

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Environmental Preservation and Conservation Committee

BILL: SM 1614

INTRODUCER: Senator Dean

SUBJECT: Kings Bay

DATE: January 30, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Roam	Yeatman	EP	Favorable
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill urges Congress to direct the U. S. Fish and Wildlife Service (FWS) to reconsider the proposed rule to designate Kings Bay a manatee refuge and requests, in lieu of the rule, that the FWS partner with state and local governments to seek long-term solutions to manatee protection.

This bill proposes a memorial to Congress on behalf of the Florida Legislature.

II. Present Situation:

Kings Bay is connected to Crystal River and is located in Citrus County.¹ Major uses of Kings Bay include: commercial fishing, manatee tours, and recreational activities such as water skiing, canoeing, kayaking, snorkeling, scuba diving, and fishing.²

In November 2010, an emergency rule promulgated by FWS declared that all portions of Kings Bay that were not already part of a manatee protection area would become a manatee refuge.³ There are two types of manatee protection areas. A manatee sanctuary is an area in which any waterborne activity would result in a taking of one or more manatees.⁴ In manatee sanctuaries,

¹ FWS, *Supplemental Information*, North Florida Ecological Services Office, available at: http://www.fws.gov/northflorida/manatee/Documents/MPARules/June11_KB_Proposed_Rule/20110621_frn_Federal_Register_Notice_for_Proposed_Kings_Bay_Manatee_Rule.html, (last visited Jan. 23, 2012).

² *Id.*

³ 50 CFR Part 17, Docket No. FWS-R4-ES-2010-0079; 92220-1113-0000-C3. RIN 1018-AX27.

⁴ 50 CFR 17.102. "Take" is defined in the Endangered Species Act as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct toward that animal." 16 U.S.C. 1532(19).

all waterborne activities are prohibited.⁵ A manatee refuge, on the other hand, is an area in which only certain waterborne activities would result in the taking of one or more manatees.⁶ Thus in manatee refuge areas only certain waterborne activities are restricted.⁷

The emergency rule included all of Kings Bay as well as tributaries and adjoining water bodies upstream of the confluence of Kings Bay and Crystal River.⁸ When the emergency rule was implemented, there were already seven manatee sanctuaries in Kings Bay, which were not affected by the rule.⁹

Map: Areas in Kings Bay Affected by the Emergency Rule in 2010¹⁰



FWS is authorized to create a manatee protection area (sanctuary or refuge) when substantial evidence exists that establishing it is necessary to prevent the taking of one or more manatees.¹¹

⁵ 50 CFR 17.104.

⁶ 50 CFR 17.102.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Presentation by Kipp Frohlich, Section Leader, Division of Imperiled Species Management Section of the Florida Fish and Wildlife Conservation Commission (FWC) on November 2, 2011 at The Florida Senate, Environmental Preservation and Conservation Committee Meeting.

¹¹ 50 CFR 17.103.

The term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct toward that animal.¹² Both the Marine Mammal Protection Act and the Florida statutes contain similar provisions¹³ Florida also has a history of manatee protection legislation dating back to the passage of the first manatee protection legislation in 1893.¹⁴ Thus manatees are protected under the Endangered Species Act (ESA), the Marine Mammal Protection Act and Florida statutes and regulations.¹⁵

The FWS expanded the manatee refuge zones in Kings Bay based upon evidence that the local manatee population had outgrown the space available.¹⁶ The FWS attributes this to an increase in the number of people, boats and manatees in the area. For example, in 1983, an estimated 124 manatees were found in Kings Bay and Crystal River. In 2010, researchers counted an estimated 565 manatees in the Kings Bay and Crystal River. Meanwhile, the number of boats in the region has been increasing. In 2009, there were 17,601 boats registered in Citrus County, an increase of 4,675 boats since 2000, when 12,926 vessels were registered there.¹⁷ From 1974-2009, 58 manatees died from collisions with watercraft in county waterways, including 15 manatees in Kings Bay. In 2008, the Florida Fish and Wildlife Conservation Commission (FWC) recorded the highest number of manatees, 8, ever killed by watercraft in Citrus County.¹⁸

The 2010 emergency rule later became part of an official FWS rule to make the protection area permanent.¹⁹ The permanent rule also clarifies that the following activities are prohibited in the refuge areas under manatee viewing guidelines:²⁰

- 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;

¹² 16 U.S.C. 1532(19).

¹³ 16 U.S.C. 1371-72; 379.411, F.S.; 68A-27.003, F.A.C.

¹⁴ Florida Fish and Wildlife Conservation Program, *Florida Manatee Program*, <http://myfwc.com/manatee>, (last visited Jan. 23, 2012).

¹⁵ See *supra*, notes 12-14.

¹⁶ 50 CFR Part 17, Docket No. FWS-R4-ES-2010-0079; 92220-1113-0000-C3. RIN 1018-AX27.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ FWS, *Proposed Kings Bay Manatee Refuge Key Designation Components*, July 7, 2011, available at: <http://www.fws.gov/northflorida/manatee/manatees.htm>.

²⁰ *Id.*

- Interfering with rescue and research activities; and
- Using mooring and float lines that can entangle manatees.

In addition to the above prohibited activities, the permanent rule prohibits the following waterborne activities in Three Sisters Springs from November 15 to March 31:²¹

- Entering Three Sisters Spring between 6:00 p.m. and 7:00 a.m;
- Scuba diving; and
- Fishing, including but not limited to fishing by hook and line, by cast net, or spear.

The FWS included an additional provision in the permanent rule, which was not included in the emergency rule, that speedboats in water would be restricted to slow travel year-round.²² Slow speed is defined as the speed at which a water vehicle proceeds when it is fully off plane and completely settled in the water.²³ This speed may vary due to the size or design of the water vehicle.²⁴ It is estimated that the longest distance from the bottom tip of the refuge area to the top is about 2.5 miles and would add an additional 11-12 minutes to a trip.²⁵

Under the old guidelines, boats were restricted to slow speed for 7 months out of the year, but free to move at the federal limit of 35 mph from April – August.²⁶ The new rule proposes the slow speed designation year round.²⁷ FWS acknowledges that would create a burden upon commercial fishers in Citrus County in the form of displacement (loss of area in which to fish) or additional travel time.²⁸ Fishermen who wish to continue to use Kings Bay will be required to use manatee safe lines for float fishing or mooring. Manatee safe lines may include lines that are reinforced by wire or lines enclosed in hose or PVC so they are kept taut.²⁹

Additional concern over the permanent rule has been raised over its effect on riparian rights. Riparian rights are those rights which accrue to private property owners whose land borders navigable waters.³⁰ The owners of such land share in not only the general public use rights to navigable waters, but also specific riparian rights.³¹ General rights, shared with the general public, include the “rights of navigation, commerce, fishing, boating, etc.”³² Specific rights, belonging to those whose land borders the water, include rights such as the right to access the water, the right to an unobstructed view of the water, and a right to create wharves or docks, etc.³³ The speed zone provision may interfere with the right to make reasonable use surrounding

²¹ *Id.*

²² *Id.*

²³ 50 C.F.R., 17.102.

²⁴ *Id.*

²⁵ See Presentation by Kipp Frohlich, *supra*, note 5.

²⁶ FWS, *Proposed Kings Bay Manatee Refuge Key Designation Components*, July 7, 2011, available at: <http://www.fws.gov/northflorida/manatee/manatees.htm>.

²⁷ *Id.*

²⁸ See FWS, *Supplemental Information*, *supra*, note 1.

²⁹ *Id.*

³⁰ 253.141, F.S.

³¹ Theresa Bixler, *Erosion of Riparian Rights Along Florida’s Coast*, *Journal of Land Use*, Vol. 20, 1, pg. 123 (2004).

³² *Id.*

³³ *Id.* at 124.

water bodies particularly including loss of space to engage in commercial or recreational fishing in certain areas.³⁴

The Citrus County Manatee Ecotourism Association says that the rule will be beneficial to manatee tourism, which provides over 1000 jobs in Citrus County.³⁵ Furthermore, the mandatory slow speed might have a positive effect on the health of the river system.³⁶

III. Effect of Proposed Changes:

This bill urges Congress to direct FWS to reconsider the proposed rule to designate Kings Bay as a manatee refuge and partner with the state and local governments in lieu of the rule in seeking joint long-term solutions to manatee protection.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None

C. Government Sector Impact:

None.

³⁴ See FWS, *Supplemental Information*, *supra*, note 1.

³⁵ Testimony of Michael Burns, President of the Manatee Ecotourism Association of Citrus County, at Florida Senate Committee Hearing (November 2, 2011), available at: <http://www.flsenate.gov/Committees/Show/EP/>.

³⁶ Timothy R. Asplund, *The Effects of Motorized Watercraft on Aquatic Ecosystems*, Wisconsin Department of Natural Resources, Bureau of Integrated Science Services and University of Wisconsin – Madison, Water Chemistry Program, March 17, 2000. PUBL-SS-948-00

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
