



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

1875 Century Boulevard  
Atlanta, Georgia 30345

In Reply Refer To:  
FWS/R4/ES

AUG 25 2009

Christine A. Erickson, Staff Counsel  
Public Employees for Environmental Responsibility  
2000 P Street NW, Suite 240  
Washington, D.C. 20036

Dear Ms. Erickson:

The U.S. Fish and Wildlife Service (Service) received the Public Employees for Environmental Responsibility (PEER) petition for rulemaking to minimize the effects of swimmer activities on manatees wintering in the Citrus County, Florida region. Specifically, your petition seeks the following regulations: 1) a ban on the approval of Special Use Permits for commercial dive shops operating “swim-with” programs in Florida; 2) an Endangered Species Act (Act) section 4(d) rule to prohibit manatee “swim-with” interactions in Florida waters, in addition to supporting regulations pursuant to section 11(f) of the ESA to govern and enforce such a rule; and 3) a request to designate Kings Bay, Three Sisters Springs, and Homosassa Springs as critical habitat under section 4(b)(2) of the ESA.

### Special Use Permits

Both the National Wildlife Refuge System Improvement Act of 1966, as amended, and the National Wildlife Refuge System Improvement Act of 1997, provide the Service with authorities to ensure that wildlife-dependent, recreational activities occurring on Service refuges are compatible with “the fulfillment of the mission of the [National Wildlife Refuge] System or mission of the refuge.” Crystal River National Wildlife Refuge (NWR) was created to protect the manatee, provide opportunities for wildlife-dependent recreation, and enable the public to better appreciate the value of and need for fish and wildlife conservation.

Pursuant to the Improvement Acts, Crystal River NWR relies on a Special Use Permit (SUP) permitting system to ensure that wildlife-dependent recreational activities are compatible with the Refuge’s mission. The Refuge issues SUPs to eco-tour operators (dive shops, kayak outfitters, etc.), photographers, and other user groups who engage in refuge-compatible, wildlife-dependent recreational activities on refuge property. SUPs specify the permit holder’s intended activity(s), conditions that the permit holder must adhere to, and provides the refuge with an additional tool to better enforce any permit holder violations that may occur, including any acts of manatee harassment.

As such, the intent of these SUPs at Crystal River is not to “operate commercial swim-with programs.” These SUPs are in fact conditioned such that the permitted activities do not harass manatees. Conditions include requirements for permit holders to educate their customers about manatees and manatee interactions, inform their customers about regulations governing interactions with manatees, and advise permit holders of circumstances under which their permits can be revoked, etc. While not all customers will follow the permit conditions one hundred percent, abandoning the Special Use Permits permitting system at Crystal River would not resolve the problem and would in fact remove a significant management tool which currently minimizes manatee harassment by swimmers.

As discussed below, section 4(d) of the Act is not an appropriate authority for any regulations related to the endangered manatee.

### Special Rule and Regulations

PEER requested that we promulgate a special rule under section 4(d) of the Act prohibiting all “swim-with” interaction in all Florida waters. However, section 4(d) of the Act only applies to species, subspecies, and Distinct Population Segments listed as *threatened*. Because the manatee is listed as an *endangered* species, section 4(d) cannot be used to promulgate a special rule to address manatee harassment concerns. Harassment of manatees is covered by the general prohibitions against take of endangered animals found in section 9(a)(1) of the Act.

### Designation of Kings Bay, Three Sisters Springs, and Homosassa Springs as Critical Habitat

In regards to your request to designate Kings Bay, Three Sisters Springs, and Homosassa Springs as critical habitat (pursuant to section 4(b)(2) of the Act), Crystal River and its headwaters, including King’s Bay and Three Sisters Springs, are already designated as critical habitat for the Florida manatee (41 FR 41914, dated September 24, 1976; 50 CFR 17.95). On December 19, 2008, the Service was petitioned to revise its critical habitat designation for the Florida manatee. Homosassa Springs, as well as other areas, were included in that petition. Our finding on the merits of that petition is still pending but is expected to be published soon. PEER’s request for a revision to critical habitat thus constitutes a second petition and any relevant comments will be considered in our ongoing review process.

In general, manatees in Florida’s Northwest Management Unit (which includes manatees that winter in the Crystal and Homosassa rivers) are doing quite well. Manatee population growth rates and adult survival rates in this area have been increasing and are among the highest in the State. A recent survey of manatees in the region identified at least 467 animals, the highest count ever made over the course of some 40 years of surveying. A review of carcass salvage data does not provide any evidence suggestive of increased levels of calf abandonment or cold-related deaths or disease in the region from swimmers or other human-related activities.

While this information suggests that manatees in northwest Florida are doing quite well, the Service, fellow agencies, and local communities are taking additional steps to better manage

manatee harassment concerns. Since 2006, the Service and others have been closely evaluating complaints and more carefully monitoring manatees, eco-tourists, and eco-tour operators in this region. During this time, enforcement officers identified very few events that warranted the issuance of citations and concluded that complaints about harassment (which have increased over the years) are largely attributable to the public's poor understanding of what constitutes harassment under the law. Officers do believe, though, that existing laws could better define harassment.

Crystal River NWR is also taking significant steps to improve its ability to manage eco-tourism in the region through the Comprehensive Conservation Plan (CCP) development process and land acquisition efforts, improved law enforcement activities conducted in partnership with other enforcement offices, and through improved outreach efforts and educational materials. The State and the Service are additionally engaged in a review of the adequacy of local sanctuaries, are developing and adopting enhanced enforcement practices, and are taking additional steps to minimize manatee harassment throughout the region. The Service takes all concerns about manatee harassment very seriously and we are working together with the State and our other partners to address them.

### Conclusion

We have reviewed PEER's *Petition for Rulemaking* and have concluded that: (1) our Special Use Permitting system at Crystal River NWR minimizes manatee harassment by swimmers while providing opportunities for wildlife-dependent recreation and enabling the public to better appreciate the value of and need for fish and wildlife conservation, and therefore a ban on SUPs is not appropriate; (2) promulgation of a special rule under section 4(d) of the ESA is not applicable to the manatee because this section of the Act only applies to threatened species; and (3) PEER's request for critical habitat designation constitutes a second petition for such action for the Florida manatee. Our finding on the December 19, 2008, petition for revision of critical habitat is expected to be published in early fall.

If you have any questions regarding these conclusions, please contact Mr. Jim Valade at our Jacksonville, Florida Field Office at 904 731-3116.

Sincerely yours,



Cynthia K. Dohner  
Acting Regional Director

**for**