

**EXCERPT FROM MINUTES OF JUNE 16, 2009 MEETING OF THE  
FLORIDA KEYS NATIONAL MARINE SANCTUARY ADVISORY COUNCIL**

**A RESOLUTION OF THE FLORIDA KEYS NATIONAL MARINE SANCTUARY ADVISORY  
COUNCIL TO DENY FLORIDA POWER AND LIGHT'S REQUEST TO EXPAND THE  
SERVICE TERRITORY FOR THE EVERGLADES MITIGATION BANK TO INCLUDE THE  
FLORIDA KEYS**

June 16, 2009

**Whereas**, the Sanctuary Advisory Council (SAC), its members and staff of the Florida Keys National Marine Sanctuary have fully participated in efforts to provide for the restoration of the Everglades ecosystem for the tenure of its history beginning with the first SAC Chair, the late George M. Barley, and

**Whereas**, the Florida Keys National Marine Sanctuary (FKNMS) was established in 1990 to provide for the protection of the unique marine waters of the Florida Keys; and

**Whereas**, the wildlife habitats found in the Keys --e.g. coral reefs, sea grass, wetlands, hardwood hammock, and pineland habitats--support a strong tourism industry and provide employment to Monroe County residents, though many of the habitats are under significant stress; and

**Whereas**, mitigation for habitat loss in the Keys by the Everglades Mitigation Bank would involve mitigation activity on Florida's mainland and would not directly involve any compensatory mitigation in the Keys; and

**Whereas**, the proposed expansion would take mitigation dollars currently spent to restore habitats in the Florida Keys through hiring primarily Monroe County residents and companies and instead give the money to restoration located on the mainland; and

**Whereas**, the effect of allowing compensatory mitigation projects located outside the Keys would cause a relative decrease in natural habitats in the Keys but for the expansion of service area; and

**Whereas**, benefits to the Florida Keys by the EMB would be geographically limited to Card Sound and would be merely a result of the fact that Card Sound is downstream from the EMB; and

**Whereas**, the Army Corps of Engineers grants a preference for "in-kind" or "type-for-type" mitigation as required by C.F.R. § 332.3(c) and C.F.R. § 332.3(e) states that compensation for "difficult to replace" resources should be provided though in-kind mitigation; and

**Whereas**, the EMB would not provide ecological benefits or type-for-type mitigation for habitats located in the Middle and Lower Keys, which make up most of the proposed expansion area; and

**Whereas**, the Florida Keys are home to several "difficult to replace" natural resources not found in the EMB, including the Key Largo woodrat, Key Largo cotton mouse, Lower Keys marsh rabbit, Florida Key deer, Stock Island tree snail, Lower Keys mud turtle, Loggerhead and green sea turtles, in addition to numerous submerged seagrass and marine community fauna; and

**Whereas**, approval of the proposed expansion would be contrary to the spirit of the Final Rule for Compensatory Mitigation for Losses of Aquatic Resources, C.F.R. § 332; and

**Whereas**, the U.S. Army Corps of Engineers oversees impacts to waters of the U.S. and for 28 years has been directing mitigation fees to the Keys Environmental Restoration Fund (KERF), which has provided compensatory mitigation to the Keys since 1981; and

**Whereas**, the 1998 agreement between the Army Corps and KERF requires a suitable alternative for mitigation funding and project permits be in place before KERF can cease to exist; and

**Whereas**, KERF's restoration efforts involve strict, type-for-type mitigation projects; and

**Whereas**, KERF has enhanced over 1110 acres of Keys habitat, including hardwood hammock; seagrass; freshwater, buttonwood, saltwater and mangrove wetlands; and hardbottom, tidal lagoons and creeks, and salt ponds; and

**Whereas**, KERF is planning several other type-for-type restoration projects in the Keys.

**NOW THEREFORE, THE FLORIDA KEYS NATIONAL MARINE SANCTUARY ADVISORY COUNCIL, THROUGH THE SUPERINTENDENT, RECOMMENDS:**

- The U.S. Army Corps of Engineers deny the application for the expansion of the Everglades Mitigation Bank service area to the Florida Keys

Passed, with one abstention, on this date: June 16, 2009.

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The Council is an advisory body to the sanctuary superintendent. The opinions and findings of this publication do not necessarily reflect the position of the Florida Keys National Marine Sanctuary, the National Oceanic and Atmospheric Administration, the Florida Department of Environmental Protection, or the Florida Fish and Wildlife Conservation Commission.