

sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide explanations to Congress, through OMB, when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

#### *I. Executive Order 12898: Environmental Justice.*

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

The Agency believes that today's proposed rule which would provide for research, development, and demonstration permits for municipal solid waste landfills would not have an adverse environmental or economic impact on any minority or low-income group, or on any other type of affected community since these standards would not significantly affect the location of any solid waste collection facility.

#### *J. Executive Order 13211: Energy Effects*

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

#### **List of Subjects in 40 CFR Part 258**

Environmental protection, Reporting and recordkeeping requirements, Municipal Landfills, Waste treatment and disposal.

Dated: May 31, 2002.

**Christine Todd Whitman,**  
*Administrator.*

For the reasons set forth in the preamble, EPA is proposing to amend 40 CFR part 258 as follows:

#### **PART 258—[AMENDED]**

1. The authority citation for part 258 continues to read as follows:

**Authority:** 33 U.S.C.1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c) and 6949a(c).

2. New § 258.4 is added to part 258 to read as follows

#### **§ 258.4 Research, development, and demonstration permits.**

(a) The Director of an approved State may issue a research, development, and demonstration permit for a new or existing municipal solid waste landfill for which the owner or operator proposes to utilize innovative and new methods for operation, design, or landfill cover which vary from any of the following criteria:

(1) The operating criteria in subpart C of this part except the procedures for excluding the receipt of hazardous waste in § 258.20 and the explosive gases control requirements in § 258.23;

(2) The design criteria in subpart D of this part; and

(3) The final cover criteria in § 258.60(a) and (b).

(b) Any permit issued under this section must include such terms and conditions as least as protective as the criteria in the part to assure protection of human health and the environment. Such permits shall:

(1) Provide for the construction and operation of such facilities as necessary, for not longer than three years unless renewed as provided in paragraph (c) of this section;

(2) Provide for the receipt by the landfill of only those types and quantities of municipal solid waste and non-hazardous wastes which the State Director deems appropriate for the purposes of determining the efficacy and performance capabilities of the technology or process;

(3) Include such requirements as necessary to protect human health and the environment (including but not limited to, requirements regarding monitoring, design, operation, financial responsibility, closure and post-closure, and remedial action), including such requirements as necessary regarding testing and providing information to the State Director with respect to the operation of the facility;

(4) Require the owner or operator of a landfill permitted under this section to

submit an annual report to the State Director showing whether and to what extent the site is progressing in attaining project goals. The report will also include a summary of all monitoring and testing requirements as well as any other operating information specified by the State Director in the permit; and

(5) Require compliance with the criteria in subpart B (location restrictions), subpart E (ground water monitoring and corrective action), and subpart G (financial assurance) of this part.

(c) The Director of an approved State may order an immediate termination of all operations at the facility at any time he determines that the overall goals of the projects are not being attained, including protection of human health or the environment.

(d) Any permit issued under this section may not be renewed more than three times by the Director of an approved State. Each such renewal shall be for a period of not more than three years.

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## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 18**

#### **Marine Mammals: Incidental Take During Specified Activities**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent to prepare an environmental impact statement (EIS).

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA), we, the Fish and Wildlife Service, intend to prepare an EIS to evaluate the effects of authorizing the incidental, unintentional take of small numbers of Florida manatees (*Trichechus manatus latirostris*). Pursuant to the Marine Mammal Protection Act (MMPA), we are currently in the process of developing incidental take regulations for government activities related to the operation of watercraft and watercraft access facilities within the geographic area of the species' range in Florida for a period of not more than five years.

**DATES:** We will consider comments on the proposed Programmatic Environmental Impact Statement that are received by July 25, 2002.

**ADDRESSES:** If you wish to comment, you may submit your comments by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216.

2. You may hand-deliver written comments to our Jacksonville Field Office, at the above address, or fax your comments to 904/232-2404.

3. You may send comments by electronic mail (e-mail) to [fw4\\_es\\_jacksonville@fws.gov](mailto:fw4_es_jacksonville@fws.gov). For directions on how to submit electronic comment files, see the "Public Comments Solicited" section.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours from 8 a.m. to 4:30 p.m., at the above address.

**FOR FURTHER INFORMATION CONTACT:**

Peter Benjamin, Assistant Field Supervisor Jacksonville Field Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section), telephone 904/232-2580; or visit our Web site at <http://northflorida.fws.gov>.

**SUPPLEMENTARY INFORMATION:** Section 104 of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361-1407) (MMPA), sets a general moratorium, with certain exceptions, on the taking and importation of marine mammals and marine mammal products 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 at section 3(18) of 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 (16 U.S.C. 1362). You can find other definitions relevant to our proposed action at 50 CFR 18.27(c).

The MMPA contains exceptions to the moratorium. For example, section 101(a)(5)(A) authorizes the Secretary, upon request by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specified geographical region, to allow 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. The Secretary must find that the total of such taking during the specified time period (not more than five consecutive years each) 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. The regulations implementing the MMPA define "negligible impact" as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 18.27(c)). If such findings are made, we would then establish specific regulations setting forth permissible methods of taking pursuant to such activity, means of effecting the least practicable adverse impact on the species or stock and their habitat, and requirements for monitoring and reporting such taking. We have determined that the subsistence provision requiring a finding 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, U.S. citizens (including government agencies) could apply for a Letter of Authorization, which, if granted, 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 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. In 2000 and 2001, watercraft-related deaths accounted for 29 percent and 25 percent, respectively. From 1996 to 2001, 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, our activities could result in the incidental, unintentional take of manatees. As such, we have initiated development of incidental take regulations for our own activities related to watercraft in Florida. We have also encouraged other Federal and State agencies involved in these same types of activities to join us in this evaluation in order to develop a more comprehensive rule that could address a broader range of activities that may result in watercraft-related take of manatees.

The Environmental Impact Statement will evaluate the environmental effects of the incidental take regulations, and will evaluate alternatives for structuring and implementing the proposed regulations.

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 regarding our preparation of an EIS related to development of incidental take regulations for manatees in Florida. We welcome any and all suggestions, materials, and recommendations to assist and guide us in this endeavor. Specifically, we are seeking:

- Information on the direct, secondary and cumulative effects of this rulemaking on manatees, manatee habitat, and other aspects of the human environment;
- Suggestions regarding the range of alternatives to be considered in the EIS, including alternatives for structuring the proposed incidental take regulations, and alternatives to incidental take regulations;
- Information regarding the potential social and economic effects of the proposed regulations;
- Information on potential mitigative measures, including technological measures, that would result in the least practicable impact on manatees and their habitat; and,
- Suggested means and measures to report and monitor the effects of incidental take on manatees.

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 EIS 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 business, and from individuals identifying themselves as representatives or officials of

organizations or businesses, available for public inspection in their entirety.

Dated: May 6, 2002.

**Sam D. Hamilton,**

*Regional Director, Region 4.*

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