

subsequently designated by the Service in November 2002. The Service pursued its designation because the State had not yet posted regulatory signage at the site and we wanted to expeditiously protect manatees using this site. Because the State has now designated and posted both sites as manatee protection areas, and is enforcing the protective regulations, and because the Service believes that State protection for both sites is now comparable to Federal protection, the Service plans to withdraw its designations at these two sites. We are not proposing to withdraw protections from the remaining Federal manatee refuges and sanctuaries at this time. In general, the State does not provide protection or does not provide comparable protection within the remaining areas.

#### Relationship to Manatee Lawsuit

In *Save the Manatee Club, et al. v. Ballard, et al.*, Civil No. 00-00076 EGS (D.D.C., filed January 13, 2000), several organizations and individuals filed suit against the Fish and Wildlife Service and the U.S. Army Corps of Engineers (Corps) alleging violations of the ESA, MMPA, National Environmental Policy Act, and the Administrative Procedure Act. Four groups representing development and boating interests intervened. Following extensive negotiations, a settlement agreement was approved by the court on January 5, 2001. In this settlement agreement, we agreed to submit a proposed rule for new refuges and sanctuaries to the **Federal Register** by April 2, 2001, and to submit a final rule by September 28, 2001.

Subsequent to the Federal settlement, the FWCC voted to settle *Save the Manatee v. Egbert*, Case No. 90-00-400CIV17-WS (N.D. Fla., filed January 13, 2000) (the State case). That settlement, which was entered into by the court on November 7, 2001, calls for very similar protective measures in many of the locations included in our proposed rule. As a result of these simultaneous processes, the parties in the Federal lawsuit agreed to extend the April 2 deadline in an attempt to negotiate a means to avoid duplication of effort and better serve the public. Subsequent negotiations resulted in additional extensions, which resulted in the proposed rule being submitted to the **Federal Register** on August 3, 2001. (An advance notice of proposed rulemaking had been published in the **Federal Register** on September 1, 2000 [65 FR 53222], and six public workshops were

held in December 2000, prior to approval of the Settlement Agreement.) The proposed rule was published in the **Federal Register** on August 10, 2001 (66 FR 42318). On January 7, 2002, we published a final rule designating two sites in Brevard County, the Barge Canal and Sykes Creek, as Federal manatee refuges (67 FR 680).

On July 9, 2002, the United States District Court for the District of Columbia ruled that the Federal Government violated the Settlement Agreement by failing to designate a sufficient number of refuges and sanctuaries throughout peninsular Florida. On August 1, 2002, the Court issued a remedial order requiring the Service to publish, by November 1, 2002, a final rule for new manatee refuges and sanctuaries throughout peninsular Florida. On September 20, 2002, we published an emergency rule designating seven sites as manatee refuges and sanctuaries on Florida's west coast for a period of 120 days (67 FR 59408). We submitted a final rule to the **Federal Register** on November 1, 2002, designating 13 manatee protection areas in Florida, including the sites previously designated under the emergency rule. The final rule was published on November 8, 2002 (67 FR 68540).

#### Coordination With State Actions

The sites that were designated in our final rule on November 8, 2002 (67 FR 68450), were selected prior to the disclosure of the terms of the proposed settlement in the State case, *Save the Manatee v. Egbert*, Case No. 90-00-400CIV17-WS (N.D. Fla.). After the terms of the State settlement were disclosed, it became apparent that there would be overlap between potential State and Federal actions. However, prior to a final determination on potential State designations, the Service was required by Court Order to move forward with its final rule for the designation of additional manatee protection areas throughout peninsular Florida. We designated protection areas at these sites in accordance with the site selection process and criteria identified in our final rule (67 FR 68456) because State protections had not been implemented at these sites. Because the State has subsequently designated and/or implemented comparable measures in these areas, the Service believes it prudent to withdraw its Federal designations for the Pansy Bayou Manatee Refuge and the Cocoa Beach Manatee Refuge.

#### Manatee Refuges Proposed for Removal

On November 8, 2002, we designated 13 manatee protection areas in Florida, including the Pansy Bayou Manatee Refuge in Sarasota County and the Cocoa Beach Manatee Refuge in Brevard County (67 FR 68450). The State has now designated both sites as manatee protection areas, has posted them, and enforces the protective regulations (F.A.C. 68C-22.026 and 22.006, respectively). As such, both sites are currently protected under both Federal and State authorities. Federal and State restrictions are comparable in terms of areal extent, duration, and type (year-round, slow speed), and each should prevent the taking of one or more manatees. In our November 2, 2002, rule (67 FR 68450), we stated that "if the State or counties implement measures at these sites that, in our view, provide comparable protection for manatees, we will consider withdrawing or modifying established designations through the rulemaking process." Because the State has now implemented measures that provide comparable protection, we propose to withdraw our designations for the Pansy Bayou Manatee Refuge and the Cocoa Beach Manatee Refuge, and to defer to the State's regulations governing waterborne activities currently in effect in these areas (F.A.C. 68C-22.026 and 22.006, respectively). We reserve the right to reinstate Federal measures should they become necessary. We recognize that the existing system of speed zones and sanctuaries has been established primarily by State and local governments. We also recognize the important role of our State and local partners, and we continue to support and encourage State and local measures to improve manatee protection.

#### Pansy Bayou Manatee Refuge

The federally designated Pansy Bayou Manatee Refuge includes approximately 47 hectares (ha) (116.1 acres) in the northern Pansy Bayou area between City Island and the John Ringling Parkway Bridge on Sarasota Bay in Sarasota County, and regulates vessel traffic to slow speed year-round (67 FR 68450) (see Pansy Bayou Manatee Refuge map). This refuge is located within a State manatee protection area in which all vessels are required by State law to operate at slow speed year-round (F.A.C. 68C-22.026(2)(a)(4)).

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