

APPENDIX C

FWS and FWC Regulations and Maps of the Julington Creek Manatee Protection Area



U.S. Fish & Wildlife Service

North Florida Field Office

Amendment to Lower St. Johns River Manatee Protection Area

[Federal Register: April 28, 2005 (Volume 70, Number 81)]

[Rules and Regulations]

[Page 21966-21971]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Amendment of Lower St. Johns River Manatee Refuge in Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service is amending a portion of the Lower St. Johns River Manatee Refuge area in Duval County, Florida, to provide for both improved public safety and increased manatee protection through improved marking and enforcement of the manatee protection area. Specifically, that portion of this manatee protection area which lies downstream of the Hart Bridge to Reddie Point will be modified to allow watercraft to travel up to 25 miles per hour (mph) in a broader portion of the St. Johns River to include areas adjacent to but outside of the navigation channel. Watercraft traveling near the banks of the river will be required to travel at slow speed much as they do now. The primary exception will be around Exchange Island where the coverage of the existing State and local slow-speed zones will be expanded. However, in the main portion of the river, watercraft will be allowed to travel at speeds up to 25 mph. The manatee protection area will also be expanded approximately one mile further downstream, to the extent it was originally proposed (68 FR 16602; April 4, 2003), in order to be consistent with existing State and local governmental manatee protection measures and thereby facilitate compliance. This modification is supported by State and local government and parties to the March 18, 2003, Stipulated Order which resulted in the initial rulemaking for this manatee protection area. The current configuration of the manatee protection area is not supported by the State of Florida or Duval County. While the Service is committed to enforcing these current protection measures, State and local government would normally provide a substantial portion of the enforcement

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effort. This rulemaking, through a minor modification in a small portion of the manatee protection area, resolves State and local objections and gains their support through education and enforcement throughout the extent of the manatee protection area. The modification will provide a substantial benefit to manatee conservation. Establishment of manatee protection areas is authorized 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 preventing the taking of one or more manatees. We also announce the availability of a final environmental assessment for this action. Under authority of 5 U.S.C. 553, we find good cause to make this rule final without prior opportunity for public comment because public notice and comment on the rule is contrary to the public interest. However, the public may provide comments on this final rule at any time to the address in the ADDRESSES caption below.

DATES: This rule is effective April 28, 2005.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: David Hankla or Chuck Underwood (see ADDRESSES section), telephone 904/232-2580; or visit our website at <http://www.fws.gov/northflorida>.

SUPPLEMENTARY INFORMATION: 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 native 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 [deg]Celsius (68 [deg]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.

Human activities, and particularly waterborne activities, are resulting in the incidental 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.

Humans can cause take of manatees by both direct and indirect means. Direct takings 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 takings can result from habitat alteration and destruction, such as the creation and/or subsequent cessation 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. Indirect takings may also result from the construction of docks, boat ramps, and marinas if they lead to increased boat traffic in areas of regular manatee use and manatee protection measures are not in place.

Collisions with watercraft are the largest cause of human-related manatee deaths. Data collected during manatee carcass salvage operations in Florida indicate that more than 1,200 manatees are confirmed victims of collisions with watercraft from 1980 through 2004. Collisions with watercraft comprise nearly 25 percent of all manatee mortalities in that timeframe. Approximately 75 percent of watercraft-related manatee mortality has taken place in 11 Florida counties (Brevard, Lee, Collier, Duval, Volusia, Broward, Palm Beach, Charlotte, Hillsborough, Citrus, and Sarasota) (Florida Fish and Wildlife Commission's Florida Wildlife Research Institute Manatee Mortality Database, 2005).

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. 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 substantial evidence shows 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).

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.

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The Lower St. Johns River Manatee Refuge was established to prevent the taking of manatees resulting from collisions with watercraft. After public review and comment, the regulation establishing the refuge was published on August 6, 2003, in the Federal Register (68 FR 46869). The portion of this manatee protection area downstream of the Hart Bridge requires watercraft to travel at slow speed outside of the navigation channel of the St. Johns River and at not more than 25 mph in the navigation channel.

This rulemaking revises the restrictions downstream of the Hart Bridge. Watercraft traveling within 300 feet of the left descending bank of the river will be required to travel at slow speed ([see map](#) in the rule portion of this document). Watercraft traveling within an area approximately 1,000 feet from the right descending bank of the river, including that portion of the river between Exchange Island and the right descending bank, and approximately 300 feet channel-ward of Exchange Island, will also be required to travel at slow speed. However, in the remaining portion of the river, watercraft will be allowed to travel at speeds up to 25 mph.

This modification to the current configuration will eliminate some restrictions and provide a greater margin of safety between recreational boaters proceeding at speeds up to 25 mph and large private and commercial vessels. Under the current regulation, any boats traveling at greater than slow speed must travel in the channel. This means that operators of small recreational craft must choose either to share a relatively narrow channel with very large vessels, or travel perhaps several miles at slow speed. The State and county government officials believe that many will opt to share the channel with the larger vessels, unnecessarily placing them in a more dangerous environment. The Service is required under a March 18, 2003, Stipulated Order (*Save the Manatee Club v. Ballard*) approved by the Court to post this area as expeditiously as possible and will complete posting in the near future. This rule will allow the area to be posted in a revised configuration and prevent this safety issue from occurring.

The manatee protection area will also be expanded approximately one mile further downstream, to the extent it was originally proposed at Reddie Point (68 FR 16601; April 4, 2003). Thus, this rule adopts the current State and local speed zone buffer configuration along the shoreline of the river which will facilitate improved signage and enforcement. There were no comments regarding the Reddie Point boundary in the initial rulemaking. We revised the initial proposed boundary here (slow speed, 25 mph in the channel) because of limitations on our ability to mark the channel boundary.

This action will also allow for some signs on wooden posts marking the boundaries of the manatee protection area to be replaced with buoys. This will reduce the danger associated with a collision with these markers.

Finally, this modification also resolves objections of State and local enforcement agencies, who have agreed to assist in enforcing this area as modified. Increased enforcement will improve the effectiveness of the protection measures not only for the benefit of manatees, but for human safety as well.

Section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 500 et seq.) allows Federal agencies to proceed immediately to a final rule "when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." Due to the primary obligation of State and local officials to ensure boater safety and to avoid and minimize navigational problems in a heavily-used waterway that is shared by recreational and non-recreational vessels, we must give weight to statements from public safety and law enforcement officials when they anticipate navigational problems that present public safety concerns. The public safety component, along with the need for prompt implementation of State and local enforcement efforts to reduce or eliminate manatee injuries and mortalities from boat strikes, constitutes our basis for proceeding immediately with the final rulemaking process directly. For these reasons, we find good cause to make this rule final without prior opportunity for public comment.

The APA also provides that agencies must wait a minimum of 30 days before making a rule effective. However, as described above, this rule will modify the manatee protection area to prevent a public safety issue from occurring. The modification affects only a fraction of the overall manatee protection area and will be posted at the same time as the remainder of the area in order to meet the terms of the Stipulated Order. Because delay in implementing the revisions can only result in increased risks to both humans and manatees, it is appropriate to make the rule effective immediately. Therefore, pursuant to section 553(d)(3) of the APA, the Service is making this rule effective immediately. However, the Service will accept comments on this rule at any time.

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. This 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 quantitative assessment of the costs and benefits is not required, nor is consideration of alternatives. No significant economic impacts would result from this modification of the existing manatee refuge impacting approximately 5.5 river miles in one county in the State of Florida.

The purpose of this rule is to modify an existing manatee protection area in the St. Johns River, Duval County, Florida, to provide for a greater margin of safety for recreational

boaters and improve manatee protection through better enforcement and compliance. The economic impacts of this rule are due to the previously described changes in speed zone restrictions in the manatee refuge. We will experience increased administrative costs of approximately \$365,000 due to modified posting requirements. Conversely, the rule may also produce some minimal though undeterminable economic benefits associated with recreational boating and commercial crabbing, as a result of faster travel times through a larger area.

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 we continue to support and encourage State and local measures to improve manatee protection.

This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Minimal restrictions to existing human uses of the sites will result from this rule. No entitlements, grants, user fees, loan programs or the rights and obligations of their recipients are expected to occur. This rule will not raise novel legal or policy issues. We have previously established manatee protection areas.

Regulatory Flexibility Act

For the reasons set forth in our rule of August 6, 2003 (68 FR 46896), we certify that this rule will not have a

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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.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5. U.S.C. 804 (2). This rule:

- a. Does not have an annual effect on the economy of \$100 million or more. The primary effect of the rule is to ease restrictions on boat speeds in a portion of the river to improve safety. There will be no adverse effects on any businesses.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. There will be no changes in costs or prices for consumers stemming from this rule.
- 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. There will be no adverse effects to any segment of the community.

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 has a limited effect on boat speeds, 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 imposes no 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 manatee protection area is located over State-or privately-owned submerged bottoms. Navigational access to private property is not affected.

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. The State of Florida and local government support the development of this 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 (OMB) 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. We may not conduct or sponsor, and

you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

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. An 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 rule is available upon request from the Jacksonville Field Office (see ADDRESSES section).

Author

The primary author of this document is David Hankla (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.

Regulation Promulgation

Accordingly, we 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.

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2. Amend Sec. 17.108 as follows:

- a. By removing the map at paragraph (c)(11)(v) titled "St. Johns River Bridges Area";
- b. By redesignating paragraph (c)(11)(v) as paragraph (c)(11)(vi);
- c. By revising paragraphs (c)(11)(i) through (iv) and adding a new paragraph (c)(11)(v) to read as set forth below; and
- d. By adding a new map, as set forth below, between the two existing maps in the newly designated paragraph (c)(11)(vi).

Sec. 17.108 List of designated manatee protection areas.

(c) * * *

(11) 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 Sandfly Point (the intersection of the right descending bank of the Trout River and the left descending bank of the St. Johns River) and Reddie Point, as

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marked, 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 (11)(vi) of this section.

(ii) In the St. Johns River from Sandfly Point on the left descending bank of the St. Johns River and Reddie Point on the right descending bank of the St. Johns River, upstream to the Hart Bridge, a distance of approximately 5.5 miles (8.8 km), watercraft are required to proceed at slow speed, year-round, within 300 feet (91 m) of the shoreline on the left descending bank of the St. Johns River and within a buffer as marked, typically about 1,000 feet (305 m) from the shoreline along the right descending bank of the river. The slow speed designation also includes that portion of the river between Exchange Island and the right descending bank, a marked buffer approximately 300 feet (91 m) along the west (channel-ward) shoreline of Exchange Island, and a portion of the Arlington River as marked. Watercraft are also required to proceed at not more than 25 miles per hour (40 km/h), year round, in the area posted as such between these slow speed shoreline buffers. See map of "[St. Johns River Bridges Area](#)" in paragraph (11)(vi) of this section.

(iii) From the Hart Bridge to the Main Street Bridge, a distance of approximately 2 miles (3.2 km), watercraft are required to proceed at slow speed, year-round, outside the marked navigation channel and at speeds of not more than 25 miles per hour (40 km/h) 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 fenders of the Main Street Bridge). See map of "[St. Johns River Bridges Area](#)" in paragraph (11)(vi) of this section.

(iv) From the Main Street Bridge to the Fuller Warren Bridge, a distance of approximately 1 mile (1.6 km), shoreline to shoreline, watercraft are required to proceed at slow speed (channel included), year-round. See map of "St. Johns River Bridges Area" in paragraph (11)(vi) of this section.

(v) Upstream of the Fuller Warren Bridge: for a distance of approximately 19.3 miles (31.1 km) along the left descending bank of the St. Johns River, watercraft are required to proceed at slow speed, year-round, in a 700-foot (213 m) to 1,000-foot (305 m) as-marked, shoreline buffer from the Fuller Warren Bridge to the south bank of the mouth of Peter's Branch in Clay County; for a distance of approximately 20.2 miles (32.5 km) along the right descending bank of the St. Johns River, watercraft are required to proceed at slow speed, year round, in a 700-foot (213 m) to 1,000-foot (305 m) as marked, shoreline buffer from the Fuller Warren Bridge to the south bank of the mouth of Julington Creek in St. Johns County (defined as a line north of a western extension of the Nature's Hammock Road North); and in Doctors Lake in Clay County watercraft are required to proceed at slow speed, year-round, in a 700-foot (213 m) to 900-foot (274 m) as-marked, shoreline buffer (approximately 12.9 miles (20.8 km)). See map of "[Lower St. Johns River](#)" in paragraph (11)(vi) of this section.

(vi) * * *

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Dated: April 22, 2005.
Craig Manson,
Assistant Secretary for Fish and Wildlife and Parks.
[FR Doc. 05-8526 Filed 4-27-05; 8:45 am]

Appendix C

PIRATES COVE

68C-22.027 (I)(b)6
300' SLOW SPEED SHORELINE BUFFER

JACKSONVILLE
NAS

MULBERRY COVE

BLACK PT

GIDDYS CREEK

SLOW SPEED

68C-22.027 (I)(b)5
VARIABLE WIDTH
SLOW SPEED BUFFER

68C-22.027 (I)(b)5
VARIABLE WIDTH
SLOW SPEED BUFFER

BUCKMAN BRIDGE
1-295

CLAY COUNTY
DUVAL COUNTY

SAN JOSE BLVD

68C-22.027 (I)(b)9
VARIABLE WIDTH
SLOW SPEED
BUFFER

68C-22.027 (I)(b)5
VARIABLE WIDTH SLOW SPEED BUFFER

SR 13

68C-22.027 (I)(b)7
300' SLOW SPEED SHORELINE BUFFER

68C-22.027 (I)(a)3
SLOW SPEED SHORE TO SHORE

HOOD LANDING
ROAD

U.S.17
68C-22.027 (I)(b)10
SLOW SPEED WITHIN
500' OF BRIDGE

ALMODOY CLAY

DUVAL COUNTY
ST JOHNS COUNTY

JULINGTON CREEK

68C-22.027 (I)(b)7
SLOW SPEED WITHIN 450' OF BRIDGE

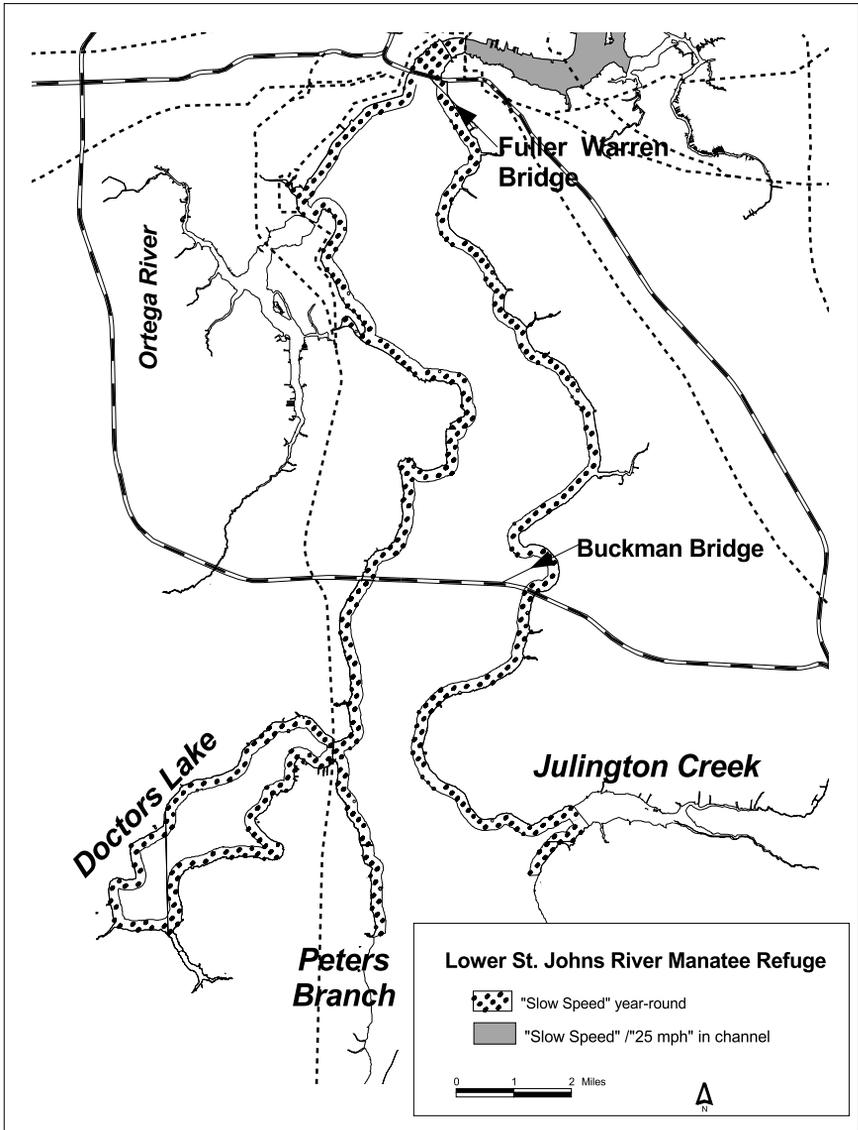
DURBIN CREEK

68C-22.027 (I)(b)8
VARIABLE WIDTH SLOW SPEED BUFFER

NATURE'S
HAMMOCK
ROAD NORTH



PETER BRANCH



Lower St. Johns River