



MARINE MAMMAL COMMISSION

3 November 2014

Mr. James W. Kurth
Chief of National Wildlife Refuges
U.S. Fish and Wildlife Service
5275 Leesburg Pike
Falls Church, VA 22041

Mr. Gary D. Frazer
Assistant Director for Endangered Species
U.S. Fish and Wildlife Service
5275 Leesburg Pike
Falls Church, VA 22041

Dear Messrs. Kurth and Frazer:

The Marine Mammal Commission (Commission) recently learned of a petition submitted to the Fish and Wildlife Service (FWS) this past August by the Save the Manatee Club and Sierra Club requesting that public access to Three Sisters Spring, part of the Crystal River National Wildlife Refuge, be seasonally prohibited to protect Florida manatees and that swimmers and snorkelers in the Kings Bay Manatee Protection Area be explicitly prohibited from touching manatees¹. The purpose of these actions is to address the increasing problem of harassment of Florida manatees in the headwaters of the Crystal River. As discussed below, the Commission believes that the underlying problems precipitating these petitions require immediate attention. There is no mechanism in place to manage the large number of people seeking to swim with manatees in Crystal River, particularly in Three Sisters Spring, which results in manatee harassment that is clearly contrary to provisions of the Marine Mammal Protection Act (MMPA) and the best interests of Florida manatees. The FWS needs to take steps to address this source of disturbance before the winter manatee season begins in mid-November.

Three Sisters Spring provides essential warm-water habitat for hundreds of manatees at a time and is one of Crystal River's most important and vulnerable manatee refuges. Its constant 72° F thermal discharge is essential for manatees seeking to avoid cold stress on cold winter days. For this reason, the FWS, along with its state, local, and private partners, purchased the spring and surrounding lands in 2010. Since then, unrestricted access to the spring by kayakers, snorkelers, and swimmers hoping to swim with or view wild manatees has often resulted in hundreds of people and

¹ We note that taking manatees is prohibited under both the Marine Mammal Protection Act and the Endangered Species Act and that touching manatees under most circumstances already should be considered a form of taking. This is particularly evident under the Marine Mammal Protection Act's definition of harassment (an element of taking), which includes any act of pursuit or annoyance that has the potential to disturb a marine mammal in the wild by disrupting its behavioral patterns.

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hundreds of manatees all crowded into the shallow 1.5-acre spring as people try to get as close to manatees as possible. This crowding and frequent close approach to animals leads to inevitable disturbance of manatee thermoregulation as they respond by frequently moving away from swimmers or fleeing the spring entirely. The only way they can flee the spring is through the narrow 8- to 15-foot-wide spring run through which all swimmers and kayakers must also pass to enter and leave the spring. In the process, manatees are routinely kicked, pushed, chased, and otherwise disturbed by people, both accidentally and deliberately.

Current refuge policies and regulations are not adequate to address this situation. Although applicable regulations (50 C.F.R. § 17.108(c)(14)(ix)) prohibit some activities that constitute taking under the MMPA, other types of activities not specifically enumerated as prohibitions that contribute to harassment are allowed. For example, although the regulations provide that touching a resting or feeding manatee is prohibited, this specificity suggests that touching manatees engaged in other activities is permissible. It also creates ambiguity that makes detection of violations and enforcement of the prohibitions more difficult. Enforcement officials would need to show not only that someone closely approached a manatee and initiated contact, but would also need to characterize the type of activity in which the animal was engaged. For other prohibitions, the manner in which an animal is touched may be determinative – poking is explicitly prohibited, but scratching is not. The Commission is concerned that, by omitting certain types of taking from the existing prohibitions, coupled with provisions that hinge on nuanced determinations for enforcement, FWS is undermining the effectiveness of its management of the refuge to the detriment of manatees.

Provisions that allow touching manatees in some situations but not others instills expectations among some swimmers and divers that they will routinely have the opportunity to touch animals. This encourages some swimmers and snorkelers to approach manatees so closely that it alters manatee behavior. Fostering this expectation hampers enforcement efforts. As noted above, provisions of this kind are inconsistent with the MMPA which prohibits both intentional and unintentional harassment of marine mammals. They are also inconsistent with watchable wildlife guidelines for marine species endorsed by the FWS that recommend people keep a respectful distance from all marine wildlife and back away from any animals that approach them. The current refuge policies and regulations also undermine parallel efforts by the National Marine Fisheries Service to limit close approaches to other marine mammal species as many members of the public assume that if they are allowed to approach and touch manatees, they should also be able to do so around other marine mammals, such as bottlenose dolphins in Florida. Finally, policies and regulations that allow petting or scratching manatees serve to reinforce manatee behavior that causes them to approach people in other circumstances that place manatees at risk.

The winter manatee season at Crystal River begins on 15 November when the likelihood of manatees retreating to warm-water refuges increases significantly. The Marine Mammal Commission therefore recommends that the FWS immediately institute additional measures to prevent crowding of manatees by kayakers, swimmers, snorkelers, in Three Sisters Spring and that it take steps to advise all people wishing to swim with wild manatees at Crystal River to avoid touching manatees at all times and to back away from any manatees that approach them. We would be grateful if you would advise the Commission on what actions the FWS plans to take to address this important issue during the coming winter manatee season and future seasons.

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We appreciate your attention to this matter and would be pleased to meet with you to discuss it further. If you or your staff has questions, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Rebecca J. Lent". The signature is written in a cursive style with a large initial "R" and a distinct "Lent" at the end.

Rebecca J. Lent, Ph.D.
Executive Director

Enclosure

Cc Michael J. Bean, Esq.
Ms. Lee R. Benaka
Ms. Donna S. Wieting