

carrier parties have the burden of proof in proceedings where rates have not been suspended. In view of this misunderstanding, the Commission takes this opportunity to state, by way of clarification, that the burden of proof in rate proceedings brought under section 3 of the 1933 Act is always on the carrier, regardless of whether the rates are suspended. Section 502.155 is proposed to be revised, accordingly.

In addition to these changes, technical amendments also are proposed in this notice to add section 3 of the 1933 Act to the authority cited for part 502, and to revise section 502.67(e) to reflect deletion of the requirement to file prehearing statements within seven days of commencement of non-GRI/GRD proceedings.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless has reviewed the rule in terms of this Order and has determined that this rule is not a "major rule" as defined in Executive Order 12291 because it will not result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic agencies, or geographic regions; or
- (3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(n), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions. The rule is procedural only and will result in a slight easing of the burdens imposed upon protestants to rate proceedings under section 3 of the 1933 Act.

List of Subjects in 46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553, sections 18 and 43 of the Shipping Act, 1916, 46 U.S.C. app. 817 and 841a, and section 3 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 845, Part 502

of Title 46, Code of Federal Regulations is proposed to be amended as follows:

PART 502—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 502 is revised to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 559; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 46 U.S.C. app. 817, 820, 821, 826, 841a, 845, 1114(b), 1705, 1707-1711, 1713-1716; E.O. 11222 of May 8, 1965 (30 FR 6569); and 21 U.S.C. 853a.

2. In section 502.67, paragraphs (a)(3), (d)(1), (d)(2), and the introductory text of paragraph (e)(1) are revised to read as follows:

§ 502.67 Proceedings under section 3(a) of the Intercoastal Shipping Act, 1933.

(a) * * *

(3) Workpapers underlying financial and operating data filed in connection with proposed rate changes shall be made available promptly by the carrier to all persons requesting them for inspection and copying upon the submission of the following certification, under oath, to the carrier:

Certification

I, (Name and title if applicable) _____, of (Full name of company or entity) _____, having been duly sworn, certify that the underlying workpapers requested from (Name of carrier) _____, will be used solely in connection with protests related to and proceedings resulting from (Name of carrier) _____'s rates, fares or charges in the _____ trade and that their contents will not be disclosed to any person who has not signed, under oath, a certification in the form prescribed, which has been filed with the Carrier, unless public disclosure is specifically authorized by an order of the Commission or the presiding officer.

Signature: _____

Date: _____

Signed and Sworn to before me this _____ day of _____ (month), _____ (year).

Notary Public: _____

My Commission expires: _____

* * * * *

(d)(1) In the event the general rate increase or decrease of a VOCC is made subject to a docketed proceeding:

(i) The VOCC shall serve, under oath, testimony and exhibits constituting its direct case, together with underlying workpapers and responses to protestants' requests for additional carrier data, on all parties pursuant to subpart H of this part, and lodge copies of such testimony and exhibits with the presiding officer, no later than seven (7) days after the Commission issues its order of investigation in the docketed proceeding; and

(ii) Hearing Counsel and all Protestants shall serve, under oath, testimony and exhibits constituting their direct cases on all parties pursuant to subpart H of this part, and lodge copies with the presiding officer, no later than fourteen (14) days after the Commission issues its order of investigation in the docketed proceeding.

(2) If other proposed tariff changes are made subject to a docketed proceeding pursuant to section 3 of the Intercoastal Shipping Act, 1933, the carrier shall serve, under oath, testimony and exhibits constituting its direct case, together with underlying workpapers, on all parties pursuant to subpart H of this part, and lodge copies of such testimony and exhibits with the presiding officer, no later than fourteen (14) days after the Commission issues its order of investigation. Further procedural dates in such proceeding shall be established by the presiding officer.

(e)(1) Subsequent to the issuance of an order of investigation, the presiding officer may direct all parties to participate in a prehearing conference to consider:

* * * * *

3. Section 502.155 is revised to read as follows:

§ 502.155. Burden of proof

At any hearing under section 3 of the Intercoastal Shipping Act, 1933 (§ 502.67), the burden of proof to show that the rate, fare, charge, classification, regulation, or practice is just and reasonable shall be upon the respondent carrier or carriers. In all other cases, the burden shall be on the proponent of the rule or order. [Rule 155.]

By the Commission.

Joseph C. Polking,

Secretary

[FR Doc. 93-11402 Filed 5-12-93, 8 45 am]

BILLING CODE 6730-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB74

Endangered and Threatened Wildlife and Plants; Proposed Rule to Establish Additional Manatee Protection Areas in Kings Bay, Crystal River, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to establish three additional permanent manatee (*Trichechus manatus*) sanctuaries and extend an existing sanctuary in Kings Bay, Crystal River, Florida. All waterborne activities would be prohibited in these sanctuaries from November 15 through March 31 of each year. The proposed action would prevent the taking of manatees by harassment resulting from waterborne activities during the winter months. The number of sanctuaries in Kings Bay would be increased from three (10.7 acres) to six (39.0 acres) to accommodate the increase in the number of manatees using the area each winter, and to offset the harassment for increasing public use. This action is proposed under the authority of the Endangered Species Act of 1973, as amended, and the Marine Mammal Protection Act of 1972.

DATES: Comments from all interested parties must be received by July 12, 1993. If requested, a public hearing will be held for the purpose of receiving comments on the permanent establishment of additional manatee sanctuaries at Kings Bay, Crystal River, Florida.

ADDRESSES: Written comments and materials should be sent to Manatee Coordinator, U.S. Fish and Wildlife Service, 3100 University Blvd. South, suite 120, Jacksonville, Florida 32216. The public hearing will be held at the Coastal Regional Library, 8619 W. Crystal Street, Crystal River, Florida.

FOR FURTHER INFORMATION CONTACT: Robert O. Turner at above address, 904/791-2580, or Vance Eaddy, Senior Resident Agent, U.S. Fish and Wildlife Service, 9721 Executive Center Dr., suite 206, St. Petersburg, Florida 33702, 813/893-3651.

SUPPLEMENTARY INFORMATION:

Crystal River is a short tidal river on the west coast of Florida. Forming the headwaters of Crystal River is Kings Bay, a lake-like body of water fed by many freshwater springs. These springs, because of their year-round temperature of over 74 °F, provide an essential warm-water wintering area for West Indian manatees (*Trichechus manatus*), a federally listed endangered species.

During cold weather, many of the manatees wintering in Kings Bay aggregate in an area known as the main spring or Kings Spring, located just south of Banana Island. This location is also a favorite site for skin and scuba divers, who come to Kings Bay for the clear, calm conditions favorable for learning diving techniques, coupled with the opportunity to "swim with the manatees". Diver use of this area is

especially heavy during the cold winter months when diving is impractical — through most of the northern states, and when the opportunity for manatee encounters is greatest.

The concurrent use of the main spring area by divers and manatees during cold weather creates a problem for manatees. Manatees are shy, harmless creatures that are easily driven away from warm springs by human activity (Buckingham 1990).

A limited number of manatees (about 15) used the springs in the 1970's prior to the establishment of the Banana Island Sanctuary. They seemed to tolerate and even enjoy some human contact. These "tame" manatees readily approached divers and allowed themselves to be petted and lightly scratched (Hartman 1979, Powell and Rathbun 1984). By 1980 when the first permanent manatee sanctuaries were established, the number of manatees wintering in the bay had increased to just over 100. This increase was greater than could be accounted for by reproduction, so it was apparent that some manatees were immigrating from other areas (Powell and Rathbun 1984). The number of manatees that chose to interact with the public increased only slightly.

Manatee use of Kings Bay now exceeds 240 animals (FWS unpublished data). A majority of manatees currently using the spring do not tolerate close human contact, and leave the warmer spring waters when humans approach too closely. They disproportionately spend their time in sanctuaries regardless of weather conditions, in direct relationship to the number of boats present (Buckingham 1990).

Efforts have been made to make divers, snorklers, and boaters aware of the manatee harassment problem. Visitors have been instructed through posters, brochures, and dive shop personnel that they should not aggressively pursue manatees or drive them from the springs. As a group, most people have been very cooperative in this regard. Though most conscientiously try to avoid harassing manatees, they seek the animals out and approach them to observe them and a few consistently pet them. Although a few manatees tolerate and occasionally invite attention, most manatees appear to find the situation intolerable, and they alter their behavior accordingly. At times, the sheer number of humans concentrated in a relatively confined area forces all the manatees to seek less disturbing conditions.

The largest numbers of manatees are found at the spring at night or during the early morning. After sunrise, when

the divers begin arriving at the spring, those manatees least able to tolerate human crowding begin leaving the spring. As greater numbers of divers arrive, more manatees leave (FWS unpublished data). On days when the temperatures of the surrounding waters are not excessively cold, this may not be critical, although it still modifies the manatee's natural behavior. On days when surrounding water temperatures are below 68 °F, manatees may begin to show some signs of cold water stress such as reduced metabolic rate and cessation of feeding. If cold stress continues long enough, manatees will die.

Research shows that the presence of waterborne users causes manatees to leave the spring heads in favor of the protected sanctuaries regardless of weather conditions. On days when there is low diver turnout, a greater proportion of manatees remain in the springs (Buckingham 1990). Observations of other wintering areas, such as Blue Spring State Park, show that, left to their own devices, most manatees will remain in warm water throughout the day during cold weather periods. Activities that cause manatees to leave can, therefore, be considered "harassment" which interferes with normal "sheltering" habits of the animal. When harassment occurs it is a violation of both the Endangered Species Act and the Marine Mammal Protection Act.

Currently, manatees are able to move away from divers by going into three sanctuaries established in 1980—Banana Island, Sunset Shores, and Magnolia Springs. The Banana Island sanctuary is located near the main spring, Kings Spring, and is relatively warm in relation to surrounding waters. Sunset Shores sanctuary is still within the southern part of the bay and provides a feeding and resting area in fairly warm water. The Magnolia Springs sanctuary is located in a canal development adjacent to Kings Bay and contains a smaller spring. The number of manatees using Kings Bay increased from 100 in 1980 to 246 in 1990. Although it might appear from the increasing numbers of manatees that additional protection is not needed, this is not the case. Manatees are losing habitat elsewhere, and Kings Bay is becoming more and more essential as one of the last natural warm water areas with abundant food resources. Additional sanctuaries are essential to insure adequate undisturbed natural areas in Kings Bay where manatees may meet most of their needs, including warm water, food, and areas for resting and socializing.

The economic importance of Kings Bay, and especially the main spring, to Crystal River and Citrus County centers around the sports of Scuba diving, snorkeling and boating. The area is internationally known as a desirable location for winter diving. The presence of manatees creates a special attraction which dive shop owners exploit by advertising their facilities as a part where one can "swim with the manatees". The tourism industry created by divers coming to Crystal River is significant and total sales at five dive shops and three motels more than doubled between 1980 and 1986, with the "manatee season" accounting for 28 to 53 percent of their sales for the entire year (Milon in prep). Due in part to national publicity manatees have recently received, the number of divers visiting Kings Bay increased to about 60,000-80,000 in the winter of 1990-91, double the number in 1980 (FWS unpublished data). This rapid increase in popularity is likely to continue, significantly affecting manatees.

The Service intends to provide manatees needed winter protection without adversely affecting diving and other waterborne activities so important to Crystal River. Aerial survey data available on manatee distribution within Kings Bay suggest that strategically placed manatee sanctuaries could provide manatees warm water refugia and feeding and resting areas free from harassment without causing a major disruption of current recreational patterns (Kochman et al. 1985, Buckingham 1990).

Therefore, the Service proposes to create additional sanctuaries in Kings Bay to provide manatees relatively undisturbed habitat during the cold weather months. These sanctuaries would exclude all waterborne activities by humans from November 15 through March 31. The areas proposed as sanctuaries have been carefully selected to avoid excluding divers from their favorite sites. The Service believes that, given these added refugia, manatees will not be forced to leave the warm water necessary for their survival and will be able to feed, rest, and socialize without being harassed.

The authority to establish manatee protection areas is provided by the Endangered Species Act of 1973, as amended, and the Marine Mammal Protection Act, and is codified at 50 CFR part 17, subpart J. Under these regulations, the Director may establish manatee protection areas whenever there is substantial evidence showing such establishment is necessary to prevent the taking (including harassment) of one or more manatees.

The proposed sanctuary addition at Magnolia Springs would expand the current Magnolia Springs Sanctuary by 1.7 acres. This short, horseshoe-shaped section of canal joins Kings Bay and is fed by auxiliary springs. The sanctuary would provide good protection for a small number of manatees which currently use the area for giving birth, resting, and as a warm water refuge.

The proposed sanctuary on the north and east sides of Buzzard Island will create an 18.0-acre sanctuary along the northwestern edge and down the length of the east side of Buzzard Island. This sanctuary is primarily used by manatees as a feeding area, since it has limited warm water input but contains abundant vegetation.

The proposed sanctuary at Tarpon Springs will create a 4.6-acre sanctuary along the northwestern side of Banana Island. The sanctuary contains a small spring and is used as a warm water, feeding, and resting area.

The 4.0-acre sanctuary on the north side of Warden Key is used primarily as a feeding area.

A standard survey of the sanctuary areas has been performed and the areas have been delineated with buoys. The proposed areas are currently being protected under the emergency provisions of 50 CFR 17.106. An emergency rule announcing this action also appears in this issue of the *Federal Register*.

Public Comments Solicited

This Service intends that any final action resulting from the proposed rule will be as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning the need for additional sanctuaries and alternatives that would alleviate the harassment of manatees from waterborne activities within the refuge.

Final promulgation of the rule will take into consideration all comments and any additional information received by the Service.

National Environmental Policy Act

An Environmental Assessment has been prepared in conjunction with this rule. It is on file in the Service's Jacksonville Field Office, 3100 University Blvd. South, suite 120, Jacksonville, Florida 32216 and may be examined by appointment during regular business hours. This assessment forms the basis for a decision that this

is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

References Cited

- Buckingham, C.A. 1990. Manatee response to boating activity in a thermal refuge. MS Thesis. University of Florida, Gainesville, Fla.
- Kochman, H.I., G.B. Rathbun, and J.A. Powell. 1985. Temporal and spatial distribution of manatees in Kings Bay, Crystal River, Florida. *J. Wildl. Manage.* 49(4):921-924.
- Hartman, D.S. 1979. Ecology and behavior of the manatee (*Trichechus manatus*) in Florida. *Am. Soc. Mamm. Special Publ.* No. 5. 153 pp.
- Milon, W. In prep. Economic activity associated with recreational diving in Kings Bay, Crystal River, Florida.
- Powell, J.A., and G.B. Rathbun. 1984. Distribution and abundance of manatees along the northern coast of the Gulf of Mexico. *Northeast Gulf Sci.* 7:1-28.

Author

The primary author of this proposed rule is Robert O. Turner, Manatee Coordinator (see ADDRESSES section above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below.

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. It is proposed to amend § 17.108 by adding paragraph (a)(3), revising paragraphs (a)(4), (a)(5), and (a)(6), removing paragraph (a)(7) and adding the map at the end of this section to read as follows:

§ 17.108 List of designated manatee protection areas.

(a) * * *

(3) A tract of submerged land, lying in Sections 21 and 28, Township 18 South, Range 17 East in Citrus County, Florida, more particularly described as follows: All of the submerged land lying within the mean high water line of a canal bordering the western, northern, and eastern sides of Paradise Isle

Subdivision, as recorded in Plat Book 3, Page 88 of the Public Records of Citrus County, Florida; bounded at the western exit by a line drawn between the southwestern corner of Lot 7 of said Paradise Isle Subdivision and the southeastern corner of Lot 22 of Springs O'Paradise Subdivision, Unit No. 3, as recorded in Plat Book 3, Page 70 of said Public Records; and bounded at the eastern exit by an easterly extension of the south boundary of said Paradise Isle Subdivision; Containing 3.4 acres, more or less.

(4) A tract of submerged land, lying in Sections 28 and 29, Township 18 South, Range 17 East in Citrus County, Florida, more particularly described as follows: For a point of reference, commence at the southwest corner of said Section 28; Then go N 06°01'23" W for 4466.90 feet to a 10-inch diameter concrete monument marking the point of beginning; Then go N 10°05'38" W for 477.32 feet to a 10-inch diameter concrete monument with an attached buoy; Then go N 37°34'41" E for 651.07 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 73°26'46" E for 634.10 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 17°50'16"

E for 1691.53 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 71°48'58" W for 117.87 feet to a 10-inch diameter concrete monument with an attached buoy; Then continue S 71°48'58" W for 5 feet more or less to the mean high water line of Buzzard Island; Then follow said mean high water line northerly and westerly to a point lying S 10°05'38" E of the point of beginning; Then go N 10°05'38" W for 5 feet more or less to the point of beginning; Containing 18.0 acres, more or less.

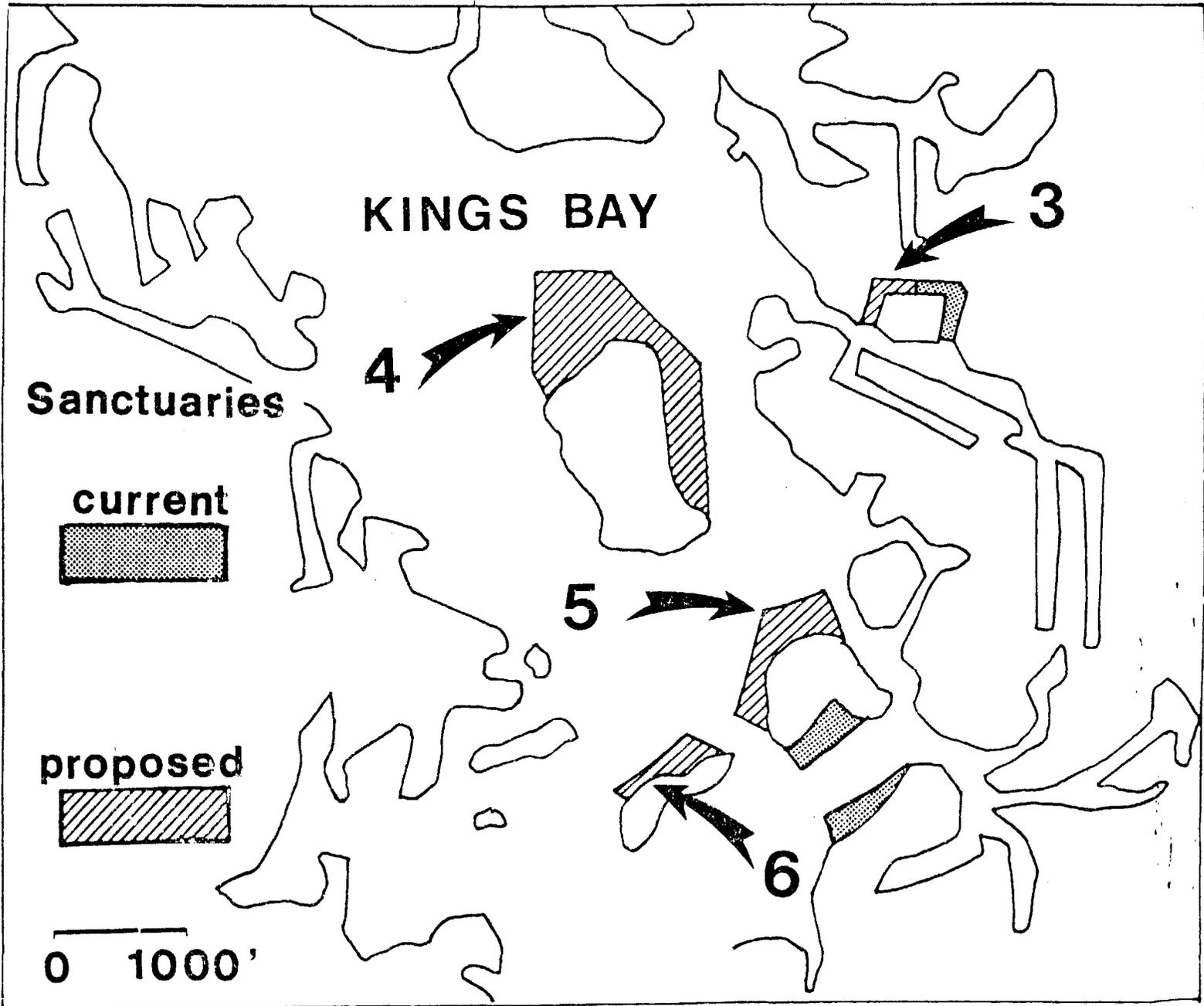
(5) A tract of submerged land, lying in Section 28, Township 18 South, Range 17 East in Citrus County, Florida, more particularly described as follows: For a point of reference, commence at the southwest corner of said Section 28; Then go N 28°55'06" E for 2546.59 feet to a 4-inch diameter iron pipe marking the point of beginning; Then go N 44°23'41" W for 282.45 feet to a 10-inch diameter concrete monument with an attached buoy; Then go N 33°53'16" E for 764.07 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 31°51'55" for 333.22 feet to a 4-inch diameter iron pipe; Then continue S 31°51'55" E for 5 feet more or less to the mean high water line

of Banana Island; Then go westerly along said main high water line to a point lying S 44°23'41" E from the point of beginning; Then go N 44°23'41" W for 5 feet more or less to the point of beginning; Containing 4.6 acres, more or less.

(6) A tract of submerged land, lying in Section 28, Township 18 South, Range 17 East in Citrus County, Florida, more particularly described as follows: For a point of reference, commence at the southwest corner of said Section 28; Then go N 06°43'00" E for 1477.54 feet to a 10-inch diameter concrete monument marking the POINT OF BEGINNING; Then go N 06°24'59" W for 251.66 feet to a 10-inch diameter concrete monument with an attached buoy; Then go N 65°41'12" E for 637.83 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 55°40'52" E for 272.86 feet to a 10-inch diameter concrete monument; Then continue S 65°15'06" W for 857.22 feet to the point of beginning; Containing 4.0 acres, more or less.

* * * * *

BILLING CODE 4310-55-M



Dated: February 8, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93-11012 Filed 5-12-93; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

Summer Flounder Fishery; Public Hearings

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

ACTION: Notice of Public hearings on amendment 5 to the fishery management plan for the summer flounder fishery.

SUMMARY: The Mid-Atlantic Fishery Council (Council) will hold public hearings to allow input on Amendment 5 to the Fishery Management Plan for the Summer Flounder Fishery (FMP). This amendment proposes to allow states, under mutual agreement and with the concurrence of the Director, Northeast Region, NMFS (Regional Director), to transfer or combine summer flounder commercial quota between states.

DATES: Written comments will be accepted until June 25, 1993. See **SUPPLEMENTARY INFORMATION** for times and dates of hearings.

ADDRESSES: Send comments to: John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115 Federal Building, 300 South New Street, Dover, DE 19901. See **SUPPLEMENTARY INFORMATION** for locations of hearings.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115 Federal Building, 300 South New Street, Dover, DE 19901, telephone (302) 674-2331.

SUPPLEMENTARY INFORMATION: Amendment 2 to the FMP, as adopted by the Council and the Atlantic States Marine Fisheries Commission and approved by NMFS, established a coastwide quota to manage the commercial fishery for summer flounder. The quota was allocated to the states based on shares derived from a state's percentage of commercial landings for the period 1980-89. In 1993, the first year the quota was implemented, fishermen who had traditionally landed summer flounder in their home ports, changed their fishing patterns and landed summer flounder in other states. In addition, several vessels fishing for summer flounder encountered emergency situations that forced them to offload in states that were not their point of destination. In both situations, the amount of summer flounder quota available to fishermen who traditionally used the ports in their home state was reduced. The purpose of Amendment 5 is to resolve these problems by allowing two or more

states, under mutual agreement and with the concurrence of the Regional Director, to transfer or combine summer flounder commercial quota between states. This issue and other related issues will be addressed at the public hearings.

Public hearings

The scheduled public hearings are as follows:

- June 1, 1993—Norfolk Airport Hilton, 1500 North Military Highway, Norfolk, VA.
- June 3, 1993—Holiday Inn, 916 Carolina Avenue, Washington, NC.
- June 7, 1993—Seaport Inn, Rt. 6, 110 Middle St., Fairhaven, MA.
- June 7, 1993—Holiday Inn, 290 Hwy. 37, East Toms River, NJ.
- June 8, 1993—Holiday Inn, Route 13, Salisbury, MD.
- June 8, 1993—Dutch Inn, Galilee, RI.
- June 9, 1993—Holiday Inn, 3845 Veterans Memorial Hwy., Ronkonkoma, NY.

All hearings begin at 7 p.m. except the New York hearing, which begins at 7:30 p.m. Hearings will be tape recorded with the tapes filed as the official transcript of the hearing.

(Authority: 16 U.S.C. 1801 *et seq.*)

Dated: May 7, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-11397 Filed 5-12-93; 8:45 am]

BILLING CODE 3510-22-M