

Directive 023-01, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting for 2 hours on 33 separate days that would prohibit entry into a portion of Oregon Inlet for bridge construction. It is categorically excluded from further review under paragraph L60 (a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05-0964 to read as follows:

§ 165.T05-0964 Safety Zone; Oregon Inlet, Dare County, NC.

(a) *Location.* The following area is a safety zone: all navigable waters of Oregon Inlet, from approximate position 35°46'23" N, 75°32'18" W, thence southeast to 35°46'18" N, 75°32'12" W, thence southwest to 35°46'16" N, 75°32'16" W, thence northwest to 35°46'20" N, 75°32'23" W, thence northeast back to the point of origin (NAD 1983) in Dare County, NC.

(b) *Definitions.* As used in this section—

Designated representative means a Coast Guard Patrol Commander,

including a Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port North Carolina (COTP) for the enforcement of the safety zone.

Captain of the Port means the Commander, Sector North Carolina.

Construction crews means persons and vessels involved in support of construction.

(c) *Regulations.* (1) The general regulations governing safety zones in § 165.23 apply to the area described in paragraph (a) of this section.

(2) With the exception of construction crews, entry into or remaining in this safety zone is prohibited.

(3) All vessels within this safety zone when this section becomes effective must depart the zone immediately.

(4) The Captain of the Port, North Carolina can be reached through the Coast Guard Sector North Carolina Command Duty Officer, Wilmington, North Carolina at telephone number 910-343-3882.

(5) The Coast Guard and designated security vessels enforcing the safety zone can be contacted on VHF-FM marine band radio channel 13 (165.65 MHz) and channel 16 (156.8 MHz).

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This regulation will be enforced from January 29, 2018, through March 24, 2018, with alternate dates of March 25, 2018, through May 6, 2018.

(f) *Public notification.* The Coast Guard will notify the public of the specific two hour closures at least 48 hours in advance by transmitting Broadcast Notice to Mariners via VHF-FM marine channel 16.

Dated: January 8, 2018.

Bion B. Stewart,

Captain, U.S. Coast Guard Captain of the Port North Carolina.

[FR Doc. 2018-00883 Filed 1-19-18; 8:45 am]

BILLING CODE 9110-04-P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1194

[Docket No. ATBCB-2015-0002]

RIN 3014-AA37

Information and Communication Technology (ICT) Standards and Guidelines

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Direct final rule; request for comments.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (we, Access Board, or Board) is issuing this direct final rule to amend its regulations addressing accessibility requirements for information and communication technology to correct several inadvertent drafting errors in a final rule published in the **Federal Register** on January 18, 2017. Specifically, this direct final rule corrects two typographical errors and the unintentional deletion of longstanding requirements for TTY compatibility and functionality that have been in place for nearly two decades. These minor amendments neither establish new substantive accessibility requirements, nor impose any costs on regulated entities. The Access Board is issuing these amendments directly as a final rule because we believe they are noncontroversial, unlikely to receive adverse comment, and will prevent confusion.

DATES: This direct final rule is effective March 23, 2018, without further action, unless adverse comment is received by February 21, 2018. If timely adverse comment is received, the Access Board will publish a notification of withdrawal of the rule in the **Federal Register** before the effective date. Such notification may withdraw the direct final rule in whole or in part.

ADDRESSES: Submit comments by any one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. The identifier for this docket is ATBCB-2015-0002.
- *Email:* docket@access-board.gov. Include ATBCB-2015-0002 in the subject line of the message.
- *Facsimile:* 202-272-0081.
- *Mail/Hand Delivery/Courier:* Office of Technical and Information Services,

Access Board, 1331 F Street NW, Suite 1000, Washington, DC 20004-1111.

All comments, including any personal information provided, will be posted without change to <http://regulations.gov> and available for public viewing.

FOR FURTHER INFORMATION CONTACT:

Timothy Creagan, Access Board, 1331 F Street NW, Suite 1000, Washington, DC 20004-1111. Telephone: (202) 272-0016 (voice) or (202) 272-0074 (TTY). Or Bruce Bailey, Access Board, 1331 F Street NW, Suite 1000, Washington, DC 20004-1111. Telephone: (202) 272-0024 (voice) or (202) 272-0070 (TTY). Email: 508@access-board.gov.

SUPPLEMENTARY INFORMATION:

Legal Authority

Section 508 of the Rehabilitation Act of 1973 (hereafter, “Section 508”), as amended, mandates that Federal agencies “develop, procure, maintain, or use” information and communication technology (ICT) in a manner that ensures Federal employees with disabilities have comparable access to, and use of, such information and data relative to other Federal employees, unless doing so would impose an undue burden. 29 U.S.C. 794d. Section 508 also requires Federal agencies to ensure that members of the public with disabilities have comparable access to publicly-available information and data unless doing so would impose an undue burden on the agency. *Id.* The Access Board is charged with developing and maintaining standards that establish technical and functional performance criteria for ICT accessibility. 29 U.S.C. 794d(a)(2)(A), (B).

Section 255 of the Communications Act of 1934 (hereafter, “Section 255”), as amended, requires telecommunications equipment and services to be accessible to, and usable by, individuals with disabilities, where readily achievable. 47 U.S.C. 255. “Readily achievable” is defined in the statute as “easily accomplishable and able to be carried out without much difficulty or expense.” *Id.* Section 255 tasks the Access Board, in conjunction with the Federal Communications Commission (FCC), with the development of guidelines for the accessibility of telecommunications equipment and customer premises equipment, as well as their periodic review and update. The FCC, however, has exclusive authority under Section 255 to issue implementing regulations and carry out their enforcement. *Id.* Section 255(f).

Purpose of Direct Final Rule

On January 18, 2017, the Access Board published a final rule in the

Federal Register (82 FR 5790) (hereafter, “ICT Final Rule”), which revised and updated—in a single rulemaking—the standards for Section 508-covered ICT developed, procured, maintained, or used by Federal agencies (hereafter, “508 Standards”), as well as the guidelines for telecommunications equipment and customer premises equipment covered by Section 255 (hereafter, “255 Guidelines”). Because nearly two decades had passed since the original issuance of our then-existing 508 Standards and 255 Guidelines, the ICT Final Rule was aimed at “refreshing” these regulations by, among other things, addressing changing technology and harmonizing with ICT accessibility standards that had been developed worldwide in recent years.

Subsequently, we discovered several small drafting errors in the ICT Final Rule. These errors included a few typographical errors and the inadvertent deletion of then-existing provisions that require telecommunications products and systems with two-way voice communication capabilities to also provide TTY compatibility and functionality. By this rule, the Access Board corrects these typographical errors and restores mistakenly deleted TTY requirements for ICT with two-way voice communication, albeit with slightly updated organization and wording (with no change in substance) for consistency with the ICT Final Rule.

The Access Board is publishing this direct final rule without prior notice and comment. The Administrative Procedure Act permits agencies to publish final rules without prior notice and comment when, for good cause, they determine such procedures are unnecessary. *See* 5 U.S.C. 553(b)(B). We view the minor, technical corrections in this rule as noncontroversial and do not anticipate adverse comment. Moreover, the public interest is best served by having these corrections without delay to prevent confusion concerning these errors in the ICT Final Rule and ensure that there are no gaps in accessibility requirements for ICT covered by Sections 508 or 255. Accordingly, there is good cause for waiver of prior notice and comment.

This direct final rule will take effect on the specified effective date, without further action, unless the Access Board receives adverse comment within the comment period. We consider an adverse comment to be a comment that challenges the propriety of the rule or asserts that it would be ineffective or unacceptable without material change. If the Access Board receives timely adverse comment, we will publish a

notification in the **Federal Register** announcing full or partial withdrawal of this rule. If an adverse comment applies only to one part of this direct final rule, and it is possible to withdraw that part without defeating the purpose of the remaining parts of the rule, we may adopt, as final, those parts of this rule that received no adverse comment. Should the Access Board withdraw this rule due to adverse comment (in whole in part), we may subsequently incorporate such comment(s) into another direct final rule or publish a notice of proposed rulemaking.

Discussion of Changes

A. Administrative Corrections

This direct final rule remedies two typographical errors on the ICT Final Rule. First, the table of contents for appendix A to part 1194 (Section 508 of the Rehabilitation Act: Application and Scoping Requirements) incorrectly lists the title of E205 as “Content.” The correct title for this section is “Electronic Content.” In this rule, we correct this error by inserting the word “Electronic” before “Content” in the table of contents entry for E205 in appendix A. Second, also in appendix A to part 1194, there is a mistaken cross-reference in E202.6, Undue Burden or Fundamental Alteration. E202.6 currently reads, in pertinent part: “Where an agency determines in accordance with E202.5 that conformance to requirements in the Revised 508 Standards would impose an undue burden of would result in a fundamental alternation in the nature of the ICT . . .” (*emphasis added*). This text should instead refer to E202.6. This direct final rule revises the cross-reference in the first sentence of E202.6 from “E202.5” to “E202.6.”

B. Restoration of TTY-Related Accessibility Requirements

1. Background

The second set of corrections in this direct final rule restores the TTY-related accessibility requirements for ICT with two-way voice communication to the Access Board’s 508 Standards and 255 Guidelines. As noted, when the Access Board published the ICT Final Rule in January 2017, ICT with two-way voice communication had long been required to ensure TTY compatibility and functionality. However, as discussed below, a drafting error resulted in these TTY-related accessibility requirements being mistakenly removed from the ICT Final Rule. This direct final rule restores these original TTY-related requirements to the Board’s 508 Standards and 255 Guidelines, albeit with minor, non-

substantive changes to better align them with the revised organization and language in the ICT Final Rule.

Both the original 508 Standards (issued in 2000) and 255 Guidelines (issued in 1998) required telecommunications products and services with two-way voice communication to provide certain TTY-related features, including a connection point for TTY (*e.g.*, RJ-11 connector), a microphone capable of being turned on and off to allow a user to intermix speech and TTY use, and support for cross-manufacturer, non-proprietary standard TTY signal protocols (*e.g.*, Baudot). *See, e.g.*, Electronic and Information Technology Accessibility Standards—Final Rule, 65 FR 80500 (Dec. 21, 2000); Telecommunications Act Accessibility Guidelines—Final Rule, 63 FR 5608 (Feb. 3, 1998); *see also* 36 CFR part 1194 (2017), appendix D, section D1194.23(a)–(e) (reprinting original 508 Standards published in 2000 as appendix to revised regulations). TTYs (*e.g.*, teletypewriters)—which were developed in the 1970s—allow persons with hearing- or speech-related disabilities to send and receive text communications over telephone networks.

In recent years, however, other text-based means of communication have emerged, including simple message service (SMS or text messages) and real-time text (RTT) technology. RTT technology permits the transmission of text in near real-time as each character is typed. SMS messages are not transmitted until the user issues a send function (usually by hitting the “enter” key). Like SMS, TTY technology has a significant disadvantage as compared to RTT—namely, to avoid scrambling messages, users must send completed messages on a turn-by-turn basis. This ability to send text transmissions instantly and simultaneously permits more conversational, interactive text-based communications that are akin to telephone conversations, as well as facilitating better communication during emergency situations. As a newer (digital) technology, RTT is directly compatible with wireless and internet protocol-based networks, whereas TTY, as an analog technology, is not. TTY signals have acoustic characteristics that cause them to be corrupted and become unusable with the typical digitization algorithms used for transmitting voice over wireless and IP-based networks.

By early 2015, when the Access Board published the notice of proposed rulemaking to “refresh” the 508 Standards and 255 Guidelines, RTT technology had matured sufficiently for the Board to propose that RTT supplant

TTY as the form of text-based functionality required for ICT with two-way voice communication. *See* Notice of Proposed Rulemaking—Information and Communication Technology Standards and Guidelines, 80 FR 10880, 10900–10901, 10909 & 10910 (Feb. 27, 2015) (hereafter, “ICT NPRM”). Most comments received in response to the ICT NPRM were supportive of the Access Board’s RTT proposal, though some expressed differing views on the appropriate technical standard for RTT interoperability with certain systems (such as Voice over internet Protocol or “VoIP” systems).

In May 2016, about one year after the ICT NPRM comment period had closed, the FCC initiated a proceeding (at the behest of several telecommunications companies) to update its accessibility rules to allow telecommunications providers and manufacturers to support RTT in lieu of TTY technology in IP-based telecommunication environments. *See* Transition from TTY to Real-Time Text Technology—Notice of Proposed Rulemaking, 81 FR 33170 (May 25, 2016).

In deference to the FCC’s ongoing rulemaking efforts on a regulatory transition from TTY to RTT technology, the Access Board elected to postpone adoption of RTT-related accessibility requirements in the ICT Final Rule. *See* 82 FR at 5800. Consequently, we removed the proposed requirements for RTT functionality from Chapter 4 of the final rule, and simply reserved section 412.5 in the final rule for future use should the Board subsequently promulgate RTT-related requirements. *See* 36 CFR part 1194, appendix C, section 412.5.

By reserving adoption of RTT-related requirements, the Access Board did not thereby intend to leave a “gap” in accessibility requirements to ensure that persons with communication disabilities can use telephone networks. In other words, with the removal and reservation of RTT-related requirements, the TTY-related requirements in the original 508 Standards and 255 Guidelines should have been incorporated into the ICT Final Rule. However, due to a drafting oversight, these existing TTY requirements did not get incorporated into the final rule. As a result, the ICT Final Rule is presently—and unintentionally—silent with respect to TTY functionality requirements for ICT with two-way voice communication.

In this direct final rule, the Access Board restores the TTY-related requirements from the original 508 Standards and 255 Guidelines to ensure that, during the pendency of further

rulemaking on RTT-related accessibility requirements, persons with communications disabilities will still be able to send and receive text-based communications over telephone networks.

Under the ICT Final Rule, Federal agencies were afforded one year from rule publication (*i.e.*, Jan. 18, 2018) to comply with the revised 508 Standards. 82 FR at 5790, 5792 & 5821. The Access Board seeks to restore TTY-related requirements to the 508 Standards prior to this compliance date. The Board is not aware of any Federal agency having relied on the mistaken omission of TTY-related requirements from the ICT Final Rule as authorization to reduce or eliminate TTY functionality on their ICT with two-way voice communication.

2. Amended TTY Requirements

As discussed in the preamble to the ICT Final Rule, the revised 508 Standards and 255 Guidelines feature significantly revamped organizational format and wording relative to their predecessor standards and guidelines. *See* 82 FR at 5790–91. The TTY-related accessibility requirements from the original 508 Standards and 255 Guidelines thus could not simply be reinserted into the revised standards and guidelines using their original wording and section numbering. Consequently, in this direct final rule, the TTY-related requirements from the original 508 Standards and 255 Guidelines have been modestly revised—in minor, non-substantive ways—so that they conform to the updated formatting and terminology used in the ICT Final Rule.

In summary, this direct final rule incorporates the original TTY-related requirements into the revised 508 Standards and 255 Guidelines as follows. The technical specifications for TTY functionality appear as a new subsection (412.8) to the section that collectively sets forth the technical requirements applicable to ICT with two-way voice communication. We retained the original wording of these reinstated TTY-related requirements to the greatest extent possible; some minor, non-substantive wording changes were needed for consistency with updated terminology used in the ICT Final Rule. Additionally, in the scoping provision for hardware covered by the 255 Guidelines (C204.1), a companion exception has been added that exempts 255-covered hardware from the accessibility requirements in new 412.8.3. This exception mirrors the existing scope of coverage under the original 255 Guidelines. Unlike the

original 508 Standards, the original 255 Guidelines do not require the features addressed in 412.8.3—namely, voice mail, auto-attendant, and interactive voice response telecommunications systems—to provide TTY functionality. *Compare, e.g.*, 36 CFR 1193.51(d) (2016) (TTY-related compatibility requirements in original 255 Guidelines) *with* 36 CFR

1194.23(c), (e) (2016) (specifying, in original 508 Standards, that telecommunications systems for voice mail, auto-attendant, interactive voice response, and caller identification must be compatible with TTYs). Lastly, in consideration of technological advances, we have clarified that the requirements for TTY compatibility (412.8) cover

software that provides TTY functionality, as well as stand-alone TTY devices and other hardware.

In Table 1 below, we provide a “crosswalk” that lists the TTY-related provisions added by the direct final rule and identifies their corresponding provisions in the original 508 Standards and 255 Guidelines.

TABLE 1—CROSSWALK OF TTY PROVISIONS IN THE DIRECT FINAL RULE AND THEIR CORRESPONDING PROVISIONS IN THE ORIGINAL 508 STANDARDS AND 255 GUIDELINES

Direct final rule (new §)	Original 508 standards (original §)	Original 255 guidelines (original §)
412.8	1194.23(a)	1193.51(d)
412.8.1	1194.23(a)	1193.51(d)
412.8.2	1194.23(a)	1193.51(d)
412.8.3	1194.23(b)	1193.51(e)
412.8.4 (Section 508-covered hardware) & C204.1, Exception for 412.8.4 (Section 255-covered hardware)	1194.23(c), (e)	n/a

Regulatory Process Matters

A. Regulatory Planning and Review (Executive Orders 12866 and 13563)

The Access Board has examined the impact of this direct final rule under Executive Orders 12866 and 13563. These executive orders direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). This rule does not impose any incremental costs or benefits because it makes minor administrative corrections and, on the one substantive matter, merely retains (restores) existing TTY-related requirements for ICT with two-way voice communication that have been in place for nearly two decades. As such, this direct final rule is not a significant regulatory action for purposes of section 3(f) of Executive Order 12866.

Additionally, because this direct final rule is a non-significant regulatory action that imposes no costs, it is also exempt from the requirements outlined in Executive Order 13771. *See* Exec. Order. 13771, 82 FR 9339 (Feb. 3, 2017); OMB, M–17–21, Guidance Implementing Executive Order 13771, Titled “Reducing Regulation and Controlling Regulatory Costs” (April 5, 2017).

B. Congressional Review Act

This direct final rule is not a major rule within the meaning of the Congressional Review Act (5 U.S.C. 801 *et seq.*).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires Federal agencies to analyze regulatory options that may assist in minimizing any significant impact of a rule on small businesses and small governmental jurisdictions. *See* 5 U.S.C. 604, 605(b). Because this direct final rule merely remedies several inadvertent drafting errors in the ICT Final Rule, including the unintentional deletion of longstanding TTY-related accessibility requirements, the Access Board certifies that the rule will not have a significant economic impact on a substantial number of small entities.

D. Federalism (Executive Order 13132)

The Access Board has analyzed this direct final rule in accordance with the principles and criteria set forth in Executive Order 13132. The Board has determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

E. Paperwork Reduction Act

This direct final rule does not contain any new collections of information or recordkeeping requirements that require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (codified at 2 U.S.C. 1531 *et seq.*) (“UMRA”) generally requires that Federal agencies assess the effects of their discretionary regulatory actions that may result in the expenditure of

\$100 million (adjusted for inflation) or more in any one year by the private sector, or by state, local, and tribal governments in the aggregate. Because this direct final rule is being issued under the good cause exception in the Administrative Procedure Act section 553(b)(B), UMRA’s analytical requirements are inapplicable. *See* 2 U.S.C. 1532(a).

List of Subjects in 36 CFR Part 1194

Civil rights, Communications, Communications equipment, Computer technology, Electronic products, Government employees, Government procurement, Incorporation by reference, Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications.

For the reasons stated in the preamble, and under the authority of 47 U.S.C. 255(e), the Board amends 36 CFR part 1194 as follows:

PART 1194—INFORMATION AND COMMUNICATION TECHNOLOGY STANDARDS AND GUIDELINES

- 1. The authority citation for part 1194 continues to read as follows:

Authority: 29 U.S.C. 794d, 47 U.S.C. 255.

Appendix A to Part 1194—[Amended]

- 2. In appendix A to part 1194:
 - a. In the table of contents, remove “E205 Content” and add in its place “E205 Electronic Content”.
 - b. In section E202.6, in the first sentence, remove “E202.5” and add in its place “E202.6”.
- 3. In appendix B to part 1194, revise the exception paragraph following section C204.1 to read as follows:

Appendix B to Part 1194—Section 255 of the Communications Act: Application and Scoping Requirements

* * * * *

C204.1 * * *
EXCEPTION: Components of telecommunications equipment and customer premises equipment shall not be required to conform to 402, 407.7, 407.8, 408, 412.8.4, and 415.

* * * * *

■ 4. In appendix C to part 1194, add sections 412.8, 412.8.1, 412.8.2, 412.8.3, and 412.8.4 in numerical order to read as follows:

Appendix C to Part 1194—Functional Performance Criteria and Technical

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412 ICT With Two-Way Voice Communication

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412.8 Legacy TTY Support. ICT equipment or systems with two-way voice communication that do not themselves provide TTY functionality shall conform to 412.8.

412.8.1 TTY Connectivity. ICT shall include a standard non-acoustic connection point for TTYS.

412.8.2 Voice and Hearing Carry Over. ICT shall provide a microphone capable of being turned on and off to allow the user to intermix speech with TTY use.

412.8.3 Signal Compatibility. ICT shall support all commonly used cross-manufacturer non-proprietary standard TTY signal protocols where the system interoperates with the Public Switched Telephone Network (PSTN).

412.8.4 Voice Mail and Other Messaging Systems. Where provided, voice mail, auto-attendant, interactive voice response, and caller identification systems shall be usable with a TTY.

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Approved by notational vote of the Access Board on January 12, 2018.

David M. Capozzi,
Executive Director.

[FR Doc. 2018-00848 Filed 1-19-18; 8:45 am]

BILLING CODE 8150-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 160105011-7999-03]

RIN 0648-XE390

Endangered and Threatened Wildlife and Plants; Final Rule To List the Giant Manta Ray as Threatened Under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: We, NMFS, announce a final rule to list the giant manta ray (*Manta birostris*) as threatened under the Endangered Species Act (ESA). We have reviewed the status of the giant manta ray, including efforts being made to protect this species, and considered public comments submitted on the proposed rule as well as new information received since publication of the proposed rule. We have made our final determinations based on the best scientific and commercial data available. At this time, we conclude that critical habitat is not determinable because data sufficient to perform the required analyses are lacking; however, we solicit information on habitat features and areas in U.S. waters that may meet the definition of critical habitat for the giant manta ray.

DATES: This final rule is effective February 21, 2018.

ADDRESSES: Endangered Species Division, NMFS Office of Protected Resources (F/PR3), 1315 East West Highway, Silver Spring, MD 20910. Copies of the petition, status review report, and **Federal Register** notices are available on our website at <http://www.fisheries.noaa.gov/pr/species/fish/manta-ray.html>.

FOR FURTHER INFORMATION CONTACT: Maggie Miller, NMFS, Office of Protected Resources, (301) 427-8403.

SUPPLEMENTARY INFORMATION:

Background

On November 10, 2015, we received a petition from Defenders of Wildlife to list the giant manta ray (*M. birostris*), reef manta ray (*M. alfredi*) and Caribbean manta ray (*M. c.f. birostris*) as threatened or endangered under the ESA throughout their respective ranges, or, as an alternative, to list any identified distinct population segments (DPSs) as threatened or endangered. The petitioners also requested that critical habitat be designated concurrently with listing under the ESA. We found that the petitioned action may be warranted for the giant manta ray and reef manta ray and announced the initiation of status reviews for these species, but found that the Caribbean manta ray is not a taxonomically valid species or subspecies for listing, and explained the basis for that finding (81 FR 8874, February 23, 2016). On January 12, 2017, we published a proposed rule to list the giant manta ray as a threatened species under the ESA and made a 12-month determination that the reef manta

ray did not warrant listing under the ESA (82 FR 3694). We solicited information on the proposed listing determination, the development of proposed protective regulations, and designation of critical habitat for the giant manta ray, and the comment period was open through March 13, 2017. This final rule provides a discussion of the information we received during and after the public comment period and our final determination on the petition to list the giant manta ray under the ESA.

Listing Species Under the Endangered Species Act

We are responsible for determining whether species are threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*). To make this determination, we first consider whether a group of organisms constitutes a “species” under section 3 of the ESA, then whether the status of the species qualifies it for listing as either threatened or endangered. Section 3 of the ESA defines species to include “any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.” On February 7, 1996, NMFS and the U.S. Fish and Wildlife Service (USFWS; together, the Services) adopted a policy describing what constitutes a DPS of a taxonomic species (61 FR 4722). The joint DPS policy identified two elements that must be considered when identifying a DPS: (1) The discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the significance of the population segment to the species (or subspecies) to which it belongs.

Section 3 of the ESA defines an endangered species as “any species which is in danger of extinction throughout all or a significant portion of its range” and a threatened species as one “which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” Thus, in the context of the ESA, the Services interpret an “endangered species” to be one that is presently in danger of extinction. A “threatened species” is not presently in danger of extinction, but is likely to become so in the foreseeable future (that is, at a later time). In other words, the primary statutory difference between a threatened and endangered species is the timing of when a species is or is likely to become in danger of extinction, either presently (endangered) or in the foreseeable future (threatened).