

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 611 Kings Bay
SPONSOR(S): Smith
TIED BILLS: **IDEN./SIM. BILLS:** SM 1614

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Federal Affairs Subcommittee	8 Y, 4 N	Bennett	Camechis
2) State Affairs Committee	11 Y, 3 N	Camechis	Hamby

SUMMARY ANALYSIS

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

The Florida manatee is a native species found in all parts of the State, and is currently protected by state law and the federal Marine Mammal Protection Act and Endangered Species Act.

Kings Bay is located in Citrus County, Florida, at the headwaters of the Crystal River, and is within the City of Crystal River. Kings Bay is the primary wintering site for endangered Florida manatees in northwest Florida, and manatees have increasingly used the bay during summer months. In 1980, about 100 manatees were using the network of springs in Kings Bay and the number of people viewing manatees was estimated at 30,000 to 40,000 per year. In recent years, more than 550 manatees have used Kings Bay and the number of people viewing manatees was estimated to exceed 100,000 people each winter.

The Service has established seven federal sanctuaries in Kings Bay. Human activity is prohibited within these sanctuaries during manatee season, which runs from November 15th through March 31st each year. Outside of the sanctuaries, human activity is permitted and regulated by the state under the Florida Manatee Sanctuary Act. During manatee season, watercraft may not operate within the designated sanctuaries and may only travel at "slow speed" in the rest of Kings Bay. During off-season months, including the summer months, watercraft may travel through the sanctuaries at idle speed and up to 35 mph in the designated water sports area.

According to the Service, the number of manatees using Kings Bay during the year has outgrown the capacity of existing protected areas, and human use of the bay has increased beyond the impacts originally considered when the existing protections were created. As a result, in June 2011, the Service determined that additional manatee protections are necessary and published a proposed rule that:

- Establishes a federal manatee refuge throughout Kings Bay, including its tributaries and connected waters,
- Authorizes temporary expansion of seasonal manatee "no entry" sanctuaries if needed during extremely cold winters,
- Specifically identifies prohibited activities to reduce harassment and injury of manatees, and
- Limits watercraft to "slow speeds" throughout Kings Bay throughout the year.

As of January 26, 2012, the proposed rule had not taken effect, but is expected to do so in the near future. This memorial has no fiscal impact; however, opponents of the proposed rule assert that, if the rule takes effect, it will have a significant negative fiscal impact on local governments and private businesses in the area.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Effect of Proposed Changes

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

Copies of the memorial will be provided to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

Present Situation

Background

The West Indian Manatee (Florida manatee) became a federally protected endangered species in 1970.¹ From 1980 through 1998, the U.S. Fish & Wildlife Service (Service) designated seven manatee sanctuaries in Kings Bay, a 530 acre aquatic area located in the City of Crystal River, at the headwaters of the Crystal River in Citrus County.² These sanctuaries allow manatee's undisturbed access to critical warm-water resting and foraging areas, and are intended to prevent any manatee takings during manatee season (November 15 - March 31). Generally, a "taking" is the harassment, injury, or death of a manatee.³ During manatee season, all waterborne activities, such as swimming, waterskiing, and boating are prohibited within the sanctuaries.

The Service contends that the number of manatees using Kings Bay has more than doubled since 1998 (from 250 animals to 566 animals); the number of residents, visitors, and boats has significantly increased; and the amount of space in the existing sanctuaries has become insufficient to provide this number of manatees with shelter free from harassment. In addition, the number of manatees struck and killed by boats in Kings Bay has increased since 2002, when the watersports area was created.⁴

According to the Service, the primary human-related causes of death and injury to manatees rangewide include watercraft-related strikes (impacts and/or propeller strikes), entrapment and/or crushing in water control structures (gates, locks, etc.), and entanglement in fishing lines, crab pot lines, etc. A 2005 analysis concluded that watercraft-related mortality was the leading cause of death for manatees throughout Florida. A subsequent threats analysis concluded that watercraft strikes and the potential loss of warm-water habitat pose the greatest threats to the Florida manatee population.⁵

From 1974 through 2010, collisions with watercraft killed 60 manatees in Citrus County waterways, including 16 manatees in Kings Bay. Thirteen of the 16 Kings Bay watercraft-related deaths occurred within the past 10 years. In 2008, the Florida Fish and Wildlife Commission (FWC) recorded the highest number (8) of manatees ever killed by watercraft in Citrus County and three of these carcasses were recovered in Kings Bay. While watercraft-related deaths occur throughout the year in Citrus County, 7 of the 16 watercraft-related deaths that occurred in Kings Bay took place outside of manatee season when the watersports area designated by the state of Florida in 2002 is in effect (May 1 to August 30).⁶

¹ Endangered Species Conservation Act of 1969 (35 FR 8491), and as amended in 1973 (16 U.S.C. 1531 *et seq.*).

² Sanctuaries: Banana Island, Sunset Shores, Magnolia Springs, Buzzard Island, Warden Key, Tarpon Springs, and Three Sisters

³ Endangered Species Act § 3 (19); Endangered and Threatened Wildlife and Plants; Proposed Rule To Establish a Manatee Refuge in Kings Bay, Citrus County, FL, 76 FR 36493-01 ("proposal").

⁴ Proposal at FR 36497.

⁵ Proposal at FR 36495.

⁶ Proposal at FR 36497.

The maximum speed at which watercraft may travel throughout Kings Bay during manatee season is “slow.”⁷ During summer months, watercraft may travel at various speeds, as posted throughout the bay. The maximum speed limit is 35 mph in the designated water sports zone.

U.S. Fish and Wildlife Service Proposed Rules for Kings Bay

In November 2010, the Service determined that the seven existing manatee sanctuaries in Kings Bay were inadequate to protect manatees due to increasing human and manatee activity in the area.⁸ To prevent “manatee harassment associated with manatee viewing and other activities,” the Service issued an emergency rule on November 15, 2010, designating all of Kings Bay a temporary federal manatee refuge and specifying what types of human contact with manatees was prohibited.⁹ The emergency refuge overlapped the existing seasonal manatee sanctuaries and allowed establishment of additional “no-entry” areas as needed to accommodate manatee use during the winter. The emergency rule did not address speed limits for watercraft.

The Service’s emergency rule expired on March 15th, 2011, and Kings Bay is no longer a designated manatee refuge. Thus, for now, the pre-November 2010 restrictions on human contact with manatees and watercraft speeds are applicable in Kings Bay.

However, in June 2011, the Service proposed a rule that would make permanent, and expand upon, the emergency refuge rule. Based upon current and historical data that document increasing numbers of manatees, waterway users, watercraft-related manatee deaths and injuries, and reports of manatee harassment in Kings Bay, the Service concluded that the take of manatees is occurring and increasing in the area. The Service further concluded that future takes would occur without additional protection measures, but there was no basis to anticipate any alternative protection measures being enacted by other agencies in sufficient time to reduce the likelihood of take. For those reasons, the Service proposed its rules.¹⁰ In general terms, the proposed rule:¹¹

- Establishes a manatee refuge including all of Kings Bay;
- Maintains the 7 existing manatee sanctuaries, where all waterborne activities are prohibited during the manatee season;
- Limits the maximum watercraft speed to “slow” throughout Kings Bay at all times;
- Specifies 13 prohibited activities that constitute manatee takings and harassment;
- Requires manatee-safe fishing lines, float lines, and mooring lines at all times;
- Allows Temporary ‘no-entry’ areas adjacent to existing sanctuaries and additional springs during the manatee season;
- Allows Temporary ‘no-entry’ areas outside of the manatee season during unusual cold events; and,
- Provides limited exceptions for adjoining property owners and their designees to provide access to the water.

The most controversial aspect of the proposed rule is the establishment of a year-round “slow speed” zone throughout Kings Bay. Currently the speed limits during the summer months are governed by state law, which allow watercraft to travel at speeds of up to 35 mph in certain areas.¹²

According to the Service, under the proposed manatee refuge designation, refuge restrictions would improve its ability to address takings associated with watercraft and with manatee viewing activities. Restrictions would require all watercraft to operate at slow speed throughout Kings Bay, except in those

⁷ Watercraft of different sizes and configurations travel at different speeds so specific speed are not assigned for “slow” or “idle.” “Slow” speed means that a vessel must be fully off plane and completely settled into the water, “idle” speed permits watercraft proceed at a speed no greater than that which will maintain steerage and headway; Fla. Admin. Code Ann. r. 68C-22.002; 011.

⁸ See proposal, supra note 3 (the number of manatees more than doubled from an estimated 250 (1998) to 566 (2010)).

⁹ *Id.*

¹⁰ Proposal at FR 36498.

¹¹ *Id.*

¹² Fla. Admin. Code Ann. r. 68C-22.011(k). Maximum 35 mph/25 mph nighttime zone (May 1 through August 31)

areas where more restrictive measures are in place (idle speed zones, no entry areas, and sanctuaries), to reduce the number of watercraft-related deaths and injuries occurring in Kings Bay.¹³

As of January 26th, 2012, the final rule had not taken effect, but is expected to do so in the near future.¹⁴

*Florida Fish and Wildlife Conservation Commission*¹⁵

In a letter dated September 30, 2011, the FWC communicated to the Service the FWC's perspective on the proposed federal rule for Kings Bay. The FWC noted that the proposed rule includes several provisions supported by the FWC; however, the FWC expressed concern with the portion of the proposed rule addressing summer boat speeds in Kings Bay, noting that "[t]he elimination of all high speed activity in Kings Bay is controversial with a variety of opinions expressed by a diverse set of stakeholders including dive operators, nature enthusiasts, motor boaters, paddlers, water-skiers, and fishermen. It is the FWC philosophy that agencies should work closely with all stakeholders and affected portions of the public when considering and developing regulations.... Our agency strongly believes that a thorough and transparent public engagement process leads to rules that have wider public acceptance." The FWC strongly encouraged the Service to "carefully consider public input and building stakeholder consensus." The FWC did not, however, express direct support of or opposition to provisions in the proposed rule addressing summer boat speeds.

B. SECTION DIRECTORY: Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: See Fiscal Comments.
2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: See Fiscal Comments.

D. FISCAL COMMENTS: Although this memorial does not have a fiscal impact on local governments or the private sector, opponents of the Service's proposed rule assert that the rule itself will have a significant negative impact on local government and private sector revenues in the affected area. However, it appears that a formal economic impact study of the proposed rules has not been performed by the Service or affected parties.

¹³ Proposal at FR 36498.

¹⁴ <http://www.chronicleonline.com/content/doomsday-rule-king's-bay-subject-gov't-takeover-opponents-say>

¹⁵ Letter to Dave Hankla, Field Supervisor, U.S. Fish and Wildlife Services, from Kathy Barco, Chair, FWC (Sept. 30, 2011).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable.
2. Other: None.

B. RULE-MAKING AUTHORITY: Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.