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**PEER Comments on the
Environmental Assessment
of the
Three Sisters Springs Unit of Crystal River National Wildlife Refuge:
Aquatic Habitat and Wildlife-Viewing Improvements
Citrus County, Florida**

VIA U.S. Mail & Email

Overview:

These comments are submitted on behalf of Public Employees for Environmental Responsibility (PEER), an organization dedicated to assisting public employees to ensure that their agencies fulfill their responsibilities to conserve and protect natural resources and the environment.

In this regard and based upon this Environmental Assessment (EA), we are pleased that the Crystal River National Wildlife Refuge (NWR) and its parent agency, the U.S. Fish & Wildlife Service (FWS) now appear to officially recognize that harassment of manatees by visitors in swim-with programs has gotten out of hand and needs to come into compliance with the law.

As noted in the August 5, 2015 FWS “Questions and Answers” document on the “Three Sisters Springs: Aquatic Habitat & Wildlife Viewing Improvements” the agency acknowledges –

- “the explosive increase in number of commercial guides and visitors ...causing unprecedented impacts in sensitive manatee resting areas, specifically at Three Sisters Springs...”
- The need to “address and limit the potential to compromise the behavior of resting and nursing manatees in Three Sisters Springs.”

- “Touching of manatees encourages inappropriate interactions with a wild animal and can habituate manatees to human interaction. Permitting the touching of manatees could comprise the provisions of the MMPA [Marine Mammal Protection Act].”

These acknowledgements would, however, justify FWS selecting Alternative B which would end swim-with activities during the winter altogether, rather than Alternative C which allows those programs to continue with some additional regulation.

PEER supports some of the measures FWS seeks to adopt, including –

- Significantly limiting the number of Special Use Permits (SUPs) for commercial tour operators;
- Reducing the number of swimmers with no more than five swimmers per guide;
- Prohibiting diving and use of swim fins; and
- Instituting guidance that tour participants stay at least six feet away from manatees.

While we view these as steps in the right direction, as detailed below we believe these steps will be inadequate to eliminate visitor harassment of manatees. We have grave concerns with the very many failures of the preferred alternative to control wide-spread documented disturbance within Three Sisters Springs as well as the rest of the bay. Chief among our concerns, as detailed below, is that none of the recommended Sanctuary restrictions on human actions or activities within Three Sisters Springs are, in-fact, required by the EA. Rather, the EA is replete with language that allows the Service to make exceptions to various measures with no opportunity for oversight or accountability. We believe that Alternative B should be chosen in this case.

Specific Comments:

1. Lobe Closures Should be Mandatory and Permanent

The two lobes that were closed to swimmers inside the springs last winter will now only be closed “as needed in response to key environmental factors . . . or at the discretion of Refuge management.” EA at 30. The referenced environmental factors include “actual or estimated manatee numbers from counts in the Springs, the spring run, and areas at the mouth of the run, tide heights measured within the Springs, ambient sea water temperatures from Shell Island USGS weather monitoring station, and ambient water temperatures from the canal entrance to the spring run,” but no specific metrics are provided.

This host of vague qualifiers is not acceptable as a workable regulation, and effectively leaves management the discretion to never close the lobes. Last year, these lobes provided crucial respite from encounters with humans, who will otherwise have nowhere to go within Three Sisters Springs to escape in-water tourists. The lobes’ closure should be mandatory and permanent.

2. FWS Should Adopt a Clear No-Touch Rule

The Agency's proposed alternative includes instituting a standard of conduct¹ that *still does not prohibit visitors from touching manatees*. People are asked not to “initiate contact with” manatees and to stay 6 feet away “unless the manatee initiates approach and interaction.” The ambiguous standard appears to merely rehash the current “passive observation” guidelines that – as ample evidence shows – the tour guides and their clients regularly ignore. As the Marine Mammal Commission informed FWS in its November 2014 letter of concern regarding Three Sisters Spring, “touching manatees under most circumstances *already should be considered a form of taking*” under the Endangered Species Act and the Marine Mammal Protection Act. November 3, 2014 MMC letter to FWS, page 1 (emphasis added).

Put another way, FWS's position is that swimmers may touch manatees that approach them. This is inconsistent with the MMPA, with parallel efforts by the National Marine Fisheries Service, and with watchable wildlife guidelines for marine species endorsed by FWS that recommend people keep a respectful distance from all marine wildlife and back away when approached. The vague guidelines regarding touching manatees are unacceptable because:

- Members of the public may assume that if they can touch manatees at Three Sisters Springs, they may also touch manatees – and for that matter, other marine mammals like bottlenose dolphins – wherever they may be found.
- Allowing visitors to touch, pet, or scratch manatees that approach them reinforces the manatees' behavior. Manatees habituated to human contact may approach humans in other locations where the protections of the Refuge do not apply, putting them at greater risk of harm.
- The ambiguity about touching manatees will hamper enforcement efforts. Officials attempting to detect and enforce prohibitions will have to determine whether a manatee “initiates approach and interaction” with a swimmer – a task that is exceedingly difficult.

In short, a straightforward “no touch” rule would offer greater protection for the manatees, send a better message to the public, and significantly facilitate enforcement.

3. Restrictions Should Extend Beyond Three Sisters Springs

The EA's focus on the Three Sisters Springs area disregards other widespread manatee harassment within the bay and the effects that the plan will have in other parts of the refuge. To adequately protect these endangered animals, all generally applicable manatee restrictions should apply not only in Three Sisters Springs, but throughout the Refuge. For example, there are no manatee sanctuaries at the north end of the bay (Jurassic, House and Hunter springs), and that is where many guides now take their patrons because they have unrestricted access to the manatees

¹ Please note that the sixth bullet point contains a typographical error that should be fixed. It prohibits loud noises “including but limited to...” This should read, “including but not limited to...”

seeking warmth. The in-water tourists regularly drive manatees out of these springs just as they have so often done at Three Sisters Springs.

Indeed, the Agency admits that operators may shift their use to other areas and indeed admits that the preferred alternative “does not prohibit recreationists from participating in similar recreational activities elsewhere” (EA at 42-43), but the Agency fails to consider the potential increased pressure that the proposal could have on those alternative locations. In particular, the current design virtually ensures that divers and swimmers will congregate around the entrance to the spring run outside Three Sisters Springs. The Agency fails to consider or enact protections for this area where, without restrictions, masses of visitors are likely to interfere with manatees’ ability to access their crucial warm water resting places.

General manatee protections should apply in all areas where manatee tourism occurs. Similarly, training for guides who will have an SUP to bring clients into the Three Sisters Springs area should be mandated for all guides bringing visitors to any location on the Refuge.

4. FWS Has no Enforcement Plan or Dedicated Resources for Enforcement

Enforcement of manatee rules has been consistently problematic at the Refuge, yet the EA fails to adequately discuss what enforcements measures will be put in place, how the measures’ effectiveness will be assessed, and how they will be funded.

Internal agency records obtained by PEER indicate massive enforcement problems at the Refuge. In a candid March 3, 2014 email, outgoing Crystal River National Wildlife Refuge/ Kings Bay Manatee Refuge manager Michael Lusk wrote, “I believe the amount of unregulated activity in [Three Sisters Springs within the refuge] is likely resulting in the take² of manatees.”

In his email, Lusk pointed out that “[v]isitor behavior in the water cannot be adequately monitored solely from land, the boardwalk, or from a kayak. Due to angle and glare it is impossible to see what the majority of visitors are doing inside the springs.” The Agency’s EA fails to discuss how this long-standing obstacle will be overcome. Lusk also stated that increasingly, visitors react to warnings from refuge staff and volunteers with “animosity” and “abusive language.” He also cautioned that increased law enforcement presence is needed to stem “potentially dangerous” situations involving “physical violence.” Again, the EA does not contain a discussion of enforcement challenges like this one.

As a result, Lusk recommended that “the Service should close the springs while manatees are present to prevent take, until such time as resources are available to safely open the springs.” His conclusions echo a Notice of Intent to Sue the Service recently filed by PEER to end swim-with programs, which enable thousands of tourists swarm the narrow, shallow warm water springs habitat the manatees need to survive. His comments also support adoption of Alternative B.

In addition, records obtained under the Freedom of Information Act include the first tabulations of manatee harassment incidents the FWS has assembled after it established a dedicated email

² Of course, “take” is a term defined by the Endangered Species Act; take can be direct or indirect, and includes harassing, harming, or pursuing endangered animals, and is a crime.

address in January 2015 to receive citizen reports. Since that time, the Agency has issued ten citations and another eight cases remain under criminal investigation. The Service information officer stipulated, however, "...please be advised that the Service has not done an analysis concerning the extent or nature of harassment of manatees, including those involving swim-with interactions between manatees and humans. Though the Service has collected the statistics provided to you, this information has not been thoroughly assessed and/or analyzed."

In other words, FWS does not analyze reports of harassment incidents it gets to avert future "swim-with" disturbances of endangered manatees. Such analysis is crucial to the success of enforcement efforts.

5. FWS Should Institute Comprehensive Video Monitoring

The Agency states that under the preferred alternative, "[m]anatee behavior and human interactions would be monitored," but does not specify who will do the monitoring or how it will be done. Fortunately, there is an easy and cost-free solution to this problem: the Save the Manatee Club and others have offered to install and maintain such a system at Three Sisters Springs, sparing the Agency any expense.

A video monitoring system would serve as a crucial and reliable enforcement tool producing admissible evidence of harassment. It would serve as a deterrent to willful violations. It would help the Service identify any tour operators operating outside the terms of their SUPs. Moreover, it would produce troves of valuable scientific information regarding the manatees' individual and collective use of the Springs under variable circumstances.

If the Agency is truly confident that its proposed alternative will solve harassment problems at Three Sisters Springs, then it would have no reason to refuse the free system. Conversely, should the Agency be unwilling to use video documentation, then it should not allow people to enter the springs at all.

6. Proposed Ramp and Dock Undercut Improvements

Building a ramp and floating dock is not in keeping with the Florida Communities Trust agreement that states there will be no access to the water from land and vice versa. EA at 21. A floating dock with constant traffic to and from the springs will be very disruptive to the manatees, and swimmers accessing the springs from the boardwalk will cause congestion for those walking the boardwalk to view manatees. It is not clear why water-to-land access to the boardwalk for paddlers and snorkelers is necessary, as paddlers and snorkelers can access the boardwalk from land either before or after they snorkel/paddle. In fact, providing such an access point will only serve to increase congestion in the adjoining canal and further exacerbate an already overcrowded and disruptive situation.

7. Viewing from Boardwalk Should Be Facilitated as it is at Blue Spring and Homosassa Springs

The EA provides no special days for those wishing to view manatees in a completely natural state (i.e., without the presence of swimmers and boats) from the boardwalk. Only on the coldest

days will they be able to view manatees alone in the springs if the FWS decides to close it to swimmers. There should be at least one day a week of full closure of the springs so boardwalk visitors can plan a day of stress-free viewing of the manatees. Under the proposed alternative, in-water access is available from 9 a.m. to 4 p.m. “daily.” EA at 29. Ideally, however, Three Sisters boardwalk visitation should be modeled after Blue Spring and Homosassa Springs State Parks where people are able to appreciate and observed manatees depending upon the vital life-sustaining characteristics of the springs in an undisturbed manner.

8. “Key Holes” Proposal Should Be Withdrawn

On pages 54-55 of the EA, the Agency mentions additional measures that could be done in collaboration with community partners; these measures are not formally a part of its preferred alternative. One of these is to insert “key holes” into the manatee sanctuaries at Three Sisters Springs. The proposed sanctuaries are already too small and this proposal would allow swimmers even closer inspection of manatees attempting to distance themselves from swimmers. Three Sisters Springs is such a small area that manatees can be seen from the edge of the proposed sanctuary boundary without adding a keyhole.

Another of these measures is the proposed addition of a “keyhole” at Mullet Hole near Kings Spring. Originally, a keyhole was added to the Kings Spring manatee sanctuary to allow divers to access the cave, so manatees now prefer the nearby Mullet Hole spring vent, so they can avoid the swimmers at the Kings Spring vent. We vigorously oppose any “keyhole” at Mullet Hole, which would interfere with one of the only remaining safe places to rest available to manatees. The fact that such an intrusion is even being contemplated further bolsters our belief that the Service appears to care more about promoting human in-water close encounters with manatees at the expense of the manatees.

Conclusion:

PEER supports Alternative B, which would end “swim-with” activities in all of Three Sisters Springs during the winter.

If FWS selects Alternative C, PEER proposes that it significantly strengthen manatee protections by making restrictions mandatory and removing ambiguous and overly-discretionary language; closing the lobes permanently; instituting a “no touch” rule; ensuring unimpeded access to and egress from the spring run; extending the reach of general manatee protection rules throughout the Refuge; improving enforcement by instituting a comprehensive video monitoring program and a plan for reviewing and analyzing reports of harassment; and incorporating the other measures discussed in these comments.

Finally, the Service must act more expeditiously in the face of documented widespread harassment within Three Sisters Springs as defined under the law. The Service should not deem the damage caused by in-water harassment of manatees to be somehow mitigated or excused because it assumes that close encounters motivate people to “support manatee” as a result, a contention that is often cited anecdotally without any numerical evidence. To the contrary,

allowing the manatees' normal and vital behaviors to be disrupted on a wide scale sends the opposite message: that what is most important is not the animals' welfare, but humans' entertainment, despite any impacts to the manatees' health, normal behaviors, or even survival. True empathy, endearment, and support can be engendered by increasing visitation from the boardwalk, where visitors can experience *true* "ecotourism" by observing manatees undisturbed by human interference. The proposition that in-water encounters increase support for manatees is not a justifiable or sustainable position either biologically or legally, and we would urge the Service to make Three Sisters Springs a full winter sanctuary and eliminate all in-water activities during the full complement of the winter months.