

MEMORANDUM OF AGREEMENT

between

THE FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION
DIVISION OF MARINE FISHERIES

and

THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE SANCTUARY PROGRAM

NOS Agreement Number: MOA-2002-036

I. PURPOSE AND SCOPE

The purpose of this Memorandum of Understanding (MOU) between the Florida Fish and Wildlife Conservation Commission, Division of Marine Fisheries (FWCC), and the National Oceanic and Atmospheric Administration, National Marine Sanctuary Program (NMSP), is to streamline the process of issuing FWCC and NMSP permits related to the collection of all coral species, sea fans (*Gorgonia* spp.), live rock, and live sand in the Florida Keys National Marine Sanctuary (FKNMS or Sanctuary).

II. BACKGROUND

FWCC is the administrative agency of the State of Florida with the power and duty to manage marine fishery resources for their long-term well-being and the benefit of the people. FWCC has responsibility for management and conservation of marine fisheries resources, including all regulated fishes and invertebrates in state and federal waters of the FKNMS. FWCC is authorized pursuant to section 370.10(2), Florida Statutes (F.S.) to issue Special Activities Licenses and permits for collection and possession of indigenous saltwater animals for experimental, scientific, exhibitional, education, and broodstock purposes.

NMSP has responsibility for management of the FKNMS under the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA) and the National Marine Sanctuaries Act (NMSA). NMSP is authorized to issue permits to allow activities in the Sanctuary that are otherwise prohibited by federal regulations.

Close cooperation and coordination between FWCC and FKNMS are essential in allowing the agencies to carry out their respective functions and responsibilities to conserve marine resources. A more efficient method of issuing permits will promote the goals and objectives of both agencies and will better serve the public, scientific community, and other resource users.

III. AUTHORITIES

FWCC develops and enforces saltwater fisheries regulations related to Chapter 370, F.S., which include the authorization of Special Activities Licenses and permits for collection and possession of indigenous saltwater animals for experimental, scientific, exhibitional, education, aquaculture broodstock, or mariculture purposes.

Pursuant to 15 CFR 922.166, NMSP issues permits for activities otherwise prohibited by Sanctuary regulations. Under section 311(a) of the NMSA, 16 U.S.C. § 1442(a), NMSP may enter into agreements with State agencies to carry out the purposes and policies of the NMSA.

IV. PROCEDURES FOR PERMIT REVIEW

A. General

For purposes of this MOA, the term “permit” means permits, licenses, approvals, or other authorizations issued by FWCC or NMSP for the conduct of certain activities that are prohibited by Sanctuary regulations at 15 CFR 922.163 and 922.164, or by State marine fisheries rules under Title 68B, Florida Administrative Code (F.A.C.).

B. Permit Authorization

1. Acceptance by the State for State permitting purposes of NMSP permits applies only to new permits issued by FKNMS after the effective date of this Agreement, for projects otherwise prohibited under 15 CFR 922.163 through 922.164 and Title 68B, F.A.C.

2. The following activities located in the Sanctuary and all direct water discharges into Florida Bay, Barnes Sound, and Card Sound are subject to this subparagraph and require permit review by NMSP, in addition to any review by FWCC or any other applicable agency:

a. Special Permits

Special scientific, educational, or exhibitional collecting permits for state-regulated marine fish and invertebrates whose harvest involves unusual or complex methodologies, or results in alteration of the sea floor, placing objects on the sea floor, removal of marine sea grasses, habitat degradation, water quality impacts, or collection or disturbance of any living or dead organism within a Sanctuary Preservation Area (SPA), Ecological Reserve (ER), or Special Use Area (Research Only) (SU/RO).

b. Special Activities Licenses

i. Capture of live marine organisms by use of quinaldine in marine waters within a SPA, ER, or SU/RO area.

ii. Capture, culture, or release of native/indigenous saltwater animals, including broodstock specimens, for mariculture or aquaculture purposes.

iii. Use of nonconforming or experimental fishing gear.

3. NMSP shall be the exclusive permitting authority for permits involving the collection of live rock, live sand, all coral and sea fans (*Gorgonia* spp.). To avoid duplicating the

issuance of permits within the Sanctuary, permits issued for these activities by NMSP will be accepted by FWCC Division of Marine Fisheries as sufficient for State purposes for authorization of Special Activities Licenses and permits for collection and possession of indigenous saltwater animals for experimental, scientific, exhibitional, education, aquaculture broodstock, or mariculture purposes. NMSP will not be the exclusive permitting authority for permits involving the collection of live rock, coral or sea fans in State Parks located within the FKNMS. In those cases, NMSP and FWCC will review applications and issue their respective permits.

4. FWCC Florida Marine Research Institute will have the opportunity to comment to NMSP on any proposed permit relating to collection of live rock, coral or sea fans (*Gorgonia* spp.). Copies of permits issued by NMSP will be provided to FWCC.
5. FWCC will continue to be the primary permitting authority for scientific, educational and exhibitional collecting permits and Special Activities Licenses within the Sanctuary relating to state-regulated fish and invertebrates except as described in paragraph 2 of this section, where joint permit review and authorization are required, and except as described in paragraph 3 of this section relating to permits issued solely by NMSP. Sanctuary regulations extend portions of the State of Florida's Marine Life Rules (68B-42 Florida Administrative Code) into Federal Sanctuary waters (15 CFR Part 922, Appendix VIII to Subpart P).
6. For any activity described in paragraphs 2a or 2b that is subject to both FWCC and NMSP review:
 - a. FWCC will notify the applicant that a Sanctuary permit or authorization of an FWCC permit is required and will provide the applicant with information to contact Sanctuary staff.
 - b. NMSP will review the application within 30 days of receipt. After the 30-day review period, NMSP will then either:
 - i. approve the application and issue a Sanctuary permit or authorize the FWCC permit; or
 - ii. deny the application.
 - c. NMSP will promptly advise the applicant and FWCC of its decision.
 - d. If FWCC concurs with NMSP regarding additional terms and conditions for a FWCC permit authorized by NMSP, it will include them in its permit.

e. If FWCC does not concur with NMSP regarding additional terms and conditions, it will notify NMSP in writing of the reasons it does not concur. If FWCC and NMSP are unable to resolve disagreements between them at the initial decisional level, they will follow the Procedures for Referral in Section VI of this MOA.

f. If FWCC determines that any terms or conditions required by NMSP fall outside of FWCC's regulatory jurisdiction, the procedures in Section V of this MOA will be followed.

V. NMSP CERTIFICATION AND AUTHORIZATION

To the maximum extent practicable, FWCC permits will address NMSP concerns regarding activities permitted by FWCC that are prohibited by Sanctuary regulations. However, if after following the procedures in Section IV and Section VI FWCC determines that it cannot address NMSP's concerns, FWCC will notify the applicant and NMSP of its determination. FWCC will indicate that the applicant must contact FKNMS to apply for an authorization or a Sanctuary permit regarding the conduct of activities prohibited by Sanctuary regulations in order to address NMSP concerns. No authorization or Sanctuary permit will be necessary for activities occurring outside the Sanctuary and that are authorized by a state permit, unless the activities result in a discharge that enters the Sanctuary.

VI. PROCEDURES FOR RESOLUTION OF DISPUTES

FWCC and NMSP anticipate that, in the vast majority of cases, their respective concerns will be addressed at the initial decision-making level. However, if concerns have not been addressed at the initial level, the disagreement may be referred to higher level officials ("responsible agency officials") within each agency for resolution. For purposes of this section, the responsible agency officials shall be the appropriate Division Director for FWCC and the FKNMS Superintendent for NMSP. If resolution is not reached at the initial level, the following process may be used by the agencies:

A. Where practicable, the positions of NMSP and FWCC at the initial decision-making level shall be jointly summarized in writing for referral to the respective responsible agency officials. This referral shall occur at the earliest practicable time but in no case later than 45 days before the final approval of the action unless the NMSP and FWCC agree to a different schedule.

B. The responsible agency officials will review the permit application and the written positions and seek to resolve the matter in a timely fashion but in no case later than 30 days before the final approval of the permit unless the agencies agree to a different schedule. If the NMSP responsible official finds that the action is likely to destroy, cause the loss of, or injure a Sanctuary resource, the NMSP official will recommend reasonable

and prudent terms, conditions or alternatives that can be taken by FWCC in implementing the agency action that will address Sanctuary concerns regarding authorization by FWCC of a prohibited activity.

C. The State agency responsible official who receives recommended alternatives under paragraph B will promptly consult with the NMSP responsible official on the alternatives. If the State agency responsible official agrees and if FWCC has regulatory jurisdiction over the matter at issue, FWCC will amend its permit accordingly and NMSP will authorize the FWCC permit. If the State agency responsible official does not accept the NMSP terms, conditions or alternatives, the official will provide written notice to the NMSP official explaining the reasons for the decision.

VII. RIGHTS OF APPEAL OR PETITION UNDER FEDERAL OR FLORIDA STATUTE OR REGULATION

This MOA is not intended to limit any rights of appeal or petition of the agencies under Federal or Florida statute or regulation.

VIII. RESERVATION OF RIGHTS

NMSP and FWCC each retain full authority and reserve all rights to take whatever actions are deemed necessary to pursue, preserve or protect any legal right, interest, or remedy available with respect to any permit action. Nothing contained in this MOA is intended nor shall be construed to waive or foreclose any such authority, right, interest, or remedy.

IX. MODIFICATION AND TERMINATION

This MOA can be amended only by written agreement signed by both agencies. Either agency can terminate this MOA by giving the other agency 90 days' written notice. The Parties will review this Agreement at least once every three years to determine whether it should be revised, renewed, or cancelled.

X. TERM

This MOA will become effective on the date of the last signature of the approving official of either agency and will continue in force unless and until terminated by either agency, pursuant to Section IX.

XI. OTHER GENERAL PROVISIONS, TERMS AND CONDITIONS

A. Nothing herein is intended to conflict with current NOAA or State directives or with any federal or state laws, regulations, policies or directives. If the terms of this Agreement are inconsistent with existing NOAA or State directives or with any federal or

state laws, regulations, policies or directives, then the inconsistent terms will be invalid but the remaining terms and conditions not affected by the inconsistency will remain in full force and effect.

B. At the first opportunity for review of the agreement, all necessary changes will be accomplished either by an amendment or by entering into a new agreement, whichever is determined by the agencies to be expedient to their interests.

C. Should disagreement arise regarding the interpretation or implementation of the provisions of this Agreement, or amendments or revisions thereto, that cannot be resolved by the responsible agency officials, the matter shall be forwarded to respective higher officials for appropriate resolution.

D. Pursuant to Chapter 119, F.S., all state records in conjunction with this MOA will be public records and will be treated in the same manner as other public records under general law. This MOA may be unilaterally terminated by FWCC for refusal by NMSP or its designee to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by FWCC in conjunction with this MOA.

E. All requirements of this agreement are subject to the availability of appropriated funds.

XII. SIGNATURE OF EACH AGENCY


NOAA - NATIONAL MARINE SANCTUARY PROGRAM



Daniel J. Basta
Director

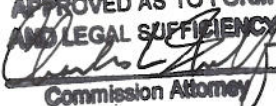
3/28/02
Date

FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION



Kenneth Haddad
Executive Director

7/9/02
Date

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY


Commission Attorney