



## U. S. Fish and Wildlife Service

### Establishment of a Manatee Refuge in Kings Bay Frequently Asked Questions

Updated: 03/14/2012

#### **Q1: What action is the U.S. Fish and Wildlife Service taking?**

**A1:** The U.S. Fish and Wildlife Service finalized its decision broadening federal manatee protections in Citrus County by designating all of Kings Bay, located in Crystal River, Florida, as a year-round, permanent manatee refuge where certain waterborne activities will be regulated to prevent the take of one or more manatees.

#### **Q2: What is "take"?**

**A2:** "Take," as defined by the [Endangered Species Act \(ESA\)](#), means "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct." "Harm" is further defined by the Service as an act which actually kills or injures wildlife and may include significant habitat modification or degradation that actually results in death or injury to listed species by significantly impairing essential behavioral patterns such as breeding, feeding, or sheltering. The Service defines "harass" as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering. "Take," as defined by the [Marine Mammal Protection Act \(MMPA\)](#), means "to harass, hunt, capture, or kill any marine mammal." "Harassment" under the MMPA means any act of pursuit, torment, annoyance which (1) has the potential to injure a marine mammal or marine mammal stock in the wild; or, (2) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing a disruption of behavioral patterns."

While the ESA provides for the authorization to issue incidental take permits for otherwise lawful activities that could take a federally-listed species, the MMPA effectively precludes such authorization.

#### **Q3: What is the Service's legal authority to establish manatee refuges or sanctuaries?**

**A3:** The authority to establish manatee protection areas is provided by [title 50 of the Code of Federal Regulations, Part 17, Subpart J \(50 CFR 17\)](#) under the authorities of the [Endangered Species Act of 1973 \(ESA\)](#), as amended and codified in [16 USC 1531 et. seq.](#), by the [Marine Mammal Protection Act of 1972 \(MMPA\)](#), as amended and codified in [16 USC 1361 et. seq.](#), and regulations promulgated pursuant to these Acts. Specifically, this authority provides the Service the discretion to establish manatee protection areas (in the form of a manatee refuge or a manatee sanctuary) whenever there is substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees ([50 CFR 17.103](#)). A manatee refuge is defined as an area in which the Director has determined that: (1) certain waterborne activities would 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 ([50 CFR 17.102](#)).

**Q4: What are manatee refuges and sanctuaries?**

**A4:** The Service can establish manatee protection areas for the purpose of preventing the take of manatees. Manatee protection areas can be either manatee refuges or manatee sanctuaries. **Manatee refuges** are areas where certain waterborne activities are restricted to prevent the taking of one or more manatees. **Manatee sanctuaries** are areas in which all waterborne activities are prohibited.

Within a manatee refuge the waterborne activities that may be restricted include, but are not limited to, swimming, diving (including skin and scuba diving), snorkeling, water skiing, surfing, fishing, and the use of water vehicles (including boats, personal watercraft, and other vehicles used to move across or underneath the water's surface).

The Kings Bay manatee refuge joins an existing federal manatee protection network of 11 sanctuaries and 13 refuges throughout Florida.

**Q5: Is the manatee refuge designation the same as an area designated as a National Wildlife Refuge?**

**A5:** No. While manatee refuges designated under the ESA/MMPA and National Wildlife Refuges designated under the [National Wildlife Refuge System Improvement Act of 1997](#) are both called refuges, the two differ in scope and purpose.

**Manatee refuges** are established solely to protect manatees against the threat of take. They are protection areas designated in the water and are not land acquisitions or land parcels. No ownership of the waterways or submerged lands is transferred as a result of establishing a manatee protection area.

**National Wildlife Refuges**, on the other hand, are part of the National Wildlife Refuge System; federal lands set aside to conserve America's fish, wildlife, and plants. Federal ownership of the lands and associated waterways and submerged lands are generally vested with a specific National Wildlife Refuge or National Wildlife Refuge Complex.

**Q6: Where is the manatee refuge located and when will it be in place?**

**A6:** The manatee refuge is in Citrus County and would encompass all waters of Kings Bay, including its tributaries and adjoining water bodies, upstream of the confluence of Kings Bay and Crystal River. The refuge will be in place year-round.

**Q7: Why establish Kings Bay as a permanent, year-round manatee refuge?**

**A7:** Protecting manatees in the natural habitats in Kings Bay is central to the recovery of the species. In winter, Kings Bay is home to the largest natural concentration of Florida manatees (more than 500) and manatee protection measures are extensive. The year-round refuge designation is necessary to protect an ever increasing number of manatees that are present in the summer. It is not unusual for two to three dozen manatees to be in Kings Bay when boats are allowed to travel at high speed. Seven carcasses of manatees struck and killed in collisions with watercraft have been recovered in the refuge area during the summer. The in-water restrictions also need to apply on a year-round basis to protect

manatees from harassment.

**Q8: What are the key differences between the final rule and the proposed rule?**

**A8:** Key differences between the final rule and the proposed designation include:

- The section outlining watercraft restrictions to slow-speed year-round, unless a more restrictive designation is already in place, was modified to allow watercraft to operate at speeds not to exceed 25 miles per hour in a portion of the manatee refuge generally northeast, north, and northwest of Buzzard Island, as marked, during daylight hours (sunrise to sunset) from June 1 through August 15 exclusive of slow speed shoreline buffer areas where manatee use is highest. Slow speed operation is required from sunset to sunrise during this period and at all times from August 16 through May 31.
- Some manatees in the Kings Bay area are known to approach anchored boats. To minimize the potential for attraction of manatees into harm's way in the high speed area, the rule prohibits anchorage (other than emergency anchorage) of watercraft in the high speed area from June 1 through August 15.
- The proposed prohibition on use of mooring and float lines was removed. Entanglements are a threat to manatees in Kings Bay. Our goal of the proposed prohibition was the removal of derelict line sources and to encourage all operators to regularly check lines that are secured in Kings Bay. Other measures, such as fishing line recycling programs and the State of Florida's derelict crab pot removal program, are already in existence within Kings Bay to provide means for reducing the number of lines discarded in this area. Therefore, we have modified the rule to remove this proposed prohibition.
- The section outlining "no entry" into Three Sisters Springs between 6 p.m. to 7 a.m. during the winter season was changed from "no entry" to prohibiting all waterborne activities during nighttime hours. Additionally, the timeframe was revised from specific hours to "sunset to sunrise." The reference to "waterborne activities" is necessary to ensure that the Service is within its ESA and MMPA authorities. This minor revision in hours is necessary to accomplish the intent to restrict waterborne activities during darkness when manatees cannot be seen and avoided, and human activities cannot be monitored by enforcement officials.
- The Service made a minor technical error in the proposed rule. In the opening summary section, the Service correctly stated the substantial evidence standard and shared a summary of the substantial evidence used on page 36494 in the proposed rule. But, in the Public Comments Solicited section of the proposed rule, the Service incorrectly cited the use of only the best scientific and commercial data. While the Service uses up-to-date scientific data in its evaluation (for example, the Service would not establish a manatee protection area where manatees are not documented), the standard by which it designates manatee protection areas is that the Service has substantial evidence that designation of the area is necessary to prevent the taking of one or more manatee(s).

**Q9: What measures are being implemented as part of the Kings Bay manatee refuge designation?**

**A9:** The manatee refuge measures, described in more detail elsewhere, include:

- maintaining the seven existing manatee sanctuaries where all waterborne activities are prohibited November 15 – March 31;
- prohibiting 12 activities throughout the manatee refuge at all times;
- allowing watercraft to operate at speeds not to exceed 25 miles per hour in a portion of the manatee refuge generally north of Buzzard Island, as marked, during daylight hours (sunrise to sunset) from June 1 through August 15 (slow-speed operation from sunset to sunrise during this period);
- prohibiting anchorage (other than emergency anchorage) of watercraft in the high speed area from June 1 through August 15;
- establishing temporary ‘no-entry’ areas adjacent to existing sanctuaries and three additional springs during the manatee season (November 15-March 31);
- designating temporary ‘no-entry’ areas prior to or after the manatee season during unusual cold events; and,
- limited exceptions for adjoining property owners and their designees.

**Q10: What effect does this designation have on the existing seasonal manatee sanctuaries and State zones?**

**A10:** The existing federal seasonal sanctuaries and State protection zones remain in place. The new manatee refuge overlays all of Kings Bay and broadens federal manatee protections beyond the winter season to address manatee use throughout the year. Where federal and state manatee zones overlap, the more restrictive of the two should be observed and will be enforced.

**Q11: What watercraft restrictions are implemented as part of this manatee refuge designation?**

**A11:** Within the Kings Bay Manatee Refuge, all watercraft will be required to operate at slow-speed year-round except where more restrictive measures are in place and as noted below.

From June 1 to August 15, watercraft may operate at speeds up to 25 miles per hour, during daylight hours (sunrise to sunset), in a portion of the refuge generally northeast, north, and northwest of Buzzard Island, as marked, exclusive of slow speed shoreline buffer areas where manatee use is highest. Slow-speed operation is required from sunset to sunrise during this period.

Some manatees in the Kings Bay area are known to approach anchored boats. To minimize the potential for attraction of manatees into harm’s way in the high speed area, the rule prohibits anchorage (other than emergency anchorage) of watercraft in the high speed area from June 1 through August 15.

As was the case with the proposed rule, this rule does not supersede any more restrictive federal, state, or local regulations currently in place nor does it preclude more restrictive future actions by these entities.

**Q12: How is "slow" speed defined in regulated areas?**

**A12:** "Slow" speed is defined as the speed at which the watercraft proceeds fully off plane and is completely settled in the water. Since watercraft of different sizes and configurations may travel at different speeds, a specific speed is not assigned. However, a watercraft is NOT proceeding at slow speed if it is: (1) on plane, (2) in the process of coming up on or coming off of plane, or (3) is creating an excessive wake. A watercraft IS proceeding at slow speed if it is fully off plane and completely settled in the water, not plowing or creating an excessive wake. Exceptions to slow speed restrictions are contained in 50 CFR 17.105 and include activities "...reasonably necessary to prevent the loss of life or property due to weather conditions or other reasonably unforeseen circumstances, or to render necessary assistance to persons or property."

**Q13: How is "idle" speed defined in regulated areas?**

**A13:** "Idle" speed is defined as the minimum speed necessary to maintain steerage.

**Q14: What specific waterborne activities are prohibited as a result of this designation?**

**A14:** The following waterborne activities are prohibited year-round and are legally enforceable by marine law enforcement officers:

- Chasing or pursuing manatee(s).
- Disturbing or touching resting or feeding manatee(s).
- Diving from the surface on to resting or feeding manatee(s).
- Cornering or surrounding or attempting to corner or surround manatee(s).
- Riding, holding, grabbing, or pinching or attempting to ride, hold, grab, or pinch manatee(s).
- Poking, prodding, or stabbing, or attempting to poke, prod, or stab manatee(s) with anything, including hands and feet.
- Standing on or attempting to stand on manatee(s).
- Separating a mother and calf or attempting to separate a mother and calf.
- Separating manatee(s) from a group or attempting to separate manatee(s) from a group.
- Giving manatee(s) anything to eat or drink or attempting to give manatee(s) anything to eat or drink.
- Actively initiating contact with belted and/or tagged manatee(s) and associated gear, including any belts, harnesses, tracking devices, and antennae.
- Interfering with rescue and research activities.

In addition, the following are prohibited within Three Sisters Springs from November 15 through March 31:

- All waterborne activities in Three Sisters Springs from sunset to sunrise.
- Scuba diving.
- Fishing, including but not limited to fishing by hook and line, by cast net, and by spear.

**Q15: How do I identify a resting manatee?**

**A15:** In regard to these prohibited activities, we consider a resting manatee to be a mostly motionless manatee that rises to breathe from the water bottom, in the water column, or on the water's surface. While resting, a manatee may make minor changes in its posture and may slightly shift its position. Minor changes in posture occur when manatees breathe or roll. Resting manatees may also make slight movements with their flippers or tail to compensate for draft, etc.

**Q16: Are there restrictions on fishing or the use of fishing line in Kings Bay?**

**A16:** No. Fishing line can entangle manatees; but, the Service did not propose to limit its use. Fishing itself is restricted only in the sanctuaries and temporary no entry areas when they are in effect and in Three Sisters Springs from November 15, through March 31.

**Q17: Where, under what conditions, and for how long can temporary no-entry areas be put in place?**

**A17:** There are two temporary no-entry area adaptive management tools outlined in the rule:

- From November 15 to March 31, during severe cold events, when there is insufficient space in the existing sanctuaries for all manatees that use Kings Bay to shelter, rest, and feed, free from harassment, the Service may create temporary no-entry areas outside of and adjacent to the existing sanctuaries. The Service also may create no-entry areas around House Spring, Jurassic Spring, and Idiot's Delight Number 2 Spring when these springs are occupied by manatees in need of shelter free from harassment.

This rule provides the ability to create temporary no-entry areas around any or all sanctuaries and specified springs for the manatee season, but the Service does not envision this will be necessary in all years. Temporary no-entry areas will be created at the distances specified in this rule to accommodate manatee biological needs as they use Kings Bay during cold events. The temporary no-entry areas will be posted for as long as they are necessary within the manatee season.

- To address cold weather events occurring prior to November 15, or after March 31, the Service can establish temporary no-entry areas during early onset and protracted cold weather events that occur outside of the manatee season. Manatees that appear in Kings Bay during cold fronts that pre-date the start of the manatee season are especially vulnerable to harassment because none of the sanctuaries and no entry areas are in effect prior to November 15. Similarly, none of these measures are in effect after March 31, during those times when cold weather continues beyond this period of time. Designations would remain in effect for the duration of a cold front and only when there is regular manatee use; manatee presence at warm-water sites during unseasonal cold events typically lasts for several days or less. Temporary designations would remain in effect for no longer than 14 consecutive days.

**Q18: Are there limits on the size of these temporary no-entry areas?**

**A18:** Yes. The distances outlined below are the maximum extent conservation managers may mark boundaries. Boundaries will be marked by buoys, float lines, signs, advisories from onsite Service employees and their designees, or other methods

- For Buzzard Island, Tarpon Springs, Magnolia Springs, Warden Key, Banana Island, and Sunset Shores Manatee Sanctuaries: to a distance not to exceed 100 feet from the existing sanctuary boundary.
- For Three Sisters Sanctuary: to a distance not to exceed 400 feet from the existing boundary. The Service does not intend to completely mark off the man-made channel. Expansions could occur directly around the existing sanctuary and north into the area locally known as Three Sisters Springs.
- For House Spring and Jurassic Spring: not to exceed 100 feet from the associated spring vents.
- For Idiot's Delight Number 2 Spring: not to exceed 25 feet from the associated spring vent. Any temporary designation will be configured to avoid the man-made channel in the canal and will not block access into Three Sisters Springs.

**Q19: How will the public know if temporary no-entry areas are implemented?**

**A19:** In addition to the physical markers, the Service will advise the public of designations through public notice(s) announcing and describing the measures in a local newspaper and other media, including but not limited to, local television and radio broadcasts, websites and other news outlets, as soon as time permits. Onsite Service employees and their designees, when present, may also inform waterway users of designations.

**Q20: How will the manatee protection area affect private lands or other land-owners?**

**A20:** Manatee protection areas are designated in the water and do not involve land acquisitions or land parcels. Public and private waterfront property owners, their guests, employees, and their designees (including but not limited to contractors and lessees), who own, visit or occupy property that adjoins designated no-entry areas, will continue to be able to access their property by obtaining, at no charge, an exception from the Crystal River NWR (CRNWR) that will allow them to operate watercraft within the adjoining no-entry area for purposes of access and property maintenance. CRNWR will continue to provide adjoining property owners and their designees with a no-cost sticker or letter of authorization that identifies their watercraft as authorized to access no-entry areas. Watercraft owned by excepted owners would be required to be marked by stickers and operate at idle speed while operating within a designated no-entry area. Designees with a letter of authorization would be required to have a copy of the letter in their possession and operate at idle speed while operating within a designated no-entry area.

**Q21: Will waterfront owners on Kings Bay whose property does not adjoin a designated no-entry area be required to get a sticker or letter? What about other users of Kings Bay?**

**A21:** No in both instances. The sticker and letter system only applies to those owners whose property on Kings Bay adjoins a designated no-entry area.

**Q22: What if my property falls within a “no entry” area in the manatee refuge?**

**A22:** Public and private waterfront owners on Kings Bay who own property that adjoins designated no-entry areas, their guests, employees, and their designees (including but not limited to contractors and lessees) will continue to be able to access the property by obtaining, at no charge, an exception from the Crystal River NWR (CRNWR) that will allow them to operate watercraft within the adjoining no-entry area for purposes of access and property maintenance. CRNWR will continue to provide adjoining property owners and their designees with a no-cost sticker or letter of authorization that identifies their watercraft as authorized to access no-entry areas. Watercraft owned by excepted owners would be required to be marked by stickers and operate at idle speed while operating within a designated no-entry area. Designees with a letter of authorization would be required to have a copy of the letter in their possession and operate at idle speed while operating watercraft within a designated no-entry area.

**Q23: Was the public given an opportunity to review and comment on the proposed rule?**

**A23:** Yes. In the June 22, 2011 proposed rule (76 FR 36493), the Service requested comments concerning any aspect of the proposal and the accompanying draft Environmental Assessment (EA) that might contribute to development of the final decision on the proposed rule. A 60-day comment period was provided. We sent notifications and other informational materials about the project to federal and state agencies, congressional representatives, conservation groups, local governments, local commercial diving operations, and numerous private citizens who may be affected or had expressed an interest in receiving further information on the project. The Service also provided copies of this proposed rule to three appropriate independent peer reviewers.

The Service published a three-column legal notice on June 24, 2011, announcing the proposal and availability of the draft EA inviting public comment on both, and announcing the schedule for the informal open house and formal public hearing in the Citrus County Chronicle on page A7. Informational flyers were also distributed by the Crystal River National Wildlife Refuge staff and friends group to all waterfront properties adjoining Kings Bay, as well as other near-by residences, and copies were mailed to the refuge's Comprehensive Conservation Plan development stakeholder and interested party list.

The Service held the informal open house and formal public hearing at the College of Central Florida-Citrus Campus, CF Conference Center in Lecanto, Florida, on July 7, 2011. The public hearing was attended by 169 people, not including Service staff. Of the 49 hearing attendees who signed up to speak, 42 provided oral comments (including 15 local officials), one speaker passed, and six speakers did not respond when called.

**Q24: Were all comments received during the public comment period evaluated and considered fully in relation to the final rule?**

**A24:** Yes. The Service has a long history of ensuring final rules reflect public feedback. Portions of the final rule were clarified or revised based in part on comments and information received during the public comment period; including the informational open house and formal public hearing.

**Q25: Were comments submitted at the public hearing given greater consideration?**

**A25:** No. All comments and information provided during the public comment period receive equal consideration regardless of how they are submitted and were considered in making a final decision.

**Q26: What was the response to the Service's request for comments and information?**

**A26:** During the comment period, the Service received 415 unique written comments and 42 oral comments. A number of written commenters attached supporting documents such as petitions with multiple signatures or member form letters. Overall, comments came from individuals, conservation organizations, property owners, dive shop owners, tour operators, business owners, local officials, and other stakeholders. The majority of the comments expressed support for or opposition to the proposed manatee refuge without any substantive data or information provided for Service consideration.

Those expressing support generally either supported the rule as proposed, with some minor modifications and suggestions for improving education, or expressed concerns it was not extensive enough. Those expressing opposition cited a broad range of concerns including property rights, regulatory enforcement efforts, lack of alternatives considered, perception that the public was not involved earlier in process, recreational user safety, and perceived economic effects. In some cases those in opposition generally supported most of the winter aspects of the rule but not the year-round watercraft restrictions.

**Q27: Human safety was a concern expressed by a number of commenters. Would closing the summer watersports zone force recreational watercraft into the narrow channel of Crystal River proper? Isn't the current watersports zone a safety hazard already?**

**A27:** The Service takes comments regarding human safety very seriously. The Service has fully evaluated comments shared by the public in and around Kings Bay and other concerned stakeholders in relation to actions being considered for implementation that were identified in the Services' June 2011 proposed rule. These concerns led the agency to seek and review Florida Fish and Wildlife Conservation Commission (FWC) boating accident records in Crystal River and Kings Bay. Review of that information revealed that since 2000, there were eight boating accidents reported in Kings Bay. Those accidents resulted in four injuries. In Crystal River, there were 24 accidents reported since 1998. Those accidents resulted in 12 injuries and one fatality.

The Service also examined manatee use data (i.e., numbers of manatees seen and their locations) in the watersports zone on a monthly basis from May through August over the course of more than a decade, 26 surveys in all. Manatee use was highest during May (23.7/survey), declined in June (16.8), July (17.5), and the first half of August (11.0), and increased in the latter half of August (19.4).

Coincidentally, the period of least manatee use also matched the timeframe when the least experienced boaters would most likely to be on the water, the public school summer vacation period.

As part of the evaluation of comments, the Service worked with the U.S. Coast Guard (USCG) to evaluate the human safety aspects of the proposed rule. In an October 7, 2011 memorandum, the USCG conveyed its concern the proposed closure of the watersports zone would result in the displacement of high speed watercraft activity into the Gulf of Mexico and the connecting waters of Crystal River, with the latter being the more likely of the two options due to the two-hour transit time from Kings Bay to the Gulf. Crystal River has a narrow high speed channel and, in working with the USCG, the Service concluded that an increase in traffic such as might occur with implementation of its proposed rule would result in unsafe conditions for watercraft operators by increasing the danger of boating safety infractions and marine accidents including vessel collisions, potentially involving serious bodily injury. The Service worked with the USCG to ensure the manatee protection area designated through this rule both prevents the take of one or more manatees and alleviates the human safety issues raised in public comments.

The Service reconsidered the best available commercial and scientific information, including manatee area and seasonal use within the Bay, and concluded it could still meet the regulatory requirements of the ESA and MMPA while also considering the human safety aspects by modifying the proposed rule to continue to allow some level of high speed watercraft recreation in Kings Bay. The final rule reflects these modifications that are within the scope of the proposed rule. Further, as confirmed in a memorandum to the Service dated November 8, 2011, these modifications alleviate the USCG's concerns regarding the proposed rule.

**Q28: Is the change allowing high-speed operations from June 1 through August 15, in a portion of the manatee refuge less protective of manatees?**

**A28:** The initial proposal maximized manatee protection within the manatee refuge. However, the Service will not knowingly impose restrictions on human use which are unsafe, and the modifications are the most responsible course of action.

The final rule provides significant improvements in manatee protection over current conditions. It provides the same level of manatee protection as the June 2011 proposed rule during 47 days of May and August when the bay is slow speed throughout. During June, July, and the first half of August (76 days total), boats will be required to travel at slow speed where manatees are most likely to occur east, west, and south of Buzzard Island (approximately 60 percent of the observed locations) and along shorelines north of Buzzard Island (approximately 15 percent of the observed locations). As a result of the changes to the rule, the Service also believes there will be fewer manatees (approximately five percent) in the area where boats have historically anchored and moored which will also increase manatee protection in the 25 miles per hour area. In total, the Service estimates that the final rule will provide at least 85 percent of the slow speed benefits of the proposed rule (100 percent for 47 days and 75 percent for 76 days) and could reduce manatee mortality and injury by this fraction as the result of legal vessel operation. The Service believes the final rule as written will prevent the take of one or more manatees and resolves the safety concerns expressed by the public and confirmed by the USCG.

**Q29: Did the Service consider the economic impact its proposed rule might have on the local community?**

**A29:** The Service considered the potential economic impacts of the proposed and final rules. Despite some public comments to the contrary, it was not clear that either the proposed rule or the final rule would have a net negative economic impact on the community. However, the final rule which incorporates revisions to address human safety issues is less likely to have a negative economic effect. The Service's evaluation of the economic impacts of this rule can be found in the Environmental Assessment under the section entitled "Socioeconomic Conditions" and section "2.2.6 Alternative F – Modified Alternative B – Designate a Kings Bay Manatee Refuge (Preferred)."

**Q30: What about property values? I am concerned that adding these restrictions will further decrease the value of my waterfront property. My neighbor seems to think it will improve our property values.**

**A30:** While a number of commenters expressed these concerns and alternative opinions, there is no substantial evidence to suggest the rule will affect property values either positively or negatively. In previous years in other areas of Florida, property values have not decreased when speed zones were added.

**Q31: A number of commenters suggested additional rules and restrictions for in-water behavior relative to specific approach distances, touching of manatees, gear requirements or prohibitions, and passive observation. Why were these suggestions not implemented in the final rule?**

**A31:** The requirements in the rule were developed by experts in both enforcement and manatee biology. In order for the Service to implement and enforce a restriction it must be able to demonstrate that the activity results in "take." There is no evidence that touching or approaching a manatee within a specific proximity or the use of specific types of gear near a manatee, will necessarily result in take. Adding these prohibitions would exceed the Service's ESA and MMPA authorities. All of the prohibitions in the rule, including several activities that involve physical contact with manatees such as disturbing or touching resting or feeding manatee(s), can be shown to result in take, will collectively allow us to prevent illegal take, and will aid in the successful prosecution of violations. (See Q & A 14 for more details.)

**Q32: Why not delay at least a portion of the rule dealing with summertime use and create a stakeholders committee to develop a solution?**

**A32:** Prior to development of this final rule, the Service held four public meetings and one public hearing. No specific alternative solutions were submitted in the prior workshops, subsequent to the workshops, or during the public comment period despite the request for such information. Delaying implementation could result in take of one or more manatees which would be a violation of the MMPA. The Service initiated additional coordination with Law Enforcement, FWC, and the USCG relative to human safety concerns expressed during the comment period. The Service considered alternative configurations for the final rule in coordination with the USCG and incorporated the changes that maximize manatee protection while addressing human safety concerns that were brought to its attention during the proposed rule comment period. The Service notes that a local stakeholders

group developed recommendations for Kings Bay in 2007, and the local government forwarded those recommendations to the Service. This final rule is less restrictive than those recommendations. Finally, the Service, as part of its mission, supports fishing, boating, and other outdoor recreation. In the future, if there is a technological means or other alternative that will protect manatees to the extent provided in the rule and allow the Service to lift some or all of the prohibitions, it will modify the manatee refuge and/or its prohibitions.

**Q33: Is it true that the Service is designating Kings Bay as a manatee refuge because of a lawsuit threat?**

**A33:** No. The judicial process is available to all persons or entities seeking to enforce a legal right or to obtain a legal remedy. The Service cannot dictate the actions of these persons or entities. In designating the Kings Bay manatee refuge, the Service is guided by the ESA and MMPA and provisions provided under 50 CFR 17.100 - 17.108. Although it is true that an organization filed a Notice of Intent (NOI) to sue in March 2011 regarding issues related to Kings Bay, the processes in play and the initial development of options to address Service and public concerns regarding manatees in Kings Bay substantially pre-date the NOI.

**Q34: Does the rule conflict with the current Crystal River National Wildlife Refuge Comprehensive Conservation Plan (CCP) being developed?**

**A34:** No. The rule is consistent with draft CCP alternatives currently being considered.

**Q35: Didn't the Florida Fish and Wildlife Conservation Commission (FWC) designate speed zones, refuges and sanctuaries in the Kings Bay-Crystal River area? Is the Service coordinating its efforts with the State agencies?**

**A35:** Yes. These provisions remain in place. Joint discussions with FWC regarding the issues and concerns associated with Kings Bay manatee protections and possible solutions have been and will continue to be a critical part of the Service's species management processes.

**Q36: Can the Fish and Wildlife Service adequately post regulation signs and boundary signs?**

**A36:** Yes. Posting of manatee refuges is required. The Service will engage the FWC, Inland Navigation Districts, local governments, the U.S Army Corps of Engineers, and the USCG, as appropriate, in the development of a sign plan for and initial posting of this manatee refuge. The ability to adequately post and enforce designated sites is always a factor in the site selection process.

**Q37: Where can I find more information on this rule and other manatee conservation/recovery efforts?**

**A37:** Visit the Service's website at <http://www.fws.gov/northflorida/>.