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[Proposed Rules]
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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018-AH86

Marine Mammals: Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: Pursuant to the Marine Mammal Protection Act we, the U.S. Fish and Wildlife Service, intend to develop a rule that would allow authorization for the incidental, unintentional take of small numbers of Florida manatees (*Trichechus manatus latirostris*) that results from government activities related to watercraft and watercraft access facilities within the geographic area of the species' range in Florida for a period of not more than 5 years.

Under provisions of the MMPA, it is unlawful for any person to take a Florida manatee in waters or on lands under the jurisdiction of the United States. Nonetheless, incidental take shall be allowed if we find, based on the best available scientific information, that the total taking during the specified time period will have a negligible impact on the species and will not have an unmitigable adverse impact on the availability of the species for subsistence uses. In making these findings, we would establish specific regulations for the activities that set forth permissible methods of taking and means of effecting the least practicable adverse impact on the species and their habitat; and requirements for monitoring and reporting.

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The rule-making process will determine if watercraft-related incidental, unintentional take by us and other entities that choose to seek coverage will have a negligible impact on manatees, and allow authorization of take caused by activities permitted, funded, or carried out by participants in the rule-making process that has no more than a negligible impact on manatees.

DATES: You must submit comments to us by April 11, 2001.

ADDRESSES: You should submit written comments by mail to Field Supervisor, Jacksonville Field Office, U. S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216.

You may also submit written comments by FACSIMILE MAIL to (904) 232-2404 (Attn: Peter Benjamin), or INTERNET to FW4esjacksonville@fws.gov.

FOR FURTHER INFORMATION CONTACT: Peter Benjamin, Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216, Telephone: (904) 232-2580 extension 106; Facsimile Mail to (904) 232-2404, or Internet to FW4esjacksonville@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA) of 1972, as amended (16 U.S.C. 1361-1421h), sets a general moratorium on the taking and importation of marine mammals. Section 102 of the MMPA 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 otherwise allowed. ``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.'' Our implementing regulations at 50 CFR 18.3 further define take as follows: To harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal, including, without limitation, any of the following: The collection of dead animals or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; or the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in the disturbing or molesting of a 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. You can find other definitions relevant to our proposed action at 50 CFR 18.27(c).

Nonetheless, the MMPA contains exceptions to the moratorium, including section 101(a)(5)(A) which allows us, on request, to authorize for a specified activity (other than commercial fishing) in a specified geographical region the incidental, but not intentional, take of small numbers of a species or stock of marine mammal if certain findings are made and regulations prescribed. We must find that the total of such taking during the specified time period (of up to five years) will have a negligible impact on the species or stock and will not have an unmitigable impact on the availability of such species or stock for subsistence uses.

If we make these findings, we must set forth permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat, and requirements pertaining to the monitoring and reporting of such taking. The subsistence provision requiring that the total taking not have an unmitigable impact on the availability of the species or stock for subsistence uses is not applicable to Florida manatees.

Following promulgation of incidental take regulations, a Letter of Authorization, which may be issued by us to U.S. Citizens (including government agencies), would authorize incidental take associated with an applicant's activities. Procedures for obtaining a Letter of Authorization are described at 50 CFR 18.27(f).

The manatee is protected under the MMPA and is also listed as an endangered species under the Endangered Species Act. The largest known human-related cause of manatee deaths is collisions with watercraft. Between 1976 and 1999, watercraft-related deaths increased at an average of 7.2 percent per year. From 1996 to 2000, watercraft-related deaths have been the highest on record, ranging from 54 to 82.

In the State of Florida, County, State, and Federal agencies engage in a variety of activities that may result in the incidental, unintentional take of manatees by watercraft. Many of these activities relate to the use and regulation of watercraft operated in Florida waters accessible to manatees, including: (1) Regulating boater behavior on the water (e.g., speed zones and vessel registration); (2) permitting construction of watercraft access facilities (marinas, docks, boat ramps); (3) funding construction of watercraft access facilities; (4) operating watercraft access facilities; and (5) operating watercraft. To date, there is no authorization for the incidental, unintentional death, injury, or harassment of manatees caused by these otherwise legal activities.

We engage in, or have the authority to engage in, each of the above five categories of activities; therefore, Service activities could result in the incidental, unintentional take of manatees. As such, we will request development of incidental take regulations for our own activities and initiate promulgating such regulations to allow authorization of take associated with government activities related to watercraft in Florida. Through this rulemaking we will determine whether take associated with watercraft use and regulation in Florida will have a negligible impact on manatees, after taking into account mitigating measures that would render the impact negligible when it may not otherwise meet that standard.

Other Federal, State, and local agencies involved in these same types of activities are encouraged to join us in this rulemaking effort in order to gain authorization and liability coverage for take that is otherwise prohibited under the MMPA. Persons wishing to provide relevant information and comments regarding this activity should submit these to the above address. For information, please contact the individual identified above in the section entitled FOR FURTHER INFORMATION CONTACT.

Public Comments Solicited

Interested persons are invited to submit comments relating to our projected development of incidental take regulations for manatees in Florida. We request suggestions, materials, and recommendations to assist and guide us in this endeavor.

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

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

Dated: March 6, 2001.

Joseph E. Doddridge,
Acting Assistant Secretary for Fish and Wildlife and Parks.
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