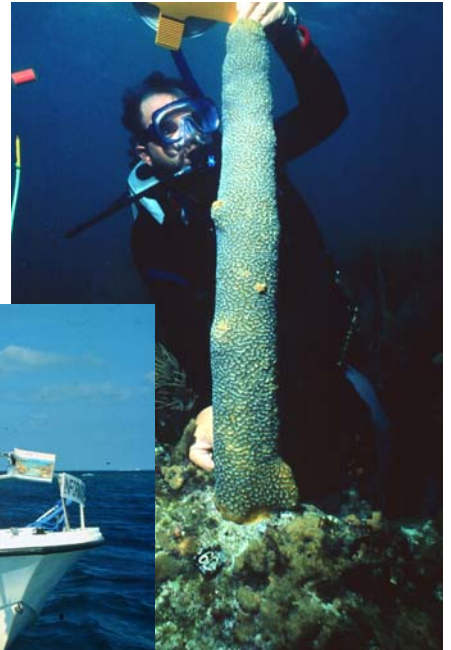


Florida Keys National Marine Sanctuary Draft Revised Management Plan



February 2005

U.S. Department of Commerce

National Oceanic and
Atmospheric Administration

National Ocean Service

National Marine Sanctuary Program

This document is the draft revised management plan for the Florida Keys National Marine Sanctuary. It replaces the management plan that was implemented in 1997 and will serve as the primary management document for the Sanctuary during the next five years.

Comments or questions on this management plan should be directed to:

Billy D. Causey
Superintendent
Florida Keys National Marine Sanctuary
P.O. Box 500368
Marathon, FL 33050
(305) 743-2437 x 26
billy.causey@noaa.gov

Note to Reader

In an effort to make this document more user-friendly, we have included references to the Florida Keys National Marine Sanctuary web site rather than including the entire text of many bulky attachments or appendices that are traditionally included in management plans. Readers who do not have access to the Internet may call the Sanctuary office at (305) 743-2437 to request copies of any documents that are on the Sanctuary's web site. For readers with Internet access, the Sanctuary's web site can be found at: <http://floridakeys.noaa.gov>.

ABOUT THIS DOCUMENT

This document is a report on the results of NOAA's five-year review of the strategies and activities detailed in the 1997 *Final Management Plan and Environmental Impact Statement* for the Florida Keys National Marine Sanctuary. It serves two primary purposes: 1) to update readers on the outcomes of successfully implemented strategies - in short, accomplishments that were merely plans on paper just five years ago; and, 2) to disseminate useful information about the Sanctuary and its management strategies, activities and products. The hope is that this information, which charts the next 5 years of Sanctuary management, will enhance the communication and cooperation so vital to protecting important national resources.

Sanctuary Characteristics

The Florida Keys National Marine Sanctuary extends approximately 220 nautical miles southwest from the southern tip of the Florida peninsula. The Sanctuary's marine ecosystem supports over 6,000 species of plants, fishes, and invertebrates, including the nation's only living coral reef that lies adjacent to the continent. The area includes one of the largest seagrass communities in this hemisphere. Attracted by this tropical diversity, tourists spend more than thirteen million visitor days in the Florida Keys each year. In addition, the region's natural and man-made resources provide livelihoods for approximately 80,000 residents.

The Sanctuary is 2,900 square nautical miles of coastal waters, including the recent addition of the Tortugas Ecological Reserve. The Sanctuary overlaps six state parks and three state aquatic preserves. Three national parks have separate jurisdictions, and share a boundary with the Sanctuary. In addition, the region has some of the most significant maritime heritage and historical resources of any coastal community in the nation.

The Sanctuary faces specific threats, including direct human impacts such as ship groundings, pollution, and overfishing. Threats to the Sanctuary also include indirect human impacts, which are harder to identify but seem to be reflected in coral declines and increases in macroalgae and turbidity. More information about the Sanctuary can be found in this document and at the Sanctuary's web site: <http://floridakeys.noaa.gov>.

Management Plan Organization

Within this document, the tools that the Sanctuary uses to achieve its goals, are presented under five management divisions: 1) Science; 2) Education, Outreach & Stewardship; 3) Enforcement & Resource Protection; 4) Resource Threat Reduction; and, 5) Administration, Community Relations, & Policy Coordination. Each management division contains two or more *action plans*, which are implemented through supporting *strategies* and *activities*. The strategies described in the 1997 *Management Plan* generally retain their designations in this document. As in the 1997 plan, two or more action plans may share a strategy where their goals and aims converge.

Accomplishments and Highlights

The Sanctuary's programs and projects have made significant progress since the original management plan was implemented 1997. An overview of these accomplishments is provided in the Introduction. In addition, each action plan contains bulleted lists of accomplishments since the 1997 management plan was adopted.

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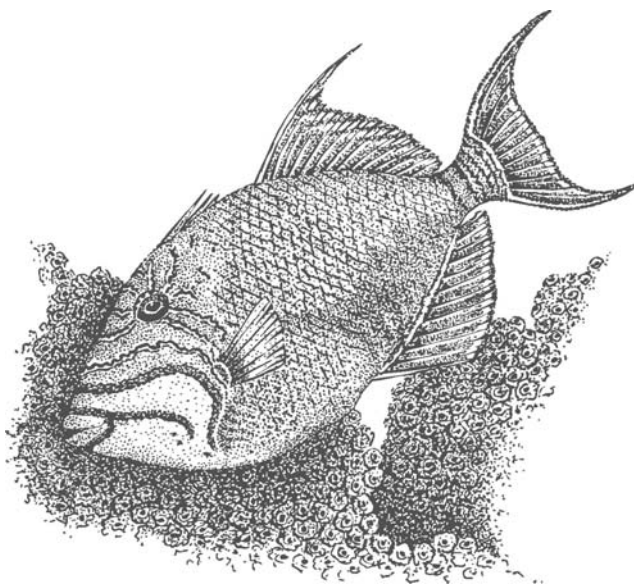
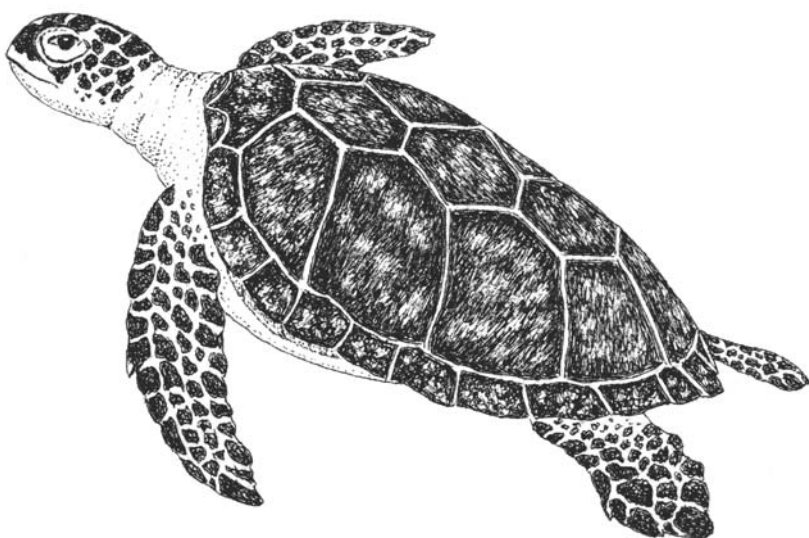
Acronyms

ASA	Abandoned Shipwreck Act
ATBAs	Areas to Be Avoided
AWT	Advanced Wastewater Treatment
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	Code of Federal Regulations
DARP	Damage Assessment and Restoration Program
DMR	Department of Marine Resources (Monroe County)
EIS	Environmental Impact Statement
EPA	Environmental Protection Agency
ESA	Endangered Species Act
F.S.	Florida Statutes
FAC	Florida Administrative Code
FDACS	Florida Department of Agriculture and Consumer Services
FDHR	Florida Division of Historical Resources
FDEP	Florida Department of Environmental Protection
FFWCC	Florida Fish and Wildlife Conservation Commission
FKNMS	Florida Keys National Marine Sanctuary
FKNMSPA	Florida Keys National Marine Sanctuary Protection Act
FPS	Florida Park Service
FWRI	Fish and Wildlife Research Institute
FWS	Fish and Wildlife Service
GIS	Geographic Information System
GPS	Global Positioning System
HAZMAT	Hazardous Materials
MBTA	Migratory Bird Treaty Act
MEERA	Marine Ecosystem Event Response and Assessment
MHR	Maritime Heritage Resources
MMPA	Marine Mammal Protection Act
MMS	Minerals Management Service
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
NEPA	National Environmental Protection Act
NGO	Non-governmental Organization
NHPA	National Historic Preservation Act
NMFS	National Marine Fisheries Service
NMS	National Marine Sanctuary
NMSA	National Marine Sanctuary Act
NMSP	National Marine Sanctuary Program
NOAA	National Oceanic and Atmospheric Administration
NOS	National Ocean Service
NPDES	National Pollutant Discharge Elimination System
NPS	National Park Service
OSDS	On-Site Disposal System
PSSA	Particularly Sensitive Sea Area

SAV	Submerged Aquatic Vegetation
SCR	Submerged Cultural Resources
SEFSC	Southeast Fisheries Science Center
SFWMD	South Florida Water Management District
SPA	Sanctuary Preservation Area
SWIM	Surface Water Improvement and Management Act
SWM	Stormwater Management
TNC	The Nature Conservancy
USACE	U.S. Army Corps of Engineers
USCG	U.S. Coast Guard
USDOC	U.S. Department of Commerce
USDOI	U.S. Department of Interior
USDOS	U.S. Department of State
USDOT	U.S. Department of Transportation
USGS	U.S. Geological Survey
WMA	Wildlife Management Area

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Appendix A - The National Marine Sanctuaries Act

*Title 16, Chapter 32, Sections 1431 et seq. United States Code
As amended by Public Law 106-513, November 2000*

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SECTION 301. Findings, purposes, and policies; establishment of system

- (a) Findings. The Congress finds that -
- (1) this Nation historically has recognized the importance of protecting special areas of its public domain, but these efforts have been directed almost exclusively to land areas above the high-water mark;
 - (2) certain areas of the marine environment possess conservation, recreational, ecological, historical, scientific, educational, cultural, archeological, or esthetic qualities which give them special national, and in some cases international, significance;
 - (3) while the need to control the effects of particular activities has led to enactment of resource-specific legislation, these laws cannot in all cases provide a coordinated and comprehensive approach to the conservation and management of special areas of the marine environment; and
 - (4) a Federal program which establishes areas of the marine environment which have special conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, or esthetic qualities as national marine sanctuaries managed as the National Marine Sanctuary System will -
 - (A) improve the conservation, understanding, management, and wise and sustainable use of marine resources;
 - (B) enhance public awareness, understanding, and appreciation of the marine environment; and
 - (C) maintain for future generations the habitat, and ecological services, of the natural assemblage of living resources that inhabit these areas.
- (b) Purposes and policies. The purposes and policies of this chapter are-
- (1) to identify and designate as national marine sanctuaries areas of the marine environment which are of special national significance and to manage these areas as the National Marine Sanctuary System;
 - (2) to provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities;
 - (3) to maintain the natural biological communities in the national marine sanctuaries, and to protect, and, where appropriate, restore and enhance natural habitats, populations, and ecological processes;
 - (4) to enhance public awareness, understanding, appreciation, and wise and sustainable use of the marine environment, and the natural, historical, cultural, and archeological resources of the National Marine Sanctuary System;
 - (5) to support, promote, and coordinate scientific research on, and long-term monitoring of, the resources of these marine areas;
 - (6) to facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities;
 - (7) to develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas;

- (8) to create models of, and incentives for, ways to conserve and manage these areas, including the application of innovative management techniques; and
 - (9) to cooperate with global programs encouraging conservation of marine resources.
- (c) Establishment of system There is established the National Marine Sanctuary System, which shall consist of national marine sanctuaries designated by the Secretary in accordance with this chapter.

SECTION 302. Definitions

As used in this chapter, the term -

- (1) "draft management plan" means the plan described in section 1434(a)(1)(C)(v) of this title;
- (2) "Magnuson-Stevens Act" means the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);
- (3) "marine environment" means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, including the exclusive economic zone, consistent with international law;
- (4) "Secretary" means the Secretary of Commerce;
- (5) "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States;
- (6) "damages" includes -
 - (A) compensation for -
 - (i)(I) the cost of replacing, restoring, or acquiring the equivalent of a sanctuary resource; and (II) the value of the lost use of a sanctuary resource pending its restoration or replacement or the acquisition of an equivalent sanctuary resource; or
 - (ii) the value of a sanctuary resource if the sanctuary resource cannot be restored or replaced or if the equivalent of such resource cannot be acquired;
 - (B) the cost of damage assessments under section 1443(b)(2) of this title;
 - (C) the reasonable cost of monitoring appropriate to the injured, restored, or replaced resources;
 - (D) the cost of curation and conservation of archeological, historical, and cultural sanctuary resources; and
 - (E) the cost of enforcement actions undertaken by the Secretary in response to the destruction or loss of, or injury to, a sanctuary resource;
- (7) "response costs" means the costs of actions taken or authorized by the Secretary to minimize destruction or loss of, or injury to, sanctuary resources, or to minimize the imminent risks of such destruction, loss, or injury, including costs related to seizure, forfeiture, storage, or disposal arising from liability under section 1443 of this title;
- (8) "sanctuary resource" means any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical,

- educational, cultural, archeological, scientific, or aesthetic value of the sanctuary;
and
- (9) "exclusive economic zone" means the exclusive economic zone as defined in the Magnuson-Stevens Act; and
 - (10) "System" means the National Marine Sanctuary System established by section 1431 of this title.

SECTION 303. Sanctuary designation standards

- (a) Standards. The Secretary may designate any discrete area of the marine environment as a national marine sanctuary and promulgate regulations implementing the designation if the Secretary determines that -
 - (1) the designation will fulfill the purposes and policies of this chapter;
 - (2) the area is of special national significance due to -
 - (A) its conservation, recreational, ecological, historical, scientific, cultural, archaeological, educational, or esthetic qualities;
 - (B) the communities of living marine resources it harbors; or
 - (C) its resource or human-use values;
 - (3) existing State and Federal authorities are inadequate or should be supplemented to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;
 - (4) designation of the area as a national marine sanctuary will facilitate the objectives stated in paragraph (3); and
 - (5) the area is of a size and nature that will permit comprehensive and coordinated conservation and management.
- (b) Factors and consultations required in making determinations and findings
 - (1) Factors. For purposes of determining if an area of the marine environment meets the standards set forth in subsection (a) of this section, the Secretary shall consider -
 - (A) the area's natural resource and ecological qualities, including its contribution to biological productivity, maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened species or species assemblages, maintenance of critical habitat of endangered species, and the biogeographic representation of the site;
 - (B) the area's historical, cultural, archaeological, or paleontological significance;
 - (C) the present and potential uses of the area that depend on maintenance of the area's resources, including commercial and recreational fishing, subsistence uses, other commercial and recreational activities, and research and education;
 - (D) the present and potential activities that may adversely affect the factors identified in subparagraphs (A), (B), and (C);
 - (E) the existing State and Federal regulatory and management authorities applicable to the area and the adequacy of those authorities to fulfill the purposes and policies of this chapter;
 - (F) the manageability of the area, including such factors as its size, its ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities;

- (G) the public benefits to be derived from sanctuary status, with emphasis on the benefits of long-term protection of nationally significant resources, vital habitats, and resources which generate tourism;
 - (H) the negative impacts produced by management restrictions on income-generating activities such as living and nonliving resources development;
 - (I) the socioeconomic effects of sanctuary designation;
 - (J) the area's scientific value and value for monitoring the resources and natural processes that occur there;
 - (K) the feasibility, where appropriate, of employing innovative management approaches to protect sanctuary resources or to manage compatible uses; and
 - (L) the value of the area as an addition to the System.
- (2) Consultation. In making determinations and findings, the Secretary shall consult with -
- (A) the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate;
 - (B) the Secretaries of State, Defense, Transportation, and the Interior, the Administrator, and the heads of other interested Federal agencies;
 - (C) the responsible officials or relevant agency heads of the appropriate State and local government entities, including coastal zone management agencies, that will or are likely to be affected by the establishment of the area as a national marine sanctuary;
 - (D) the appropriate officials of any Regional Fishery Management Council established by section 302 of the Magnuson-Stevens Act (16 U.S.C. 1852) that may be affected by the proposed designation; and
 - (E) other interested persons.

SECTION 304. Procedures for designation and implementation

- (a) Sanctuary proposal
- (1) Notice. In proposing to designate a national marine sanctuary, the Secretary shall-
- (A) issue, in the Federal Register, a notice of the proposal, proposed regulations that may be necessary and reasonable to implement the proposal, and a summary of the draft management plan;
 - (B) provide notice of the proposal in newspapers of general circulation or electronic media in the communities that may be affected by the proposal; and
 - (C) no later than the day on which the notice required under subparagraph (A) is submitted to the Office of the Federal Register, submit a copy of that notice and the draft sanctuary designation documents prepared pursuant to paragraph (2), including an executive summary, to the Committee on Resources of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Governor of each State in which any part of the proposed sanctuary would be located.

- (2) Sanctuary designation documents. The Secretary shall prepare and make available to the public sanctuary designation documents on the proposal that include the following:
- (A) A draft environmental impact statement pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
 - (B) A resource assessment that documents -
 - (i) present and potential uses of the area, including commercial and recreational fishing, research and education, minerals and energy development, subsistence uses, and other commercial, governmental, or recreational uses;
 - (ii) after consultation with the Secretary of the Interior, any commercial, governmental, or recreational resource uses in the areas that are subject to the primary jurisdiction of the Department of the Interior; and
 - (iii) information prepared in consultation with the Secretary of Defense, the Secretary of Energy, and the Administrator of the Environmental Protection Agency, on any past, present, or proposed future disposal or discharge of materials in the vicinity of the proposed sanctuary. Public disclosure by the Secretary of such information shall be consistent with national security regulations.
 - (C) A draft management plan for the proposed national marine sanctuary that includes the following:
 - (i) The terms of the proposed designation.
 - (ii) Proposed mechanisms to coordinate existing regulatory and management authorities within the area.
 - (iii) The proposed goals and objectives, management responsibilities, resource studies, and appropriate strategies for managing sanctuary resources of the proposed sanctuary, including interpretation and education, innovative management strategies, research, monitoring and assessment, resource protection, restoration, enforcement, and surveillance activities.
 - (iv) An evaluation of the advantages of cooperative State and Federal management if all or part of the proposed sanctuary is within the territorial limits of any State or is superjacent to the subsoil and seabed within the seaward boundary of a State, as that boundary is established under the Submerged Lands Act (43 U.S.C. 1301 et seq.).
 - (v) An estimate of the annual cost to the Federal Government of the proposed designation, including costs of personnel, equipment and facilities, enforcement, research, and public education.
 - (vi) The proposed regulations referred to in paragraph (1)(A).
 - (D) Maps depicting the boundaries of the proposed sanctuary.
 - (E) The basis for the determinations made under section 1433(a) of this title with respect to the area.
 - (F) An assessment of the considerations under section 1433(b)(1) of this title.

- (3) Public hearing. No sooner than thirty days after issuing a notice under this subsection, the Secretary shall hold at least one public hearing in the coastal area or areas that will be most affected by the proposed designation of the area as a national marine sanctuary for the purpose of receiving the views of interested parties.
 - (4) Terms of designation. The terms of designation of a sanctuary shall include the geographic area proposed to be included within the sanctuary, the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value, and the types of activities that will be subject to regulation by the Secretary to protect those characteristics. The terms of designation may be modified only by the same procedures by which the original designation is made.
 - (5) Fishing regulations. The Secretary shall provide the appropriate Regional Fishery Management Council with the opportunity to prepare draft regulations for fishing within the Exclusive Economic Zone as the Council may deem necessary to implement the proposed designation. Draft regulations prepared by the Council, or a Council determination that regulations are not necessary pursuant to this paragraph, shall be accepted and issued as proposed regulations by the Secretary unless the Secretary finds that the Council's action fails to fulfill the purposes and policies of this chapter and the goals and objectives of the proposed designation. In preparing the draft regulations, a Regional Fishery Management Council shall use as guidance the national standards of section 301(a) of the Magnuson-Stevens Act (16 U.S.C. 1851) to the extent that the standards are consistent and compatible with the goals and objectives of the proposed designation. The Secretary shall prepare the fishing regulations, if the Council declines to make a determination with respect to the need for regulations, makes a determination which is rejected by the Secretary, or fails to prepare the draft regulations in a timely manner. Any amendments to the fishing regulations shall be drafted, approved, and issued in the same manner as the original regulations. The Secretary shall also cooperate with other appropriate fishery management authorities with rights or responsibilities within a proposed sanctuary at the earliest practicable stage in drafting any sanctuary fishing regulations.
 - (6) Committee action. After receiving the documents under subsection (a)(1)(C) of this section, the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate may each hold hearings on the proposed designation and on the matters set forth in the documents. If within the forty-five day period of continuous session of Congress beginning on the date of submission of the documents, either Committee issues a report concerning matters addressed in the documents, the Secretary shall consider this report before publishing a notice to designate the national marine sanctuary.
- (b) Taking effect of designations
- (1) Notice. In designating a national marine sanctuary, the Secretary shall publish in the Federal Register notice of the designation together with final regulations to implement the designation and any other matters required by law, and submit such notice to the Congress. The Secretary shall advise the public of the

availability of the final management plan and the final environmental impact statement with respect to such sanctuary. The Secretary shall issue a notice of designation with respect to a proposed national marine sanctuary site not later than 30 months after the date a notice declaring the site to be an active candidate for sanctuary designation is published in the Federal Register under regulations issued under this Act, or shall publish not later than such date in the Federal Register findings regarding why such notice has not been published. No notice of designation may occur until the expiration of the period for Committee action under subsection (a)(6) of this section. The designation (and any of its terms not disapproved under this subsection) and regulations shall take effect and become final after the close of a review period of forty-five days of continuous session of Congress beginning on the day on which such notice is published unless, in the case of a national marine sanctuary that is located partially or entirely within the seaward boundary of any State, the Governor affected certifies to the Secretary that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the seaward boundary of the State.

- (2) Withdrawal of designation. If the Secretary considers that actions taken under paragraph (1) will affect the designation of a national marine sanctuary in a manner that the goals and objectives of the sanctuary or System cannot be fulfilled, the Secretary may withdraw the entire designation. If the Secretary does not withdraw the designation, only those terms of the designation not certified under paragraph (1) shall take effect.
- (3) Procedures. In computing the forty-five-day periods of continuous session of Congress pursuant to subsection (a)(6) of this section and paragraph (1) of this subsection -
 - (A) continuity of session is broken only by an adjournment of Congress sine die; and
 - (B) the days on which either House of Congress is not in session because of an adjournment of more than three days to a day certain are excluded.
- (c) Access and valid rights
 - (1) Nothing in this chapter shall be construed as terminating or granting to the Secretary the right to terminate any valid lease, permit, license, or right of subsistence use or of access that is in existence on the date of designation of any national marine sanctuary.
 - (2) The exercise of a lease, permit, license, or right is subject to regulation by the Secretary consistent with the purposes for which the sanctuary is designated.
- (d) Interagency cooperation
 - (1) Review of agency actions
 - (A) In general. Federal agency actions internal or external to a national marine sanctuary, including private activities authorized by licenses, leases, or permits, that are likely to destroy, cause the loss of, or injure any sanctuary resource are subject to consultation with the Secretary.
 - (B) Agency statements required. Subject to any regulations the Secretary may establish each Federal agency proposing an action described in subparagraph (A) shall provide the Secretary with a written statement describing the action and its potential effects on sanctuary resources at

- the earliest practicable time, but in no case later than 45 days before the final approval of the action unless such Federal agency and the Secretary agree to a different schedule.
- (2) Secretary's recommended alternatives. If the Secretary finds that a Federal agency action is likely to destroy, cause the loss of, or injure a sanctuary resource, the Secretary shall (within 45 days of receipt of complete information on the proposed agency action) recommend reasonable and prudent alternatives, which may include conduct of the action elsewhere, which can be taken by the Federal agency in implementing the agency action that will protect sanctuary resources.
 - (3) Response to recommendations. The agency head who receives the Secretary's recommended alternatives under paragraph (2) shall promptly consult with the Secretary on the alternatives. If the agency head decides not to follow the alternatives, the agency head shall provide the Secretary with a written statement explaining the reasons for that decision.
 - (4) Failure to follow alternative. If the head of a Federal agency takes an action other than an alternative recommended by the Secretary and such action results in the destruction of, loss of, or injury to a sanctuary resource, the head of the agency shall promptly prevent and mitigate further damage and restore or replace the sanctuary resource in a manner approved by the Secretary.
- (e) Review of management plans. Not more than five years after the date of designation of any national marine sanctuary, and thereafter at intervals not exceeding five years, the Secretary shall evaluate the substantive progress toward implementing the management plan and goals for the sanctuary, especially the effectiveness of site-specific management techniques and strategies, and shall revise the management plan and regulations as necessary to fulfill the purposes and policies of this chapter. This review shall include a prioritization of management objectives.
- (f) Limitation on designation of new sanctuaries
- (1) Finding required. The Secretary may not publish in the Federal Register any sanctuary designation notice or regulations proposing to designate a new sanctuary, unless the Secretary has published a finding that -
 - (A) the addition of a new sanctuary will not have a negative impact on the System; and
 - (B) sufficient resources were available in the fiscal year in which the finding is made to -
 - (i) effectively implement sanctuary management plans for each sanctuary in the System; and
 - (ii) complete site characterization studies and inventory known sanctuary resources, including cultural resources, for each sanctuary in the System within 10 years after the date that the finding is made if the resources available for those activities are maintained at the same level for each fiscal year in that 10 year period.
 - (2) Deadline. If the Secretary does not submit the findings required by paragraph (1) before February 1, 2004, the Secretary shall submit to the Congress before October 1, 2004, a finding with respect to whether the requirements of

subparagraphs (A) and (B) of paragraph (1) have been met by all existing sanctuaries.

- (3) Limitation on application. Paragraph (1) does not apply to any sanctuary designation documents for -
 - (A) Thunder Bay National Marine Sanctuary; or
 - (B) Northwestern Hawaiian Islands National Marine Sanctuary.

SECTION 305. Application of regulations; international negotiations and cooperation

- (a) Regulations. This chapter and the regulations issued under section 1434 of this title shall be applied in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party. No regulation shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States, unless in accordance with -
 - (1) generally recognized principles of international law;
 - (2) an agreement between the United States and the foreign state of which the person is a citizen; or
 - (3) an agreement between the United States and the flag state of a foreign vessel, if the person is a crewmember of the vessel.
- (b) Negotiations. The Secretary of State, in consultation with the Secretary, shall take appropriate action to enter into negotiations with other governments to make necessary arrangements for the protection of any national marine sanctuary and to promote the purposes for which the sanctuary is established.
- (c) International cooperation. The Secretary, in consultation with the Secretary of State and other appropriate Federal agencies, shall cooperate with other governments and international organizations in furtherance of the purposes and policies of this chapter and consistent with applicable regional and multilateral arrangements for the protection and management of special marine areas.

SECTION 306. Prohibited activities

It is unlawful for any person to -

- (1) destroy, cause the loss of, or injure any sanctuary resource managed under law or regulations for that sanctuary;
- (2) possess, sell, offer for sale, purchase, import, export, deliver, carry, transport, or ship by any means any sanctuary resource taken in violation of this section;
- (3) interfere with the enforcement of this chapter by -
 - (A) refusing to permit any officer authorized to enforce this chapter to board a vessel, other than a vessel operated by the Department of Defense or United States Coast Guard, subject to such person's control for the purposes of conducting any search or inspection in connection with the enforcement of this chapter;
 - (B) resisting, opposing, impeding, intimidating, harassing, bribing, interfering with, or forcibly assaulting any person authorized by the Secretary to implement this chapter or any such authorized officer in the conduct of any search or inspection performed under this chapter; or
 - (C) knowingly and willfully submitting false information to the Secretary or any officer authorized to enforce this chapter in connection with any search or inspection conducted under this chapter; or

- (4) violate any provision of this chapter or any regulation or permit issued pursuant to this chapter.

SECTION 307. Enforcement

- (a) In general. The Secretary shall conduct such enforcement activities as are necessary and reasonable to carry out this chapter.
- (b) Powers of authorized officers. Any person who is authorized to enforce this chapter may -
 - (1) board, search, inspect, and seize any vessel suspected of being used to violate this chapter or any regulation or permit issued under this chapter and any equipment, stores, and cargo of such vessel;
 - (2) seize wherever found any sanctuary resource taken or retained in violation of this chapter or any regulation or permit issued under this chapter;
 - (3) seize any evidence of a violation of this chapter or of any regulation or permit issued under this chapter;
 - (4) execute any warrant or other process issued by any court of competent jurisdiction;
 - (5) exercise any other lawful authority; and
 - (6) arrest any person, if there is reasonable cause to believe that such person has committed an act prohibited by section 1436(3) of this title.
- (c) Criminal offenses
 - (1) Offenses. A person is guilty of an offense under this subsection if the person commits any act prohibited by section 1436(3) of this title.
 - (2) Punishment. Any person that is guilty of an offense under this subsection -
 - (A) except as provided in subparagraph (B), shall be fined under title 18, imprisoned for not more than 6 months, or both; or
 - (B) in the case of a person who in the commission of such an offense uses a dangerous weapon, engages in conduct that causes bodily injury to any person authorized to enforce this chapter or any person authorized to implement the provisions of this chapter, or places any such person in fear of imminent bodily injury, shall be fined under title 18, imprisoned for not more than 10 years, or both.
- (d) Civil penalties
 - (1) Civil penalty Any person subject to the jurisdiction of the United States who violates this chapter or any regulation or permit issued under this chapter shall be liable to the United States for a civil penalty of not more than \$100,000 for each such violation, to be assessed by the Secretary. Each day of a continuing violation shall constitute a separate violation.
 - (2) Notice No penalty shall be assessed under this subsection until after the person charged has been given notice and an opportunity for a hearing.
 - (3) In rem jurisdiction A vessel used in violating this chapter or any regulation or permit issued under this chapter shall be liable in rem for any civil penalty assessed for such violation. Such penalty shall constitute a maritime lien on the vessel and may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.
 - (4) Review of civil penalty Any person against whom a civil penalty is assessed under this subsection may obtain review in the United States district court for the

- appropriate district by filing a complaint in such court not later than 30 days after the date of such order.
- (5) Collection of penalties If any person fails to pay an assessment of a civil penalty under this section after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.
 - (6) Compromise or other action by Secretary The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is or may be imposed under this section.
- (e) Forfeiture
- (1) In general. Any vessel (including the vessel's equipment, stores, and cargo) and other item used, and any sanctuary resource taken or retained, in any manner, in connection with or as a result of any violation of this chapter or of any regulation or permit issued under this chapter shall be subject to forfeiture to the United States pursuant to a civil proceeding under this subsection. The proceeds from forfeiture actions under this subsection shall constitute a separate recovery in addition to any amounts recovered as civil penalties under this section or as civil damages under section 1443 of this title. None of those proceeds shall be subject to set-off.
 - (2) Application of the customs laws The Secretary may exercise the authority of any United States official granted by any relevant customs law relating to the seizure, forfeiture, condemnation, disposition, remission, and mitigation of property in enforcing this chapter.
 - (3) Disposal of sanctuary resources Any sanctuary resource seized pursuant to this chapter may be disposed of pursuant to an order of the appropriate court, or, if perishable, in a manner prescribed by regulations promulgated by the Secretary. Any proceeds from the sale of such sanctuary resource shall for all purposes represent the sanctuary resource so disposed of in any subsequent legal proceedings.
 - (4) Presumption For the purposes of this section there is a rebuttable presumption that all sanctuary resources found on board a vessel that is used or seized in connection with a violation of this chapter or of any regulation or permit issued under this chapter were taken or retained in violation of this chapter or of a regulation or permit issued under this chapter.
- (f) Payment of storage, care, and other costs
- (1) Expenditures
 - (A) Notwithstanding any other law, amounts received by the United States as civil penalties, forfeitures of property, and costs imposed under paragraph (2) shall be retained by the Secretary in the manner provided for in section 9607(f)(1) of title 42.
 - (B) Amounts received under this section for forfeitures and costs imposed under paragraph (2) shall be used to pay the reasonable and necessary costs incurred by the Secretary to provide temporary storage, care, maintenance, and disposal of any sanctuary resource or other property

- seized in connection with a violation of this chapter or any regulation or permit issued under this chapter.
- (C) Amounts received under this section as civil penalties and any amounts remaining after the operation of subparagraph (B) shall be used, in order of priority, to -
- (i) manage and improve the national marine sanctuary with respect to which the violation occurred that resulted in the penalty or forfeiture;
 - (ii) pay a reward to any person who furnishes information leading to an assessment of a civil penalty, or to a forfeiture of property, for a violation of this chapter or any regulation or permit issued under this chapter; and
 - (iii) manage and improve any other national marine sanctuary.
- (2) Liability for costs. Any person assessed a civil penalty for a violation of this chapter or of any regulation or permit issued under this chapter, and any claimant in a forfeiture action brought for such a violation, shall be liable for the reasonable costs incurred by the Secretary in storage, care, and maintenance of any sanctuary resource or other property seized in connection with the violation.
- (g) Subpoenas. In the case of any hearing under this section which is determined on the record in accordance with the procedures provided for under section 554 of title 5, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, electronic files, and documents, and may administer oaths.
- (h) Use of resources of State and other Federal agencies. The Secretary shall, whenever appropriate, use by agreement the personnel, services, and facilities of State and other Federal departments, agencies, and instrumentalities, on a reimbursable or nonreimbursable basis, to carry out the Secretary's responsibilities under this section.
- (i) Coast Guard authority not limited. Nothing in this section shall be considered to limit the authority of the Coast Guard to enforce this or any other Federal law under section 89 of title 14.
- (j) Injunctive relief. If the Secretary determines that there is an imminent risk of destruction or loss of or injury to a sanctuary resource, or that there has been actual destruction or loss of, or injury to, a sanctuary resource which may give rise to liability under section 1443 of this title, the Attorney General, upon request of the Secretary, shall seek to obtain such relief as may be necessary to abate such risk or actual destruction, loss, or injury, or to restore or replace the sanctuary resource, or both. The district courts of the United States shall have jurisdiction in such a case to order such relief as the public interest and the equities of the case may require.
- (k) Area of application and enforceability. The area of application and enforceability of this chapter includes the territorial sea of the United States, as described in Presidential Proclamation 5928 of December 27, 1988, which is subject to the sovereignty of the United States, and the United States exclusive economic zone, consistent with international law.
- (l) Nationwide service of process. In any action by the United States under this chapter, process may be served in any district where the defendant is found, resides, transacts business, or has appointed an agent for the service of process.

SECTION 308. Regulations

The Secretary may issue such regulations as may be necessary to carry out this chapter.

SECTION 309. Research, monitoring, and education

- (a) In general. The Secretary shall conduct, support, or coordinate research, monitoring, evaluation, and education programs consistent with subsections (b) and (c) of this section and the purposes and policies of this chapter.
- (b) Research and monitoring
 - (1) In general The Secretary may -
 - (A) support, promote, and coordinate research on, and long-term monitoring of, sanctuary resources and natural processes that occur in national marine sanctuaries, including exploration, mapping, and environmental and socioeconomic assessment;
 - (B) develop and test methods to enhance degraded habitats or restore damaged, injured, or lost sanctuary resources; and
 - (C) support, promote, and coordinate research on, and the conservation, curation, and public display of, the cultural, archeological, and historical resources of national marine sanctuaries.
 - (2) Availability of results. The results of research and monitoring conducted, supported, or permitted by the Secretary under this subsection shall be made available to the public.
- (c) Education
 - (1) In general The Secretary may support, promote, and coordinate efforts to enhance public awareness, understanding, and appreciation of national marine sanctuaries and the System. Efforts supported, promoted, or coordinated under this subsection must emphasize the conservation goals and sustainable public uses of national marine sanctuaries and the System.
 - (2) Educational activities. Activities under this subsection may include education of the general public, teachers, students, national marine sanctuary users, and ocean and coastal resource managers.
- (d) Interpretive facilities
 - (1) In general. The Secretary may develop interpretive facilities near any national marine sanctuary.
 - (2) Facility requirement. Any facility developed under this subsection must emphasize the conservation goals and sustainable public uses of national marine sanctuaries by providing the public with information about the conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, or esthetic qualities of the national marine sanctuary.
- (e) Consultation and coordination. In conducting, supporting, and coordinating research, monitoring, evaluation, and education programs under subsection (a) of this section and developing interpretive facilities under subsection (d) of this section, the Secretary may consult or coordinate with Federal, interstate, or regional agencies, States or local governments.

SECTION 310. Special use permits

- (a) Issuance of permits. The Secretary may issue special use permits which authorize the conduct of specific activities in a national marine sanctuary if the Secretary determines

- such authorization is necessary -
- (1) to establish conditions of access to and use of any sanctuary resource; or
 - (2) to promote public use and understanding of a sanctuary resource.
- (b) Public notice required. The Secretary shall provide appropriate public notice before identifying any category of activity subject to a special use permit under subsection (a) of this section.
- (c) Permit terms. A permit issued under this section -
- (1) shall authorize the conduct of an activity only if that activity is compatible with the purposes for which the sanctuary is designated and with protection of sanctuary resources;
 - (2) shall not authorize the conduct of any activity for a period of more than 5 years unless renewed by the Secretary;
 - (3) shall require that activities carried out under the permit be conducted in a manner that does not destroy, cause the loss of, or injure sanctuary resources; and
 - (4) shall require the permittee to purchase and maintain comprehensive general liability insurance, or post an equivalent bond, against claims arising out of activities conducted under the permit and to agree to hold the United States harmless against such claims.
- (d) Fees
- (1) Assessment and collection. The Secretary may assess and collect fees for the conduct of any activity under a permit issued under this section.
 - (2) Amount. The amount of a fee under this subsection shall be equal to the sum of -
 - (A) costs incurred, or expected to be incurred, by the Secretary in issuing the permit;
 - (B) costs incurred, or expected to be incurred, by the Secretary as a direct result of the conduct of the activity for which the permit is issued, including costs of monitoring the conduct of the activity; and
 - (C) an amount which represents the fair market value of the use of the sanctuary resource.
 - (3) Use of fees. Amounts collected by the Secretary in the form of fees under this section may be used by the Secretary -
 - (A) for issuing and administering permits under this section; and
 - (B) for expenses of managing national marine sanctuaries.
 - (4) Waiver or reduction of fees. The Secretary may accept in-kind contributions in lieu of a fee under paragraph (2)(C), or waive or reduce any fee assessed under this subsection for any activity that does not derive profit from the access to or use of sanctuary resources.
- (e) Violations. Upon violation of a term or condition of a permit issued under this section, the Secretary may -
- (1) suspend or revoke the permit without compensation to the permittee and without liability to the United States;
 - (2) assess a civil penalty in accordance with section 1437 of this title; or
 - (3) both.
- (f) Reports. Each person issued a permit under this section shall submit an annual report to the Secretary not later than December 31 of each year which describes activities conducted under that permit and revenues derived from such activities during the year.

- (g) Fishing. Nothing in this section shall be considered to require a person to obtain a permit under this section for the conduct of any fishing activities in a national marine sanctuary.

SECTION 311. Cooperative agreements, donations, and acquisitions

- (a) Agreements and grants. The Secretary may enter into cooperative agreements, contracts, or other agreements with, or make grants to, States, local governments, regional agencies, interstate agencies, or other persons to carry out the purposes and policies of this chapter.
- (b) Authorization to solicit donations. The Secretary may enter into such agreements with any nonprofit organization authorizing the organization to solicit private donations to carry out the purposes and policies of this chapter.
- (c) Donations. The Secretary may accept donations of funds, property, and services for use in designating and administering national marine sanctuaries under this chapter. Donations accepted under this section shall be considered as a gift or bequest to or for the use of the United States.
- (d) Acquisitions. The Secretary may acquire by purchase, lease, or exchange, any land, facilities, or other property necessary and appropriate to carry out the purposes and policies of this chapter.
- (e) Use of resources of other government agencies. The Secretary may, whenever appropriate, enter into an agreement with a State or other Federal agency to use the personnel, services, or facilities of such agency on a reimbursable or nonreimbursable basis, to assist in carrying out the purposes and policies of this chapter.
- (f) Authority to obtain grants. Notwithstanding any other provision of law that prohibits a Federal agency from receiving assistance, the Secretary may apply for, accept, and use grants from other Federal agencies, States, local governments, regional agencies, interstate agencies, foundations, or other persons, to carry out the purposes and policies of this chapter.

SECTION 312. Destruction or loss of, or injury to, sanctuary resources

- (a) Liability
 - (1) Liability to United States. Any person who destroys, causes the loss of, or injures any sanctuary resource is liable to the United States for an amount equal to the sum of -
 - (A) the amount of response costs and damages resulting from the destruction, loss, or injury; and
 - (B) interest on that amount calculated in the manner described under section 2705 of title 33.
 - (2) Liability in rem. Any vessel used to destroy, cause the loss of, or injure any sanctuary resource shall be liable in rem to the United States for response costs and damages resulting from such destruction, loss, or injury. The amount of that liability shall constitute a maritime lien on the vessel and may be recovered in an action in rem in any district court of the United States that has jurisdiction over the vessel.
 - (3) Defenses. A person is not liable under this subsection if that person establishes that -

- (A) the destruction or loss of, or injury to, the sanctuary resource was caused solely by an act of God, an act of war, or an act or omission of a third party, and the person acted with due care;
 - (B) the destruction, loss, or injury was caused by an activity authorized by Federal or State law; or
 - (C) the destruction, loss, or injury was negligible.
- (4) Limits to liability Nothing in sections 181 to 188 of title 46, Appendix, or section 192 of title 46, Appendix, shall limit the liability of any person under this chapter.
- (b) Response actions and damage assessment
 - (1) Response actions. The Secretary may undertake or authorize all necessary actions to prevent or minimize the destruction or loss of, or injury to, sanctuary resources, or to minimize the imminent risk of such destruction, loss, or injury.
 - (2) Damage assessment. The Secretary shall assess damages to sanctuary resources in accordance with section 1432(6) of this title.
- (c) Civil actions for response costs and damages
 - (1) The Attorney General, upon request of the Secretary, may commence a civil action against any person or vessel who may be liable under subsection (a) of this section for response costs and damages. The Secretary, acting as trustee for sanctuary resources for the United States, shall submit a request for such an action to the Attorney General whenever a person may be liable for such costs or damages.
 - (2) An action under this subsection may be brought in the United States district court for any district in which -
 - (A) the defendant is located, resides, or is doing business, in the case of an action against a person;
 - (B) the vessel is located, in the case of an action against a vessel; or
 - (C) the destruction of, loss of, or injury to a sanctuary resource occurred.
- (d) Use of recovered amounts. Response costs and damages recovered by the Secretary under this section shall be retained by the Secretary in the manner provided for in section 9607(f)(1) of title 42, and used as follows:
 - (1) Response costs. Amounts recovered by the United States for costs of response actions and damage assessments under this section shall be used, as the Secretary considers appropriate -
 - (A) to reimburse the Secretary or any other Federal or State agency that conducted those activities; and
 - (B) after reimbursement of such costs, to restore, replace, or acquire the equivalent of any sanctuary resource.
 - (2) Other amounts. All other amounts recovered shall be used, in order of priority -
 - (A) to restore, replace, or acquire the equivalent of the sanctuary resources that were the subject of the action, including for costs of monitoring and the costs of curation and conservation of archeological, historical, and cultural sanctuary resources;
 - (B) to restore degraded sanctuary resources of the national marine sanctuary that was the subject of the action, giving priority to sanctuary resources and habitats that are comparable to the sanctuary resources that were the subject of the action; and

- (C) to restore degraded sanctuary resources of other national marine sanctuaries.
- (3) Federal-State coordination. Amounts recovered under this section with respect to sanctuary resources lying within the jurisdiction of a State shall be used under paragraphs (2)(A) and (B) in accordance with the court decree or settlement agreement and an agreement entered into by the Secretary and the Governor of that State.
- (e) Statute of limitations. An action for response costs or damages under subsection (c) of this section shall be barred unless the complaint is filed within 3 years after the date on which the Secretary completes a damage assessment and restoration plan for the sanctuary resources to which the action relates.

SECTION 313. Authorization of appropriations

There are authorized to be appropriated to the Secretary -

- (1) to carry out this chapter -
 - (A) \$32,000,000 for fiscal year 2001;
 - (B) \$34,000,000 for fiscal year 2002;
 - (C) \$36,000,000 for fiscal year 2003;
 - (D) \$38,000,000 for fiscal year 2004;
 - (E) \$40,000,000 for fiscal year 2005; and
- (2) for construction projects at national marine sanctuaries, \$6,000,000 for each of fiscal years 2001, 2002, 2003, 2004, and 2005.

SECTION 314. U.S.S. Monitor artifacts and materials

- (a) Congressional policy. In recognition of the historical significance of the wreck of the United States ship Monitor to coastal North Carolina and to the area off the coast of North Carolina known as the Graveyard of the Atlantic, the Congress directs that a suitable display of artifacts and materials from the United States ship Monitor be maintained permanently at an appropriate site in coastal North Carolina.
- (b) Disclaimer. This section shall not affect the following:
 - (1) Responsibilities of Secretary. The responsibilities of the Secretary to provide for the protection, conservation, and display of artifacts and materials from the United States ship Monitor.
 - (2) Authority of Secretary. The authority of the Secretary to designate the Mariner's Museum, located at Newport News, Virginia, as the principal museum for coordination of activities referred to in paragraph (1).

SECTION 315. Advisory Councils

- (a) Establishment. The Secretary may establish one or more advisory councils (in this section referred to as an "Advisory Council") to advise and make recommendations to the Secretary regarding the designation and management of national marine sanctuaries. The Advisory Councils shall be exempt from the Federal Advisory Committee Act.
- (b) Membership. Members of the Advisory Councils may be appointed from among -
 - (1) persons employed by Federal or State agencies with expertise in management of natural resources;
 - (2) members of relevant Regional Fishery Management Councils established under section 1852 of this title; and

- (3) representatives of local user groups, conservation and other public interest organizations, scientific organizations, educational organizations, or others interested in the protection and multiple use management of sanctuary resources.
- (c) Limits on membership. For sanctuaries designated after November 4, 1992, the membership of Advisory Councils shall be limited to no more than 15 members.
- (d) Staffing and assistance. The Secretary may make available to an Advisory Council any staff, information, administrative services, or assistance the Secretary determines are reasonably required to enable the Advisory Council to carry out its functions.
- (e) Public participation and procedural matters. The following guidelines apply with respect to the conduct of business meetings of an Advisory Council:
 - (1) Each meeting shall be open to the public, and interested persons shall be permitted to present oral or written statements on items on the agenda.
 - (2) Emergency meetings may be held at the call of the chairman or presiding officer.
 - (3) Timely notice of each meeting, including the time, place, and agenda of the meeting, shall be published locally and in the Federal Register, except that in the case of a meeting of an Advisory Council established to provide assistance regarding any individual national marine sanctuary the notice is not required to be published in the Federal Register.
 - (4) Minutes of each meeting shall be kept and contain a summary of the attendees and matters discussed.

SECTION 316. Enhancing support for national marine sanctuaries

- (a) Authority. The Secretary may establish a program consisting of -
 - (1) the creation, adoption, and publication in the Federal Register by the Secretary of a symbol for the national marine sanctuary program, or for individual national marine sanctuaries or the System;
 - (2) the solicitation of persons to be designated as official sponsors of the national marine sanctuary program or of individual national marine sanctuaries;
 - (3) the designation of persons by the Secretary as official sponsors of the national marine sanctuary program or of individual sanctuaries;
 - (4) the authorization by the Secretary of the manufacture, reproduction, or other use of any symbol published under paragraph (1), including the sale of items bearing such a symbol, by official sponsors of the national marine sanctuary program or of individual national marine sanctuaries;
 - (5) the creation, marketing, and selling of products to promote the national marine sanctuary program, and entering into exclusive or nonexclusive agreements authorizing entities to create, market or sell on the Secretary's behalf;
 - (6) the solicitation and collection by the Secretary of monetary or in-kind contributions from official sponsors for the manufacture, reproduction or use of the symbols published under paragraph (1);
 - (7) the retention of any monetary or in-kind contributions collected under paragraphs (5) and (6) by the Secretary; and
 - (8) the expenditure and use of any monetary and in-kind contributions, without appropriation, by the Secretary to designate and manage national marine sanctuaries. Monetary and in-kind contributions raised through the sale,

- marketing, or use of symbols and products related to an individual national marine sanctuary shall be used to support that sanctuary.
- (b) Contract authority. The Secretary may contract with any person for the creation of symbols or the solicitation of official sponsors under subsection (a) of this section.
 - (c) Restrictions. The Secretary may restrict the use of the symbols published under subsection (a) of this section, and the designation of official sponsors of the national marine sanctuary program or of individual national marine sanctuaries to ensure compatibility with the goals of the national marine sanctuary program.
 - (d) Property of United States. Any symbol which is adopted by the Secretary and published in the Federal Register under subsection (a) of this section is deemed to be the property of the United States.
 - (e) Prohibited activities. It is unlawful for any person -
 - (1) designated as an official sponsor to influence or seek to influence any decision by the Secretary or any other Federal official related to the designation or management of a national marine sanctuary, except to the extent that a person who is not so designated may do so;
 - (2) to represent himself or herself to be an official sponsor absent a designation by the Secretary;
 - (3) to manufacture, reproduce, or otherwise use any symbol adopted by the Secretary under subsection (a)(1) of this section, including to sell any item bearing such a symbol, unless authorized by the Secretary under subsection (a)(4) of this section or subsection (f) of this section; or
 - (4) to violate any regulation promulgated by the Secretary under this section.
 - (f) Collaborations. The Secretary may authorize the use of a symbol adopted by the Secretary under subsection (a)(1) of this section by any person engaged in a collaborative effort with the Secretary to carry out the purposes and policies of this chapter and to benefit a national marine sanctuary or the System.
 - (g) Authorization for non-profit partner organization to solicit sponsors
 - (1) In general. The Secretary may enter into an agreement with a non-profit partner organization authorizing it to assist in the administration of the sponsorship program established under this section. Under an agreement entered into under this paragraph, the Secretary may authorize the non-profit partner organization to solicit persons to be official sponsors of the national marine sanctuary system or of individual national marine sanctuaries, upon such terms as the Secretary deems reasonable and will contribute to the successful administration of the sanctuary system. The Secretary may also authorize the non-profit partner organization to collect the statutory contribution from the sponsor, and, subject to paragraph (2), transfer the contribution to the Secretary.
 - (2) Reimbursement for administrative costs. Under the agreement entered into under paragraph (1), the Secretary may authorize the non-profit partner organization to retain not more than 5 percent of the amount of monetary contributions it receives from official sponsors under the agreement to offset the administrative costs of the organization in soliciting sponsors.
 - (3) Partner organization defined. In this subsection, the term "partner organization" means an organization that -
 - (A) draws its membership from individuals, private organizations, corporations, academic institutions, or State and local governments; and

- (B) is established to promote the understanding of, education relating to, and the conservation of the resources of a particular sanctuary or 2 or more related sanctuaries.

SECTION 317. Dr. Nancy Foster Scholarship Program

- (a) Establishment. The Secretary shall establish and administer through the National Ocean Service the Dr. Nancy Foster Scholarship Program. Under the program, the Secretary shall award graduate education scholarships in oceanography, marine biology or maritime archeology, to be known as Dr. Nancy Foster Scholarships.
- (b) Purposes. The purposes of the Dr. Nancy Foster Scholarship Program are -
 - (1) to recognize outstanding scholarship in oceanography, marine biology, or maritime archeology, particularly by women and members of minority groups; and
 - (2) to encourage independent graduate level research in oceanography, marine biology, or maritime archeology.
- (c) Award Each Dr. Nancy Foster Scholarship -
 - (1) shall be used to support graduate studies in oceanography, marine biology, or maritime archeology at a graduate level institution of higher education; and
 - (2) shall be awarded in accordance with guidelines issued by the Secretary.
- (d) Distribution of funds. The amount of each Dr. Nancy Foster Scholarship shall be provided directly to a recipient selected by the Secretary upon receipt of certification that the recipient will adhere to a specific and detailed plan of study and research approved by a graduate level institution of higher education.
- (e) Funding. Of the amount available each fiscal year to carry out this chapter, the Secretary shall award 1 percent as Dr. Nancy Foster Scholarships.
- (f) Scholarship repayment requirement. The Secretary shall require an individual receiving a scholarship under this section to repay the full amount of the scholarship to the Secretary if the Secretary determines that the individual, in obtaining or using the scholarship, engaged in fraudulent conduct or failed to comply with any term or condition of the scholarship.
- (g) Maritime archeology defined. In this section the term "maritime archeology" includes the curation, preservation, and display of maritime artifacts.

Appendix B - The Florida Keys National Marine Sanctuary and Protection Act

Public Law 101-605 (H.R. 5909)

SECTION 1. SHORT TITLE. This Act may be cited as the "Florida Keys National Marine Sanctuary and Protection Act."

SEC. 2. FINDINGS. The Congress finds and declares the following:

- (1) The Florida Keys extend approximately 220 miles southwest from the southern tip of the Florida peninsula.
- (2) Adjacent to the Florida Keys land mass are located spectacular, unique, and nationally significant marine environments, including seagrass meadows, mangrove islands, and extensive living coral reefs.
- (3) These marine environments support rich biological communities possessing extensive conservation, recreational, commercial, ecological, historical, research, educational, and esthetic values which give this area special national significance.
- (4) These environments are the marine equivalent of tropical rain forests in that they support high levels of biological diversity, are fragile and easily susceptible to damage from human activities, and possess high value to human beings if properly conserved.
- (5) These marine environments are subject to damage and loss of their ecological integrity from a variety of sources of disturbance.
- (6) Vessel groundings along the reefs of the Florida Keys represent one of many serious threats to the continued vitality of the marine environments of the Florida Keys which must be addressed in order to protect their values.
- (7) Action is necessary to provide comprehensive protection for these marine environments by establishing a Florida Keys National Marine Sanctuary, by restricting vessel traffic within such Sanctuary, and by requiring promulgation of a management plan and regulations to protect sanctuary resources.
- (8) The agencies of the United States must cooperate fully to achieve the necessary protection of sanctuary resources.

(9) The Federal Government and the State of Florida should jointly develop and implement a comprehensive program to reduce pollution in the waters offshore the Florida Keys to protect and restore the water quality, coral reefs, and other living marine resources of the Florida Keys environment.

POLICY AND PURPOSE

SEC. 3.(a) POLICY. – It is the policy of the United States to protect and preserve living and other resources of the Florida Keys marine environment.

(b) PURPOSE. – The purpose of this Act is to protect the resources of the area described in section 5(b), to educate and interpret for the public regarding the Florida Keys marine environment, and to manage such human uses of the Sanctuary consistent with this Act. Nothing in this Act is intended to restrict activities that do not cause an adverse effect to the resources or property of the Sanctuary or that do not pose harm to users of the Sanctuary.

DEFINITION

SEC. 4. As used in this Act, the term “adverse effect” means any factor, force, or action that would independently or cumulatively damage, diminish, degrade, impair, destroy, or otherwise harm –

(1) any sanctuary resource, as defined in section 302(8) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1432(8)); or

(2) any of those qualities, values, or purposes for which the Sanctuary is designated.

SANCTUARY DESIGNATION

SEC. 5.(a) DESIGNATION. – The area described in subsection (b) is designated as the Florida Keys National Marine Sanctuary (in this Act referred to as the “Sanctuary”) under title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.). The Sanctuary shall be managed and regulations enforced under all applicable provisions of such title III as if the Sanctuary had been designated under such title.

(b) AREA INCLUDED. – (1) Subject to subsections (c) and (d), the area referred to in subsection (a) consists of all submerged lands and waters, including living marine and other

resources within and on those lands and waters, from the mean high water mark to the boundary described under paragraph (2), with the exception of areas within the Fort Jefferson National Monument. The Sanctuary shall be generally identified and depicted on National Oceanic and Atmospheric Administration charts FKNMS 1 and 2, which shall be maintained on file and kept available for public examination during regular business hours at the Office of Ocean and Coastal Resource Management of the National Oceanic and Atmospheric Administration and which shall be updated to reflect boundary modifications under this section.

(2) The boundary referred to in paragraph (1) –

(A) begins at the northeasternmost point of Biscayne National Park located at approximately 25 degrees 39 minutes north latitude, 80 degrees 5 minutes west longitude, then runs eastward to the 300-foot isobath located at approximately 25 degrees 39 minutes north latitude, 80 degrees 4 minutes west longitude;

(B) then runs southward and connects in succession the points at the following coordinates:

(i) 25 degrees 34 minutes north latitude, 80 degrees 4 minutes west longitude,

(ii) 25 degrees 28 minutes north latitude, 80 degrees 5 minutes west longitude, and

(iii) 25 degrees 21 minutes north latitude, 80 degrees 7 minutes west longitude;

(C) then runs southward to the northeastern corner of the existing Key Largo National Marine Sanctuary located at 25 degrees 16 minutes north latitude, 80 degrees 8 minutes west longitude;

(D) then runs southwesterly approximating the 300-foot isobath and connects in succession the points at the following coordinates:

(i) 25 degrees 7 minutes north latitude, 80 degrees 13 minutes west longitude,

(ii) 24 degrees 57 minutes north latitude, 80 degrees 21 minutes west longitude,

(iii) 24 degrees 39 minutes north latitude, 80 degrees 52 minutes west longitude,

(iv) 24 degrees 30 minutes north latitude, 81 degrees 23 minutes west longitude,

(v) 24 degrees 25 minutes north latitude, 81 degrees 50 minutes west longitude,

(vi) 24 degrees 22 minutes north latitude, 82 degrees 48 minutes west longitude,

(vii) 24 degrees 37 minutes north latitude, 83 degrees 6 minutes west longitude,

(viii) 24 degrees 40 minutes north latitude, 83 degrees 6 minutes west longitude,

(ix) 24 degrees 46 minutes north latitude, 82 degrees 54 minutes west longitude,

(x) 24 degrees 44 minutes north latitude, 81 degrees 55 minutes west longitude,

(xi) 24 degrees 51 minutes north latitude, 81 degrees 26 minutes west longitude, and

(xii) 24 degrees 55 minutes north latitude, 80 degrees 56 minutes west longitude;

(E) then follows the boundary of Everglades National Park in a southerly then northeasterly direction through Florida Bay, Buttonwood Sound, Tarpon Basin, and Blackwater Sound;

(F) after Division Point, then departs from the boundary of Everglades National Park and follows the western shoreline of Manatee Bay, Barnes Sound, and Card Sound;

(G) then follows the southern boundary of Biscayne National Park and the northern boundary of Key Largo National Marine Sanctuary to the southeasternmost point of Biscayne National Park; and

(H) then follows the eastern boundary of the Biscayne

National Park to the beginning point specified in subparagraph (A).

(c) AREAS WITHIN STATE OF FLORIDA. – The designation under subsection (a) shall not take effect for any area located within the waters of the State of Florida if, not later than 45 days after the date of enactment of this Act, the Governor of the State of Florida objects in writing to the Secretary of Commerce.

(d) BOUNDARY MODIFICATIONS. – No later than the issuance of the draft environmental impact statement for the Sanctuary under section 304(a) (1) (C) (vii) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1434(a) (1) (C) (vii)), in consultation with the Governor of the State of Florida, if appropriate, the Secretary of Commerce may make minor modifications to the boundaries of the Sanctuary as necessary to properly protect sanctuary resources. The Secretary of Commerce shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a written notification of such modifications. Any boundary modification made under this subsection shall be reflected on the charts referred to in subsection (b) (1).

PROHIBITION OF CERTAIN USES

SEC. 6.(a) VESSEL TRAFFIC. – (1) Consistent with generally recognized principles of international law, a person may not operate a tank vessel (as that term is defined in section 2101 of title 46, United States Code) or a vessel greater than 50 meters in length in the Area to Be Avoided described in the Federal Register notice of May 9, 1990 (55 Fed. Reg. 19418-19419).

(2) The prohibition in paragraph (1) shall not apply to necessary operations of public vessels. For the purposes of this paragraph, necessary operations of public vessels shall include operations essential for national defense, law enforcement, and responses to emergencies that threaten life, property, or the environment.

(3) The provisions of paragraphs (1) and (2), including the area in which vessel operations are prohibited under paragraph (1), may be modified by regulations issued jointly by the Secretary of the department in which the Coast guard is operating and

the Secretary of Commerce.

(4) This subsection shall be effective on the earliest of the following:

(A) the date that is six months after the date of enactment of this Act,

(B) the date of publication of a notice to mariners consistent with this section, or

(C) the date of publication of new nautical charts consistent with this section.

(b) MINERAL AND HYDROCARBON LEASING, EXPLORATION, DEVELOPMENT, AND PRODUCTION. – No leasing, exploration, development, or production of minerals or hydrocarbons shall be permitted within the Sanctuary.

COMPREHENSIVE MANAGEMENT PLAN

SEC. 7.(a) PREPARATION OF PLAN. – The Secretary of Commerce, in consultation with appropriate Federal, State, and local government authorities and with the Advisory Council established under section 208, shall develop a comprehensive management plan and implementing regulations to achieve the policy and purpose of this Act. The Secretary of Commerce shall complete such comprehensive management plan and final regulations for the Sanctuary not later than 30 months after the date of enactment of this Act. In developing the plan and regulations, the Secretary of Commerce shall follow the procedures specified in sections 303 and 304 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1433 and 1434), except those procedures requiring the delineation of Sanctuary boundaries and development of a resource assessment report. Such comprehensive management plan shall –

(1) facilitate all public and private uses of the Sanctuary consistent with the primary objective of Sanctuary resource protection;

(2) consider temporal and geographical zoning, to ensure protection of sanctuary resources;

(3) incorporate regulations necessary to enforce the elements of the comprehensive water quality protection program

developed under section 8 unless the Secretary of Commerce determines that such program does not meet the purpose for which the Sanctuary is designated or is otherwise inconsistent or incompatible with the comprehensive management plan developed under this section;

(4) identify priority needs for research and amounts needed to—

(A) improve management of the Sanctuary, and in particular, the coral reef ecosystem within the Sanctuary; and

(B) identify clearly the cause and effect relationships between factors threatening the health of the coral reef ecosystem in the Sanctuary;

(5) establish a long-term ecological monitoring program and database, including methods to disseminate information on the management of the coral reef ecosystem.

(6) identify alternative sources of funding needed to fully implement the plan's provisions and supplement appropriations under section 9 of this Act and section 313 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1444).

(7) ensure coordination and cooperation between Sanctuary managers and other Federal, State, and local authorities with jurisdiction within or adjacent to the Sanctuary;

(8) promote education, among users of the Sanctuary, about coral reef conservation and navigational safety; and

(9) incorporate the existing Looe Key and Key Largo National Marine Sanctuaries into the Florida Keys National Marine Sanctuary except that Looe Key and Key Largo Sanctuaries shall continue to be operated until completion of the comprehensive management plan for the Florida Keys Sanctuary.

(b) PUBLIC PARTICIPATION. — The Secretary of Commerce shall provide for participation by the general public in development of the comprehensive management plan.

(c) TERMINATION OF STUDIES. — On the date of

enactment of this Act, all congressionally mandated studies of existing areas in the Florida Keys for designation as National Marine Sanctuaries shall be terminated.

FLORIDA KEYS WATER QUALITY

SEC. 8.(a) WATER QUALITY PROTECTION PROGRAM. – (1) Not later than 18 months after the date of enactment of this Act, the Administrator of the Environmental Protection Agency and the Governor of the State of Florida, in consultation with the Secretary of Commerce, shall develop a comprehensive water quality protection program for the Sanctuary. If the Secretary of Commerce determines that such comprehensive water quality protection program does not meet the purpose for which the Sanctuary is designated or is otherwise inconsistent or incompatible with the comprehensive management plan prepared under section 7, such water quality program shall not be included in the comprehensive management plan. The purposes of such water quality program shall be to –

(A) recommend priority corrective actions and compliance schedules addressing point and nonpoint sources of pollution to restore and maintain the chemical, physical, and biological integrity of the Sanctuary, including restoration and maintenance of a balanced, indigenous population of corals, shellfish, fish and wildlife, and recreational activities in and on the water; and

(B) assign responsibilities for the implementation of the program among the Governor, the Secretary of Commerce, and the Administrator in accordance with applicable Federal and State laws.

(2) The program required by paragraph (1) shall, under applicable Federal and State laws, provide for measures to achieve the purposes described under paragraph (1), including –

(A) adoption or revision, under applicable Federal and State laws, by the State and the Administrator of applicable water quality standards for the Sanctuary, based on water quality criteria which may utilize biological monitoring or assessment methods, to assure protection and restoration of the water quality, coral

reefs, and other living marine resources of the Sanctuary;

(B) adoption under applicable Federal and State laws of enforceable pollution control measures (including water quality-based effluent limitations and best management practices) and methods to eliminate or reduce pollution from point and nonpoint sources;

(C) establishment of a comprehensive water quality monitoring program to (i) determine the sources of pollution causing or contributing to existing or anticipated pollution problems in the Sanctuary, (ii) evaluate the effectiveness of efforts to reduce or eliminate those sources of pollution, and (iii) evaluate progress toward achieving and maintaining water quality standards and toward protecting and restoring the coral reefs and other living marine resources of the Sanctuary;

(D) provision of adequate opportunity for public participation in all aspects of developing and implementing the program; and

(E) identification of funding for implementation of the program, including appropriate Federal and State cost sharing arrangements.

(b) COMPLIANCE AND ENFORCEMENT. – The Administrator of the Environmental Protection Agency, the Secretary of Commerce, and the Governor of the State of Florida shall ensure compliance with the program required by this section, consistent with applicable Federal and State laws.

(c) CONSULTATION. – In the development and implementation of the program required by paragraph (1), appropriate State and local government officials shall be consulted.

(d) IMPLEMENTATION. –

(1) The Administrator of the Environmental Protection Agency and the Governor of the State of Florida shall implement the program required by this section, in cooperation with the Secretary of Commerce.

(2)(A) The Regional Administrator of the Environmental Protection Agency shall with the Governor of the State

of Florida establish a Steering Committee to set guidance and policy for the development and implementation of such program. Membership shall include representatives of the Environmental Protection Agency, the National Park Service, the United States Fish and Wildlife Service, the Army Corps of Engineers, the National Oceanic and Atmospheric Administration, the Florida Department of Community Affairs, the Florida Department of Environmental Regulation, the South Florida Water Management District, and the Florida Keys Aqueduct Authority; three individuals in local government in the Florida Keys; and three citizens knowledgeable about such program.

(B) The Steering Committee shall, on a biennial basis, issue a report to Congress that –

- (i) summarizes the progress of the program;
- (ii) summarizes any modifications to the program and its recommended actions and plans; and
- (iii) incorporates specific recommendations concerning the implementation of the program.

(C) The Administrator of the Environmental Protection Agency and the Administrator of the National Oceanic and Atmospheric Administration shall cooperate with the Florida Department of Environmental Regulation to establish a Technical Advisory Committee to advise the Steering Committee and to assist in the design and prioritization of programs for scientific research and monitoring. The Technical Advisory Committee shall be composed of scientists from federal agencies, State agencies, academic institutions, private non-profit organizations, and knowledgeable citizens.

(3)(A) The Regional Administrator of the Environmental Protection Agency shall appoint a Florida Keys Liaison Officer. The Liaison Officer, who shall be located within the State of Florida, shall have the authority and staff to –

- (i) assist and support the implementation of the program required by this section, including administrative and technical support for the Steering Committee and Technical Advisory

Committee;

(ii) assist and support local, State, and Federal agencies in developing and implementing specific action plans designed to carry out such program;

(iii) coordinate the actions of the Environmental Protection Agency with other Federal agencies, including the National Oceanic and Atmospheric Administration and the National Park Service, and State and local authorities, in developing strategies to maintain, protect, and improve water quality in the Florida Keys;

(iv) collect and make available to the public publications, and other forms of information that the Steering Committee determines to be appropriate, related to the water quality in the vicinity of the Florida Keys; and

(v) provide for public review and comment on the program and implementing actions.

(4)(A) There are authorized to be appropriated to the Administrator of the Environmental Protection Agency \$2,000,000 for fiscal year 1993, \$3,000,000 for fiscal year 1994, and \$4,000,000 for fiscal year 1995, for the purpose of carrying out this section.

(B) There are authorized to be appropriated to the Secretary of Commerce \$300,000 for fiscal year 1993, \$400,000 for fiscal year 1994, and \$500,000 for fiscal year 1995, for the purpose of enabling the National Oceanic and Atmospheric Administration to carry out this section.

(C) Amounts appropriated under this paragraph shall remain available until expended.

(D) No more than 15 percent of the amount authorized to be appropriated under subparagraph (A) for any fiscal year may be expended in that fiscal year on administrative expense.

ADVISORY COUNCIL

SEC. 9.(a) ESTABLISHMENT. – The Secretary of Commerce, in

consultation with the Governor of the State of Florida and the Board of County Commissioners of Monroe County, Florida, shall establish an Advisory Council to assist the Secretary in the development and implementation of the comprehensive management plan for the Sanctuary.

(b) MEMBERSHIP. – Members of the Advisory Council may be appointed from among (1) Sanctuary managers, (2) members of other government agencies with overlapping management responsibilities for the Florida Keys marine environment, and (3) representatives of local industries, commercial users, conservation groups, the marine scientific and educational community, recreational user groups, or the general public.

(c) EXPENSES. – Members of the Advisory Council shall not be paid compensation for their service as members and shall not be reimbursed for actual and necessary traveling and subsistence expenses incurred by them in the performance of their duties as such members.

(d) ADMINISTRATION. – The Advisory Council shall elect a chairperson and may establish subcommittees, and adopt bylaws, rules, and such other administrative requirements and procedures as are necessary for the administration of its functions.

(e) STAFFING AND OTHER ASSISTANCE. – The Secretary of Commerce shall make available to the Advisory Council such staff, information, and administrative services and assistance as the Secretary of Commerce determines are reasonably required to enable the Advisory Council to carry out its functions.

AUTHORIZATION OF APPROPRIATIONS

SEC. 10.(a) AUTHORIZATION FOR SECRETARY OF COMMERCE. – Section 313(2) (C) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1444(2) (C)) is amended by striking “\$3,000,000” and inserting in lieu thereof “\$4,000,000.”

(b) AUTHORIZATION FOR EPA ADMINISTRATOR. – There are authorized to be appropriated to the Administrator of the Environmental Protection Agency \$750,000 for each of the fiscal years 1991 and 1992.

(c) REPORT. – The Secretary of Commerce shall, not later

than March 1, 1991, submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report on the future requirements for funding the Sanctuary through fiscal year 1999 under title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 14321 et seq.).

Approved November 16, 1990.

Appendix C - FKNMS Regulations

15 CFR part 922, subpart P – Florida Keys National Marine Sanctuary

Source: 62 FR 32161, June 12, 1997, unless otherwise noted.

§ 922.160 Purpose.

- (a) The purpose of the regulations in this subpart is to implement the comprehensive management plan for the Florida Keys National Marine Sanctuary by regulating activities affecting the resources of the Sanctuary or any of the qualities, values, or purposes for which the Sanctuary is designated, in order to protect, preserve and manage the conservation, ecological, recreational, research, educational, historical, and aesthetic resources and qualities of the area. In particular, the regulations in this part are intended to protect, restore, and enhance the living resources of the Sanctuary, to contribute to the maintenance of natural assemblages of living resources for future generations, to provide places for species dependent on such living resources to survive and propagate, to facilitate to the extent compatible with the primary objective of resource protection all public and private uses of the resources of the Sanctuary not prohibited pursuant to other authorities, to reduce conflicts between such compatible uses, and to achieve the other policies and purposes of the Florida Keys National Marine Sanctuary and Protection Act and the National Marine Sanctuaries Act.
- (b) Section 304(e) of the NMSA requires the Secretary to review management plans and regulations every five years, and make necessary revisions. Upon completion of the five year review of the Sanctuary management plan and regulations, the Secretary will repropose the regulations in their entirety with any proposed changes thereto, including those regulations in subparts A and E of this part that apply to the Sanctuary. The Governor of the State of Florida will have the opportunity to review the re-proposed regulations before they take effect and if the Governor certifies such regulations as unacceptable, they will not take effect in State waters of the Sanctuary.

§ 922.161 Boundary.

The Sanctuary consists of an area of approximately 2900 square nautical miles (9,800 square kilometers) of coastal and ocean waters, and the submerged lands thereunder,

surrounding the Florida Keys in Florida. Appendix I to this subpart sets forth the precise Sanctuary boundary.

[66 FR 4369, Jan. 17, 2001]

§ 922.162 Definitions.

(a) The following definitions apply to the Florida Keys National Marine Sanctuary regulations. To the extent that a definition appears in §922.3 and this section, the definition in this section governs.

Acts means the Florida Keys National Marine Sanctuary and Protection Act, as amended, (FKNMSPA) (Pub. L. 101-605), and the National Marine Sanctuaries Act (NMSA), also known as Title III of the Marine Protection, Research, and Sanctuaries Act, as amended, (MPRSA) (16 U.S.C. 1431 et seq.).

Adverse effect means any factor, force, or action that independently or cumulatively damages, diminishes, degrades, impairs, destroys, or otherwise harms any Sanctuary resource, as defined in section 302(8) of the NMSA (16 U.S.C. 1432(8)) and in this section, or any of the qualities, values, or purposes for which the Sanctuary is designated.

Airboat means a vessel operated by means of a motor driven propeller that pushes air for momentum.

Areas To Be Avoided means the areas in which vessel operations are prohibited pursuant to section 6(a)(1) of the FKNMSPA (see §922.164(a)). Appendix VII to this subpart sets forth the geographic coordinates of these areas, including any modifications thereto made in accordance with section 6(a)(3) of the FKNMSPA.

Closed means all entry or use is prohibited.

Coral means the corals of the Class Hydrozoa (stinging and hydrocorals); the Class Anthozoa, Subclass Hexacorallia, Order Scleractinia (stony corals) and Antipatharia (black corals).

Coral area means marine habitat where coral growth abounds including patch reefs, outer bank reefs, deepwater banks, and hardbottoms.

Coral reefs means the hard bottoms, deep-water banks, patch reefs, and outer bank reefs.

Ecological Reserve means an area of the Sanctuary consisting of contiguous, diverse habitats, within which uses are subject to conditions, restrictions and prohibitions, including access restrictions, intended to minimize human influences, to provide natural spawning, nursery, and permanent residence areas for the replenishment and genetic protection of marine life, and also to protect and preserve natural assemblages of habitats and species within areas representing a broad diversity of resources and habitats found within the Sanctuary. Appendix IV to this subpart sets forth the geographic coordinates of these areas.

Existing Management Area means an area of the Sanctuary that is within or is a resource management area established by NOAA or by another Federal authority of competent jurisdiction as of the effective date of these regulations where protections above and beyond those provided by Sanctuary-wide prohibitions and restrictions are needed to adequately protect resources. Appendix II to this subpart sets forth the geographic coordinates of these areas.

Exotic species means a species of plant, invertebrate, fish, amphibian, reptile or mammal whose natural zoogeographic range would not have included the waters of the Atlantic Ocean, Caribbean, or Gulf of Mexico without passive or active introduction to such area through anthropogenic means.

Fish means finfish, mollusks, crustaceans, and all forms of marine animal and plant life other than marine mammals and birds.

Fishing means:

- (1) The catching, taking, or harvesting of fish; the attempted catching, taking, or harvesting of fish; any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or any operation at sea in support of, or in preparation for, any activity described in this subparagraph (1).
- (2) Such term does not include any scientific research activity which is conducted by a scientific research vessel.

Hardbottom means a submerged marine community comprised of organisms attached to exposed solid rock substrate. Hardbottom is the substrate to which corals may attach but does not include the corals themselves.

Idle speed only/ no-wake means a speed at which a boat is operated that is no greater than 4 knots or does not produce a wake.

Idle speed only/no-wake zone means a portion of the Sanctuary where the speed at which a boat is operated may be no greater than 4 knots or may not produce a wake.

Length overall (LOA) or length means, as used in §922.167 with respect to a vessel, the horizontal distance, rounded to the nearest foot (with 0.5 ft and above rounded upward), between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments.

Live rock means any living marine organism or an assemblage thereof attached to a hard substrate, including dead coral or rock but not individual mollusk shells (e.g., scallops, clams, oysters). Living marine organisms associated with hard bottoms, banks, reefs, and live rock may include, but are not limited to: sea anemones (Phylum Cnidaria: Class Anthozoa: Order Actinaria); sponges (Phylum Porifera); tube worms (Phylum Annelida), including fan worms, feather duster worms, and Christmas tree worms; bryozoans (Phylum Bryozoa); sea squirts (Phylum Chordata); and marine algae, including Mermaid's fan and cups (*Udotea* spp.), corraline algae, green feather, green grape algae (*Caulerpa* spp.) and watercress (*Halimeda* spp.).

Marine life species means any species of fish, invertebrate, or plant included in sections (2), (3), or (4) of Rule 46-42.001, Florida Administrative Code, reprinted in Appendix VIII to this subpart.

Military activity means an activity conducted by the Department of Defense with or without participation by foreign forces, other than civil engineering and other civil works projects conducted by the U.S. Army Corps of Engineers.

No-access buffer zone means a portion of the Sanctuary where vessels are prohibited from entering regardless of the method of propulsion.

No motor zone means an area of the Sanctuary where the use of internal combustion motors is prohibited. A vessel with an internal combustion motor may access a no motor zone only through the use of a push pole, paddle, sail, electric motor or similar means of operation but is prohibited from using its internal combustion motor.

Not available for immediate use means not readily accessible for immediate use, e.g., by being stowed unbaited in a cabin, locker, rod holder, or similar storage area, or by being securely covered and lashed to a deck or bulkhead.

Officially marked channel means a channel marked by Federal, State of Florida, or Monroe County officials of competent jurisdiction with navigational aids except for channels marked idle speed only/no wake.

Personal watercraft means any jet or air-powered watercraft operated by standing, sitting, or kneeling on or behind the vessel, in contrast to a conventional boat, where the operator stands or sits inside the vessel, and that uses an inboard engine to power a water jet pump for propulsion, instead of a propeller as in a conventional boat.

Prop dredging means the use of a vessel's propulsion wash to dredge or otherwise alter the seabed of the Sanctuary. Prop dredging includes, but is not limited to, the use of propulsion wash deflectors or similar means of dredging or otherwise altering the seabed of the Sanctuary. Prop dredging does not include the disturbance to bottom sediments resulting from normal vessel propulsion.

Prop scarring means the injury to seagrasses or other immobile organisms attached to the seabed of the Sanctuary caused by operation of a vessel in a manner that allows its propeller or other running gear, or any part thereof, to cause such injury (e.g., cutting seagrass rhizomes). Prop scarring does not include minor disturbances to bottom sediments or seagrass blades resulting from normal vessel propulsion.

Residential shoreline means any man-made or natural:

- (1) Shoreline,
- (2) Canal mouth,
- (3) Basin, or
- (4) Cove adjacent to any residential land use district, including improved subdivision, suburban residential or suburban residential limited, sparsely settled, urban residential, and urban residential mobile home under the Monroe County land development regulations.

Sanctuary means the Florida Keys National Marine Sanctuary.

Sanctuary Preservation Area means an area of the Sanctuary that encompasses a discrete, biologically important area, within which uses are subject to conditions, restrictions and prohibitions, including access restrictions, to avoid concentrations of uses that could result in significant declines in species populations or habitat, to reduce conflicts between uses, to protect areas that are critical for sustaining important marine species or habitats, or to provide opportunities for scientific research. Appendix V to this subpart sets forth the geographic coordinates of these areas.

Sanctuary wildlife means any species of fauna, including avifauna, that occupy or utilize the submerged resources of the Sanctuary as nursery areas, feeding grounds, nesting sites, shelter, or other habitat during any portion of their life cycles.

Seagrass means any species of marine angiosperms (flowering plants) that inhabit portions of the seabed in the Sanctuary. Those species include, but are not limited to: *Thalassia testudinum* (turtle grass); *Syringodium filiforme* (manatee grass); *Halodule wrightii* (shoal grass); *Halophila decipiens*, *H. engelmannii*, *H. johnsonii*; and *Ruppia maritima*.

Special-use Area means an area of the Sanctuary set aside for scientific research and educational purposes, recovery or restoration of Sanctuary resources, monitoring, to prevent use or user conflicts, to facilitate access and use, or to promote public use and understanding of Sanctuary resources. Appendix VI to this subpart sets forth the geographic coordinates of these areas.

Stem means the foremost part of a vessel, consisting of a section of timber or fiberglass, or cast, forged, or rolled metal, to which the sides of the vessel are united at the fore end, with the lower end united to the keel, and with the bowsprit, if one is present, resting on the upper end.

Stern means the aftermost part of the vessel.

Tank vessel means any vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that —

- (1) Is a United States flag vessel;
- (2) Operates on the navigable waters of the United States; or

- (3) Transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States [46 U.S.C. 2101].

Traditional fishing means those commercial or recreational fishing activities that were customarily conducted within the Sanctuary prior to its designation as identified in the Environmental Impact Statement and Management Plan for this Sanctuary. Tropical fish means any species included in section (2) of Rule 46-42.001, Florida Administrative Code, reproduced in Appendix VIII to this subpart, or any part thereof.

Vessel means a watercraft of any description, including, but not limited to, motorized and non-motorized watercraft, personal watercraft, airboats, and float planes while maneuvering on the water, capable of being used as a means of transportation in/on the waters of the Sanctuary. For purposes of this part, the terms “vessel,” “watercraft,” and “boat” have the same meaning.

Wildlife Management Area means an area of the Sanctuary established for the management, protection, and preservation of Sanctuary wildlife resources, including such an area established for the protection and preservation of endangered or threatened species or their habitats, within which access is restricted to minimize disturbances to Sanctuary wildlife; to ensure protection and preservation consistent with the Sanctuary designation and other applicable law governing the protection and preservation of wildlife resources in the Sanctuary. Appendix III to this subpart lists these areas and their access restrictions.

- (b) Other terms appearing in the regulations in this part are defined at 15 CFR 922.3, and/or in the Marine Protection, Research, and Sanctuaries Act (MPRSA), as amended, 33 U.S.C. 1401 et seq. and 16 U.S.C. 1431 et seq.

[62 FR 32161, June 12, 1997, as amended at 66 FR 4369, Jan. 17, 2001]

§ 922.163 Prohibited activities – Sanctuary-wide.

- (a) Except as specified in paragraph (b) through (e) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

- (1) Mineral and hydrocarbon exploration, development and production. Exploring for, developing, or producing minerals or hydrocarbons within the Sanctuary.
- (2) Removal of, injury to, or possession of coral or live rock.
 - (i) Moving, removing, taking, harvesting, damaging, disturbing, breaking, cutting, or otherwise injuring, or possessing (regardless of where taken from) any living or dead coral, or coral formation, or attempting any of these activities, except as permitted under 50 CFR part 638.
 - (ii) Harvesting, or attempting to harvest, any live rock from the Sanctuary, or possessing (regardless of where taken from) any live rock within the Sanctuary, except as authorized by a permit for the possession or harvest from aquaculture operations in the Exclusive Economic Zone, issued by the National Marine Fisheries Service pursuant to applicable regulations under the appropriate Fishery Management Plan, or as authorized by the applicable State authority of competent jurisdiction within the Sanctuary for live rock cultured on State submerged lands leased from the State of Florida, pursuant to applicable State law. See §370.027, Florida Statutes and implementing regulations.
- (3) Alteration of, or construction on, the seabed. Drilling into, dredging, or otherwise altering the seabed of the Sanctuary, or engaging in prop-dredging; or constructing, placing or abandoning any structure, material, or other matter on the seabed of the Sanctuary, except as an incidental result of:
 - (i) Anchoring vessels in a manner not otherwise prohibited by this part (see §§922.163(a)(5)(ii) and 922.164(d)(1)(v));
 - (ii) Traditional fishing activities not otherwise prohibited by this part;
 - (iii) Installation and maintenance of navigational aids by, or pursuant to valid authorization by, any Federal, State, or local authority of competent jurisdiction;

- (iv) Harbor maintenance in areas necessarily associated with Federal water resource development projects in existence on July 1, 1997, including maintenance dredging of entrance channels and repair, replacement, or rehabilitation of breakwaters or jetties;
 - (v) Construction, repair, replacement, or rehabilitation of docks, seawalls, breakwaters, piers, or marinas with less than ten slips authorized by any valid lease, permit, license, approval, or other authorization issued by any Federal, State, or local authority of competent jurisdiction.
- (4) Discharge or deposit of materials or other matter.
- (i) Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter, except:
 - (A) Fish, fish parts, chumming materials, or bait used or produced incidental to and while conducting a traditional fishing activity in the Sanctuary;
 - (B) Biodegradable effluent incidental to vessel use and generated by a marine sanitation device approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322 et seq.;
 - (C) Water generated by routine vessel operations (e.g., deck wash down and graywater as defined in section 312 of the FWPCA), excluding oily wastes from bilge pumping; or
 - (D) Cooling water from vessels or engine exhaust;
 - (ii) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except those listed in paragraph (a)(4)(i) (A) through (D) of this section and those authorized under Monroe County land use permits or under State permits.
- (5) Operation of vessels.

- (i) Operating a vessel in such a manner as to strike or otherwise injure coral, seagrass, or any other immobile organism attached to the seabed, including, but not limited to, operating a vessel in such a manner as to cause prop-scarring.
- (ii) Having a vessel anchored on living coral other than hardbottom in water depths less than 40 feet when visibility is such that the seabed can be seen.
- (iii) Except in officially marked channels, operating a vessel at a speed greater than 4 knots or in manner which creates a wake:
 - (A) Within an area designated idle speed only/no wake;
 - (B) Within 100 yards of navigational aids indicating emergent or shallow reefs (international diamond warning symbol);
 - (C) Within 100 feet of the red and white “divers down” flag (or the blue and white “alpha” flag in Federal waters);
 - (D) Within 100 yards of residential shorelines; or
 - (E) Within 100 yards of stationary vessels.
- (iv) Operating a vessel in such a manner as to injure or take wading, roosting, or nesting birds or marine mammals.
- (v) Operating a vessel in a manner which endangers life, limb, marine resources, or property.
- (6) Conduct of diving/snorkeling without flag. Diving or snorkeling without flying in a conspicuous manner the red and white “divers down” flag (or the blue and white “alpha” flag in Federal waters).
- (7) Release of exotic species. Introducing or releasing an exotic species of plant, invertebrate, fish, amphibian, or mammals into the Sanctuary.
- (8) Damage or removal of markers. Marking, defacing, or damaging in any way or displacing, removing, or tampering with any official signs, notices, or placards, whether temporary or permanent, or with any navigational aids, monuments, stakes, posts, mooring buoys, boundary buoys, trap buoys, or scientific equipment.

- (9) Movement of, removal of, injury to, or possession of Sanctuary historical resources. Moving, removing, injuring, or possessing, or attempting to move, remove, injure, or possess, a Sanctuary historical resource.
 - (10) Take or possession of protected wildlife. Taking any marine mammal, sea turtle, or seabird in or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 et seq., the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 et seq., and the Migratory Bird Treaty Act, as amended, (MBTA) 16 U.S.C. 703 et seq.
 - (11) Possession or use of explosives or electrical charges. Possessing, or using explosives, except powerheads, or releasing electrical charges within the Sanctuary.
 - (12) Harvest or possession of marine life species. Harvesting, possessing, or landing any marine life species, or part thereof, within the Sanctuary, except in accordance with rules 46-42.001 through 46-42.003, 46-42.0035, and 46-42.004 through 46-42.007, and 46.42.009 of the Florida Administrative Code, reproduced in Appendix VIII to this subpart, and such rules shall apply mutatis mutandis (with necessary editorial changes) to all Federal and State waters within the Sanctuary.
 - (13) Interference with law enforcement. Interfering with, obstructing, delaying or preventing an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Acts or any regulation or permit issued under the Acts.
- (b) Notwithstanding the prohibitions in this section and in §922.164, and any access and use restrictions imposed pursuant thereto, a person may conduct an activity specifically authorized by, and conducted in accordance with the scope, purpose, terms, and conditions of, a National Marine Sanctuary permit issued pursuant to §922.166.
- (c) Notwithstanding the prohibitions in this section and in §922.164, and any access and use restrictions imposed pursuant thereto, a person may conduct an activity

specifically authorized by a valid Federal, State, or local lease, permit, license, approval, or other authorization in existence on the effective date of these regulations, or by any valid right of subsistence use or access in existence on the effective date of these regulations, provided that the holder of such authorization or right complies with §922.167 and with any terms and conditions on the exercise of such authorization or right imposed by the Director as a condition of certification as he or she deems reasonably necessary to achieve the purposes for which the Sanctuary was designated.

- (d) Notwithstanding the prohibitions in this section and in §922.164, and any access and use restrictions imposed pursuant thereto, a person may conduct an activity specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization issued after the effective date of these regulations, provided that the applicant complies with §922.168, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems reasonably necessary to protect Sanctuary resources and qualities. Amendments, renewals and extensions of authorizations in existence on the effective date of these regulations constitute authorizations issued after the effective date of these regulations.
- (e)(1) All military activities shall be carried out in a manner that avoids to the maximum extent practical any adverse impacts on Sanctuary resources and qualities. The prohibitions in paragraph (a) of this section and §922.164 do not apply to existing classes of military activities which were conducted prior to the effective date of these regulations, as identified in the Environmental Impact Statement and Management Plan for the Sanctuary. New military activities in the Sanctuary are allowed and may be exempted from the prohibitions in paragraph (a) of this section and in §922.164 by the Director after consultation between the Director and the Department of Defense pursuant to section 304(d) of the NMSA. When a military activity is modified such that it is likely to destroy, cause the loss of, or injure a Sanctuary resource or quality in a manner significantly greater than was considered in a previous consultation under section 304(d) of the

NMSA, or it is likely to destroy, cause the loss of, or injure a Sanctuary resource or quality not previously considered in a previous consultation under section 304(d) of the NMSA, the activity is considered a new activity for purposes of this paragraph. If it is determined that an activity may be carried out, such activity shall be carried out in a manner that avoids to the maximum extent practical any adverse impact on Sanctuary resources and qualities.

- (2) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings caused by the Department of Defense, the cognizant component shall promptly coordinate with the Director for the purpose of taking appropriate actions to prevent, respond to or mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.
- (f) The prohibitions contained in paragraph (a)(5) of this section do not apply to Federal, State and local officers while performing enforcement duties and/or responding to emergencies that threaten life, property, or the environment in their official capacity.
- (g) Notwithstanding paragraph (b) of this section and paragraph (a) of §922.168, in no event may the Director issue a permit under §922.166 authorizing, or otherwise approve, the exploration for, leasing, development, or production of minerals or hydrocarbons within the Sanctuary, the disposal of dredged material within the Sanctuary other than in connection with beach renourishment or Sanctuary restoration projects, or the discharge of untreated or primary treated sewage (except by a certification, pursuant to §922.167, of a valid authorization in existence on the effective date of these regulations), and any purported authorizations issued by other authorities after the effective date of these regulations for any of these activities within the Sanctuary shall be invalid.
- (h) Any amendment to these regulations shall not take effect in Florida State waters until approved by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida. Any fishery regulations in the Sanctuary shall not take

effect in Florida State waters until established by the Florida Marine Fisheries Commission.

§ 922.164 Additional activity regulations by Sanctuary area.

In addition to the prohibitions set forth in §922.163, which apply throughout the Sanctuary, the following regulations apply with respect to activities conducted within the Sanctuary areas described in this section and in Appendix (II) through (VII) to this subpart. Activities located within two or more overlapping Sanctuary areas are concurrently subject to the regulations applicable to each overlapping area.

- (a) Areas to be avoided. Operating a tank vessel or a vessel greater than 50 meters in registered length is prohibited in all areas to be avoided, except if such vessel is a public vessel and its operation is essential for national defense, law enforcement, or responses to emergencies that threaten life, property, or the environment. Appendix VII to this subpart sets forth the geographic coordinates of these areas.
- (b) Existing management areas –
 - (1) Key Largo and Looe Key Management Areas. The following activities are prohibited within the Key Largo and Looe Key Management Areas (also known as the Key Largo and Looe Key National Marine Sanctuaries) described in Appendix II to this subpart:
 - (i) Removing, taking, damaging, harmfully disturbing, breaking, cutting, spearing or similarly injuring any coral or other marine invertebrate, or any plant, soil, rock, or other material, except commercial taking of spiny lobster and stone crab by trap and recreational taking of spiny lobster by hand or by hand gear which is consistent with these regulations and the applicable regulations implementing the applicable Fishery Management Plan.
 - (ii) Taking any tropical fish.
 - (iii) Fishing with wire fish traps, bottom trawls, dredges, fish sleds, or similar vessel-towed or anchored bottom fishing gear or nets.
 - (iv) Fishing with, carrying or possessing, except while passing through without interruption or for law enforcement purposes:

pole spears, air rifles, bows and arrows, slings, Hawaiian slings, rubber powered arbaletes, pneumatic and spring-loaded guns or similar devices known as spearguns.

- (2) Great White Heron and Key West National Wildlife Refuge Management Areas. Operating a personal watercraft, operating an airboat, or water skiing except within Township 66 South, Range 29 East, Sections 5, 11, 12 and 14; Township 66 South, Range 28 East, Section 2; Township 67 South, Range 26 East, Sections 16 and 20, all Tallahassee Meridian, are prohibited within the marine portions of the Great White Heron and Key West National Wildlife Refuge Management Areas described in Appendix II to this subpart.
- (c) Wildlife management areas.
- (1) Marine portions of the Wildlife Management Areas listed in Appendix III to this subpart or portions thereof may be designated “idle speed only/no-wake,” “no-motor” or “no-access buffer” zones or “closed”. The Director, in cooperation with other Federal, State, or local resource management authorities, as appropriate, shall post signs conspicuously, using mounting posts, buoys, or other means according to location and purpose, at appropriate intervals and locations, clearly delineating an area as an “idle speed only/no wake”, a “no-motor”, or a “no-access buffer” zone or as “closed”, and allowing instant, long-range recognition by boaters. Such signs shall display the official logo of the Sanctuary.
 - (2) The following activities are prohibited within the marine portions of the Wildlife Management Areas listed in Appendix III to this subpart:
 - (i) In those marine portions of any Wildlife Management Area designated an “idle speed only/no wake” zone in Appendix III to this subpart, operating a vessel at a speed greater than idle speed only/no wake.
 - (ii) In those marine portions of any Wildlife Management Area designated a “no-motor” zone in Appendix III to this subpart, using internal combustion motors or engines for any purposes. A

vessel with an internal combustion motor or engine may access a “no-motor” zone only through the use of a push pole, paddle, sail, electric motor or similar means of propulsion.

- (iii) In those marine portions of any Wildlife Management Area designated a “no-access buffer” zone in Appendix III of this subpart, entering the area by vessel.
 - (iv) In those marine portions of any Wildlife Management Area designated as closed in Appendix III of this subpart, entering or using the area.
- (3) The Director shall coordinate with other Federal, State, or local resource management authorities, as appropriate, in the establishment and enforcement of access restrictions described in paragraph (c)(2) (i)–(iv) of this section in the marine portions of Wildlife Management Areas.
- (4) The Director may modify the number and location of access restrictions described in paragraph (c)(2) (i)–(iv) of this section within the marine portions of a Wildlife Management Area if the Director finds that such action is reasonably necessary to minimize disturbances to Sanctuary wildlife, or to ensure protection and preservation of Sanctuary wildlife consistent with the purposes of the Sanctuary designation and other applicable law governing the protection and preservation of wildlife resources in the Sanctuary. The Director will effect such modification by:
- (i) Publishing in the Federal Register, after notice and an opportunity for public comments in accordance, an amendment to the list of such areas set forth in Appendix III to this subpart, and a notice regarding the time and place where maps depicting the precise locations of such restrictions will be made available for public inspection, and
 - (ii) Posting official signs delineating such restrictions in accordance with paragraph (c)(1) of this section.
- (d) Ecological Reserves and Sanctuary Preservation Areas.

- (1) The following activities are prohibited within the Ecological Reserves described in Appendix IV to this subpart, and within the Sanctuary Preservation Areas, described in Appendix V to this subpart:
 - (i) Discharging or depositing any material or other matter except cooling water or engine exhaust.
 - (ii) Possessing, moving, harvesting, removing, taking, damaging, disturbing, breaking, cutting, spearing, or otherwise injuring any coral, marine invertebrate, fish, bottom formation, algae, seagrass or other living or dead organism, including shells, or attempting any of these activities. However, fish, invertebrates, and marine plants may be possessed aboard a vessel in an Ecological Reserve or Sanctuary Preservation Area, provided such resources can be shown not to have been harvested within, removed from, or taken within, the Ecological Reserve or Sanctuary Preservation Area, as applicable, by being stowed in a cabin, locker, or similar storage area prior to entering and during transit through such reserves or areas, provided further that in an Ecological Reserve or Sanctuary Preservation Area located in Florida State waters, such vessel is in continuous transit through the Ecological Reserve or Sanctuary Preservation Area.
 - (iii) Except for catch and release fishing by trolling in the Conch Reef, Alligator Reef, Sombrero Reef, and Sand Key SPAs, fishing by any means. However, gear capable of harvesting fish may be aboard a vessel in an Ecological Reserve or Sanctuary Preservation Area, provided such gear is not available for immediate use when entering and during transit through such Ecological Reserve or Sanctuary Preservation Area, and no presumption of fishing activity shall be drawn therefrom.
 - (iv) Touching living or dead coral, including but not limited to, standing on a living or dead coral formation.

- (v) Anchoring in the Tortugas Ecological Reserve. In all other Ecological Reserves and Sanctuary Preservation Areas, placing any anchor in a way that allows the anchor or any portion of the anchor apparatus (including the anchor, chain or rope) to touch living or dead coral, or any attached living organism. When anchoring dive boats, the first diver down must inspect the anchor to ensure that it is not touching living or dead coral, and will not shift in such a way as to touch such coral or other attached organism. No further diving shall take place until the anchor is placed in accordance with these requirements.
- (vi) Except in the Tortugas Ecological Reserve where mooring buoys must be used, anchoring instead of mooring when a mooring buoy is available or anchoring in other than a designated anchoring area when such areas have been designated and are available.
- (vii) Except for passage without interruption through the area, for law enforcement purposes, or for purposes of monitoring pursuant to paragraph (d)(2) of this section, violating a temporary access restriction imposed by the Director pursuant to paragraph (d)(2) of this section.
- (viii) Except for passage without interruption through the area, for law enforcement purposes, or for purposes of monitoring pursuant to paragraph (d)(2) of this section: entering the Tortugas South area of the Tortugas Ecological Reserve; or entering the Tortugas North area of the Tortugas Ecological Reserve without a valid access permit issued pursuant to §922.167 or entering or leaving the Tortugas North area with a valid access permit issued pursuant to §922.167 without notifying FKNMS staff at the Dry Tortugas National Park office by telephone or radio no less than 30 minutes and no more than 6 hours, before entering and upon leaving the Tortugas Ecological Reserve.

- (ix) Tying a vessel greater than 100 feet (30.48 meters) LOA, or tying more than one vessel (other than vessels carried on board a vessel) if the combined lengths would exceed 100 feet (30.48 meters) LOA, to a mooring buoy or to a vessel tied to a mooring buoy in the Tortugas Ecological Reserve.
- (2) The Director may temporarily restrict access to any portion of any Sanctuary Preservation Area or Ecological Reserve if the Director, on the basis of the best available data, information and studies, determines that a concentration of use appears to be causing or contributing to significant degradation of the living resources of the area and that such action is reasonably necessary to allow for recovery of the living resources of such area. The Director will provide for continuous monitoring of the area during the pendency of the restriction. The Director will provide public notice of the restriction by publishing a notice in the Federal Register, and by such other means as the Director may deem appropriate. The Director may only restrict access to an area for a period of 60 days, with one additional 60-day renewal. The Director may restrict access to an area for a longer period pursuant to a notice and opportunity for public comment rulemaking under the Administrative Procedure Act. Such restriction will be kept to the minimum amount of area necessary to achieve the purposes thereof.
- (e) Special-use Areas. (1) The Director may set aside discrete areas of the Sanctuary as Special-use Areas, and, by designation pursuant to this paragraph, impose the access and use restrictions specified in paragraph (e)(3) of this section. Special-use Areas are described in Appendix VI to this subpart, in accordance with the following designations and corresponding objectives:
 - (i) “Recovery area” to provide for the recovery of Sanctuary resources from degradation or other injury attributable to human uses;
 - (ii) “Restoration area” to provide for restoration of degraded or otherwise injured Sanctuary resources;

- (iii) “Research-only area” to provide for scientific research or education relating to protection and management, through the issuance of a Sanctuary General permit for research pursuant to §922.166 of these regulations; and
 - (iv) “Facilitated-use area” to provide for the prevention of use or user conflicts or the facilitation of access and use, or to promote public use and understanding, of Sanctuary resources through the issuance of special-use permits.
- (2) A Special-use Area shall be no larger than the size the Director deems reasonably necessary to accomplish the applicable objective.
- (3) Persons conducting activities within any Special-use Area shall comply with the access and use restrictions specified in this paragraph and made applicable to such area by means of its designation as a “recovery area,” “restoration area,” “research-only area,” or “facilitated-use area.” Except for passage without interruption through the area or for law enforcement purposes, no person may enter a Special-use Area except to conduct or cause to be conducted the following activities:
 - (i) In such area designated as a “recovery area” or a “restoration area”, habitat manipulation related to restoration of degraded or otherwise injured Sanctuary resources, or activities reasonably necessary to monitor recovery of degraded or otherwise injured Sanctuary resources;
 - (ii) In such area designated as a “research only area”, scientific research or educational use specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of a valid National Marine Sanctuary General or Historical Resources permit, or
 - (iii) In such area designated as a “facilitated-use area”, activities specified by the Director or specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a valid Special-use permit.

- (4)(i) The Director may modify the number of, location of, or designations applicable to, Special-use Areas by publishing in the Federal Register, after notice and an opportunity for public comment in accordance with the Administrative Procedure Act, an amendment to Appendix VI to this subpart, except that, with respect to such areas designated as a “recovery area,” “restoration area,” or “research only area,” the Director may modify the number of, location of, or designation applicable to, such areas by publishing a notice of such action in the Federal Register if the Director determines that immediate action is reasonably necessary to:
 - (A) Prevent significant injury to Sanctuary resources where circumstances create an imminent risk to such resources;
 - (B) Initiate restoration activity where a delay in time would significantly impair the ability of such restoration activity to succeed;
 - (C) Initiate research activity where an unforeseen natural event produces an opportunity for scientific research that may be lost if research is not initiated immediately.
- (ii) if the Director determines that a notice of modification must be promulgated immediately in accordance with paragraph (e)(4)(i) of this section, the Director will, as part of the same notice, invite public comment and specify that comments will be received for 15 days after the effective date of the notice. As soon as practicable after the end of the comment period, the Director will either rescind, modify or allow the modification to remain unchanged through notice in the Federal Register.
- (f) Additional Wildlife Management Areas, Ecological Reserves, Sanctuary Preservation Areas, or Special-use Areas, and additional restrictions in such areas, shall not take effect in Florida State waters unless first approved by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida.
- (g) Anchoring on Tortugas Bank. Vessels 50 meters or greater in registered length, are prohibited from anchoring on the portion of Tortugas Bank within the

Florida Keys National Marine Sanctuary west of the Dry Tortugas National Park that is outside of the Tortugas Ecological Reserve. The boundary of the area closed to anchoring by vessels 50 meters or greater in registered length is formed by connecting in succession the points at the following coordinates (based on the North American Datum of 1983):

- (1) 24 deg. 32.00' N 83 deg. 00.05' W
- (2) 24 deg. 37.00' N 83 deg. 06.00' W
- (3) 24 deg. 39.00' N 83 deg. 06.00' W
- (4) 24 deg. 39.00' N 83 deg. 00.05' W
- (5) 24 deg. 32.00' N 83 deg. 00.05' W

[62 FR 32161, June 12, 1997, as amended at 63 FR 43873, Aug. 17, 1998; 66 FR 4369, Jan. 17, 2001]

§ 922.165 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. Emergency regulations shall not take effect in Florida territorial waters until approved by the Governor of the State of Florida. Any temporary regulation may be in effect for up to 60 days, with one 60-day extension. Additional or extended action will require notice and comment rulemaking under the Administrative Procedure Act, notice in local newspapers, notice to Mariners, and press releases.

§ 922.166 Permits other than for access to the Tortugas Ecological Reserve—application procedures and issuance criteria.

- (a) National Marine Sanctuary General Permit.
 - (1) A person may conduct an activity prohibited by §§922.163 or 922.164, other than an activity involving the survey/inventory, research/recovery, or deaccession/transfer of Sanctuary historical resources, if such activity is specifically authorized by, and provided such activity is conducted in accordance with the scope, purpose, terms and conditions of, a National Marine Sanctuary General permit issued under this paragraph (a).

- (2) The Director, at his or her discretion, may issue a General permit under this paragraph (a), subject to such terms and conditions as he or she deems appropriate, if the Director finds that the activity will:
 - (i) Further research or monitoring related to Sanctuary resources and qualities;
 - (ii) Further the educational value of the Sanctuary;
 - (iii) Further the natural or historical resource value of the Sanctuary;
 - (iv) Further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty;
 - (v) Assist in managing the Sanctuary; or
 - (vi) Otherwise further Sanctuary purposes, including facilitating multiple use of the Sanctuary, to the extent compatible with the primary objective of resource protection.

- (3) The Director shall not issue a General permit under this paragraph (a), unless the Director also finds that:
 - (i) The applicant is professionally qualified to conduct and complete the proposed activity;
 - (ii) The applicant has adequate financial resources available to conduct and complete the proposed activity;
 - (iii) The duration of the proposed activity is no longer than necessary to achieve its stated purpose;
 - (iv) The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's goals in relation to the activity's impacts on Sanctuary resources and qualities;
 - (v) The proposed activity will be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities, considering the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, any indirect, secondary or cumulative effects of the activity, and the duration of such effects;

- (vi) It is necessary to conduct the proposed activity within the Sanctuary to achieve its purposes; and
 - (vii) The reasonably expected end value of the activity to the furtherance of Sanctuary goals and purposes outweighs any potential adverse impacts on Sanctuary resources and qualities from the conduct of the activity.
- (4) For activities proposed to be conducted within any of the areas described in §922.164 (b)–(e), the Director shall not issue a permit unless he or she further finds that such activities will further and are consistent with the purposes for which such area was established, as described in §§922.162 and 922.164 and in the management plan for the Sanctuary.
- (b) National Marine Sanctuary Survey/Inventory of Historical Resources Permit.
- (1) A person may conduct an activity prohibited by §§922.163 or 922.164 involving the survey/inventory of Sanctuary historical resources if such activity is specifically authorized by, and is conducted in accordance with the scope, purpose, terms and conditions of, a Survey/Inventory of Historical Resources permit issued under this paragraph (b). Such permit is not required if such survey/inventory activity does not involve any activity prohibited by §§922.163 or 922.164. Thus, survey/inventory activities that are non-intrusive, do not include any excavation, removal, or recovery of historical resources, and do not result in destruction of, loss of, or injury to Sanctuary resources or qualities do not require a permit. However, if a survey/inventory activity will involve test excavations or removal of artifacts or materials for evaluative purposes, a Survey/Inventory of Historical Resources permit is required. Regardless of whether a Survey/Inventory permit is required, a person may request such permit. Persons who have demonstrated their professional abilities under a Survey/Inventory permit will be given preference over other persons in consideration of the issuance of a Research/Recovery permit. While a Survey/Inventory permit does not grant any rights with regards to areas subject to pre-existing rights of access which are still valid, once a

permit is issued for an area, other survey/inventory permits will not be issued for the same area during the period for which the permit is valid.

- (2) The Director, at his or her discretion, may issue a Survey/Inventory permit under this paragraph (b), subject to such terms and conditions as he or she deems appropriate, if the Director finds that such activity:
 - (i) Satisfies the requirements for a permit issued under paragraph (a)(3) of this section;
 - (ii) Either will be non-intrusive, not include any excavation, removal, or recovery of historical resources, and not result in destruction of, loss of, or injury to Sanctuary resources or qualities, or if intrusive, will involve no more than the minimum manual alteration of the seabed and/or the removal of artifacts or other material necessary for evaluative purposes and will cause no significant adverse impacts on Sanctuary resources or qualities; and
 - (iii) That such activity will be conducted in accordance with all requirements of the Programmatic Agreement for the Management of Submerged Cultural Resources (SCR) in the Florida Keys National Marine Sanctuary among NOAA, the Advisory Council on Historic Preservation, and the State of Florida (hereinafter SCR Agreement), and that such permit issuance is in accordance with such SCR Agreement. Copies of the SCR Agreement may also be examined at, and obtained from, the Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, 12th floor, Silver Spring, MD 20910; or from the Florida Keys National Marine Sanctuary Office, P.O. Box 500368, Marathon, FL 33050.
- (c) National Marine Sanctuary Research/Recovery of Sanctuary Historical Resources Permit. (1) A person may conduct any activity prohibited by §§922.163 or 922.164 involving the research/recovery of Sanctuary historical resources if such activity is specifically authorized by, and is conducted in

accordance with the scope, purpose, terms and conditions of, a Research/Recovery of Historical Resources permit issued under this paragraph (c).

(2) The Director, at his or her discretion, may issue a Research/Recovery of Historical Resources permit, under this paragraph (c), and subject to such terms and conditions as he or she deems appropriate, if the Director finds that:

- (i) Such activity satisfies the requirements for a permit issued under paragraph (a)(3) of this section;
- (ii) The recovery of the resource is in the public interest as described in the SCR Agreement;
- (iii) Recovery of the resource is part of research to preserve historic information for public use; and
- (iv) Recovery of the resource is necessary or appropriate to protect the resource, preserve historical information, and/or further the policies and purposes of the NMSA and the FKNMSPA, and that such permit issuance is in accordance with, and that the activity will be conducted in accordance with, all requirements of the SCR Agreement.

(d) National Marine Sanctuary Special-use Permit. (1) A person may conduct any commercial or concession-type activity prohibited by §§922.163 or 922.164, if such activity is specifically authorized by, and is conducted in accordance with the scope, purpose, terms and conditions of, a Special-use permit issued under this paragraph (d). A Special-use permit is required for the deaccession/transfer of Sanctuary historical resources.

(2) The Director, at his or her discretion, may issue a Special-use permit in accordance with this paragraph (d), and subject to such terms and conditions as he or she deems appropriate and the mandatory terms and conditions of section 310 of the NMSA, if the Director finds that issuance of such permit is reasonably necessary to: establish conditions of access to and use of any Sanctuary resource; or promote public use and

understanding of any Sanctuary resources. No permit may be issued unless the activity is compatible with the purposes for which the Sanctuary was designated and can be conducted in a manner that does not destroy, cause the loss of, or injure any Sanctuary resource, and if for the deaccession/transfer of Sanctuary Historical Resources, unless such permit issuance is in accordance with, and that the activity will be conducted in accordance with, all requirements of the SCR Agreement.

- (3) The Director may assess and collect fees for the conduct of any activity authorized by a Special-use permit issued pursuant to this paragraph (d). No Special-use permit shall be effective until all assessed fees are paid, unless otherwise provided by the Director by a fee schedule set forth as a permit condition. In assessing a fee, the Director shall include:
- (i) All costs incurred, or expected to be incurred, in reviewing and processing the permit application, including, but not limited to, costs for:
 - (A) Number of personnel;
 - (B) Personnel hours;
 - (C) Equipment;
 - (D) Biological assessments;
 - (E) Copying; and
 - (F) Overhead directly related to reviewing and processing the permit application;
 - (ii) All costs incurred, or expected to be incurred, as a direct result of the conduct of the activity for which the Special-use permit is being issued, including, but not limited to:
 - (A) The cost of monitoring the conduct both during the activity and after the activity is completed in order to assess the impacts to Sanctuary resources and qualities;
 - (B) The use of an official NOAA observer, including travel and expenses and personnel hours; and

- (C) Overhead costs directly related to the permitted activity;
and
 - (iii) An amount which represents the fair market value of the use of the Sanctuary resource and a reasonable return to the United States Government.
- (4) Nothing in this paragraph (d) shall be considered to require a person to obtain a permit under this paragraph for the conduct of any fishing activities within the Sanctuary.
- (e) Applications.
 - (1) Applications for permits should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuary Superintendent, Florida Keys National Marine Sanctuary, P.O. Box 500368, Marathon, FL 33050. All applications must include:
 - (i) A detailed description of the proposed activity including a timetable for completion of the activity and the equipment, personnel and methodology to be employed;
 - (ii) The qualifications and experience of all personnel;
 - (iii) The financial resources available to the applicant to conduct and complete the proposed activity;
 - (iv) A statement as to why it is necessary to conduct the activity within the Sanctuary;
 - (v) The potential impacts of the activity, if any, on Sanctuary resources and qualities;
 - (vi) The benefit to be derived from the activity; and
 - (vii) Such other information as the Director may request depending on the type of activity. Copies of all other required licenses, permits, approvals, or other authorizations must be attached to the application.
 - (2) Upon receipt of an application, the Director may request such additional information from the applicant as he or she deems reasonably necessary to act on the application and may seek the views of any persons. The

Director may require a site visit as part of the permit evaluation. Unless otherwise specified, the information requested must be received by the Director within 30 days of the postmark date of the request. Failure to provide such additional information on a timely basis may be deemed by the Director to constitute abandonment or withdrawal of the permit application.

- (f) A permit may be issued for a period not exceeding five years. All permits will be reviewed annually to determine the permittee's compliance with permit scope, purpose, terms and conditions and progress toward reaching the stated goals and appropriate action taken under paragraph (g) of this section if warranted. A permittee may request permit renewal pursuant to the same procedures for applying for a new permit. Upon the permittee's request for renewal, the Director shall review all reports submitted by the permittee as required by the permit conditions. In order to renew the permit, the Director must find that the:
 - (1) Activity will continue to further the purposes for which the Sanctuary was designated in accordance with the criteria applicable to the initial issuance of the permit;
 - (2) Permittee has at no time violated the permit, or these regulations; and
 - (3) The activity has not resulted in any unforeseen adverse impacts to Sanctuary resources or qualities.
- (g) The Director may amend, suspend, or revoke a permit for good cause. The Director may deny a permit application, in whole or in part, if it is determined that the permittee or applicant has acted in violation of a previous permit, of these regulations, of the NMSA or FKNMSPA, or for other good cause. Any such action shall be communicated in writing to the permittee or applicant by certified mail and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are set forth in Subpart D of 15 CFR part 904.
- (h) The applicant for or holder of a National Marine Sanctuary permit may appeal the denial, conditioning, amendment, suspension or revocation of the permit in accordance with the procedures set forth in §922.50.

- (i) A permit issued pursuant to this section other than a Special-use permit is nontransferable. Special-use permits may be transferred, sold, or assigned with the written approval of the Director. The permittee shall provide the Director with written notice of any proposed transfer, sale, or assignment no less than 30 days prior to its proposed consummation. Transfers, sales, or assignments consummated in violation of this requirement shall be considered a material breach of the Special-use permit, and the permit shall be considered void as of the consummation of any such transfer, sale, or assignment.
- (j) The permit or a copy thereof shall be maintained in legible condition on board all vessels or aircraft used in the conduct of the permitted activity and be displayed for inspection upon the request of any authorized officer.
- (k) Any permit issued pursuant to this section shall be subject to the following terms and conditions:
 - (1) All permitted activities shall be conducted in a manner that does not destroy, cause the loss of, or injure Sanctuary resources or qualities, except to the extent that such may be specifically authorized.
 - (2) The permittee agrees to hold the United States harmless against any claims arising out of the conduct of the permitted activities.
 - (3) All necessary Federal, State, and local permits from all agencies with jurisdiction over the proposed activities shall be secured before commencing field operations.
- (l) In addition to the terms and conditions listed in paragraph (k) of this section, any permit authorizing the research/recovery of historical resources shall be subject to the following terms and conditions:
 - (1) A professional archaeologist shall be in charge of planning, field recovery operations, and research analysis.
 - (2) An agreement with a conservation laboratory shall be in place before field recovery operations are begun, and an approved nautical conservator shall be in charge of planning, conducting, and supervising the conservation of any artifacts and other materials recovered.

- (3) A curation agreement with a museum or facility for curation, public access and periodic public display, and maintenance of the recovered historical resources shall be in place before commencing field operations (such agreement for the curation and display of recovered historical resources may provide for the release of public artifacts for deaccession/transfer if such deaccession/transfer is consistent with preservation, research, education, or other purposes of the designation and management of the Sanctuary. Deaccession/transfer of historical resources requires a Special-use permit issued pursuant to paragraph (d) and such deaccession/transfer shall be executed in accordance with the requirements of the SCR Agreement).
 - (4) The site's archaeological information is fully documented, including measured drawings, site maps drawn to professional standards, and photographic records.
- (m) In addition to the terms and conditions listed in paragraph (k) and (l) of this section, any permit issued pursuant to this section is subject to such other terms and conditions, including conditions governing access to, or use of, Sanctuary resources, as the Director deems reasonably necessary or appropriate and in furtherance of the purposes for which the Sanctuary is designated. Such terms and conditions may include, but are not limited to:
- (1) Any data or information obtained under the permit shall be made available to the public.
 - (2) A NOAA official shall be allowed to observe any activity conducted under the permit.
 - (3) The permittee shall submit one or more reports on the status, progress, or results of any activity authorized by the permit.
 - (4) The permittee shall submit an annual report to the Director not later than December 31 of each year on activities conducted pursuant to the permit. The report shall describe all activities conducted under the permit and all revenues derived from such activities during the year and/or term of the permit.

- (5) The permittee shall purchase and maintain general liability insurance or other acceptable security against potential claims for destruction, loss of, or injury to Sanctuary resources arising out of the permitted activities. The amount of insurance or security should be commensurate with an estimated value of the Sanctuary resources in the permitted area. A copy of the insurance policy or security instrument shall be submitted to the Director.

§ 922.167 Permits for access to the Tortugas Ecological Reserve.

- (a) A person may enter the Tortugas North area of the Tortugas Ecological Reserve other than for passage without interruption through the reserve, for law enforcement purposes, or for purposes of monitoring pursuant to paragraph (d)(2) of §922.164 , if authorized by a valid access permit issued pursuant to §922.167.
- (b)(1) Access permits must be requested at least 72 hours but no longer than one month before the date the permit is desired to be effective. Access permits do not require written applications or the payment of any fee. Permits may be requested via telephone or radio by contacting FKNMS at any of the following numbers:
Key West office: telephone: (305) 292-0311 Marathon office: telephone: (305) 743-2437
- (2) The following information must be provided, as applicable:
- (i) Vessel name.
 - (ii) Name, address, and telephone number of owner and operator.
 - (iii) Name, address, and telephone number of applicant.
 - (iv) USCG documentation, state license, or registration number.
 - (v) Home port.
 - (vi) Length of vessel and propulsion type (i.e., motor or sail).
 - (vii) Number of divers.
 - (viii) Requested effective date and duration of permit (2 weeks, maximum).
- (c) The Sanctuary Superintendent will issue a permit to the owner or to the owner's representative for the vessel when all applicable information has been provided.

The Sanctuary Superintendent will provide a permit number to the applicant and confirm the effective date and duration period of the permit. Written confirmation of permit issuance will be provided upon request.

[66 FR 4370, Jan. 17, 2001]

§ 922.168 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.

- (a) A person may conduct an activity prohibited by §§922.163 or 922.164 if such activity is specifically authorized by a valid Federal, State, or local lease, permit, license, approval, or other authorization in existence on July 1, 1997, or by any valid right of subsistence use or access in existence on July 1, 1997, provided that:
 - (1) The holder of such authorization or right notifies the Director, in writing, within 90 days of July 1, 1997, of the existence of such authorization or right and requests certification of such authorization or right; for the area added to the Sanctuary by the boundary expansion for the Tortugas Ecological Reserve, the holder of such authorization or right notifies the Director, in writing, within 90 days of the effective date of the boundary expansion, of the existence of such authorization or right and requests certification of such authorization or right.
 - (2) The holder complies with the other provisions of this §922.168; and
 - (3) The holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification, by the Director, to achieve the purposes for which the Sanctuary was designated.
- (b) The holder of an authorization or right described in paragraph (a) of this section authorizing an activity prohibited by Secs. 922.163 or 922.164 may conduct the activity without being in violation of applicable provisions of Secs. 922.163 or 922.164, pending final agency action on his or her certification request, provided the holder is in compliance with this §922.168.
- (c) Any holder of an authorization or right described in paragraph (a) of this section may request the Director to issue a finding as to whether the activity for which

the authorization has been issued, or the right given, is prohibited by Secs. 922.163 or 922.164, thus requiring certification under this section.

- (d) Requests for findings or certifications should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuary Superintendent, Florida Keys National Marine Sanctuary, P.O. Box 500368, Marathon, FL 33050. A copy of the lease, permit, license, approval, or other authorization must accompany the request.
- (e) The Director may request additional information from the certification requester as he or she deems reasonably necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The information requested must be received by the Director within 45 days of the postmark date of the request. The Director may seek the views of any persons on the certification request.
- (f) The Director may amend any certification made under this §922.168 whenever additional information becomes available justifying such an amendment.
- (g) Upon completion of review of the authorization or right and information received with respect thereto, the Director shall communicate, in writing, any decision on a certification request or any action taken with respect to any certification made under this §922.168, in writing, to both the holder of the certified lease, permit, license, approval, other authorization, or right, and the issuing agency, and shall set forth the reason(s) for the decision or action taken.
- (h) Any time limit prescribed in or established under this §922.168 may be extended by the Director for good cause.
- (i) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in §922.50.
- (j) Any amendment, renewal, or extension made after July 1, 1997, to a lease, permit, license, approval, other authorization or right is subject to the provisions of §922.49.

[66 FR 4369, Jan. 17, 2001]

Appendix I to Subpart P of Part 922—Florida Keys National Marine Sanctuary Boundary Coordinates

(APPENDIX BASED ON NORTH AMERICAN DATUM OF 1983)

- (1) The boundary of the Florida Keys National Marine Sanctuary—
 - (a) Begins at the northeasternmost point of Biscayne National Park located at approximately 25 degrees 39 minutes north latitude, 80 degrees 05 minutes west longitude, then runs eastward to the point at 25 degrees 39 minutes north latitude, 80 degrees 04 minutes west longitude; and
 - (b) Then runs southward and connects in succession the points at the following coordinates:
 - (i) 25 degrees 34 minutes north latitude, 80 degrees 04 minutes west longitude,
 - (ii) 25 degrees 28 minutes north latitude, 80 degrees 05 minutes west longitude, and
 - (iii) 25 degrees 21 minutes north latitude, 80 degrees 07 minutes west longitude;
 - (iv) 25 degrees 16 minutes north latitude, 80 degrees 08 minutes west longitude;
 - (c) Then runs southwesterly approximating the 300-foot isobath and connects in succession the points at the following coordinates:
 - (i) 25 degrees 07 minutes north latitude, 80 degrees 13 minutes west longitude,
 - (ii) 24 degrees 57 minutes north latitude, 80 degrees 21 minutes west longitude,
 - (iii) 24 degrees 39 minutes north latitude, 80 degrees 52 minutes west longitude,
 - (iv) 24 degrees 30 minutes north latitude, 81 degrees 23 minutes west longitude,
 - (v) 24 degrees 25 minutes north latitude, 81 degrees 50 minutes west longitude,
 - (vi) 24 degrees 22 minutes north latitude, 82 degrees 48 minutes west longitude,
 - (vii) 24 degrees 37 minutes north latitude, 83 degrees 06 minutes west longitude,
 - (viii) 24 degrees 46 minutes north latitude, 83 degrees 06 minutes west longitude,
 - (ix) 24 degrees 46 minutes north latitude, 82 degrees 54 minutes west longitude,
 - (x) 24 degrees 44 minutes north latitude, 81 degrees 55 minutes west longitude,
 - (xi) 24 degrees 51 minutes north latitude, 81 degrees 26 minutes west longitude, and
 - (xii) 24 degrees 55 minutes north latitude, 80 degrees 56 minutes west longitude;
 - (d) Then follows the boundary of Everglades National Park in a southerly then northeasterly direction through Florida Bay, Buttonwood Sound, Tarpon Basin, and Blackwater Sound;
 - (e) After Division Point, then departs from the boundary of Everglades National Park and follows the western shoreline of Manatee Bay, Barnes Sound, and Card Sound;
 - (f) then follows the southern boundary of Biscayne National Park to the southeasternmost point of Biscayne National Park; and
 - (g) then follows the eastern boundary of Biscayne National Park to the beginning point specified in paragraph (a).
- (2) The shoreward boundary of the Florida Keys National Marine Sanctuary is the mean high-water mark except around the Dry Tortugas where the boundary is coterminous with that of the Dry Tortugas National Park, formed by connecting in succession the points at the following coordinates:
 - (a) 24 degrees 34 minutes 0 seconds north latitude, 82 degrees 54 minutes 0 seconds west longitude;
 - (b) 24 degrees 34 minutes 0 seconds north latitude, 82 degrees 58 minutes 0 second west longitude;
 - (c) 24 degrees 39 minutes 0 seconds north latitude, 82 degrees 58 minutes 0 seconds west longitude;
 - (d) 24 degrees 43 minutes 0 seconds north latitude, 82 degrees 54 minutes 0 seconds west longitude;
 - (e) 24 degrees 43 minutes 32 seconds north latitude, 82 degrees 52 minutes 0 seconds west longitude;
 - (f) 24 degrees 43 minutes 32 seconds north latitude, 82 degrees 48 minutes 0 seconds west longitude;

- (g) 24 degrees 42 minutes 0 seconds north latitude, 82 degrees 46 minutes, 0 seconds west longitude;
- (h) 24 degrees 40 minutes 0 seconds north latitude, 82 degrees 46 minutes 0 seconds west longitude;
- (i) 24 degrees 37 minutes 0 seconds north latitude, 82 degrees 48 minutes 0 seconds west longitude; and
- (j) 24 degrees 34 minutes 0 seconds north latitude, 82 degrees 54 minutes 0 seconds west longitude.

(3) The Florida Keys National Marine Sanctuary also includes the area located within the boundary formed by connecting in succession the points at the following coordinates:

- (a) 24 degrees 33 minutes north latitude, 83 degrees 09 minutes west longitude,
- (b) 24 degrees 33 minutes north latitude, 83 degrees 05 minutes west longitude, and
- (c) 24 degrees 18 minutes north latitude, 83 degrees 05 minutes west longitude;
- (d) 24 degrees 18 minutes north latitude, 83 degrees 09 minutes west longitude; and
- (e) 24 degrees 33 minutes north latitude, 83 degrees 09 minutes west longitude.

[66 FR 4370, Jan. 17, 2001]

Appendix II to Subpart P of Part 922—Existing Management Areas Boundary Coordinates

(1) The boundary of each of the Existing Management Areas is formed by connecting in succession the points at the following coordinates:

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

KEY LARGO-MANAGEMENT AREA [Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	25 deg.19'45" N	80 deg.12'00" W.
2	25 deg.16'02" N	80 deg.08'07" W.
3	25 deg.07'05" N	80 deg.12'05" W.
4	24 deg.58'03" N	80 deg.19'08" W.
5	25 deg.02'02" N	80 deg.25'25" W.
6	25 deg.19'45" N	80 deg.12'00" W.

LOOE KEY MANAGEMENT AREA [Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.31'62" N	81 deg.26'00" W.
2	24 deg.33'57" N	81 deg.26'00" W.
3	24 deg.34'15" N	81 deg.23'00" W.
4	24 deg.32'20" N	81 deg.23'00" W.
5	24 deg.31'62" N	81 deg.26'00" W.

UNITED STATES FISH AND WILDLIFE SERVICE

GREAT WHITE HERON NATIONAL WILDLIFE REFUGE

[Based on the North American Datum of 1983]

Point	Latitude	Longitude
1	24 deg.43.8' N	81 deg.48.6' W.
2	24 deg.43.8' N	81 deg.37.2' W.
3	24 deg.49.2' N	81 deg.37.2' W.
4	24 deg.49.2' N	81 deg.19.8' W.
5	24 deg.48.0' N	81 deg.19.8' W.
6	24 deg.48.0' N	81 deg.14.4' W.
7	24 deg.49.2' N	81 deg.14.4' W.
8	24 deg.49.2' N	81 deg.08.4' W.
9	24 deg.43.8' N	81 deg.08.4' W.
10	24 deg.43.8' N	81 deg.14.4' W.
11	24 deg.43.2' N	81 deg.14.4' W.
12	24 deg.43.2' N	81 deg.16.2' W.
13	24 deg.42.6' N	81 deg.16.2' W.
14	24 deg.42.6' N	81 deg.21.0' W.
15	24 deg.41.4' N	81 deg.21.0' W.
16	24 deg.41.4' N	81 deg.22.2' W.
17	24 deg.43.2' N	81 deg.22.2' W.
18	24 deg.43.2' N	81 deg.22.8' W.
19	24 deg.43.8' N	81 deg.22.8' W.
20	24 deg.43.8' N	81 deg.24.0' W.
21	24 deg.43.2' N	81 deg.24.0' W.
22	24 deg.43.2' N	81 deg.26.4' W.
23	24 deg.43.8' N	81 deg.26.4' W.
24	24 deg.43.8' N	81 deg.27.0' W.
25	24 deg.43.2' N	81 deg.27.0' W.
26	24 deg.43.2' N	81 deg.29.4' W.
27	24 deg.42.6' N	81 deg.29.4' W.
28	24 deg.42.6' N	81 deg.30.6' W.
29	24 deg.41.4' N	81 deg.30.6' W.
30	24 deg.41.4' N	81 deg.31.2' W.
31	24 deg.40.8' N	81 deg.31.2' W.
32	24 deg.40.8' N	81 deg.32.4' W.
33	24 deg.41.4' N	81 deg.32.4' W.
34	24 deg.41.4' N	81 deg.34.2' W.
35	24 deg.40.8' N	81 deg.34.2' W.
36	24 deg.48.0' N	81 deg.35.4' W.
37	24 deg.39.6' N	81 deg.35.4' W.
38	24 deg.39.6' N	81 deg.36.0' W.
39	24 deg.39.0' N	81 deg.36.0' W.
40	24 deg.39.0' N	81 deg.37.2' W.
41	24 deg.37.8' N	81 deg.37.2' W.

42	24 deg.37.8' N	81 deg.37.8' W.
43	24 deg.37.2' N	81 deg.37.8' W.
44	24 deg.37.2' N	81 deg.40.2' W.
45	24 deg.36.0' N	81 deg.40.2' W.
46	24 deg.36.0' N	81 deg.40.8' W.
47	24 deg.35.4' N	81 deg.40.8' W.
48	24 deg.35.4' N	81 deg.42.0' W.
49	24 deg.36.0' N	81 deg.42.0' W.
50	24 deg.36.0' N	81 deg.48.6' W.
51	24 deg.43.8' N	81 deg.48.6' W.

KEY WEST NATIONAL WILDLIFE REFUGE

[Based on the North American Datum of 1983]

Point	Latitude	Longitude
1	24 deg.40.0' N	81 deg.49.0' W.
2	24 deg.40.0' N	82 deg.10.0' W.
3	24 deg.27.0' N	82 deg.10.0' W.
4	24 deg.27.0' N	81 deg.49.0' W.
5	24 deg.40.0' N	81 deg.49.0' W.

(2) When differential Global Positioning Systems data becomes available, these coordinates may be publication in the FEDERAL REGISTER to reflect the increased accuracy of such data.

[66 FR 4371, Jan. 17, 2001]

Appendix III to Subpart P of Part 922—Wildlife Management Areas Access Restrictions

Area	Access restrictions
Bay Keys	No-motor zone (300 feet) around one key; idle speed only/ no-wake zones in tidal creeks.
Boca Grande Key	South one-half of beach closed (beach above mean high water closed by Department of the Interior).
Woman Key	One-half of beach and sand spit on southeast side closed (beach and sand spit above mean high water closed by Department of the Interior).
Cayo Agua Keys	Idle speed only/ no-wake zones in all navigable tidal creeks.
Cotton Key	No-motor zone on tidal flat.
Snake Creek	No-motor zone on tidal flat.
Cottrell Key	No-motor zone (300 feet) around entire key.
Little Mullet Key	No-access buffer zone (300 feet) around entire key.
Big Mullet Key	No-motor zone (300 feet) around entire key.
Crocodile Lake	No-access buffer zone (100 feet) along shoreline between March 1 and October 1.
East Harbor Key	No-access buffer zone (300 feet) around northernmost island.
Lower Harbor Keys	Idle speed only/ no-wake zones in selected tidal creeks.

Eastern Lake Surprise	Idle speed only/no-wake zone east of highway U.S. 1.
Horseshoe Key	No-access buffer zone (300 feet) around main island (main island closed by Department of the Interior).
Marquesas Keys	(i) No-motor zones (300 feet) around three smallest keys on western side of chain; (ii) no-access buffer zone (300 feet) around one island at western side of chain; (iii) idle speed only/no-wake zone in southwest tidal creek.
Tidal flat south of Marvin Key	No-access buffer zone on tidal flat.
Mud Keys	(i) Idle speed only/no-wake zones in the two main tidal creeks; (ii) two smaller creeks on west side closed.
Pelican Shoal	No-access buffer zone out to 50 meters from shore between April 1 and August 31 (shoal closed by the Florida Game and Freshwater Fish Commission).
Rodriguez Key	No-motor zone on tidal flats.
Dove Key	No-motor zone on tidal flats; area around the two small islands closed.
Tavernier Key	No-motor zone on tidal flats.
Sawyer Keys	Tidal creeks on south side closed.
Snipe Keys	(i) Idle speed only/no-wake zone in main tidal creek; (ii) no-motor zone in all other tidal creeks.
Upper Harbor Key	No-access buffer zone (300 feet) around entire key.
East Content Keys	Idle speed only/no-wake zones in tidal creeks between southwesternmost keys.
West Content Keys	Idle speed only/no-wake zones in selected tidal creeks; no-access buffer zone in one cove.
Little Crane Key	No-access buffer zone (300 feet) around entire key.

Appendix IV to Subpart P of Part 922—Ecological Reserves Boundary Coordinates

(1) The boundary of the Western Sambo Ecological Reserve is formed by connecting in succession the points at the following coordinates:

WESTERN SAMBO

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.33.70' N.....	81 deg.40.80' W.
2	24 deg.28.85' N.....	81 deg.41.90' W.
3	24 deg.28.50' N.....	81 deg.43.70' W.
4	24 deg.33.50' N.....	81 deg.43.10' W.
5	24 deg.33.70' N.....	81 deg.40.80' W.

(2) The Tortugas Ecological Reserve consists of two discrete areas, Tortugas North and Tortugas South.

(3) The boundary of Tortugas North is formed by connecting in succession the points at the following coordinates:

TORTUGAS NORTH

Point	Latitude	Longitude
1	24 deg.46.00' N.....	83 deg.06.00' W.

2	24 deg.46.00' N.....	82 deg.54.00' W.
3	24 deg.45.80' N.....	82 deg.48.00' W.
4	24 deg.43.53' N.....	82 deg.48.00' W.
5	24 deg.43.53' N.....	82 deg.52.00' W.
6	24 deg.43.00' N.....	82 deg.54.00' W.
7	24 deg.39.00' N.....	v 82 deg.58.00' W.
8	24 deg.39.00' N.....	83 deg.06.00' W.
9	24 deg.46.00' N.....	83 deg.06.00' W.

(4) The boundary of Tortugas South is formed by connecting in succession the points at the following coordinates:

TORTUGAS SOUTH

Point	Latitude	Longitude
1	24 deg.33.00' N.....	83 deg.09.00' W.
2	24 deg.33.00' N.....	83 deg.05.00' W.
3	24 deg.18.00' N.....	83 deg.05.00' W.
4	24 deg.18.00' N.....	83 deg.09.00' W.
5	24 deg.33.00' N.....	83 deg.09.00' W.

[66 FR 4372, Jan. 17, 2001]

Appendix V to Subpart P of Part 922—Sanctuary Preservation Areas Boundary Coordinates

The boundary of each of the Sanctuary Preservation Areas (SPAs) is formed by connecting in succession the points at the following coordinates:

ALLIGATOR REEF [Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.50.98' N	80 deg.36.84' W.
2	24 deg.50.51' N	80 deg.37.35' W.
3	24 deg.50.81' N	80 deg.37.63' W.
4	24 deg.51.23' N	80 deg.37.17' W.
5	24 deg.50.98' N	80 deg.36.84' W.

Catch and release fishing by trolling only is allowed in this SPA.

CARYSFORT/SOUTH CARYSFORT REEF [Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	25 deg.13.78' N	80 deg.12.00' W.
2	25 deg.12.03' N	80 deg.12.98' W.
3	25 deg.12.24' N	80 deg.13.77' W.
4	25 deg.14.13' N	80 deg.12.78' W.
5	25 deg.13.78' N	80 deg.12.00' W.

CHEECA ROCKS [Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.54.42' N	80 deg.36.91' W.
2	24 deg.54.25' N	80 deg.36.77' W.

3	24 deg.54.10' N	80 deg.37.00' W.
4	24 deg.54.22' N	80 deg.37.15' W.
5	24 deg.54.42' N	80 deg.36.91' W.

COFFINS PATCH [Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.41.47' N	80 deg.57.68' W.
2	24 deg.41.12' N	80 deg.57.53' W.
3	24 deg.40.75' N	80 deg.58.33' W.
4	24 deg.41.06' N	80 deg.58.48' W.
5	24 deg.41.47' N	80 deg.57.68' W.

CONCH REEF [Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.57.48' N	80 deg.27.47' W.
2	24 deg.57.34' N	80 deg.27.26' W.
3	24 deg.56.78' N	80 deg.27.52' W.
4	24 deg.56.96' N	80 deg.27.73' W.
5	24 deg.57.48' N	80 deg.27.47' W.

Catch and release fishing by trolling only is allowed in this SPA.

DAVIS REEF [Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.55.61' N	80 deg.30.27' W.
2	24 deg.55.41' N	80 deg.30.05' W.
3	24 deg.55.11' N	80 deg.30.35' W.
4	24 deg.55.34' N	80 deg.30.52' W.
5	24 deg.55.61' N	80 deg.30.27' W.

DRY ROCKS [Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	25 deg.07.59' N	80 deg.17.91' W.
2	25 deg.07.41' N	80 deg.17.70' W.
3	25 deg.07.25' N	80 deg.17.82' W.
4	25 deg.07.41' N	80 deg.18.09' W.
5	25 deg.07.59' N	80 deg.17.91' W.

GRECIAN ,ROCKS [Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	25 deg.06.91' N	80 deg.18.20' W.
2	25 deg.06.67' N	80 deg.18.06' W.
3	25 deg.06.39' N	80 deg.18.32' W.
4	25 deg.06.42' N	80 deg.18.48' W.
5	25 deg.06.81' N	80 deg.18.44' W.
6	25 deg.06.91' N	80 deg.18.20' W.

EASTERN DRY ROCKS [Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.27.92' N	81 deg.50.55' W.
2	24 deg.27.73' N	81 deg.50.33' W.
3	24 deg.27.47' N	81 deg.50.80' W.
4	24 deg.27.72' N	81 deg.50.86' W.
5	24 deg.27.92' N	81 deg.50.55' W.

THE ELBOW [Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	25 deg.08.97' N	80 deg.15.63' W.
2	25 deg.08.95' N	80 deg.15.22' W.
3	25 deg.08.18' N	80 deg.15.64' W.
4	25 deg.08.50' N	80 deg.16.07' W.
5	25 deg.08.97' N	80 deg.15.63' W.

FRENCH REEF [Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	25 deg.02.20' N	80 deg.20.63' W.
2	25 deg.01.81' N	80 deg.21.02' W.
3	25 deg.02.36' N	80 deg.21.27' W.
4	25 deg.02.20' N	80 deg.20.63' W.

HEN AND CHICKENS [Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.56.38' N	80 deg.32.86' W.
2	24 deg.56.21' N	80 deg.32.63' W.
3	24 deg.55.86' N	80 deg.32.95' W.
4	24 deg.56.04' N	80 deg.33.19' W.
5	24 deg.56.38' N	80 deg.32.86' W.

LOOE KEY [Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.33.24' N	81 deg.24.03' W.
2	24 deg.32.70' N	81 deg.23.85' W.
3	24 deg.32.52' N	81 deg.24.70' W.
4	24 deg.33.12' N	81 deg.24.81' W.
5	24 deg.33.24' N	81 deg.24.03' W.

MOLASSES REEF [Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	25 deg.01.00' N	80 deg.22.53' W.
2	25 deg.01.06' N	80 deg.21.84' W.
3	25 deg.00.29' N	80 deg.22.70' W.
4	25 deg.00.72' N	80 deg.22.83' W.
5	25 deg.01.00' N	80 deg.22.53' W.

NEWFOUND HARBOR KEY [Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.37.10' N	81 deg.23.34' W.
2	24 deg.36.85' N	81 deg.23.28' W.
3	24 deg.36.74' N	81 deg.23.80' W.
4	24 deg.37.00' N	81 deg.23.86' W.
5	24 deg.37.10' N	81 deg.23.34' W.

ROCK KEY [Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.27.48' N	81 deg.51.35' W.
2	24 deg.27.30' N	81 deg.51.15' W.
3	24 deg.27.21' N	81 deg.51.60' W.
4	24 deg.27.45' N	81 deg.51.65' W.
5	24 deg.27.48' N	81 deg.51.35' W.

SAND KEY [Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.27.58' N	81 deg.52.29' W.
2	24 deg.27.01' N	81 deg.52.32' W.
3	24 deg.27.02' N	81 deg.52.95' W.
4	24 deg.27.61' N	81 deg.52.94' W.
5	24 deg.27.58' N	81 deg.52.29' W.

Catch and release fishing by trolling only is allowed in this SPA.

SOMBRERO KEY [Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.37.91' N	81 deg.06.78' W.
2	24 deg.37.50' N	81 deg.06.19' W.
3	24 deg.37.25' N	81 deg.06.89' W.
4	24 deg.37.91' N	81 deg.06.78' W.

Catch and release fishing by trolling only is allowed in this SPA.

[66 FR 4373, Jan. 17, 2001]

Appendix VI to Subpart P of Part 922—Special-Use Areas Boundary Coordinates and Use Designations

The boundary of each of the Special-Use is formed by connecting in succession the points at the following coordinates:

CONCH REEF (Research Only)—[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.56.83' N	80 deg.27.26' W.
2	24 deg.57.10' N	80 deg.26.93' W.
3	24 deg.56.99' N	80 deg.27.42' W.
4	24 deg.57.34' N	80 deg.27.26' W.
5	24 deg.56.83' N	80 deg.27.26' W.

EASTERN SAMBO (Research Only)—[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.29.84' N	81 deg.39.59' W.
2	24 deg.29.55' N	81 deg.39.35' W.
3	24 deg.29.37' N	81 deg.39.96' W.
4	24 deg.29.77' N	81 deg.40.03' W.
5	24 deg.29.84' N	81 deg.39.59' W.

LOOE KEY (Research Only)—[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.34.17' N	81 deg.23.01' W.
2	24 deg.33.98' N	81 deg.22.96' W.
3	24 deg.33.84' N	81 deg.23.60' W.
4	24 deg.34.23' N	81 deg.23.68' W.
5	24 deg.34.17' N	81 deg.23.01' W.

TENNESSEE REEF (Research Only)—[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg.44.77' N	80 deg.47.12' W.
2	24 deg.44.57' N	80 deg.46.98' W.
3	24 deg.44.68' N	80 deg.46.59' W.
4	24 deg.44.95' N	80 deg.46.74' W.
5	24 deg.44.77' N	80 deg.47.12' W.

[66 FR 4376, Jan. 17, 2001]

Appendix VII to Subpart P of Part 922—Areas To Be Avoided Boundary Coordinates

THE VICINITY OF THE FLORIDA KEYS [Reference Charts: United States 11466, 27th Edition—September 1, 1990 and United States 11450, 4th Edition—August 11, 1990]

Point	Latitude	Longitude
1	25deg.45.00'N	80deg.06.10' W
2	25deg.38.70'N	80deg.02.70' W
3	25deg.22.00'N	80deg.03.00' W
4	25deg.06.38'N	80deg.10.48' W
5	24deg.56.37'N	80deg.19.26' W
6	24deg.37.90'N	80deg.47.30' W
7	24deg.29.20'N	81deg.17.30' W
8	24deg.22.30'N	81deg.43.17' W
9	24deg.28.00'N	81deg.43.17' W
10	24deg.28.70'N	81deg.43.50' W
11	24deg.29.80'N	81deg.43.17' W
12	24deg.33.10'N	81deg.35.15' W
13	24deg.33.60'N	81deg.26.00' W
14	24deg.38.20'N	81deg.07.00' W

15	24deg.43.20'N	80deg.53.20' W
16	24deg.46.10'N	80deg.46.15' W
17	24deg.51.10'N	80deg.37.10' W
18	24deg.57.50'N	80deg.27.50' W
19	25deg.09.90'N	80deg.16.20' W
20	25deg.24.00'N	80deg.09.10' W
21	25deg.31.50'N	80deg.07.00' W
22	25deg.39.70'N	80deg.06.85' W
23	25deg.45.00'N	80deg.06.10' W

IN THE VICINITY OF KEY WEST HARBOR [Reference Chart: United States 11434, 21st Edition—August 11, 1990]

Point	Latitude	Longitude
24	24 deg.27.95' N	81 deg.48.65' W.
25	24 deg.23.00' N	81 deg.53.50' W.
26	24 deg.26.60' N	81 deg.58.50' W.
27	24 deg.27.75' N	81 deg.55.70' W.
28	24 deg.29.35' N	81 deg.53.40' W.
29	24 deg.29.35' N	81 deg.50.00' W.
30	24 deg.27.95' N	81 deg.48.65' W.

AREA SURROUNDING THE MARQUESAS KEYS [Reference Chart: United States 11434, 21st Edition—August 11, 1990]

Point	Latitude	Longitude
31	24 deg.26.60' N	81 deg.59.55' W.
32	24 deg.23.00' N	82 deg.03.50' W.
33	24 deg.23.60' N	82 deg.27.80' W.
34	24 deg.34.50' N	82 deg.37.50' W.
35	24 deg.43.00' N	82 deg.26.50' W.
36	24 deg.38.31' N	81 deg.54.06' W.
37	24 deg.37.91' N	81 deg.53.40' W.
38	24 deg.36.15' N	81 deg.51.78' W.
39	24 deg.34.40' N	81 deg.50.60' W.
40	24 deg.33.44' N	81 deg.49.73' W.
41	24 deg.31.20' N	81 deg.52.10' W.
42	24 deg.28.70' N	81 deg.56.80' W.
43	24 deg.26.60' N	81 deg.59.55' W.

AREA SURROUNDING THE DRY TORTUGAS ISLANDS [Reference Chart: United States 11434, 21st Edition—August 11, 1990]

Point	Latitude	Longitude
44	24 deg.32.00' N	82 deg.53.50' W.
45	24 deg.32.00' N	83 deg.00.05' W.
46	24 deg.39.70' N	83 deg.00.05' W.
47	24 deg.45.60' N	82 deg.54.40' W.
48	24 deg.45.60' N	82 deg.47.02' W.
49	24 deg.42.80' N	82 deg.43.90' W.
50	24 deg.39.50' N	82 deg.43.90' W.

51	24 deg.35.60' N	82 deg.46.40' W.
52	24 deg.32.00' N	82 deg.53.50' W

[66 FR 4377, Jan. 17, 2001, as amended at 66 FR 34534, June 29, 2001]

Appendix VIII to Subpart P of Part 922—Marine Life Rule [As Excerpted From Chapter 46–42 of the Florida Administrative Code]

46–42.001 Purpose and Intent; Designation of Restricted Species; Definition of “Marine Life Species.”

46–42.002 Definitions.

46–42.003 Prohibition of Harvest: Longspine Urchin, Bahama Starfish. 46–

42.0035 Live Landing and Live Well Requirements.

46–42.0036 Harvest in Biscayne National Park.*

46–42.004 Size Limits.

46–42.005 Bag Limits.

46–42.006 Commercial Season, Harvest Limits.

46–42.007 Gear Specifications and Prohibited Gear.

46–42.008 Live Rock.*

46–42.009 Prohibition on the Taking, Destruction, or Sale of Marine Corals and Sea Fans.

*—Part 42.0036 was not reproduced because it does not apply to the Sanctuary.

*—Part 42.008 was not reproduced because it is regulated pursuant to this Part 922.163(2)(ii).

46–42.001 Purpose and Intent; Designation of Restricted Species; Definition of “Marine Life Species”.—

- (1)(a) The purpose and intent of this chapter are to protect and conserve Florida’s tropical marine life resources and assure the continuing health and abundance of these species. The further intent of this chapter is to assure that harvesters in this fishery use nonlethal methods of harvest and that the fish, invertebrates, and plants so harvested be maintained alive for the maximum possible conservation and economic benefits.
- (b) It is the express intent of the Marine Fisheries Commission that landing of live rock propagated through aquaculture will be allowed pursuant to the provisions of this chapter.
- (2) The following fish species, as they occur in waters of the state and in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters, are hereby designated as restricted species pursuant to Section 370.01(20), Florida Statutes:
 - (a) Moray eels—Any species of the Family Muraenidae.
 - (b) Snake eels—Any species of the Genera Myrichthys and Myrophis of the Family Ophichthidae.
 - (c) Toadfish—Any species of the Family Batrachoididae.
 - (d) Frogfish—Any species of the Family Antennariidae.
 - (e) Batfish—Any species of the Family Ogcocephalidae.
 - (f) Clingfish—Any species of the Family Gobiesocidae.
 - (g) Trumpetfish—Any species of the Family Aulostomidae.
 - (h) Cornetfish—Any species of the Family Fistulariidae.
 - (i) Pipefish/seahorses—Any species of the Family Syngnathidae.
 - (j) Hamlet/seabass—Any species of the Family Serranidae, except groupers of the genera Epinephalus and Mycteroperca, and seabass of the genus Centropristis.
 - (k) Basslets—Any species of the Family Grammistidae.
 - (l) Cardinalfish—Any species of the Family Apogonidae.
 - (m) High-hat, Jackknife-fish, Spotted drum, Cubbyu—Any species of the genus Equetus of the Family Sciaenidae.
 - (n) Reef Croakers—Any of the species Odontocion dentex.

- (o) Sweepers—Any species of the Family Pempheridae.
 - (p) Butterflyfish—Any species of the Family Chaetodontidae.
 - (q) Angelfish—Any species of the Family Pomacanthidae.
 - (r) Damselfish—Any species of the Family Pomacentridae.
 - (s) Hawkfish—Any species of the Family Cirrhitidae.
 - (t) Wrasse/hogfish/razorfish—Any species of the Family Labridae, except hogfish, *Lachnolaimus maximus*.
 - (u) Parrotfish—Any species of the Family Scaridae.
 - (v) Jawfish—Any species of the Family Opistognathidae.
 - (w) Blennies—Any species of the Families Clinidae or Blenniidae.
 - (x) Sleepers—Any species of the Family Eleotrididae.
 - (y) Gobies—Any species of the Family Gobiidae.
 - (z) Tangs and surgeonfish—Any species of the Family Acanthuridae.
 - (aa) Filefish/triggerfish—Any species of the Family Balistes, except gray triggerfish, *Balistidae caprisus*.
 - (bb) Trunkfish/cowfish—Any species of the Family Ostraciidae.
 - (cc) Pufferfish/burrfish/balloonfish—Any of the following species:
 - 1. Balloonfish—*Diodon holocanthus*.
 - 2. Sharpnose puffer—*Canthigaster rostrata*.
 - 3. Striped burrfish—*Chilomycterus schoepfi*.
- (3) The following invertebrate species, as they occur in waters of the state and in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters, are hereby designated as restricted species pursuant to Section 370.01(20), Florida Statutes:
- (a) Sponges—Any species of the Class Demospongia, except sheepswool, yellow, grass, glove, finger, wire, reef, and velvet sponges, Order Dictyoceratida.
 - (b) Upside-down jellyfish—Any species of the Genus Cassiopeia.
 - (c) Siphonophores/hydroids—Any species of the Class Hydrozoa, except fire corals, Order Milleporina.
 - (d) Soft corals—Any species of the Subclass Octocorallia, except sea fans *Gorgonia flabellum* and *Gorgonia ventalina*.
 - (e) Sea anemones—Any species of the Orders Actinaria, Zoanthidea, Corallimorpharia, and Ceriantharia.
 - (f) Featherduster worms/calcareous tubeworms—Any species of the Families Sabellidae and Serpulidae.
 - (g) Star-shells—Any of the species *Astraea americana* or *Astraea phoebia*.
 - (h) Nudibranchs/sea slugs—Any species of the Subclass Opisthobranchia.
 - (i) Fileclams—Any species of the Genus *Lima*.
 - (j) Octopods—Any species of the Order Octopoda, except the common octopus, *Octopus vulgaris*.
 - (k) Shrimp—Any of the following species:
 - 1. Cleaner shrimp and peppermint shrimp— Any species of the Genera *Periclimenes* or *Lysmata*.
 - 2. Coral shrimp—Any species of the Genus *Stenopus*.
 - 3. Snapping shrimp—Any species of the Genus *Alpheus*.
 - (l) Crabs—Any of the following species:
 - 1. Yellowline arrow crab—*Stenorhynchus seticornis*.
 - 2. Furcate spider or decorator crab— *Stenocionops furcata*.
 - 3. Thinstripe hermit crab—*Clibanarius vittatus*.
 - 4. Polkadotted hermit crab—*Phimochirus operculatus*.
 - 5. Spotted porcelain crab—*Porcellana sayana*.
 - 6. Nimble spray or urchin crab—*Percnon gibbesi*.

7. False arrow crab—*Metoporphaphis calcarata*.
- (m) Starfish—Any species of the Class Asteroidea, except the Bahama starfish, *Oreaster reticulatus*.
 - (n) Brittlestars—Any species of the Class Ophiuroidea.
 - (o) Sea urchins—Any species of the Class Echinoidea, except longspine urchin, *Diadema antillarum*, and sand dollars and sea biscuits, Order Clypeasteroidea.
 - (p) Sea cucumbers—Any species of the Class Holothuroidea.
 - (q) Sea lillies—Any species of the Class Crinoidea.
- (4) The following species of plants, as they occur in waters of the state and in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters, are hereby designated as restricted species pursuant to Section 370.01(20), Florida Statutes:
- (a) Caulerpa—Any species of the Family Caulerpacae.
 - (b) Halimeda/mermaid’s fan/mermaid’s shaving brush—Any species of the Family Halimedaceae.
 - (c) Coralline red algae—Any species of the Family Corallinaceae.
- (5) For the purposes of Section 370.06(2)(d), Florida Statutes, the term “marine life species” is defined to mean those species designated as restricted species in subsections (2), (3), and (4) of this rule.

Specific Authority 370.01(20), 370.027(2), 370.06(2)(d), F.S. Law Implemented 370.01(20), 370.025, 370.027, 370.06(2)(d), F.S. History—New 1–1–91, Amended 7–1–92, 1–1–95.

46–42.002 Definitions.— As used in this rule chapter:

- (1) “Barrier net,” also known as a “fence net,” means a seine used beneath the surface of the water by a diver to enclose and concentrate tropical fish and which may be made of either nylon or monofilament.
- (2) “Drop net” means a small, usually circular, net with weights attached along the outer edge and a single float in the center, used by a diver to enclose and concentrate tropical fish.
- (3) “Hand held net” means a landing or dip net as defined in Rule 46–4.002(4), except that a portion of the bag may be constructed of clear plastic material, rather than mesh.
- (4) “Harvest” means the catching or taking of a marine organism by any means whatsoever, followed by a reduction of such organism to possession. Marine organisms that are caught but immediately returned to the water free, alive, and unharmed are not harvested. In addition, temporary possession of a marine animal for the purpose of measuring it to determine compliance with the minimum or maximum size requirements of this chapter shall not constitute harvesting such animal, provided that it is measured immediately after taking, and immediately returned to the water free, alive, and unharmed if undersize or oversize.
- (5) “Harvest for commercial purposes” means the taking or harvesting of any tropical ornamental marine life species or tropical ornamental marine plant for purposes of sale or with intent to sell. The harvest of tropical ornamental marine life species or tropical ornamental marine plants in excess of the bag limit shall constitute prima facie evidence of intent to sell.
- (6) “Land,” when used in connection with the harvest of marine organisms, means the physical act of bringing the harvested organism ashore.
- (7) “Live rock” means rock with living marine organisms attached to it.
- (8) “Octocoral” means any erect, nonencrusting species of the Subclass Octocorallia, except the species *Gorgonia flabellum* and *Gorgonia ventalina*.
- (9) “Slurp gun” means a self-contained, handheld device that captures tropical fish by rapidly drawing seawater containing such fish into a closed chamber.
- (10) “Total length” means the length of a fish as measured from the tip of the snout to the tip of the tail.

- (11) “Trawl” means a net in the form of an elongated bag with the mouth kept open by various means and fished by being towed or dragged on the bottom. “Roller frame trawl” means a trawl with all of the following features and specifications:
- (a) A rectangular rigid frame to keep the mouth of the trawl open while being towed.
 - (b) The lower horizontal beam of the frame has rollers to allow the trawl to roll over the bottom and any obstructions while being towed.
 - (c) The trawl opening is shielded by a grid of vertical bars spaced no more than 3 inches apart.
 - (d) The trawl is towed by attaching a line or towing cable to a tongue located above and at the center of the upper horizontal beam of the frame.
 - (e) The trawl has no doors attached to keep the mouth of the trawl open.
- (12) “Tropical fish” means any species included in subsection (2) of Rule 46–42.001, or any part thereof.
- (13) “Tropical ornamental marine life species” means any species included in subsections (2) or (3) of Rule 46–42.001, or any part thereof.
- (14) “Tropical ornamental marine plant” means any species included in subsection (4) of Rule 46–42.001. Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History—New 1–1–91, Amended 7–1–92, 1–1–95.
- 46–42.003 Prohibition of Harvest: Longspine Urchin, Bahama Starfish.— No person shall harvest, possess while in or on the waters of the state, or land any of the following species:
- (1) Longspine urchin, *Diadema antillarum*.
 - (2) Bahama starfish, *Oreaster reticulatus*. Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History—New 1–1–91, Amended 7–1–92.
- 46–42.0035 Live Landing and Live Well Requirements.—
- (1) Each person harvesting any tropical ornamental marine life species or any tropical ornamental marine plant shall land such marine organism alive.
 - (2) Each person harvesting any tropical ornamental marine life species or any tropical ornamental marine plant shall have aboard the vessel being used for such harvest a continuously circulating live well or aeration or oxygenation system of adequate size and capacity to maintain such harvested marine organisms in a healthy condition.
- Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History—New 7–1–92.
- 46–42.004 Size Limits.—
- (1) Angelfishes.—
 - (a) No person harvesting for commercial purposes shall harvest, possess while in or on the waters of the state, or land any of the following species of angelfish, of total length less than that set forth below:
 1. One-and-one-half (1 1/2) inches for:
 - a. Gray angelfish (*Pomacanthus arcuatus*).
 - b. French angelfish (*Pomacanthus paru*).
 2. One-and-three-quarters (1 3/4) inches for:
 - a. Blue angelfish (*Holacanthus bermudensis*).
 - b. Queen angelfish (*Holacanthus ciliaris*).
 3. Two (2) inches for rock beauty (*Holacanthus tricolor*).
 - (b) No person shall harvest, possess while in or on the waters of the state, or land any angelfish (Family Pomacanthidae), of total length greater than that specified below:
 1. Eight (8) inches for angelfish, except rock beauty (*Holacanthus tricolor*).
 2. Five (5) inches for rock beauty.
 - (c) Except as provided herein, no person shall purchase, sell, or exchange any angelfish smaller than the limits specified in paragraph (a) or larger than the limits specified in paragraph (b). This prohibition shall not apply to angelfish legally

harvested outside of state waters or federal Exclusive Economic Zone (EEZ) waters adjacent to state waters, which angelfish are entering Florida in interstate or international commerce. The burden shall be upon any person possessing such angelfish for sale or exchange to establish the chain of possession from the initial transaction after harvest, by appropriate receipt(s), bill(s) of sale, or bill(s) of lading, and any customs receipts, and to show that such angelfish originated from a point outside the waters of the State of Florida or federal Exclusive Economic Zone (EEZ) waters adjacent to Florida waters and entered the state in interstate or international commerce. Failure to maintain such documentation or to promptly produce same at the request of any duly authorized law enforcement officer shall constitute prima facie evidence that such angelfish were harvested from Florida waters or adjacent EEZ waters for purposes of this paragraph.

(2) Butterflyfishes.—

(a) No person harvesting for commercial purposes shall harvest, possess while in or on the waters of the state, or land any butterflyfish (Family Chaetodontidae) of total length less than one (1) inch.

(b) No person shall harvest, possess while in or on the waters of the state, or land any butterflyfish of total length greater than 4 inches.

(3) Gobies—No person shall harvest, possess while in or on the waters of the state, or land any gobie (Family Gobiidae) of total length greater than 2 inches.

(4) Jawfishes—No person shall harvest, possess while in or on the waters of the state, or land any jawfish (Family Opistognathidae) of total length greater than 4 inches.

(5) Spotfin and Spanish hogfish—

(a) No person shall harvest, possess while in or on the waters of this state, or land any Spanish hogfish (*Bodianus rufus*) of total length less than 2 inches.

(b) No person shall harvest, possess while in or on the waters of this state, or land any Spanish hogfish (*Bodianus rufus*) or spotfin hogfish (*Bodianus pulchellus*) of total length greater than 8 inches.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History—New 1–1–91, Amended 7–1–92, 1–1–95.

46–42.005 Bag limit.—

(1) Except as provided in Rule 46–42.006 or subsections (3) or (4) of this rule, no person shall harvest, possess while in or on the waters of the state, or land more than 20 individuals per day of tropical ornamental marine life species, in any combination.

(2) Except as provided in Rule 46–42.006, no person shall harvest, possess while in or on the waters of the state, or land more than one (1) gallon per day of tropical ornamental marine plants, in any combination of species.

(3) Except as provided in Rule 46–42.006, no person shall harvest, possess while in or on the waters of the state, or land more than 5 angelfishes (Family Pomacanthidae) per day. Each angelfish shall be counted for purposes of the 20 individual bag limit specified in subsection (1) of this rule.

(4)(a) Unless the season is closed pursuant to paragraph

(b), no person shall harvest, possess while in or on the waters of the state, or land more than 6 colonies per day of octocorals. Each colony of octocoral or part thereof shall be considered an individual of the species for purposes of subsection (1) of this rule and shall be counted for purposes of the 20 individual bag limit specified therein. Each person harvesting any octocoral as authorized by this rule may also harvest substrate within 1 inch of the perimeter of the holdfast at the base of the octocoral, provided that such substrate remains attached to the octocoral. (b) If the harvest of octocorals in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters is closed to all harvesters prior to September 30 of any year, the season for harvest of octocorals in state waters shall also close until the following October 1, upon notice given by the Secretary of the Department of Environmental Protection, in the manner provided in s.120.52(16)(d), Florida

Statutes.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History—New 1–1–91, Amended 1–1–95.

46–42.006 Commercial Season, Harvest Limits.—

- (1) Except as provided in Rule 46–42.008(7), no person shall harvest, possess while in or on the waters of the state, or land quantities of tropical ornamental marine life species or tropical ornamental marine plants in excess of the bag limits established in Rule 46–42.005 unless such person possesses a valid saltwater products license with both a marine life fishery endorsement and a restricted species endorsement issued by the Department of Environmental Protection.
- (2) Persons harvesting tropical ornamental marine life species or tropical ornamental marine plants for commercial purposes shall have a season that begins on October 1 of each year and continues through September 30 of the following year. These persons shall not harvest, possess while in or on the waters of the state, or land tropical ornamental marine life species in excess of the following limits:
 - (a) A limit of 75 angelfish (Family Pomacanthidae) per person per day or 150 angelfish per vessel per day, whichever is less.
 - (b) A limit of 75 butterflyfishes (Family Chaetodontidae) per vessel per day.
 - (c) There shall be no limits on the harvest for commercial purposes of octocorals unless and until the season for all harvest of octocorals in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters is closed. At such time, the season for harvest of octocorals in state waters shall also close until the following October 1, upon notice given by the Secretary of the Department of Environmental Protection, in the manner provided in Section 120.52(16)(d), Florida Statutes. Each person harvesting any octocoral as authorized by this rule may also harvest substrate within 1 inch of the perimeter of the holdfast at the base of the octocoral, provided that such substrate remains attached to the octocoral.
 - (d) A limit of 400 giant Caribbean or “pink-tipped” anemones (Genus *Condylactus*) per vessel per day.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History—New 1–1–91, Amended 7–1–92, 1–1–95.

46–42.007 Gear Specifications and Prohibited Gear.—

- (1) The following types of gear shall be the only types allowed for the harvest of any tropical fish, whether from state waters or from federal Exclusive Economic Zone (EEZ) waters adjacent to state waters:
 - (a) Hand held net.
 - (b) Barrier net, with a mesh size not exceeding 3/4 inch stretched mesh.
 - (c) Drop net, with a mesh size not exceeding 3/4 inch stretched mesh.
 - (d) Slurp gun.
 - (e) Quinaldine may be used for the harvest of tropical fish if the person using the chemical or possessing the chemical in or on the waters of the state meets each of the following conditions:
 1. The person also possesses and maintains aboard any vessel used in the harvest of tropical fish with quinaldine a special activity license authorizing the use of quinaldine, issued by the Division of Marine Resources of the Department of Environmental Protection pursuant to Section 370.08(8), Florida Statutes.
 2. The quinaldine possessed or applied while in or on the waters of the state is in a diluted form of no more than 2% concentration in solution with seawater. Prior to dilution in seawater, quinaldine shall only be mixed with isopropyl alcohol or ethanol.

- (f) A roller frame trawl operated by a person possessing a valid live bait shrimping license issued by the Department of Environmental Protection pursuant to Section 370.15, Florida Statutes, if such tropical fish are taken as an incidental bycatch of shrimp lawfully harvested with such trawl.
- (g) A trawl meeting the following specifications used to collect live specimens of the dwarf seahorse, *Hippocampus zosterae*, if towed by a vessel no greater than 15 feet in length at no greater than idle speed:
 - 1. The trawl opening shall be no larger than 12 inches by 48 inches.
 - 2. The trawl shall weigh no more than 5 pounds wet when weighed out of the water.
- (2) This rule shall not be construed to prohibit the use of any bag or container used solely for storing collected specimens or the use of a single blunt rod in conjunction with any allowable gear, which rod meets each of the following specifications:
 - (a) The rod shall be made of nonferrous metal, fiberglass, or wood.
 - (b) The rod shall be no longer than 36 inches and have a diameter no greater than 3/4 inch at any point.
- (3) No person shall harvest in or from state waters any tropical fish by or with the use of any gear other than those types specified in subsection (1); provided, however, that tropical fish harvested as an incidental bycatch of other species lawfully harvested for commercial purposes with other types of gear shall not be deemed to be harvested in violation of this rule, if the quantity of tropical fish so harvested does not exceed the bag limits established in Rule 46–42.005.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History—New 1–1–91, Amended 7–1–92, 1–1–95.

46–42.009 Prohibition on the Taking, Destruction, or Sale of Marine Corals and Sea Fans; Exception; Repeal of Section 370.114, Florida Statutes.—

- (1) Except as provided in subsection (2), no person shall take, attempt to take, or otherwise destroy, or sell, or attempt to sell, any sea fan of the species *Gorgonia flabellum* or of the species *Gorgonia ventalina*, or any hard or stony coral (Order Scleractinia) or any fire coral (Genus *Millepora*). No person shall possess any such fresh, uncleaned, or uncured sea fan, hard or stony coral, or fire coral.
- (2) Subsection (1) shall not apply to:
 - (a) Any sea fan, hard or stony coral, or fire coral legally harvested outside of state waters or federal Exclusive Economic Zone (EEZ) waters adjacent to state waters and entering Florida in interstate or international commerce. The burden shall be upon any person possessing such species to establish the chain of possession from the initial transaction after harvest, by appropriate receipt(s), bill(s) of sale, or bill(s) of lading, and any customs receipts, and to show that such species originated from a point outside the waters of the State of Florida or federal Exclusive Economic Zone (EEZ) adjacent to state waters and entered the state in interstate or international commerce. Failure to maintain such documentation or to promptly produce same at the request of any duly authorized law enforcement officer shall constitute prima facie evidence that such species were harvested from Florida waters in violation of this rule.
 - (b) Any sea fan, hard or stony coral, or fire coral harvested and possessed pursuant to permit issued by the Department of Environmental Protection for scientific or educational purposes as authorized in Section 370.10(2), Florida Statutes.
 - (c) Any sea fan, hard or stony coral, or fire coral harvested and possessed pursuant to the aquacultured live rock provisions of Rule 46–42.008(3)(a) or pursuant to a Live Rock Aquaculture Permit issued by the National Marine Fisheries Service under 50 CFR Part 638 and meeting the following requirements:
 - (1) Persons possessing these species in or on the waters of the state shall also possess a state submerged lands lease for live rock aquaculture and a Department of Environmental Protection permit for live rock culture deposition and removal or a federal Live Rock Aquaculture Permit. If the person possessing these species is not the person named in

the documents required herein, then the person in such possession shall also possess written permission from the person so named to transport aquacultured live rock pursuant to this exception.

- (2) The nearest office of the Florida Marine Patrol shall be notified at least 24 hours in advance of any transport in or on state waters of aquacultured live rock pursuant to this exception.
- (3) Persons possessing these species off the water shall maintain and produce upon the request of any duly authorized law enforcement officer sufficient documentation to establish the chain of possession from harvest on a state submerged land lease for live rock aquaculture or in adjacent Exclusive Economic Zone (EEZ) waters pursuant to a federal Live Rock Aquaculture Permit.
- (4) Any sea fan, hard or stony coral, or fire coral harvested pursuant to Rule 46-42.008(3)(a) shall remain attached to the cultured rock.

Specific Authority 370.027(2), F.S.; Section 6, Chapter 83-134, Laws of Florida, as amended by Chapter 84-121, Laws of Florida. Law Implemented 370.025, 370.027, F.S.; Section 6, Chapter 83-134, Laws of Florida, as amended by Chapter 84-121, Laws of Florida. History— New 1-1-95.22

Appendix D - Final FKNMS Designation Document

Article I. Designation and Effect

On November 16, 1990, the Florida Keys National Marine Sanctuary and Protection Act, Pub. L. 101-605 (16 U.S.C. 1433 note), became law. That Act designated an area of waters and submerged lands, including the living and nonliving resources within those waters, as described therein, as the Florida Keys National Marine Sanctuary (Sanctuary). By this revised Designation Document, the boundary of the Sanctuary is expanded to include important coral reef resources and resources in two areas known as Sherwood Forest and Riley's Hump, just beyond the westernmost portion of the statutory Sanctuary boundary.

Section 304 of the National Marine Sanctuaries Act (NMSA), 16 U.S.C. 1431 *et seq.*, authorizes the Secretary of Commerce to issue such regulations as are necessary and reasonable to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, scientific, educational, cultural, archaeological or aesthetic resources and qualities of a national marine sanctuary. Section 1 of Article IV of this Designation Document lists activities of the type that are presently being regulated or may have to be regulated in the future, in order to protect Sanctuary resources and qualities. Listing in section 1 does not mean that a type of activity will be regulated in the future, however, if a type of activity is not listed, it may not be regulated, except on an emergency basis, unless section 1 is amended, following the procedures for designation of a sanctuary set forth in paragraphs (a) and (b) of section 304 of the NMSA, to include the type of activity.

Nothing in this Designation Document is intended to restrict activities that do not cause an adverse effect on the resources or qualities of the Sanctuary or on Sanctuary property or that do not pose a threat of harm to users of the Sanctuary.

Article II. Description of the Area

The Florida Keys National Marine Sanctuary boundary encompasses approximately 2900 nm² (9,800 square kilometers) of coastal and ocean waters, and the submerged lands thereunder, surrounding the Florida Keys in Florida. The easternmost point of the Sanctuary is the northeasternmost point of Biscayne National Park and the westernmost point is approximately 15 kilometers to the west of the western boundary of Dry Tortugas National Park, a linear distance of approximately 335 kilometers. The contiguous area boundary on the Atlantic Ocean side of the Florida Keys runs south from Biscayne National Park generally following the 300-foot isobath, curving in a southwesterly direction along the Florida Keys archipelago until south of the Dry Tortugas. The contiguous area boundary on the Gulf of Mexico side of the Florida Keys runs from this southern point in a straight line to the northwest and then when directly west of the Dry Tortugas in a straight line to the north. The boundary then turns to the east and slightly south and follows a straight line to just west of Key West and then turns to the northeast and follows a straight line parallel to the Florida Keys approximately five miles to the south, and then follows the Everglades National Park boundary until Division Point where the boundary then follows the western shore of Manatee Bay, Barnes Sound, and Card Sound. The boundary then follows the southern boundary of Biscayne National Park and up its eastern boundary until its northeasternmost point. Starting just to the east of the most western boundary line of the contiguous portion of the Sanctuary there is a vertical rectangular shape area of 60 nm² just to the south.

The shoreward boundary of the Sanctuary is the mean high-water mark except around the Dry Tortugas where it is the boundary of the Dry Tortugas National Park. The Sanctuary boundary encompasses the entire Florida coral reef tract, all of the mangrove islands of the Florida Keys, and some of the sea grass meadows of the Florida Keys. The precise boundary of the Sanctuary is set forth at the end of this Designation Document.

Article III. Characteristics of the Area That Give it Particular Value

The Florida Keys extend approximately 223 miles southwest from the southern tip of the Florida peninsula. Adjacent to the Florida Keys land mass are located spectacular unique, nationally significant marine environments, including sea grass meadows, mangrove islands, and extensive living coral reefs. These marine environments support rich biological communities possessing extensive conservation, recreational, commercial, ecological, historical, research, educational, and aesthetic values which give this area special national significance. These environments are the marine equivalent of tropical rain forests in that they support high levels of biodiversity, are fragile and easily susceptible to damage from human activities, and possess high value to humans if properly conserved. These marine environments are subject to damage and loss of their ecological integrity from a variety of sources of disturbance.

The Florida Keys are a limestone island archipelago. The Keys are located at the southern edge of the Florida Plateau, a large carbonate platform made of a depth of up to 7000 meters of marine sediments, which have been accumulating for 150 million years and which have been structurally modified by subsidence and sea level fluctuation. The Keys region is generally divided into five distinct areas: the Florida reef tract, one of the world's largest coral reef tracts and the only barrier reef in the United States; Florida Bay, described as an active lime-mud factory because of the high carbonate content of its silts and muds; the Southwest Continental Shelf; the Straits of Florida; and the Keys themselves.

The 2.5 million-acre Sanctuary contains one of North America's most diverse assemblages of terrestrial, estuarine, and marine fauna and flora, including, in addition to the Florida reef tract, thousands of patch reefs, one of the world's largest sea grass communities covering 1.4 million acres, mangrove fringed shorelines, mangrove islands, and various hardbottom habitats. These diverse habitats provide shelter and food for thousands of species of marine plants and animals, including more than 50 species of animals identified under Federal or State law, as endangered or threatened. The Keys were at one time a major seafaring center for European and American trade routes to the Caribbean, and the submerged cultural and historic resources (*i.e.*, shipwrecks) abound in the surrounding waters. In addition, the Sanctuary may contain substantial archaeological resources of pre-European cultures.

The uniqueness of the marine environment draws multitudes of visitors to the Keys. The major industry in the Florida Keys is tourism, including activities related to the Keys' marine resources, such as dive shops, charter fishing and dive boats and marinas, as well as hotels and restaurants. The abundance of the resources also supports a large commercial fishing employment sector.

The number of visitors to the Keys grows each year, with a concomitant increase in the number of residents, homes, jobs, and businesses. As population grows and the Keys accommodate ever-increasing resource pressures, the quality and quantity of Sanctuary resources are increasingly threatened. These pressures require coordinated and comprehensive monitoring and researching of the Florida Keys' region.

Article IV. Scope of Regulations

Section 1. Activities Subject to Regulation

The following activities are subject to regulation under the NMSA, either throughout the entire Sanctuary or within identified portions of it or, as indicated, in areas beyond the boundary of the Sanctuary, to the extent necessary and reasonable. Such regulation may include prohibitions to ensure the protection and management of the conservation, recreational, ecological, historical, scientific, educational, cultural, archaeological or aesthetic resources and qualities of the area. Because an activity is listed here does not mean that such activity is being or will be regulated. All listing means is that the activity can be regulated, after compliance with all applicable regulatory laws, without going through the designation procedures required by paragraphs (a) and (b) of section 304 of the NMSA, 16 U.S.C. 1434(a) and (b). Further, no regulation issued under the authority of the NMSA except an emergency regulation issued with the approval of the Governor of the State of Florida may take effect in the area of the Sanctuary lying within the seaward boundary of the State of Florida if the Governor of the State of Florida certifies to the Secretary of Commerce that such regulation is unacceptable within the forty-five-day review period specified in NMSA. Detailed definitions and explanations of the following “activities subject to regulation” appear in the Sanctuary Management Plan:

1. Exploring for, developing, or producing oil, gas, and/or minerals (*e.g.*, clay, stone, sand, gravel, metalliferous ores, nonmetalliferous ores) in the Sanctuary;
2. Touching, climbing on, taking, removing, moving, collecting, harvesting, injuring, destroying or causing the loss of, or attempting to take, remove, move, collect, harvest, injure, destroy or cause the loss of, coral in the Sanctuary;
3. Drilling into, dredging or otherwise altering the seabed of the Sanctuary, except incidental to allowed fishing and boating practices or construction activities permitted by county, state or federal regulatory agencies; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary, except as authorized by appropriate permits or incidental to allowed fishing practices;
4. Discharging or depositing, within or beyond the boundary of the Sanctuary, any material that subsequently enters the Sanctuary and injures a Sanctuary resource or quality;
5. Operating water craft in the Sanctuary
 - (a) in a manner that could injure coral, hardbottoms, seagrass, mangroves, or any other immobile organism attached to the seabed,
 - (b) in a manner that could injure or endanger the life of divers, fishermen, boaters or other users of the Sanctuary,
 - (c) in a manner that could disturb marine mammals, marine reptiles, or bird rookeries;
6. Diving or boating activities in the Sanctuary including anchoring that could harm Sanctuary resources, Sanctuary property, or other users of the Sanctuary;
7. Stocking within the Sanctuary or releasing within the Sanctuary or from beyond the boundary of the Sanctuary, native or exotic species of plant, invertebrate, fish, amphibian or mammals;
8. Defacing, marking, or damaging in any way or displacing, removing, or tampering with any markers, signs, notices, placards, navigational aids, monuments, stakes, posts, mooring buoys, boundary buoys, trap buoys, or scientific equipment in the Sanctuary;
9. Removing, injuring, preserving, curating, and managing historic resources within the Sanctuary without all required state and/or federal permits;

10. Taking, removing, moving, catching, collecting, harvesting, feeding, injuring, destroying, or causing the loss of, or attempting to take, remove, move, catch, collect, harvest, feed, injure, destroy or cause the loss of any marine mammal, marine reptile, or bird within the Sanctuary, without all required state and/or federal permits;
11. Possessing, moving, harvesting, removing, taking, damaging, disturbing, breaking, cutting, spearing, or otherwise injuring any marine invertebrate, fish, bottom formation, algae, seagrass or other living or dead organism, including shells, or attempting any of these activities in any area of the Sanctuary designated as an Existing Management Area, Wildlife Management Area, Ecological Reserve, Sanctuary Preservation Area, or Special-Use Area;
12. Carrying or possessing specified fishing gear in any area of the Sanctuary designated as an Existing Management Area, Wildlife Management Area, Ecological Reserve, Sanctuary Preservation Area, or Special-Use Area except for passage through without interruption;
13. Entering and leaving any Wildlife Management Area, Ecological Reserve, Sanctuary Preservation Area, or Special-Use Area except for passage through without interruption or for law enforcement purposes;
14. Harvesting marine life as defined and regulated by the State of Florida under its marine life rule;
15. Mariculture;
16. Possessing or using explosives or releasing electrical charges or substances poisonous or toxic to fish and other living marine resources within the Sanctuary or beyond the boundary of the Sanctuary (possession of ammunition shall not be considered possession of explosives);
17. Removing and disposing of lost, out-of-season, or illegal gear discovered within the Sanctuary; removing of vessels grounded, lodged, stuck or otherwise perched on coral reefs, hardbottom, or seagrasses within the Sanctuary; and removing and disposing of derelict or abandoned vessels or other vessels within the Sanctuary for which ownership cannot be determined or for which the owner takes no action for removal or disposal; and salvaging and towing of vessels abandoned or disabled within the Sanctuary vessels or of vessels within the Sanctuary otherwise needing salvaging or towing; and
18. Interfering with, obstructing, delaying or preventing an investigation, search, seizure or deposition of seized property in connection with enforcement of the NMSA or any regulation or permit issued under the NMSA.

Section 2. Emergency Regulation

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality; or to minimize the imminent risk of such destruction, loss or injury, any activity, including any not listed in Section 1 of this article, is subject to immediate temporary regulation, including prohibition. However, no such regulation may take effect in any area of the Sanctuary lying within the seaward boundary of the State of Florida without the approval of the Governor of the State of Florida.

Article V. Effect on Leases, Permits, Licenses, and Rights

Pursuant to paragraph (c)(1) of section 304 of the NMSA, 16 U.S.C. 1434(c)(1), no valid lease, permit, license, approval or other authorization issued by any federal, State, or local

authority of competent jurisdiction, or any right of subsistence use or access, may be terminated by the Secretary of Commerce, or his or her designee, as a result of a designation, or as a result of any sanctuary regulation, if such authorization or right was in effect on the effective date of the designation (November 16, 1990 with respect to the statutory Sanctuary boundary; January 17, 2001 with respect to the revision to the Sanctuary boundary expansion made by this Revised Designation Document).

In no event may the Secretary of Commerce or his or her designee issue a permit authorizing, or otherwise approving: (1) the exploration for, development of, or production of oil, gas, or minerals within the Sanctuary; or (2) the disposal of dredged materials within the Sanctuary (except by certification in accordance with applicable National Marine Sanctuary Program regulations of valid authorizations in existence on the effective date of Sanctuary designation). Any purported authorizations issued by other authorities after the effective date of Sanctuary designation for any of these activities within the Sanctuary shall be invalid.

Article VI. Alteration of this Designation

The terms of designation, as defined in paragraph (a) of section 304 of the NMSA, 16 U.S.C. 1434(a), may be modified only by the procedures outlined in paragraphs (a) and (b) of section 304 of the NMSA, 16 U.S.C. 1434(a) and (b), including public hearings, consultation with interested federal, state, and local government agencies, review by the appropriate Congressional committees, review by the Governor of the State of Florida, and approval by the Secretary of Commerce, or his or her designee. No designation, term of designation, or implementing regulation may take effect in the area of the Sanctuary lying within the seaward boundary of the State of Florida if the Governor of the State of Florida certifies to the Secretary of Commerce that such designation or term of designation regulation is unacceptable within the forty-five-day review period specified in NMSA.

Florida Keys National Marine Sanctuary Boundary Coordinates (based on North American datum of 1983)

The boundary of the Florida Keys National Marine Sanctuary –

- (a) begins at the northeasternmost point of Biscayne National Park located at a point approximately 25 degrees 39 minutes north latitude, 80 degrees 05 minutes west longitude, then runs eastward to the point located at 25 degrees 39 minutes north latitude, 80 degrees 04 minutes west longitude; and
- (b) then runs southward and connects in succession the points at the following coordinates:
 - (i) 25 degrees 34 minutes north latitude, 80 degrees 04 minutes west longitude,
 - (ii) 25 degrees 28 minutes north latitude, 80 degrees 05 minutes west longitude,
 - (iii) 25 degrees 21 minutes north latitude, 80 degrees 07 minutes west longitude, and
 - (iv) 25 degrees 16 minutes north latitude, 80 degrees 08 minutes west longitude;
- (c) then runs southwesterly and connects in succession the points at the following coordinates:
 - (i) 25 degrees 07 minutes north latitude, 80 degrees 13 minutes west longitude,
 - (ii) 24 degrees 57 minutes north latitude, 80 degrees 21 minutes west longitude,
 - (iii) 24 degrees 39 minutes north latitude, 80 degrees 52 minutes west longitude,
 - (iv) 24 degrees 30 minutes north latitude, 81 degrees 23 minutes west longitude,
 - (v) 24 degrees 25 minutes north latitude, 81 degrees 50 minutes west longitude,
 - (vi) 24 degrees 22 minutes north latitude, 82 degrees 48 minutes west longitude,

- (vii) 24 degrees 37 minutes north latitude, 83 degrees 06 minutes west longitude,
 - (viii) 24 degrees 46 minutes north latitude, 83 degrees 06 minutes west longitude,
 - (ix) 24 degrees 46 minutes north latitude, 82 degrees 54 minutes west longitude,
 - (x) 24 degrees 44 minutes north latitude, 81 degrees 55 minutes west longitude,
 - (xi) 24 degrees 51 minutes north latitude, 81 degrees 26 minutes west longitude, and
 - (xii) 24 degrees 55 minutes north latitude, 80 degrees 56 minutes west longitude;
- (d) then follows the boundary of Everglades National Park in a southerly then northeasterly direction through Florida Bay, Buttonwood Sound, Tarpon Basin, and Blackwater Sound;
- (e) after Division Point, then departs from the boundary of Everglades National Park and follows the western shoreline of Manatee Bay, Barnes Sound, and Card Sound;
- (f) then follows the southern boundary of Biscayne National Park to the southeasternmost point of Biscayne National Park; and
- (g) then follows the eastern boundary of Biscayne National Park to the beginning point specified in paragraph (a).

The shoreward boundary of the Florida Keys National Marine Sanctuary is the mean high-water mark except around the Dry Tortugas where the boundary is conterminous with that of the Dry Tortugas National Park, formed by connecting in succession the points at the following coordinates:

- (i) 24 degrees 34 minutes 0 seconds north latitude, 82 degrees 54 minutes 0 seconds west longitude;
- (ii) 24 degrees 34 minutes 0 seconds north latitude, 82 degrees 58 minutes 0 seconds west longitude;
- (iii) 24 degrees 39 minutes 0 seconds north latitude, 82 degrees 58 minutes 0 seconds west longitude;
- (iv) 24 degrees 43 minutes 0 seconds north latitude, 82 degrees 54 minutes 0 seconds west longitude;
- (v) 24 degrees 43 minutes 32 seconds north latitude, 82 degrees 52 minutes 0 seconds west longitude;
- (vi) 24 degrees 43 minutes 32 seconds north latitude, 82 degrees 48 minutes 0 seconds west longitude;
- (vii) 24 degrees 42 minutes 0 seconds north latitude, 82 degrees 46 minutes 0 seconds west longitude;
- (viii) 24 degrees 40 minutes 0 seconds north latitude, 82 degrees 46 minutes 0 seconds west longitude;
- (ix) 24 degrees 37 minutes 0 seconds north latitude, 82 degrees 48 minutes 0 seconds west longitude; and
- (x) 24 degrees 34 minutes 0 seconds north latitude, 82 degrees 54 minutes 0 seconds west longitude.

The Florida Keys National Marine Sanctuary also includes the area located within the boundary formed by connecting in succession the points at the following coordinates;

- (i) 24 degrees 33 minutes north latitude, 83 degrees 09 minutes west longitude,
- (ii) 24 degrees 33 minutes north latitude, 83 degrees 05 minutes west longitude,
- (iii) 24 degrees 18 minutes north latitude, 83 degrees 05 minutes west longitude,
- (iv) 24 degrees 18 minutes north latitude, 83 degrees 09 minutes west longitude, and
- (v) 24 degrees 33 minutes north latitude, 83 degrees 09 minute west longitude.

Appendix E - FKNMS Advisory Council

Members	Alternates
I. Officers	
<p>Chair: Member: Bruce Popham Seat: Boating Term: 07/06 Marathon Boatyard 2059 Overseas Hwy. Marathon, FL 33050 305-743-6341 bruce@marathonboatyard.com</p>	<p>Alternate: Jack Elon Hildreth Tolley & Zirilli, P.A. P.O. Box 672 Tavernier, FL 33070 305-852-9898 Hildrethcc@yahoo.com</p>
<p>Vice-Chair Member: Ken Nedimyer Seat: Commercial Fishing (Marine/Tropical) Term: 10/06 SeaLife Tavernier, FL 33070 305-852-1623 sealife@terranova.net</p>	<p>Alternate: Vacant</p>
II. Other Non-Governmental Members	
<p>Member: Ralph Boragine Seat: Commercial Fishing (Shell/Scale) Term: 12/07 Monroe County Commercial Fishermen MCCF P.O. Box 501404 Marathon, FL 33050 305-872-9026 MCCF1@bellsouth.net</p>	<p>Alternate: Tony Iarocci Global Marine Consultants Inc. 236 Guava Avenue Grassy Key, FL 33050 305-743-7162 Fax: 305-743-2697</p>
<p>Member: Jack Curlett Seat: Citizen-at-Large (Upper Keys) Term: 08/06 Marine Max 5 Caloosa Road Key Largo, FL 33037 305-367-2727 jack.curlett@marinemax.com</p>	<p>Alternate: Vacant</p>

<p>Member: Todd Firm Seat: Diving – Upper Keys Term: 10/06 Keys Diver Snorkel Tours 99696 Overseas Hwy, Unit #1 Key Largo, FL 33037 305-451-1177 tbfirm@aol.com</p>	<p>Alternate: Scott Fowler Quiescence Diving Services 1032 Adams Drive Key Largo, FL 33037 305-451-6440 Iwatchfish@aol.com</p>
<p>Member: Richard Fortmann Seat: Citizen-at-Large (Middle Keys) (Captain Hooks Marina) 712 60th St. Gulf Marathon, FL 33050 305-743-4135 kandr@terranova.net</p>	<p>Alternate: Fran Decker Double Decker Charters 697 Copa D’Oro Marathon, FL 33050 305-849-1581 crazybuss@aol.com</p>
<p>Member: Debra Harrison Seat: Conservation & Environment (1) Term: 10/06 World Wildlife Fund 8075 Overseas Hwy Marathon, FL 33050 305-289-1010 forpanda@bellsouth.net</p>	<p>Alternate: Marci Rose Esq 818 White Street Key West, FL 33040 305-293-1881 squirerose@aol.com</p>
<p>Member: David Hawtof Seat: Citizen-at-Large (Lower Keys) Term: 10/06 1037 United Street Key West, FL 33040 305-292-7818 adiosdg@aol.com</p>	<p>Alternate: Walter Drabinski Vantage Consulting, Inc. 20844 4th Ave West Cudjoe Key, FL 33042 305-744-3440 wdrabinski@vantageconsulting.com</p>
<p>Member: Don Kincaid Seat: Diving (Lower Keys) Term: 10/06 Stars & Stripes Charters P.O. Box 6126 Key West, FL 33040 305-294-7877 donkincaid@earthlink.net</p>	<p>Alternate: Bob Jason Florida Keys Community College 937 Felton Road Key West, FL 33050 (305)-296-9081 ext 297 rsjason@aol.com</p>

<p>Member: Mark Klingbeil Seat: Recreational Fishing Term: 08/06 World Wide Sportsman 850 97th Street Ocean Marathon, FL 33050 305-664-4615 robalo@terranova.net</p>	<p>Alternate: Jim Trice 107 Valencia Drive Islamorada, FL 33036 305-664-3864 james_trice@hotmail.com</p>
<p>Member: Vacant Seat: Conservation & Environment (2) Term:</p>	<p>Alternate: Jody Thomas The Nature Conservancy P.O. Box 420237 Summerland Key, FL 33043 305-745-8402 jthomas@tnc.org</p>
<p>Member: Jerome Lorenz Seat: Research & Monitoring Term:10/07 Audubon Society 115 Indian Mound Trail Tavernier, FL 33070 305-852-5092 jlorenz@audubon.org</p>	<p>Alternate: Deborah Shaw Florida Keys Electric Cooperative 43 Lake Shore Drive Key Largo, FL 33037 debshaw@FKEC.com</p>
<p>Member: Vacant Seat: Maritime Heritage Term:</p>	<p>Alternate: Diane Silvia City of Key West Key West, FL 33040 305-292-8278 dsilvia@keywestcity.com</p>
<p>Member: Martin Moe Seat: Education Term: 10/06 Green Turtle Publications 222 Gulfview Drive Islamorada, FL 33036 305-517-9085 martin_moe@yahoo.com</p>	<p>Alternate: Bryant Diersing Key Largo Library 20 N. Ocean Drive Key Largo, FL 33037 305-853-3594 bdierring@hotmail.com</p>
<p>Member: Ken Nedimyer Seat: Commercial Fishing (Marine/Tropical) Term: 10/06 SeaLife Tavernier, FL 33070 305-852-1623</p>	<p>Alternate: Vacant</p>

sealife@terranova.net	
<p>Member: George R. Neugent Seat: Elected Official Term: ends 10/06 Monroe County Commissioner 25 Ships Way Big Pine Key, FL 33043 305-872-1678 Neugent-George@monroecounty-fl.gov</p>	<p>Alternate: Murray Nelson Monroe County Commissioner 99198 Overseas Highway Key Largo, FL 33037 305-852-7175 boccdis5@monroecounty-fl.gov</p>
<p>Member: Krueger Nicholson Seat: Tourism (Upper Keys) Term: 10/07 Outward Bound 100693 Overseas Hwy. Key Largo, FL 33037 305-394-1866 Krueger54@netzero.com</p>	<p>Alternate: Barbara Froelich DiversCity, USA 659 Colson Drive Key Largo, FL 33037 305-852-0430 Barbfronav@aol.com</p>
<p>Member: Kathleen Patton Seat: Tourism (Lower Keys) Term: 10/07 Florida Keys Discovery Key West, FL 33040 305-296-8071 keykp@aol.com</p>	<p>Alternate: Bob Holston Dive Key West 3128 N. Roosevelt Blvd. Key West, FL 33040 305-296-3823 bob@divekeywest.com</p>
<p>Member: Bruce Popham Seat: Boating Term: 07/06 Marathon Boatyard 2059 Overseas Hwy. Marathon, FL 33050 305-743-6341 bruce@marathonboatyard.com</p>	<p>Alternate: Jack Elon Hildreth Tolley & Zirilli, P.A. P.O. Box 672 Tavernier, FL 33070 305-852-9898 Hildrethcc@yahoo.com</p>
<p>Member: Robert Simonds Charter Fishing (Sports) 17131 Seagrape Lane Sugarloaf Key, FL 33044 305-745-6502 rbsfish@mindspring.com</p>	<p>Alternate: Vacant</p>

Appendix F - Maritime Heritage Resources Programmatic Agreement

Programmatic Agreement

among

The National Oceanic and Atmospheric Administration,

The Advisory Council on Historic Preservation,

and

The State of Florida

for

Historical Resource Management

in the

Florida Keys National Marine Sanctuary

NOS Agreement Code: MOA-2003-103

The Florida Keys National Marine Sanctuary (Sanctuary) was established to provide comprehensive protection to the marine environment in the Florida Keys and comprehensive management of the use of the Sanctuary and its resources, including historical resources.

The Secretary of Commerce, through the National Oceanic and Atmospheric Administration (NOAA), and in consultation with the State of Florida, developed a comprehensive management plan which facilitates multiple use of the Sanctuary resources consistent with the primary objective of resource protection.

The purpose of this Programmatic Agreement (Agreement) is to define the relative relationship of the State of Florida, as owner of all submerged cultural resources (hereafter "SCRs") (Chapter 267, Florida Statutes) located in State waters, with NOAA, and to jointly develop a policy, as represented by this Agreement, for protection and management of historic resources in the Florida Keys National Marine Sanctuary by the Co-Trustees, the State of Florida and NOAA. The Advisory Council on Historic Preservation (Council) agrees that this is a Programmatic Agreement under sections 106 and 110 of the National Historic Preservation Act and implementing regulations.

Management and protection of the historic resources in the Sanctuary shall be administered in accordance with the Florida Keys National Marine Sanctuary & Protection Act (FKNMSPA), the National Marine Sanctuaries Act (NMSA), the Abandoned Shipwreck Act (ASA) and the State regulations guiding archaeological removal of SCRs, provided they do not conflict with the federal archaeological program. Any NOAA management actions taken which are consistent with the procedures in this Agreement satisfy NOAA's Section 106 and 110 responsibilities for all individual federal undertakings affecting the historic resources within the Sanctuary.

I. REFERENCES AND AUTHORITIES

The Sanctuary was established under the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA), Public Law No. 101-605, 104 Stat. 3089 (Nov. 16, 1990). Section 5(a) of the FKNMSPA expressly provides that the Florida Keys National Marine Sanctuary be managed under all applicable provisions of the NMSA, as amended, 16 U.S.C. 1431 *et seq.* NOAA enters this Agreement pursuant to the FKNMSPA and the NMSA.

The Abandoned Shipwreck Act of 1987 (ASA), 43 U.S.C. 2101-2106, transferred title to abandoned shipwrecks on states' submerged lands to the states. Under the ASA, states are to manage the abandoned shipwrecks in a manner which protects natural resources, the shipwreck sites, and allows for appropriate public and private sector recovery of shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and sites. The State of Florida enters this Agreement pursuant to Chapter 267 of the Florida Statutes, in which title to abandoned historic resources on state-owned lands or state-owned sovereignty submerged lands is vested in the Division of Historical Resources of the Florida Department of State which is charged with the statutory responsibility of locating, acquiring, protecting, preserving, operating, and interpreting historic resources in order to foster an appreciation of Florida history and culture.

The designation of the Sanctuary does not alter the State of Florida's title and the rights of collection and disposition attendant thereto, to abandoned shipwrecks on State submerged lands. However, in the manner set forth in this agreement, upon designation NOAA and the State share co-trustee responsibilities for natural and historic resources within the State portions of the Sanctuary.

The Abandoned Shipwreck Act Guidelines, 55 Fed. Reg. 50116 (December 4, 1990; ASA Guidelines), provide advice to the states and federal agencies on how to effectively manage abandoned shipwrecks on submerged lands under their ownership or control. The ASA Guidelines provide for private sector participation in shipwreck research projects, and recovery of shipwrecks when such activities are in the public interest.

II. DEFINITIONS

As used in this Agreement the following terms have the meanings stated.

Adverse Effect - an effect on a site listed in or eligible for inclusion in the National Register that may diminish the integrity of the property's location, design, setting, materials, workmanship, feeling or association, as set forth in 36 CFR Part 800.9, Protection of Historic and Cultural Properties.

Archaeological Recovery - A process of systematic artifact recovery and mapping of shipwreck sites

Artifact - an object made or manipulated by man. Artifacts commonly found at archaeological sites may have one or more of the following qualities:

1. Historic - an object associated with historical events;
2. Aesthetic - a work of art or craft;
3. Religious - iconic, ceremonial;
4. Functional - a tool, utensil, etc.;
5. Modified Commodity;
6. Food Product Used For Subsistence - butchered animal bones, seeds, corn cobs, etc.

Artifact Scatter Pattern - The stratigraphic and horizontal distribution of scattered artifacts, ballast deposits, and ship remains which archaeologically documents the events surrounding the sinking and progressive disintegration of a shallow water shipwreck site.

Commercial Salvage - the search for and recovery of shipwrecks artifacts using archaeological recovery techniques and historical documentation to maximize the intrinsic value of the finds. It is to be distinguished from treasure hunting which involves recovery without regard for archaeological context and historical significance.

Crafted Items - materials made of metals, stones or other materials that have functional, aesthetic, cultural, historical or religious significance or value.

Debris Field - generally referring to the area of artifacts from shipwrecks outside of shallow waters where artifacts are scattered and deposited through: (1) the wrecking or sinking of a

vessel; (2) natural occurrences such as currents or storms; (3) salvage activities; and (4) other processes.

Duplicative Artifacts - a group of artifacts that are similar or identical in nature.

Historical - possessing historical, cultural, archaeological, or paleontological significance, including sites, structures, districts, and objects significantly associated with or representative of earlier people, cultures, and human activities and events.

Historical Association - the inter-relationship of discovered objects to one another and to their surrounding environment, and which provide the cultural context of the site.

Historical Interest - capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific and scholarly techniques such as controlled collection, analysis, interpretation and explanation.

Historical Resource or Historic Property - any material remains of human life or activities which are at least 50 years of age, and which are of historical interest.

Identical Artifacts - artifacts made of identical material, of same content and weight, made in the same mold, having the same marks, stamps, designs. They are often manufactured assembly-style with machinery.

In Situ - A Latin term meaning "in the original position."

Material Remains - physical evidence of human habitation, occupation, use or activity, including the site, location or context in which such evidence is situated

Modified Raw Materials - commodities that had been reduced to a concentrated state. Such items indicate cultural activity in the shape, size, markings and content of the artifact. This includes ingots, pigs and bullion.

Primary Archaeological Deposit - a shipwreck artifact assemblage stabilized by *in situ* ballast, hull structure and overlying bottom deposits, or a combination thereof, which defines the original location and orientation of the bulk of a historic shipwreck's material remains. These deposits represent non-random distribution patterns that include personal effects, cargo, and ship's supplies reflecting human behavior in different shipboard activity areas.

Raw Materials - commodities that are in a natural state save for marks from cutting, breaking, or separating for transport. Such items are of historical interest due to tool marks, use and wear marks or patterns, size breakdown for transport, metal or mineral composition.

Secondary Archaeological Deposit - scattered artifacts derived from the break-up of a vessel following its sinking and progressive break-up of the hull under prevailing local hydrological conditions. The contextual associations within these derived artifacts are largely determined by oceanographic variables (wind, waves and currents) within a short time following the sinking of the vessel.

Similar Artifacts - artifacts made from the same materials for the same functional purpose. These artifacts may vary slightly in composition, weight, size, stamps and marks, wear patterns, color, design, etc. These may often be items made by handcraft.

Submerged Cultural Resource (SCR) - A historic resource or historic property that is under water.

Tertiary Archaeological Deposit - artifacts transported from their original position on the sea floor through continual re-deposition within the regular erosion sedimentation cycle characteristic of shallow off-shore coastal processes.

III. MANAGEMENT OF HISTORIC SANCTUARY RESOURCES

NOAA and the State of Florida agree that the comprehensive management plan for the Florida Keys National Marine Sanctuary should have uniform policies and regulations for management of resources throughout the Sanctuary which are consistent with the provisions of the NMSA, the ASA, and the ASA Guidelines. The Sanctuary will be managed to protect natural and historical resources, including abandoned shipwrecks, for present and future generations. The management will also facilitate access for research (NMSA), education (NMSA), commercial salvage (ASA) and recreational enjoyment (NMSA) in a manner which is consistent with the primary objective of resource protection while recognizing that the discovery and protection of historical submerged cultural resources may require their excavation and removal.

The management plan for the Sanctuary does not terminate valid federal admiralty rights to certain shipwrecks that were in existence prior to the designation of the Sanctuary by Congress on November 16, 1990, pursuant to valid orders of Federal Admiralty Courts.

A. Inventory and Documentation of Historical Shipwrecks

1. The survey and inventory of SCRs, including historical shipwrecks, is necessary for proper SCR management. NOAA and the State of Florida will seek all appropriate public and private means of continuing to survey the Sanctuary and prepare a shipwreck inventory of all known shipwrecks and other SCR sites within the Sanctuary.
2. Information obtained from literary research, survey and research permit reports, site maps and photographs shall be used to supplement the shipwreck inventory. The shipwreck inventory will provide a database to aid resource managers in proper management of historical resources within the Sanctuary. All shipwrecks shall also be reported to the Florida Site File at the Florida Division of Historical Resources. The shipwreck inventory shall, at a minimum, contain the following information:
 - a. Popular name, and when known, the vessel name, if different;
 - b. Vessel size, type, and age;
 - c. When known, the wreck date and function at the time of the wreck incident;
 - d. Location, including whether it is in a zoned area, or areas of coral, seagrass or other

- natural/historical significance;
- e. The integrity and degree of dispersal of the shipwreck;
 - f. Whether it is buried or encrusted in coralline formations;
 - g. Whether it is listed in or eligible for listing in the National Register of Historic Places, or is eligible for listing, or is a National Historic Landmark;
 - h. The site form recorded in the Florida Site File; and
 - i. Whether the site is State owned, or subject to pre-existing rights of access under admiralty law.
3. Any newly discovered shipwrecks or any new information pertaining to listed shipwrecks brought to the attention of NOAA or the State of Florida shall immediately be included in the shipwreck inventory, and where appropriate, the Florida Site File. NOAA and the State of Florida shall annually review the progress of the shipwreck inventory and shall make recommendations for the following year's work.
 4. All information relating to each vessel including field notes, historical information, photographs, videotapes, site maps, drawings, inventory forms, and reports shall be maintained together and be deposited, when possible, in both the NOAA central repository and the Florida Site File. All such documentation shall be available to the public for interpretive and educational purposes.

B. Resource Protection

NOAA and the State of Florida agree that in order to protect natural and historic sanctuary resources, the Sanctuary regulations will prohibit the unauthorized removal or injury of historical and natural resources. Applications for permits involving activities which may injure or adversely affect historical resources will be reviewed by the State Historic Preservation Office, and NOAA. Permits which strictly adhere to the Sanctuary regulations, and this SCR Agreement are also deemed to be in compliance with section 106 of the National Historic Preservation Act, and do not require further approval of the Advisory Council on Historic Preservation. Permits which are outside of the scope of this SCR Agreement, in whole or in part, are subject to section 106 review.

C. Public Access

1. NOAA and the State of Florida agree to allow public access to historic resources which does not harm or adversely affect the natural or historic qualities of these resources. Sport diver access to publicly-owned shipwrecks having recreational value may be facilitated through the placement of marker buoys and anchor moorings and through the distribution of information at dive shops and marinas.
2. NOAA and the State of Florida agree that generally, any person should be able to freely and without a permit dive on, photograph, or otherwise use and enjoy publicly-owned shipwrecks, including historical shipwrecks and shipwrecks whose historical significance has not yet been evaluated, provided that the use or activity does not involve disturbing or removing parts or portions of the shipwreck, its immediate environment, coral, seagrass and other natural resources.
3. NOAA and the State of Florida agree that there may be instances in which access to certain

shipwrecks should be limited. Decisions to limit, monitor, or prohibit public access to shipwrecks shall be made on a case by case basis, be practical and fairly administered. NOAA and the State of Florida may seek comments from various interested groups prior to imposing restrictions on public access to shipwrecks. Generally, public access to shipwrecks shall be regulated, including zoning, when:

- a. A shipwreck is extremely fragile and in danger of collapsing;
 - b. A shipwreck is suffering extensive deterioration or attrition due to prior unregulated access;
 - c. A permittee who is recovering a shipwreck under a valid permit requests that access be regulated during the term of the permit;
 - d. A shipwreck site presents an unacceptable risk to human safety and/or the visitor does not assume full responsibility for his or her safety; or
 - e. A shipwreck is subject to sovereign immunity and the applicable Federal Government agency or foreign nation provides instructions on regulating public access to the shipwreck. In the absence of specific instructions from the applicable sovereign, under customary international law, access by any U.S. national to shipwrecks entitled to sovereign immunity is prohibited. When a sovereign grants permission, it generally limits access to named individuals for specified purposes. As a matter of policy, the U.S. Navy does not abandon its vessels and permission generally is not given to access, or salvage, sunken Navy vessels.
4. NOAA and the State of Florida agree that public access to historical resources removed from the Sanctuary shall be maintained through curation and display agreements consistent to the maximum extent practicable with 36 CFR Part 79. The Florida Division of Historical Resources has agreed to be an approved curation facility.

D. Education

1. NOAA and the State of Florida agree that in order to responsibly manage historical resources in the Sanctuary, a public education program shall be developed to facilitate understanding of these resources, their significance in maritime history, and the importance of their preservation.
2. Public education will be facilitated through public workshops, field trips, and volunteer projects.
3. NOAA and the State of Florida shall work toward establishing a system of underwater parks and underwater shipwreck trails where public access shall be encouraged. Recovery shall be prohibited in these areas.
4. The volunteer coordinator will develop an educational program for public volunteers to participate in gathering historical information for the shipwreck inventory.
5. To the extent practicable, recovered artifacts may be placed in museums for public display and interpretation. Museums shall also develop interpretive programs that help illustrate the background and history of the recovered artifacts.

E. Permits

1. NOAA and the State of Florida agree that non-intrusive surveys of historical resources are encouraged but will not require a survey/inventory permit. However, no archaeological research/recovery permit will be granted unless and until the applicant has completed the survey/inventory process successfully or can otherwise demonstrate his or her professional abilities and that research/recovery is in the public interest.
2. Consistent with the policies of the National Marine Sanctuary Program and the Federal Archaeological Program, NOAA and the State of Florida prefer that certain SCRs are preserved in-situ while others should be recovered pursuant to research/recovery permits. Upon proper research and recovery, under the ASA there is also a public interest in the deaccession or transfer of certain SCRs consistent with this agreement and implementing guidelines. Because historic resources are an irreplaceable non-renewable resource, where public access to artifacts, examination, and historic research can be facilitated without removal, they should remain in the sanctuary for research, education and the viewing enjoyment of the public for present and future generations, unless removal is in the public interest as determined by the criteria prescribed in this agreement. For example, a public interest for removal may be present for artifacts imbedded in submerged land as such artifacts cannot be directly examined or physically displayed to the public without removal.
3. Requests for the archaeological recovery of historic shipwrecks and their associated artifacts shall be jointly reviewed and approved by NOAA and the State of Florida in accordance with this agreement and the permitting procedures found in the FKNMSPA implementing regulations, 15 CFR Part 929. Deaccession/transfer are for commercial salvage and have been determined to be special use permits and are therefore also subject to the requirements and conditions for special use permits found in 15 CFR § 929.166(d). If consensus between the State of Florida and NOAA on deaccession/transfer is not reached, then the State may, without a special use permit, exercise its rights of ownership of SCRs in State waters and independently determine how SCRs owned by the State shall be deaccessioned or transferred pursuant to current state law.
4. The proposed recovery activity must be in the public interest and should, at a minimum, further archaeological knowledge. For example, it should facilitate research, education, public access, or other management objectives for the Sanctuary, the ASA, and the ASA Guidelines. The decisions will be made on a case-by-case basis by weighing and balancing the values and uses a particular shipwreck may have, the potential benefits to be derived from the proposed recovery activity, and the potential adverse effects of the proposed recovery activity. Only those public and private sector recovery activities that are in the best interests of the public should be authorized. To help determine whether a proposed public or private sector activity is in the best interest of the public, in addition to the factors/criteria in the Sanctuary regulations and elsewhere in this Agreement, consistent with the ASA guidelines, NOAA and the State will also consider the following:
 - a. Is the SCR owned by the State; or is it subject to sovereign immunity or other sovereign interest, i.e., Florida, U.S., or Foreign government? What is the preference of the sovereign owner of the SCR as to recovery? What disposition will facilitate the greatest public access to the artifacts? Will the proposed recovery add to the pool of artifacts available to sovereign owner for public loan and display?
 - b. If the SCRs can be identified without excavation and recovery, what are the SCRs' current and potential value and uses? Is recovery consistent with those values and uses? Will it enhance those values and uses? If it can be determined what the SCRs are, will recovery irrevocably damage or destroy any of those values and uses?

- c. Will the proposed recovery result in the acquisition of new historical information or verify historical documentation?
 - d. Is the SCR threatened? Is it being damaged or destroyed by natural processes (such as erosion), or by human activity (intentional or unintentional)? Is the threat imminent and unavoidable and will the area be restored to its original condition?
 - e. Will recovery impede navigation?
 - f. If applicable, is the SCR listed in or eligible for inclusion in the National Register of Historic Places? Is it a National Historic Landmark?
 - g. Will the proposed recovery result in a nomination to the Secretary of Interior to list the SCR in the National Register or result in a recommendation for designation as a National Historic Landmark?
 - h. Will the area be restored to its original condition?
5. The permit applicant, shall employ a project archaeologist or anthropologist who must meet, at a minimum, the following qualifications to carry out the activity:
- a. Hold a graduate degree in anthropology or archaeology, or equivalent training and experience;
 - b. Completed at least 12 months of experience in research concerning archaeological resources of the pertinent period, meaning that applicants proposing to study historic shipwrecks should have one year of experience in historic shipwreck research, etc.;
 - c. Demonstrate the ability to carry out research to completion, as evidenced by timely completion of theses, research reports, or similar documents; and
 - d. Completed at least 16 months of professional experience and/or specialized training in archaeological field, laboratory, or library research, administration, or management, including at least 4 months experience and/or specialized training in the kind of activity being proposed.
6. The project archaeologist or anthropologist must supervise all permitted activities and participate in all recovery operations, assist permittee in the compilation of data collected relating to the site and the recovered artifacts in an acceptable form for the annual and final reports, ensure that all on site data is properly collected, assist in on site mapping of significant features such as articulated structures, ballast concentrations, cannon and anchor features, etc. This requirement shall not require the continuous physical presence of the project archaeologist or anthropologist at the recovery site.
7. Permit applications to recover historical resources shall, at a minimum, include the following information:
- a. A research plan describing in detail specific research objectives;
 - b. A statement of the project's research significance;

- c. A detailed operational plan including description of the proposed methods to be used for excavation, recovery, and storage of artifacts and related materials on site;
 - d. An analysis of the extent and nature of potential environmental impacts to sanctuary resources;
 - e. A plan for site restoration and remediation;
 - f. A statement of compliance with the Federal Archaeological Program Executive Order 11593 and federal statutes cited therein, and implementing regulations and guidelines;
 - g. A signed agreement with an appropriate conservation facility detailing a plan for the conservation of artifacts consistent with federal law (36 CFR Part 79);
 - h. A signed agreement with a repository, i.e., museum, archaeological center, laboratory or storage facility managed by a university, college, museum, other educational or scientific institution, Federal, State or local government agency, to provide professional, systematic and accountable curatorial services on a long-term basis consistent with federal law (36 CFR Part 79). The Florida Department of State, Division of Historical Resources will provide professional, systematic and accountable curatorial services on a long-term basis if the permittee is unable to secure any other repository. Agreements shall, at a minimum, include:
 - 1) A statement that identifies who owns and has jurisdiction over the collection;
 - 2) A statement of work to be performed by the repository, including how the artifacts will be stored, assessed, preserved, maintained, exhibited, and conserved; and
 - 3) A statement of the responsibility of the permittee.
 - i. A plan for the storage and public availability of records related to the research project and the artifacts;
 - j. A separate statement of the professional qualifications for each personnel member who will conduct the activities involved in the project, signed and certified by that personnel member; and
 - k. Any other information that may be determined necessary on a case-by-case basis.
8. The permittee shall submit a final report detailing the research plan, methodologies, field operations, and research findings.
9. A permittee authorized to excavate and recover an historical shipwreck may be required as a condition of the permit to:
- a. Make presentations on the results of the recovery activity and the archaeological findings in public forums;

- b. Prepare scientific and non-technical, popular publications; and
 - c. Make artifacts and other materials recovered from the shipwreck available for future study, public interpretation and public exhibition.
10. NOAA or the State of Florida may periodically monitor permitted recovery activities to ensure that they are in compliance with all terms and conditions of the permit.
 11. NOAA or State of Florida officials who monitor permitted activities shall have the authority to immediately suspend the permit if it appears the activity is not in compliance with the conditions and terms of permit. Once work is suspended, work may not resume until NOAA and the State have conducted a thorough review and notified the permittee of their findings. Notwithstanding the above, a permittee who has been the subject of such an emergency suspension will be entitled to notice and hearing in accordance with NOAA regulations and the Administrative Procedure Act.
 12. Any person applying for a permit must demonstrate their financial ability for the proposed activity. In cases where NOAA and the State are concerned about the financial ability to complete the project, a performance bond or other security to cover costs associated with the recovery, conservation and final report may be required in order to approve the permit. The terms of the performance bonds shall be deemed fulfilled when the recovery activity is completed in compliance with the permit, the recovered items are properly conserved and analyzed, and the final report submitted pursuant to subparagraph (E)(8) is jointly reviewed and approved by NOAA and the State of Florida.
 13. The permittee, at his or her expense, shall provide secure storage of artifacts. NOAA and State approval of the storage facility may include the waiver of the insurance requirements.

F. Survey/Inventory Permits

1. NOAA and the State of Florida agree that to adequately protect historical resources within the Sanctuary, it will be necessary to develop a detailed understanding of the number, nature, location, and historical significance of shipwrecks in the Sanctuary.
2. To assess the number, nature, location, and historical significance of shipwrecks in the Sanctuary, non-intrusive surveys of historical resources are encouraged.
3. Applications to conduct surveys shall contain a description of the methodology to be employed. Preference shall be given to applications for survey/inventory permits that propose employing superior scientific methodologies and techniques, i.e., the use of magnetometers, side-scan sonar, subbottom profilers, and remotely operated vehicles, if appropriate for the area being surveyed. No more than one permit will be issued for a particular site for a particular period of time. The duration of permits should not exceed five years.
4. Authorized survey activities shall be conducted according to the following minimum requirements:
 - a. Surveys should be conducted systematically, with sufficiently close lane spacing to provide accurate, detailed coverage of the survey area;

- b. Surveys should be conducted by a team that includes, at a minimum, persons trained or experienced in the conduct of marine surveys, the use of remote sensing equipment, and the examination and analysis of remote sensing readings for the purpose of identifying shipwrecks.
 - c. The location of a shipwreck should be recorded on a map using a standard coordinate system.
2. All SCRs located during a remote-sensing survey should be ground-truthed through seabed inspection, either by remotely operated vehicle or divers. Shipwrecks should be examined to determine the nature, extent and integrity of the wrecked vessel, surviving cargo, and associated scattered wreckage, and to locate any visible human remains.
3. SCRs shall be examined in a non-destructive and non-disturbing manner. Determinations of a shipwreck's type, age, condition and, when possible, specific identity shall be made without test excavations or removal of artifacts or other materials.
4. When test excavations are necessary or artifacts or other materials must be removed, i.e., if the shipwreck is embedded or encrusted, the amount to be excavated or removed shall be as limited as possible to make evaluations, and be done using archaeological methods. Any artifacts or other materials recovered from historic shipwrecks shall be conserved by a nautical conservator.
5. All tapes, equipment readings, field notebooks, and logs generated during surveys shall be collated and archivally saved for future study.
6. Survey reports shall be prepared and published that describe the areas surveyed, survey methods used and the results of the survey. Copies of the reports shall be submitted to NOAA and the State of Florida.

G. Research/Recovery Permits

1. NOAA and the State of Florida agree that archaeological research or recovery involving excavation and removal of SCRs, or other intrusive activities is prohibited, except as authorized and strictly regulated by a research/recovery permit under this section or a deaccession/transfer permit issued pursuant to section H.
2. Based upon the need to protect natural and historical resources, and the potential use of the resource for research, education, recreation, or other public or private uses, use of historic resources *in situ* is preferred if no public interest for their removal exists as determined by the criteria prescribed in this agreement.
3. Recovery of historical resources may be appropriate if NOAA and the State of Florida determine that such activity is in the public interest and that the removal of historical resources may be necessary or appropriate to protect the resource, preserve historical information and/or fulfill other NMSA purposes, such as land based public access, research, education, and appreciation.
4. Recovery of historical resources will only be permitted in conjunction with a plan of research which preserves the historic information for public use.
5. NOAA and the State of Florida will jointly determine whether intrusive research/recovery should be permitted on a case by case basis, weighing and balancing the values and uses a particular

shipwreck may have, the potential public benefits to be derived from the proposed recovery, and the potential adverse effects to be caused by the proposed activity. Only those recovery activities for which a public interest is demonstrated shall be authorized.

6. To determine whether a proposed recovery activity is in the public interest, NOAA and the State of Florida shall, at a minimum, consider the following in addition to those previously enumerated public interest criteria:
 - a. The shipwreck's current and potential future values and uses and whether the proposed recovery is consistent with or enhances such values and uses;
 - b. The archaeological or historical significance of the shipwreck site;
 - c. The structural integrity of the shipwreck site and the potential adverse effects that may result from the proposed recovery; and
 - d. The environmental impacts of the proposed recovery activity.
2. For any research/recovery activity proposed within the Sanctuary, the artifacts and material remains that are recovered from the shipwreck site shall remain public resources of the sovereign owner, unless transfer of title has occurred pursuant to a deaccession/transfer permit issued by the sovereign owner as described in section H.

H. Deaccession/Transfer Permits

1. NOAA and the State of Florida agree that based upon the potential use of historical resources for research, maintaining recovered non-deaccessed resources together at one location as a collection is preferred. However, agreements for the curation and display of recovered non-deaccessed historical resources may provide for distribution of artifacts in order to fulfill resource protection, research, education or other purposes of the Sanctuary.
2. The following types of artifacts are historical resources and shall remain Sanctuary resources and shall not be unconditionally transferred to the private sector, unless the NOAA Marine Archaeologist and the State Archaeologist (NOAA/State Archaeologists) determine that the artifact is no longer of historical interest pursuant to paragraphs 11-13:
 - a. All portions of shipwrecks, which are of archaeological interest and at least 50 years old, including, but not limited to, armaments, apparel, tackle, and cargo;
 - b. Any material remains, if they are at least 50 years old and reflect past human life or activities, or have social, cultural, archaeological, aesthetic, or religious significance with regard to past human life or activities, found within or as part of a shipwreck, in the debris field of a shipwreck, or in an historical context. This includes, but is not limited to, any portion or piece of crafted items, modified raw materials, natural state raw materials, food products, and paleontological remains.
3. NOAA and the State of Florida agree that there may be instances in which certain historical resources are no longer of historical interest and, therefore, are available for unconditional transfer into private ownership.

4. NOAA and the State of Florida agree that if the NOAA/State Archaeologists determine that an object is not of historical interest it will be available to the party that recovered it pursuant to a valid research/recovery permit.
 5. NOAA and the State of Florida agree that if certain artifacts or portions of a collection of artifacts become available for transfer to the private sector, all of the artifacts shall have first been conserved, analyzed, interpreted in a published report, and in each instance, representative samples retained for research, education, or public display.
 6. NOAA and the State of Florida agree that transfer of title to artifacts transferrable to a permittee will occur only after field operations and laboratory analysis for the preceding field season are completed, and the final report for that field season is approved by the NOAA/State Archaeologists. Consistent with the Secretary of State's directive, such decisions by NOAA and the State will be made within 60 days, or the State will make a decision independent of NOAA pursuant to condition 14 below.
 7. NOAA and the State of Florida agree that to the extent possible, the items transferred should be preserved and maintained as an intact collection and should be made available for future study, public interpretation and exhibition.
 8. NOAA and the State of Florida agree that as a condition of transfer of ownership of artifacts, information on the recovery activity and the archaeological findings shall be disseminated by the permittee to the scientific community and the public.
 9. NOAA and the State of Florida agree that after an artifact has been conserved, analyzed and interpreted in a published report, the NOAA/State Archaeologists may determine that the significant historical information has been preserved and that the artifact is no longer necessary for providing additional significant scientific or humanistic understanding of past human behavior, cultural adaptation, and related topics. In such an instance, the artifact may become available for transfer to the private sector.
 10. NOAA and the State of Florida agree that the following items if determined by the NOAA/State Archaeologists to be randomly deposited and found outside of a shipwreck, shipwreck debris field, or historical association and determined by the NOAA/State Archaeologists to have no future potential for indicating any hitherto unknown or indefinite historical resource, shall not be of historical interest and may be transferred to the private party that recovered it under the terms of a valid permit. Such items include:
 - a. unworked minerals and rocks;
 - b. modified raw materials (ingots, bullion, pigs);
 - c. coins, gems, projectiles.
- To determine whether the artifact may be available for transfer to the private sector, the NOAA/State Archaeologists shall consider the factors listed in paragraphs 11-13.
11. The following criteria shall be applied to determine whether an artifact is of historical significance:
 - a. Items with no archaeological association are usually of low historical interest;

- b. An intact collection is usually of higher historical value than unrelated artifacts;
 - c. Identical artifacts are usually of low historical interest when a representative sample is retained in public ownership;
 - d. Similar artifacts are usually of low historical interest when a sample representing all types is retained in public ownership;
 - e. Items of unmodified raw material are usually of low historical interest when a sample representing the full range of variation is retained in public ownership;
 - f. Items of modified raw material are usually of moderate historical interest;
 - g. Items that are rare or unique are of high historical interest;
 - h. Items that have future potential for archaeological, historical, cultural, or scientific research are of high historical interest.
12. The NOAA/State Archaeologists shall determine the final disposition of artifacts as follows:
- a. Certain artifacts of high historical interest, or overriding cultural or scientific importance are not available for transfer of title;
 - b. All artifacts are available for loan or other uses short of ownership as means of generating revenue provided the permit conditions have been satisfied and artifacts are properly cared for;
 - c. Items that are recovered illegally, or in violation of a permit or condition thereof are not available for transfer of title;
 - d. Artifacts of low historical interest are available for transfer of title to the permittee in accordance with the provisions set forth in this agreement for the disposition of recovered SCRs.
13. The decision to transfer title is to be made by the NOAA/Florida Archaeologists pursuant to the following criteria:
- a. Items of low historical interest regardless of age may be transferred;
 - b. Items greater than fifty (50) years of age and having moderate historical interest may be transferred provided that no such artifacts shall be conveyed until all conditions of a research/recovery/transfer permit have been satisfied and representative samples have been retained;
 - c. Items of high historical interest shall not be transferred.
 - d. If the guidelines which are subsequently developed and recommended to State, NOAA, and the Advisory Council on Historic Preservation are determined by the State to be inadequate to sufficiently address the State's interest in the management of State SCRs, then it is understood by the Parties that no sanctuary Special Use Permit will be required, and the State will, consistent with condition H.14 and independent of NOAA, dispose of State SCRs pursuant to current State law.

14. If NOAA and the State are unable to reach consensus on the deaccession/transfer pursuant to a Special Use permit under this Agreement, then the State may, without a Special Use Permit, exercise its rights of ownership of SCRs in State waters and independently determine how SCRs owned by the State shall be deaccessioned or transferred pursuant to current state law. The Secretary of State does not by this Agreement divest the State of its ownership and the rights attendant thereto of SCRs located in State waters and accordingly retains the authority to dispose of SCRs recovered under this Agreement.

IV. MODIFICATION

This Agreement may be modified by agreement of the signatories. All modifications must be in writing and executed by the signatories in the same manner as this agreement.

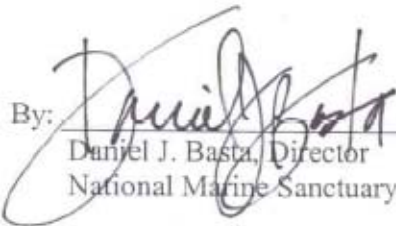
V. OTHER PROVISIONS

1. Upon request by the public the Council will review specific NOAA management activities with respect to compliance with federal historic preservation law. Upon such review NOAA is required to review such specified activities and respond to the Council. The Council will report its findings to the public, to the requestor, and to the State of Florida.
2. Every two (2) years, NOAA shall provide to the Council a brief report on the implementation of this agreement. The report will summarize activities at the Sanctuary, describe the condition of known historic properties, including any changes since the last report, and discuss any proposed changes in procedures to improve implementation of this agreement. The Council will supply NOAA's report and its own findings to the State of Florida.
3. In the event that this programmatic agreement is terminated, NOAA is not relieved of its responsibilities to comply with parts 36 CFR Parts 800.4 - 800.6 with regard to federal undertakings within the Sanctuary.
4. NOAA's and the State's responsibilities under this agreement are subject to the availability of appropriated funds.

VI. PERIOD

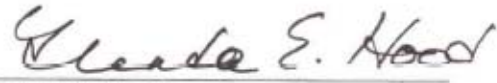
This Agreement shall be effective for five years. NOAA will re-propose the SCR Agreement and the corresponding regulations in their entirety. The State will have the opportunity to review the management plan and regulations, in their entirety, and indicate if any or all of its terms are unacceptable in which case the unacceptable terms shall not take effect in state waters.

ACCEPTED AND APPROVED FOR THE
U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION

By: 
Daniel J. Basta, Director
National Marine Sanctuary Program

Date: 1/9/04

ACCEPTED AND APPROVED FOR THE
STATE OF FLORIDA
DEPARTMENT OF STATE

By: 
Glenda E. Hood
Secretary of State

Date: 3-9-04

ACCEPTED AND APPROVED FOR THE
ADVISORY COUNCIL ON HISTORIC
PRESERVATION

By: 
John Fowler
Executive Director

Date: 2/11/04

Appendix G - Vessel Operations/PWC Management Regulatory Alternatives

1. Status Quo - No action beyond activities implemented in other action plans related to PWC use (e.g. additional WMAs, concentrated nearshore enforcement, boater-education initiatives).
2. In addition to the existing idle speed from 100 yards of residential shorelines regulation, establish a 400-yard, point-to-point travel corridor from shorelines where repeated high-speed maneuvers for all vessels would be restricted except in specifically identified rental-riding areas, to be determined in conjunction with rental operators. Beyond 400 yards, vessels should operate in a reasonable and prudent manner. Establish PWC rental-riding areas. Guided tours for renters will be permitted outside of rental-riding zones.
3. In sensitive shallow seagrass areas determined to be detrimentally impacted by vessel operation, establish WMA – No-motor Zones. Increase the number and spatial extent of WMAs to effectively manage natural-resource impacts occurring from all vessels operating in shallow water throughout the Sanctuary. Designation and placement of the areas would coincide with recommended no-motor zones identified in the working group’s scoping process. Placement will also be guided by public input and scientific findings throughout the Keys, beginning with the scoping meetings held by the PWC Working Group in 2000 and 2001.

Numerous shallow-water areas on the Florida Bay side of the Keys have been identified as significant areas to Sanctuary wildlife. Additional flats and nearshore areas on the ocean side have been also identified as important habitats in the Middle to Upper Keys (Marathon to Key Largo). These areas serve as examples of candidate sites for WMAs. An associated activity is to work with rental operators to establish marked areas for operation of rental PWCs throughout the Keys. This activity will include consultation with rental operators and law enforcement.

4. In addition to the 100-yard Idle-Speed-Only Zone from residential shorelines regulation, establish a 400-yard, point-to-point travel corridor from all shorelines where repeated high-speed maneuvers for all vessels would be restricted except in specifically identified rental-riding areas, determined in conjunction with rental operators. In areas identified by homeowners as having a need for regulatory markers, establish a process to install 100-yard Idle-Speed-Only markers to address all vessel use, including personal watercraft.
5. Prohibit PWCs throughout the Sanctuary. The Sanctuary Advisory Council has recommended that PWC operation be prohibited within the Sanctuary. This recommendation has raised some questions as the State legislature has passed legislation prohibiting local ordinances from singling out PWCs. Since the State is a co-trustee and partner in the management of the Sanctuary, this recommendation by the Sanctuary Advisory Council raises a difficult issue.

In October 2001, the Sanctuary Advisory Council voted to ban the operation of all vessels in less than two feet of water in the Sanctuary. Although NOAA questions the feasibility of such a regulatory action, considering the diurnal changes in tides and wind driven currents and the enforceability of such a regulation, this option will be added to the list of regulatory alternatives for consideration during the NEPA process, when the public may review and comment on suggested regulatory changes.