

August 22, 2011

Public Comments Processing
Attn: FWS-R4-ES-2010-0079
Division of Policy and Directives Management
U.S. Fish and Wildlife Service
4401 N. Fairfax Drive, Suite MS 2042-PDM
Arlington, VA 22203

RE: Comments on Proposed Rule to Establish a Manatee Refuge in Kings Bay, Citrus County, Florida

Public Employees for Environmental Responsibility (PEER) would like to take this opportunity to provide comments addressing the proposed rule FWS/R4/ES/2010-0079 regarding manatee protection measures proposed to be promulgated in Kings Bay, Crystal River, Florida.

PEER believes this proposal is long overdue but contains critical limits which may undermine its effectiveness.

Most critically, PEER strongly endorses the implementation of a year-round slow speed zone in Kings Bay. Manatee use of the bay has increased dramatically in recent years, even during the warm seasons. A slow speed zone within the bay will reduce the potential for manatees to be killed or injured severely by collisions with watercraft.

Unfortunately, the high speed zone in the Crystal River itself remains problematic. The Crystal River is the only ingress/egress avenue for manatees using Kings Bay. As a result, watercraft deaths of manatees may occur as manatees enter and leave the new refuge.

PEER also supports the action to establish an emergency manatee refuge, as codified in 50 CFR 17 subpart J., throughout Kings Bay, Citrus County, Florida. A manatee refuge is defined as an area in which the U.S. Fish and Wildlife Service (FWS) Director has determined that: (1) certain waterborne activities will take one or more manatees; or (2) certain waterborne activities must be restricted to prevent the take of one or more manatees, including but not limited to taking by harassment.

That being said, the proposed regulations that accompany this designation fall far short of addressing the problems of the unauthorized take of manatees by harassment. In our correspondence to you, dated February 17, 2011, suggesting steps that FWS should incorporate

in this permanent rule once the emergency rule lapsed, we requested the following regulations be implemented within the proposed Kings Bay Manatee Refuge.

1. Establish a manatee sanctuary for the entire canal system, starting at the entrance of Kings Bay proper, for the canal system which includes Magnolia and Three Sisters Springs. Waterfront home owners will be provided identification to allow for ingress/egress with their personal watercraft.
2. The manatee sanctuary at the King Spring will be expanded to include the spring itself and the existing entrance corridor (known as the “keyhole”).
3. Require that all persons swimming/snorkeling in the waters of King’s Bay
 - a. Wear a wet suit and/or dry suit or flotation devices
 - b. Wear no weights/ weight belt or other devices which facilitate prolonged submerged activities.
 - c. Wear no swim fins or other devices designed to assist with in-water propulsion.

In addition, PEER requested the following actions to be completed as part of the process of finalizing and making permanent the establishment of a manatee refuge that includes all of Kings Bay, Citrus County, Florida:

- A. Include, under 50 CFR 102, a definition of what constitutes harassment of manatees. This definition should include intentional hazing with the use of watercraft, feeding, watering, chasing, riding, holding, separating a calf from a cow or attempting to impede or block a manatee from moving, feeding or sheltering, and disturbing a resting/sleeping manatee.
- B. Make items 1-3, as outlined above for actions to implement under the emergency rule, permanent regulations for the Kings Bay manatee refuge.
- C. Implement a daily permit system that would regulate the activities of swimmers/divers in Kings Bay during the period 11/15-3/15 inclusive. This quota system would be administered by the FWS. This permit system would have provisions for the following:
 1. A daily quota that would limit the number of swimmers/divers in Kings Bay. This quota will be determined with the intent to minimize disturbance to wintering manatees.
 2. A requirement for education of permit applicants to address the actions allowed and prohibited to minimize manatee “take”.
 3. Provisions to rescind the permit for individuals violating manatee regulations.
 4. Provisions to regulate and permit commercial operations which provide equipment, access or guide services to the public for the purpose of interactions with manatees in

Kings Bay as well as provisions to rescind permits of those commercial operations which demonstrate the inability to prevent violations of manatee regulations.

The proposed rule includes some of these suggestions but does not adequately address the overall thrust of our criteria for effective manatee protection.

Significantly, PEER requested a sanctuary be established for the entire canal system, starting at the entrance of Kings Bay proper, for the canal system which includes Magnolia and Three Sisters Springs (Item 1). The proposed rule provides for temporary manatee sanctuaries and a night time closure of Three Sisters Spring. This proposal totally disregards the intense harassment that occurs at this site on a daily basis.

PEER also requested the manatee sanctuary at the King Spring be expanded to include the spring itself and the existing entrance corridor (known as the “keyhole”) (Item 2). The proposed rule does not include this request.²

PEER requested the following diver/swimmer specific regulations be enacted (Item 3):

- a. Wear a wet suit and/or dry suit or flotation devices
- b. Wear no weights/ weight belt or other devices which facilitate prolonged submerged activities.
- c. Wear no swim fins or other devices designed to assist with in-water propulsion.

The purpose of these proposed regulations was to provide real-world solutions to the issue of manatee harassment:

- The wearing of wet suit and/or dry suit or flotation devices (Item a) would minimize the ability of swimmers/ divers from diving on submerged or resting manatees.
- The purpose of no weights/ weight belt or other devices which facilitate prolonged submerged activities (Item b) serves the same purpose of preventing swimmers/divers from disturbing submerged and resting manatees, particularly when coupled with Item a.
- The purpose of prohibiting swim fins or other devices designed to assist with in-water propulsion (Item C) would minimize the ability of swimmers/divers from pursuing or chasing manatees.

Rather than adopt these clear and simple regulations, the Service has proposed to only place into regulation a series of prohibitions. While this is again long overdue, relying solely on these prohibitions, each containing nebulous and subjective elements which may render them unenforceable, misses the need to prevent occasions for manatee harassment in the first place – rather than trying to regulate it after contact occurs.

Thus, the proposed rule lays out 12 prohibited actions relating to manatee “swim-with” operations but each raises needless questions of interpretation which may undercut their effectiveness. For example:

1. Pursuing manatees. How is pursuing defined? Most swimmers encountering manatees do not want this experience to be cut short and will follow/swim after a manatee when it starts swimming away. Would this constitute a violation? If so, virtually all swimmers will be violators.
2. Diving from the surface on a resting/feeding manatee. What is considered diving? If a swimmer submerges 1-2 ft. is that considered diving? Is jumping feet-first permitted?
3. Contacting a tagged manatee. Does this contact ban forbid any touching? The wording suggests that contact with the manatee is permitted if the tag is undisturbed. Is it necessary to prove the swimmer knew of the tag? Why is it permitted to contact non-tagged manatees but a violation to contact tagged manatees (provided one does not disturb the scientific devices)?

The basic problem with reliance only on these proposed regulations is that they are arbitrary and unenforceable. These proposed regulations have existed for years as guidelines and have been used by the Service in an attempt to enforce the prohibition of harassment. The nebulous nature of these guidelines prevents enforcement of all but the most blatant violations. Codifying these guidelines into regulations will serve no purpose as they have already been demonstrated as a failure in addressing the problem of harassment in Kings Bay. PEER strongly recommends that the Service adopt as regulation measures that reduce the number and intensity of the human-manatee interactions (Items a, b, and c above).

Moreover, these harassment regulations are limited to Kings Bay. Yet, these activities commonly occur throughout Florida. If they constitute harassment in Kings Bay why are they not harassment elsewhere?

FWS has also proposed that manatee-safe lines be employed for fishing, mooring and other waterborne activities in Kings Bay. While laudable, this proposal may not provide complete protection against manatee entanglements. Under the proposal, current recreational fishing lines (monofilament, braid) would be prohibited. Yet, boaters and waterfront owners could continue to employ a variety of lines for anchoring, mooring and docking in which manatees could become entangled.

Again, as with the harassment regulations, if the use of such lines is essential to manatee protection and recovery efforts, the Service should make this a regulation that would be in effect throughout the range of the manatee rather than just in Kings Bay.

In July 2009, PEER petitioned FWS to 1) stop issuing commercial swim-with permits; 2) adopt rules forbidding swimming with the manatees; and 3) expand critical habitat status to key manatee breeding and resting areas. In August 2009, the agency rejected the first two prongs of the PEER petition and indicated that it would consider additional critical habitat. On January 12, 2010, the Service issued a finding acknowledging that the current habitat designations were insufficient to protect the endangered manatee population, but declined to act due to the need to address unspecified “higher priority listing-related actions and funding constraints.”

After the deadly winter of 2010, FWS, in early November 2010, unveiled emergency restrictions for Florida's largest wintering habitats citing an "imminent danger" for the endangered manatee. In its June 2011 notice on this proposal, FWS concluded that harassment and other negative impacts on manatees in Kings bay are increasing – hence the need for these proposed rules.

To the extent that the emergency rules did not redress the problem, merely extending those rules without addressing the underlying dynamics may well prove ineffective, as well. Nonetheless, PEER is concerned that FWS may be pressured to step back from even these limited half-steps.

In March 2010, PEER filed a notice of intent to sue under the Endangered Species Act on the grounds that FWS inaction or half-steps were interfering with the recovery of the endangered manatee. That summer, FWS representatives asked PEER to hold off filing suit while it finalized new protective measures – a process that has culminated in the current proposal.

PEER again implores FWS to take actions which will effectively protect the manatee based upon the science rather than the local politics, thus obviating the need for court intervention into what should be administrative decision-making.

Thank you for this opportunity to comment on the forthcoming permanent rule.

Sincerely,

Jeff Ruch
Executive Director

Cc. Ms. Cynthia Dohner, USFWS Southeast Regional Director