

support these designations. We recognize and support efforts to continually evaluate and improve information regarding manatee distribution and habitat use, boating activity, and the effectiveness of existing regulations. But we also know perfect information will never be available to definitively address all the issues that are raised by such rulemakings. We have attempted to design this final rule to address issues that we believe are necessary and appropriate to address at this time, without hindering the State's ability to make additional changes as needed in the future. In some areas there is considerable overlap between our final designations, existing State regulations, and FWCC regulatory actions anticipated in the near future (e.g., the Halifax River). We are committed to working with the FWCC to make necessary changes through the rulemaking process at that time to our manatee protection areas to ensure consistency with State designations as long as manatee protection is not compromised. If changes are beneficial and/or necessary, we may initiate concurrent rulemaking with the FWCC to ensure consistency with State-designated zones to meet this goal.

*Comment 3:* Several commentors believe that implementation of Federal zones that are not consistent with the existing FWCC zones will confuse boaters, reduce compliance, and delay dissemination of educational material.

*Response 3:* We have made our final designations as consistent as possible with existing regulations, in order to minimize boater confusion and enhance compliance while ensuring appropriate protection for manatees. We recognize that, in those areas where these Federal designations represent considerable changes to the existing regulations, educational material specific to those areas will need to be updated.

*Comment 4:* The FWCC and other commentors believe that the Service could improve existing zones by providing funds for improved signage of existing manatee protection zones.

*Response 4:* Appropriate signage is critical to effective implementation of manatee protection areas. For example, we have long identified the inadequacy of the signage of the current State manatee protection zone on the St. Johns River as the primary deficiency of the existing regulations in this area. Establishment of Federal manatee protection areas will make it easier for us to devote Federal funding to signage in the areas designated.

*Comment 5:* The FWCC and other commentors also believe that the Service should/could have used funds

spent on new rules to increase Federal enforcement of existing manatee protection zones.

*Response 5:* We agree that, in general, enforcement of existing manatee protection areas can be more cost effective than establishment of new areas. However, when substantial evidence shows that establishment of a manatee protection area is necessary to prevent the taking of one or more manatees then designation of a manatee protection area may be a proper course of action for us to take. Such a situation exists for the areas designated by this rule. Notwithstanding this determination, we would like to emphasize that we have increased our efforts to enforce existing Federal and State manatee protection areas.

*Comment 6:* Although they do not necessarily recommend it, the FWCC commented that, as an alternative to the proposed rule, the Service could adopt existing State zones, thereby eliminating any conflict between sign posting and enforcement issues. Further, adopting the existing State zones as Federal zones may provide more security to the zones by making legal challenges to the zones more difficult to mount.

*Response 6:* In some cases we did this, but in some cases we believe that adoption of existing State zones would hinder State efforts to modify zones in the future, and in some cases we believed that additional protection for manatees is needed at this time.

*Comment 7:* One peer reviewer noted that any manatee protection area with either a channel exempt, 25 mph in the channel, or shoreline buffer designation should, in general, result in minimal impact to recreational boating (the reviewer acknowledges that recreational boating activity varies widely from location to location, and some areas, as well as some commercial activities, may be more significantly impacted than others). According to the peer reviewer's studies, a vast majority of recreational boat traffic is already traveling between 20 and 30 mph. Additionally, very few hull designs are not capable of achieving and maintaining planing speed at 25 mph. Therefore, slow-speed, channel exempt (or 25 mph in the channel) seems to be a reasonably effective management alternative in areas where manatee use is well documented and there is a well defined, marked channel.

*Response 7:* We agree with this assessment, and as such believe that our final designations should result in minimal adverse impacts on the boating public, except in those limited areas in which high-speed travel was previously allowed.

*Comment 8:* One commentor stated that our proposed rule "makes clear that there is a far more compelling basis for designating these areas as refuges than existed for some of the other protected areas recently created by the Service."

*Response 8:* In our previous rulemakings (finalized in 2002) (67 FR 680-696 and 67 FR 68450-68489), we established four criteria for selecting Federal manatee protection areas. The sites addressed in this final rule were evaluated against those criteria during the previous rulemaking. They were not selected because in 2002 we concluded that, due to the earlier commitment of our limited resources to higher priority sites, we could not enact adequate protection measures at these sites and/or the State or local agencies were in a better position to address concerns at these sites. Per the Stipulated Order, we made a commitment to reevaluate these sites. As a result of this reevaluation we have concluded that Federal action is warranted at portions of these sites at this time, and that we now have the capability to implement these actions. Additionally, new information, such as FMRI's 2002 Caloosahatchee River study, was not available during the 2002 rulemaking. Specifically, the study showed significant manatee use of the Redfish Point area of the river and that manatees were likely crossing the river at this point, as opposed to confining most of their movement to shoreline habitat as they appear to do in most of the Caloosahatchee River. We do not agree with the commentor that these designations are more important to manatee conservation than previous Service actions.

*Comment 9:* One commentor noted that the Service stated in the March 18, 2003, Stipulated Order and the proposed rule that these zones were justified.

*Response 9:* It is correct to say that we had determined that portions of these three large areas met the criteria for designation as manatee protection areas. The proposed rule depicts the maximum extent of actions that were determined to be potentially warranted through the preliminary review conducted during the negotiations regarding the Stipulated Order. We put these sites out to the public as a proposed rule in order to collect information and data and have modified the designations in this final rule to reflect that analysis.

*Comment 10:* One commentor stated that the Service "could refrain from adopting the refuges only by demonstrating that scientific data not previously available to the agency has