



# MARINE MAMMAL COMMISSION

22 August 2011

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

To Whom It May Concern:

The Marine Mammal Commission in consultation with its Committee of Scientific Advisors has reviewed the Fish and Wildlife Service *Federal Register* Notice (76 FR 36493) and associated Draft Environmental Assessment proposing rules to establish a manatee refuge in Kings Bay, Citrus County, Florida. We offer the following recommendations and comments.

## RECOMMENDATIONS

The Marine Mammal Commission recommends that the Fish and Wildlife Service—

- adopt the proposed rule that would establish year-round slow-speed requirements in all areas of the refuge not otherwise designated as either idle speed zones or no-entry manatee sanctuaries;
- (1) adopt alternative D in its draft environmental assessment, which would establish the proposed Kings Bay manatee refuge and (2) expand its list of prohibited activities to include petting, touching, rubbing, or attempting to pet, touch, or rub, any manatees and approaching them closer than 10 feet; and
- modify its draft environmental assessment by providing a more complete analysis of the no-touching and stand-off distance requirements, including points discussed in this letter.

## RATIONALE

The complex of springs in Kings Bay at the head of the Crystal River is a winter warm-water refuge used by a large and increasing number of Florida manatees. From 2000 to 2005 maximum one-day winter counts ranged from 150 to 300 individuals and from 2006 to 2010 they ranged from 250 to 550 individuals. More manatees also are using the bay in non-winter months, necessitating manatee protection year-round. In the early 1980s the Fish and Wildlife Service purchased the islands in the bay and some surrounding water bottoms. In 1983, it designated those areas as the Crystal River National Wildlife Refuge to protect manatees.

At the same time, the number of people using the bay also has increased steadily. The increases in both manatees and recreational use have resulted in growing numbers of watercraft-related manatee deaths and reports of manatee harassment. To address those problems, the Service now proposes new rules under the Marine Mammal Protection Act to designate all areas of Kings Bay and its adjacent canals and waterways as a manatee refuge. The intent of the refuge would be to (1) prevent manatee deaths and injuries by reducing boat speeds and (2) prevent harassment of manatees by swimmers and divers by adjusting the size of no-entry manatee sanctuaries and clarifying restrictions on swimming and interacting with manatees.

### **Rules to restrict boat speed**

The Marine Mammal Commission recommends that the Fish and Wildlife Service adopt the proposed rule that would establish year-round slow-speed requirements in all areas of the refuge not otherwise designated as either idle speed zones or no-entry manatee sanctuaries. In effect, this provision would eliminate an existing water sports area in the center of Kings Bay where, currently, boats are allowed to travel at 35 miles per hour (mph) during the day and 25 mph at night between 1 May and 30 August. Over the past 10 years several manatees have been struck and killed in that area during the summer. The Commission commends the Service for addressing this need.

### **Rules to prevent manatee harassment**

Current regulations do not define harassment specifically for Florida manatees. To prevent manatee harassment, the proposed rule would (1) maintain seven existing no-entry manatee sanctuaries that are closed from 15 November through 31 March, (2) authorize the establishment of temporary no-entry areas adjacent to the existing manatee sanctuaries and at small springs not currently included in manatee sanctuaries if refuge staff deem them necessary based on manatee or human use patterns, and (3) prohibit throughout the year 13 specified activities likely to harass manatees. Those activities include chasing or pursuing manatees; disturbing or touching resting or feeding manatees; poking, prodding, or stabbing manatees; standing on manatees; giving manatees anything to eat or drink; and separating mothers from calves. Having such an explicit list in the regulations helps clarify which actions constitute harassment for manatees, resolves related ambiguities, and offers much needed guidance to the public and enforcement officers.

The Marine Mammal Commission commends the Fish and Wildlife Service for its attention to long-standing harassment problems at this location. However, more could and should be done. Over the past 10 years the Marine Mammal Commission has written several letters to the Service expressing concern about escalating manatee harassment by swimmers and divers viewing wild manatees in Kings Bay. The Commission has recommended that the Service adopt rules to prohibit divers from touching manatees or approaching them closer than 10 feet. The Commission believes that escalating numbers of harassment reports have been directly related to policies that allow divers to pet and rub wild manatees and to approach animals to within inches. Those policies lead to situations where too many people bend or disregard non-regulatory guidance on diving etiquette around manatees in hopes of getting close enough to pet them. In the end, too many divers either chase manatees that do not wish to be petted or approach them so closely that it disrupts their normal behavior.

Although the proposed rules partially address those concerns by prohibiting the touching of resting or feeding animals, they still allow people to approach and pet or rub manatees that are not feeding or resting. The proposed rules also still allow people to approach any animals, including those that are resting and feeding, to within inches. The precise distance at which normal manatee behavior will be disrupted by approaching divers undoubtedly varies depending on many factors including the individual tolerances of different manatees, their behavior at the time, the number and behavior of divers, and whether the approached animals are alone, in groups, or mother-calf pairs. Although manatees in Kings Bay are accustomed to having divers near them, divers approaching

animals to within inches are likely to disturb them at some point and the divers will not know when to stop until the manatees react and move away. At that point, it is too late to avoid disturbance.

The Service included no-touch and minimum approach provisions in Alternative D of the draft environmental assessment for the proposed rules. However, the analyses of those provisions and reasons for rejecting them are incomplete and, in the Commission's view, not well reasoned. The Service appears to have concluded that petting and rubbing a small set of more tolerant manatees does not constitute harassment as defined under the Marine Mammal Protection Act. The Commission recognizes that interactions between divers and certain manatees that invite contact with people may not annoy, disturb, or harm them. The problem is that divers do not always know which animals enjoy such contact. As a result, divers hoping to touch a manatee approach, disturb, and harass many manatees that shun human contact.

In addition, the acclimation of manatees to humans may put them at added risk in other areas. Manatee interactions with humans are not always benign. The state's salvage and necropsy program has documented numerous cases where manatees have been shot, maimed, or defiled by people who may consider them pests or feel animosity toward them because of unwelcome boat speed regulations or other protection measures. Such incidents are known to occur in Kings Bay. For example, in 2007 when the Commission last wrote to the Service recommending a no-touch and 10-foot approach limit, one manatee in Kings Bay had recently been spray-painted and another had a garden rake embedded in its back. Policies that condone touching animals effectively condition and reinforce unnatural behavior patterns that may lead some animals to approach people and boats. Such behavior by wild animals is well recognized by wildlife managers as detrimental to them and to be discouraged because it creates nuisance animals and can lead to their death or injury. Indeed, such concerns are a prominent reason for established prohibitions on feeding and watering manatees. The draft environmental assessment does not describe this risk. The Commission believes that if people stopped reinforcing this approach behavior by manatees seeking to be petted or rubbed, such behavior could be extinguished over time and that stopping or reducing such behavior should be a goal of the Service's manatee conservation program. The Service should note that a no-touch policy would be essential for accomplishing that objective.

The Commission also notes that any proposed rule that allows divers to touch manatees in certain situations is inconsistent with "Marine Wildlife Viewing Guidelines"<sup>1</sup> prepared by Watchable Wildlife, Inc., and officially endorsed by the Service as well as other federal wildlife management agencies. Two of the first three viewing guidelines are "hands-off" (i.e., never touch, handle, or ride marine wildlife) and "keep your distance." The reasons for those standards include the need to prevent or extinguish behaviors that cause animals to approach people or sites of human activity. Furthermore, the Service recently revised its diver education materials, including the "Manatee Manners" video, to promote passive viewing. Passive viewing can only mean no deliberate touching. If the Service intends to promote passive manatee viewing and its endorsement of the Marine Wildlife Viewing Guidelines is sincere, it should reinforce that message with regulations that are consistent with those principles by prohibiting all touching of manatees in the wild.

---

<sup>1</sup> Watchable Wildlife, Inc. "Marine Wildlife Viewing Guidelines"  
[http://www.watchablewildlife.org/publications/marine\\_wildlife\\_viewing\\_guidelines.htm](http://www.watchablewildlife.org/publications/marine_wildlife_viewing_guidelines.htm)

The sole reason cited in the draft environmental assessment for rejecting a no-touch prohibition is the following:

(It) would be difficult to enforce in light of the fact that manatees knowingly approach and, on occasion, initiate physical contact with people. Distinguishing between a manatee-initiated approach and contact and a person-initiated approach and contact could be difficult.

This statement is incomplete and unconvincing. Although manatees may approach divers and present themselves to be petted or rubbed, it is our understanding that manatees rarely rub against divers who do not reciprocate by petting or rubbing them. In any case, we see no reason why it should be prohibitively difficult to distinguish between divers who deliberately reach out to pet or rub a manatee from divers who are approached but do not rub or pet them. The statements asserting enforcement difficulty should either be deleted or revised to explain why enforcement personnel cannot readily distinguish between divers reaching out and petting or rubbing animals and a manatee approaching and rubbing against a person.

The Service also should impose a minimum approach distance. As noted above, divers will not know at what distance their presence will disturb a manatee until after the animal reacts. Under the proposed rules, as long as divers do not pet animals, they would be allowed to approach any animals, including those that are feeding or resting, to within inches. Although some manatees have a high degree of tolerance to swimmers and most are accustomed to having people in the water near them, most animals so approached would alter their behavior and begin to move away even if they are not touched. On this point, the draft environmental assessment notes that when many people are in the water near manatees, the animals often mill around and are less likely to engage in feeding or resting. That is, their normal behavior has been disrupted. Allowing divers to approach and pet milling animals would prevent them from resuming normal feeding and resting behavior.

The Commission believes a 10-foot approach distance would significantly reduce manatee disturbance, reinforce a no-touch provision, and allow disturbed manatees to resume their normal behavior more rapidly. In the clear waters of Kings Bay, a 10-foot approach limit would still offer divers an exceptional opportunity to view wild manatees at close range, far closer than they are likely to get to any other large wild animal. This restriction would not diminish a diver's experience or reduce Kings Bay's reputation as a premiere diving destination for viewing wild manatees in their natural habitat.

In the draft environmental assessment the main justification for rejecting a provision to establish a fixed approach distance is that "it would be...difficult to enforce given inherent difficulties associated with gauging distances in and on the water." As noted above, past Commission letters have recommended a very modest 10-foot approach limit to reduce potential manatee disturbance. This distance is roughly the length of adult manatees. Even though it may be difficult to gauge distances under water, at that distance there should be little difficulty for either divers or enforcement officers to determine when they are closer than a body length from the animal being approached or watched.

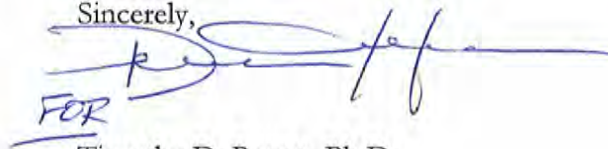
The draft environmental assessment also asserts that it would be difficult for an enforcement officer to determine if an animal is moving toward a diver. This reason for rejecting an approach limit also is flawed. An enforcement officer should be able to determine if a manatee was moving toward a diver (in which case it would be facing directly towards the diver) or if the diver was moving toward the manatee (in which case the diver most likely would be approaching the animal from an angle other than head on and the diver's movements should be indicative of his/her intent). Indeed, similar judgments are necessary to distinguish between divers who are chasing a manatee (which is prohibited under the proposed rules and apparently is enforceable) and divers who are simply following or approaching moving animals. Accordingly, the statement in the draft assessment suggesting that approach distances are too difficult to enforce should either be deleted or further discussion should be added explaining why enforcement officers or divers could not determine when the animals being approached are closer than a body length.

Finally we note that regulations allowing divers to approach manatees within inches and touch them have repercussions on other wildlife protection efforts. At past Marine Mammal Commission annual meetings, representatives of the National Marine Fisheries Service have noted that their efforts to promote no-touch and approach distance limits for dolphins and other marine mammal species under its jurisdiction have been undercut by Fish and Wildlife Service policies allowing people to touch manatees and approach them to within touching distance. That is, members of the public argue that, because there are no such standards for manatees, they should not be necessary for other marine mammals. It is our understanding that the National Marine Fisheries Service has made this point directly to the Fish and Wildlife Service and urged that manatee harassment policies and regulations be made consistent with the Watchable Wildlife Guidelines to avoid such mixed messages. If the Fish and Wildlife Service continues to reject the no-touch and minimum approach distance standards, it will undermine management efforts for other marine mammal species. The draft environmental statement should be expanded to identify and discuss the full consequences of no-touch and minimum approach distance standards.

To address the above points, the Marine Mammal Commission recommends that the Fish and Wildlife Service (1) adopt alternative D in its draft environmental assessment, which would establish the proposed Kings Bay manatee refuge and (2) expand its list of prohibited activities to include petting, touching, rubbing, or attempting to pet, touch, or rub, any manatees and approaching them closer than 10 feet. The Commission also recommends that the Service modify its draft environmental assessment by providing a more complete analysis of the no-touching and stand-off distance requirements, including points discussed in this letter.

Please contact me if you have questions about our recommendations or rationale.

Sincerely,



Timothy D. Ragen, Ph.D.  
Executive Director