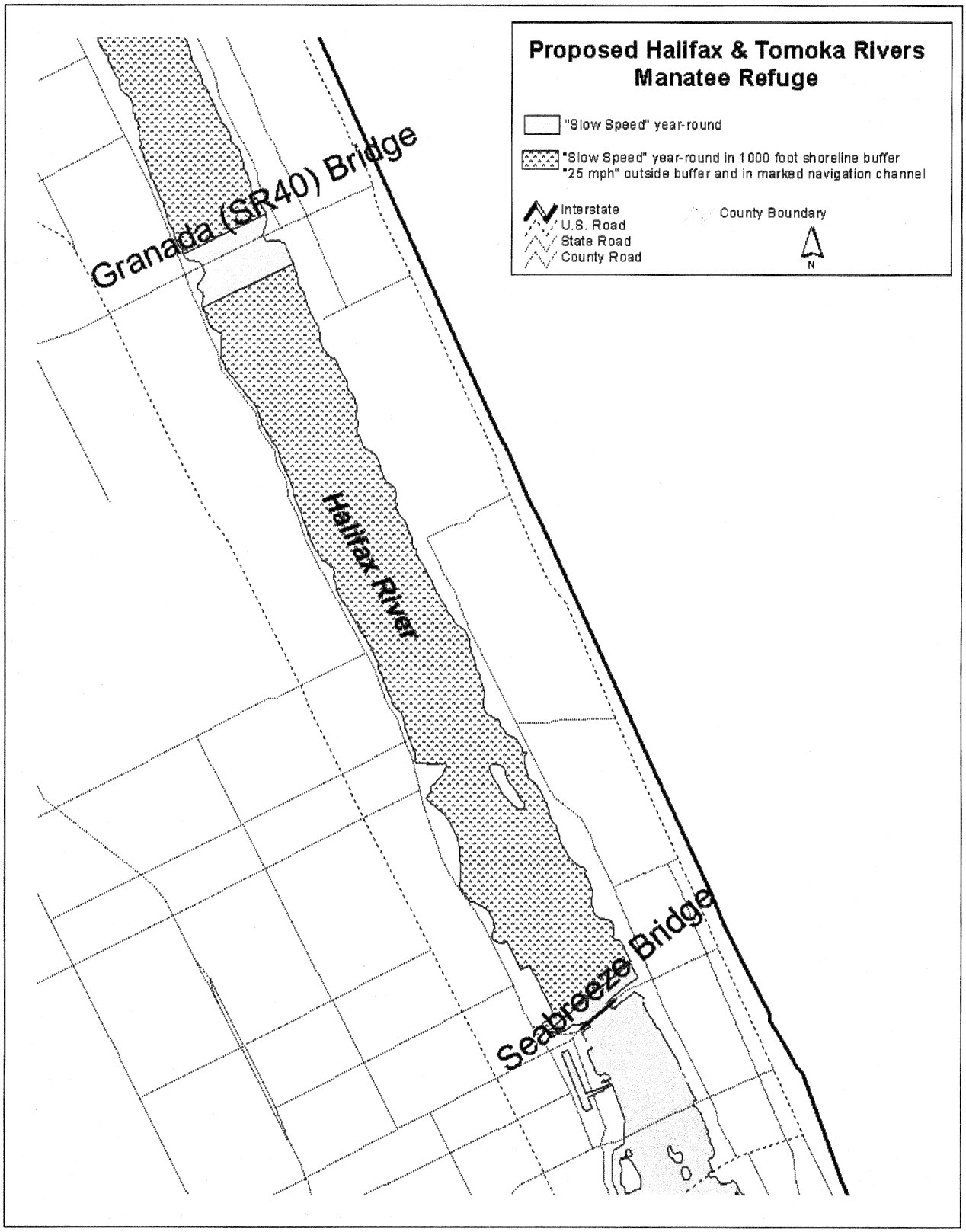
Halifax Creek



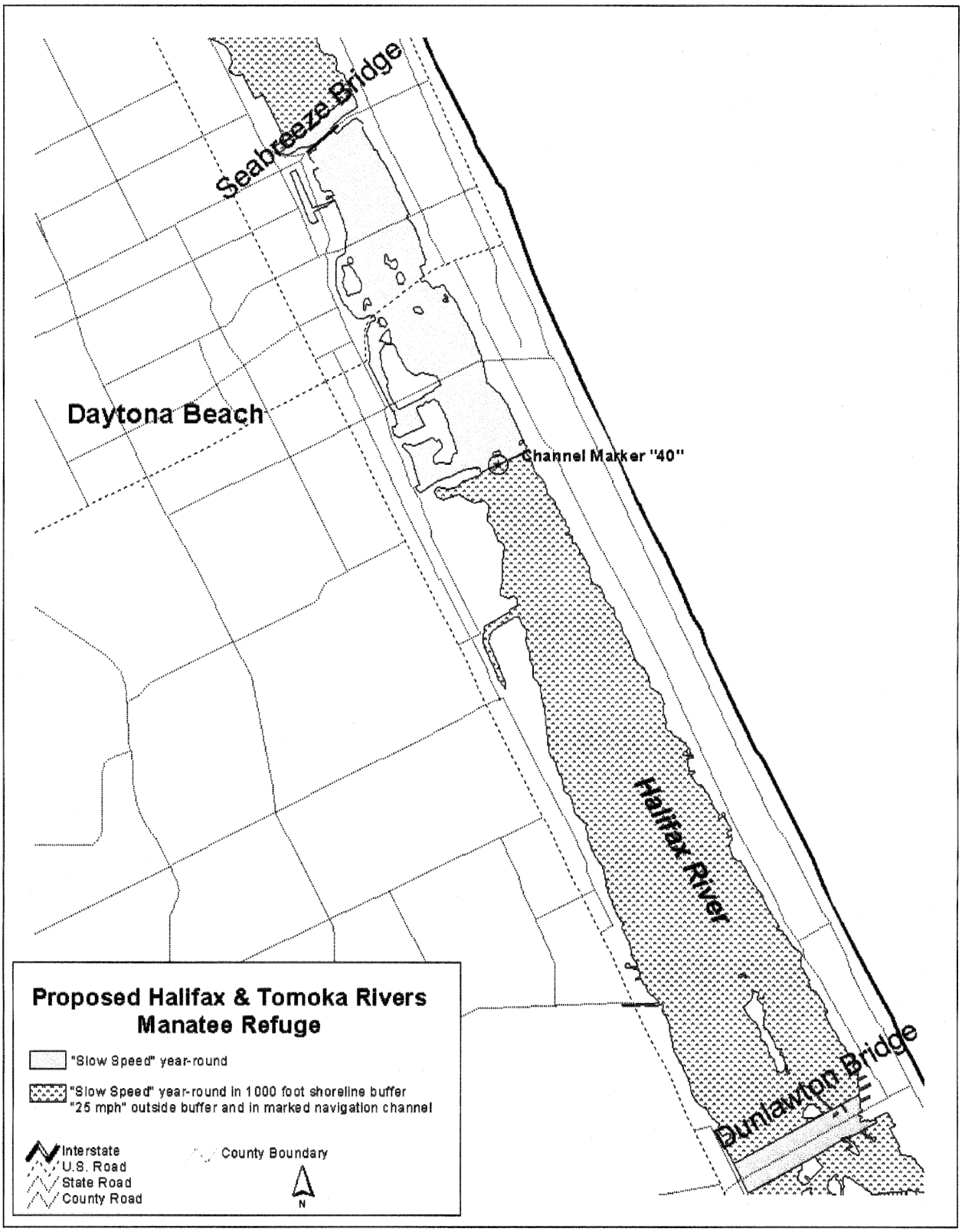
Tomoka River Basin



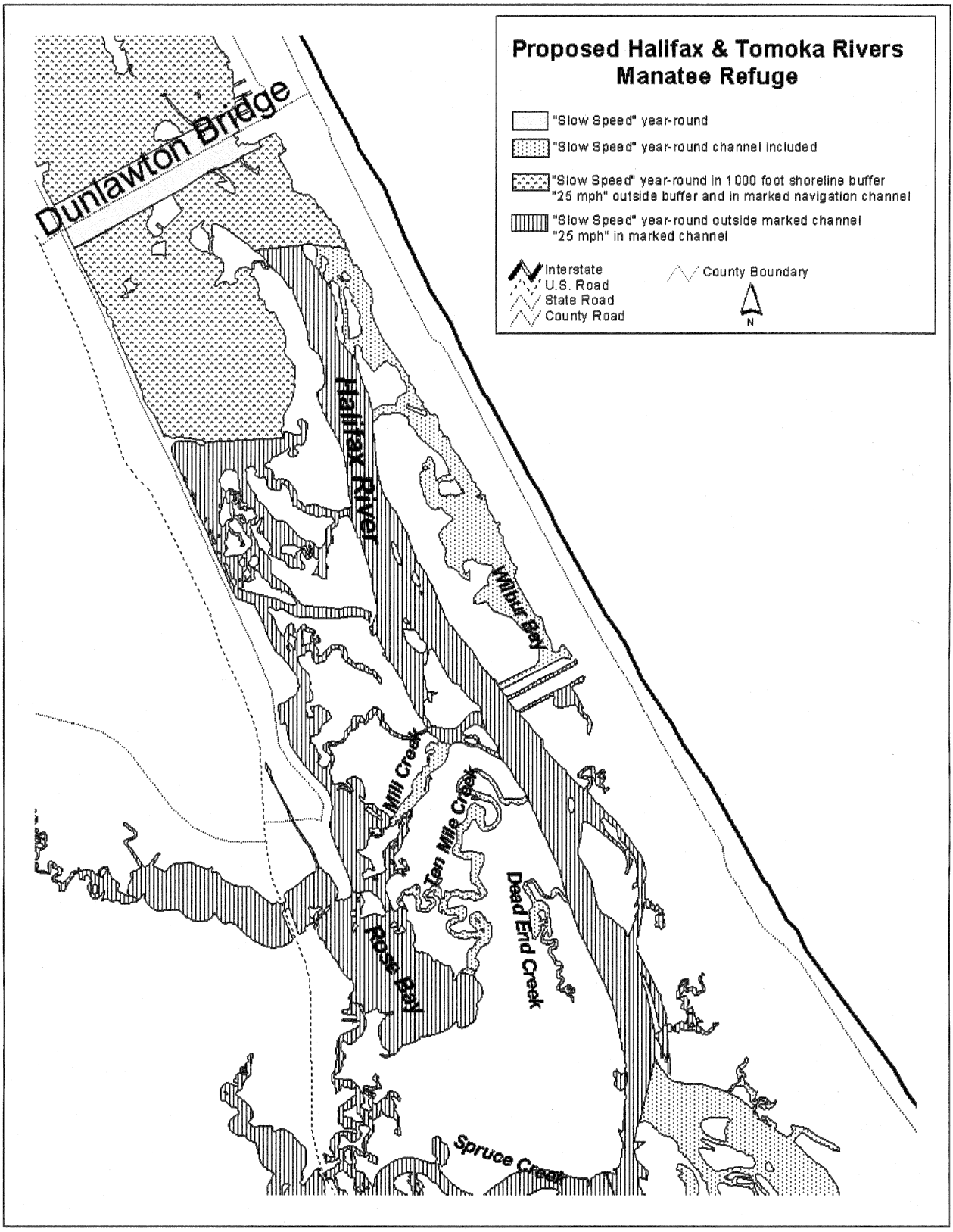
Tomoka River



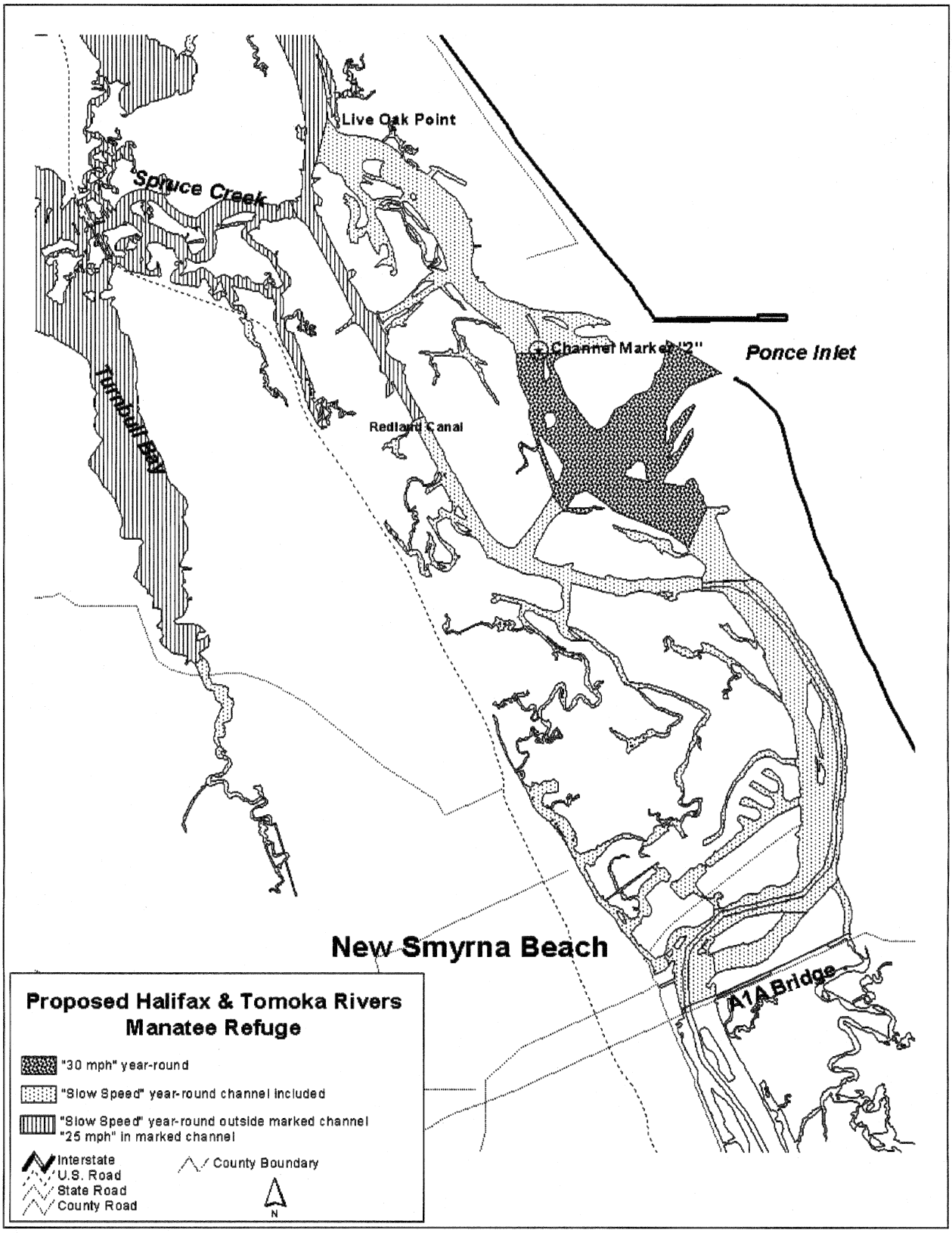
Halifax River A



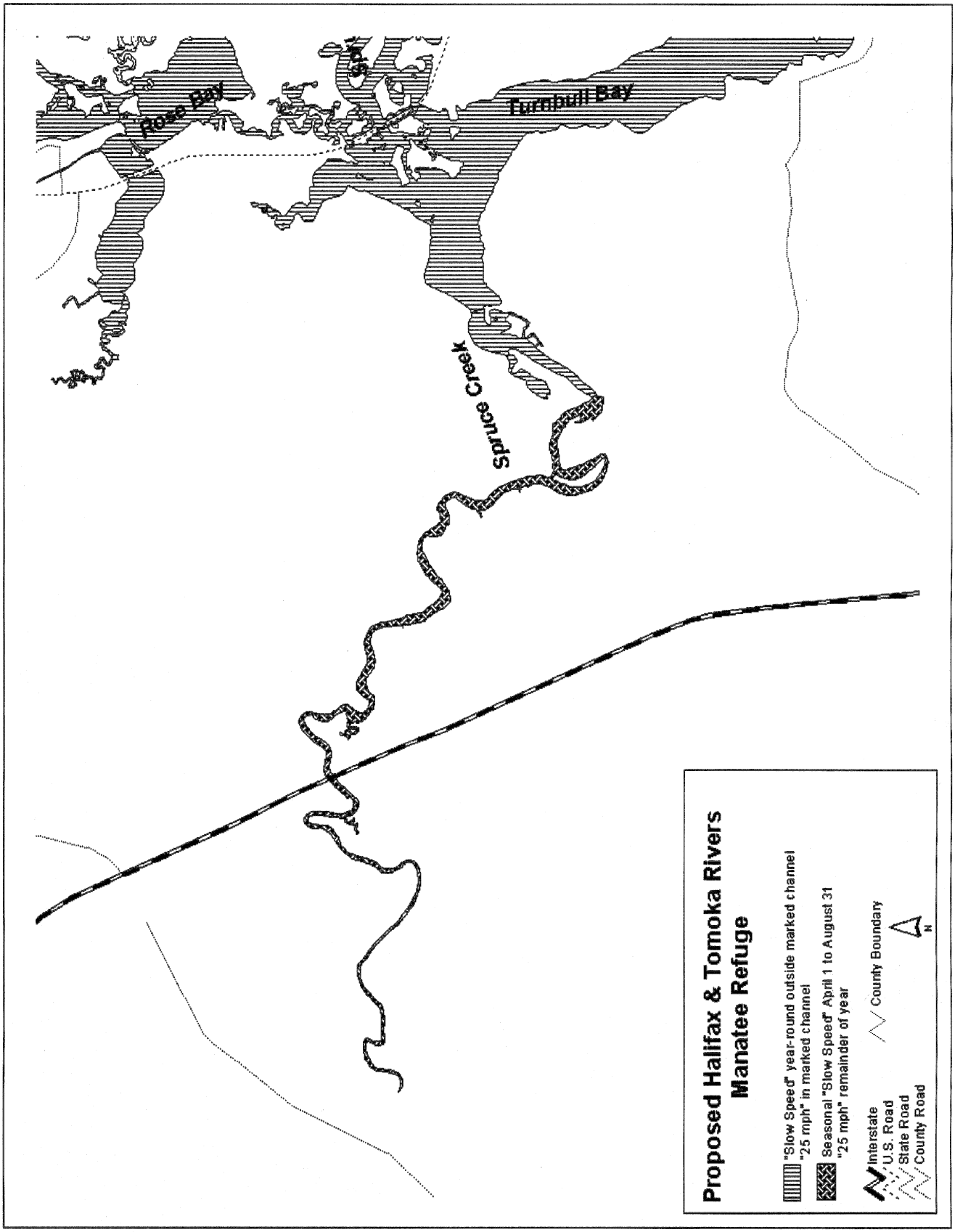
Halifax River B



Ponce Inlet Area A



Ponce Inlet Area B



Ponce Inlet Area C

Dated: March 26, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–8179 Filed 4–3–03; 8:45 am]

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