

Implementing Florida Keys National Marine Sanctuary's Regulatory and Marine Zoning Action Plans

A Staff Summary for Sanctuary Advisory Council Review

August 16, 2011





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Section 1. What is the purpose of this document?

The purpose of this document is to provide the Florida Keys National Marine Sanctuary (FKNMS) Advisory Council (SAC) and stakeholders information about the state of planning for implementation of the *FKNMS Revised Management Plan* and its intentions to review its current regulations. This document outlines the need for regulations in the Sanctuary, identifies the drivers for reviewing those regulations, and explains the scope of the Comprehensive Regulatory Review. The document also contains a summary of the existing regulations, the types of marine zones used in the FKNMS, and the rules specific to each. The FKNMS SAC has provided previous input on marine zoning, and a synthesis of their recommendations is included.

It has been over three years since the *FKNMS Revised Management Plan* was finalized and the March 2008 SAC Marine Zoning workshop was held. Given the importance of the SAC in providing guidance to the Sanctuary Superintendent, the FKNMS is seeking the SAC's recommendations regarding previously discussed marine zoning principles and general guidance for exploring future regulatory changes. This synthesis will serve as the starting point for that discussion and a future scoping process.

Section 2. What is the Florida Keys National Marine Sanctuary?

The Office of National Marine Sanctuaries (ONMS), part of the National Oceanic and Atmospheric Administration (NOAA), manages a national system of underwater protected areas. Since 1972, the ONMS has worked cooperatively with the public and federal, state, and local officials to promote conservation while allowing compatible commercial and recreational activities. Increasing public awareness of our marine heritage, scientific research, monitoring, exploration, educational programs, and outreach are just a few of the ways the ONMS fulfills its mission to the American people.

Today, the National Marine Sanctuary System includes 14 underwater marine protected areas: 13 national marine sanctuaries and one national monument. These national marine sanctuaries embrace part of our collective riches as a nation. Within their protected waters, giant humpback whales breed, temperate reefs flourish, and shipwrecks tell stories of our maritime history. Ranging in size from less than one square mile to 137,792 square miles, each sanctuary site is a unique place needing special protection.

Designated on November 16, 1990, FKNMS is one of the 14 marine protected areas that make up the National Marine Sanctuary System. The FKNMS protects 2,900 square nautical miles of waters surrounding the Florida Keys, from south of Miami westward to encompass the Dry Tortugas, excluding Dry Tortugas National Park. The shoreward boundary of the sanctuary is the mean high-water mark, so once you set foot in Keys waters you have entered the sanctuary.

Within the boundaries of the sanctuary lie spectacular, unique, and nationally significant marine resources, including the world's third largest barrier reef, extensive seagrass beds, vast shallow hardbottom habitats, mangrove-fringed islands, and more than 6,000 species of marine life. The

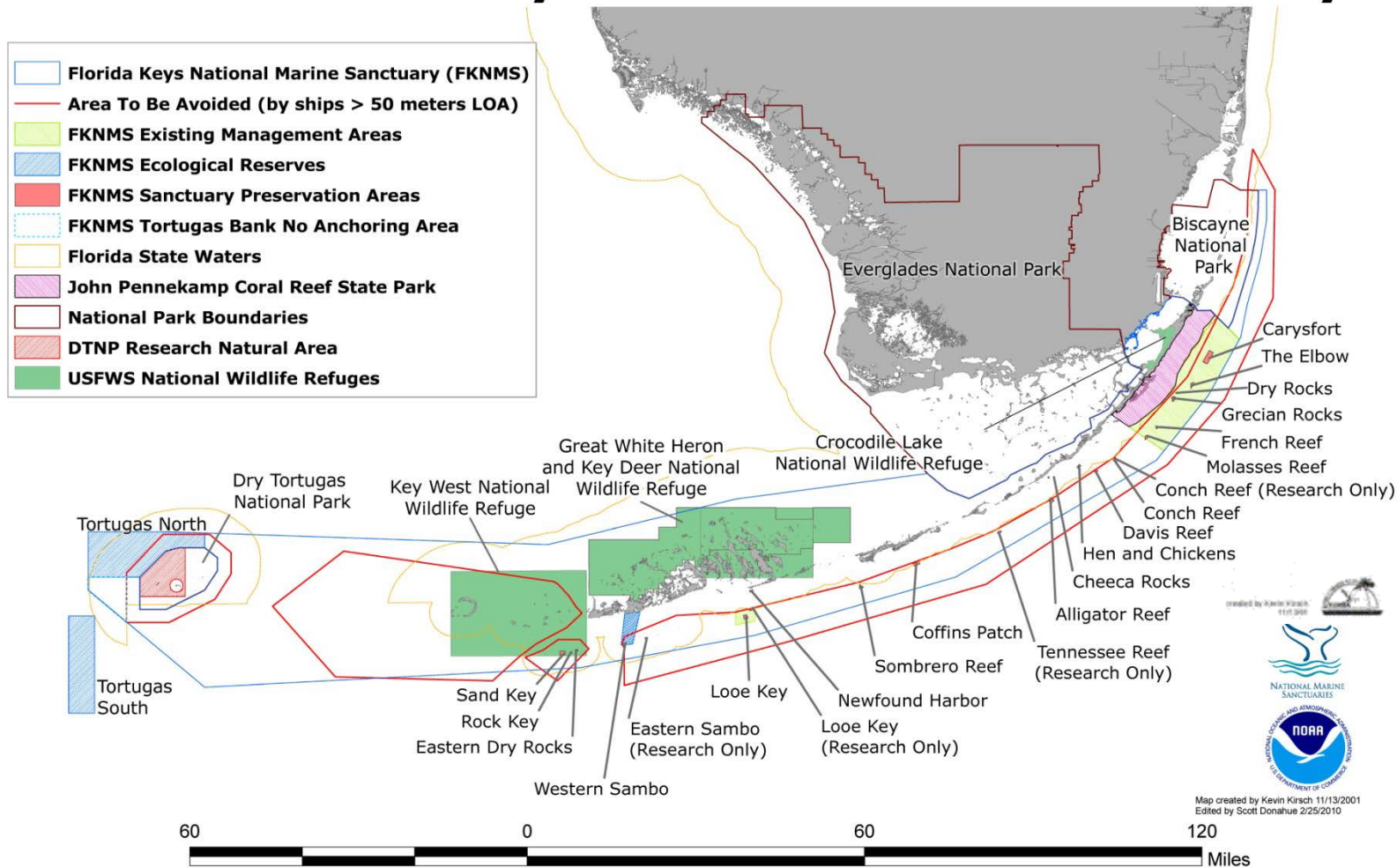
sanctuary also protects pieces of our nation's history such as shipwrecks and other archeological treasures.

Administered by NOAA, a federal agency within the U.S. Department of Commerce, the FKNMS was created and exists under federal law. However, because approximately 60 percent of the protected area falls in state waters, the sanctuary is also effective in these state waters by consent of the State of Florida. This creates a unique partnership whereby the sanctuary is administered by NOAA and jointly managed by NOAA and the State of Florida under a co-trustee agreement. Under this agreement, NOAA's primary management partner is the Florida Department of Environmental Protection (DEP). NOAA's Office of Law Enforcement enforces sanctuary regulations in coordination and under a Joint Enforcement Agreement with the Florida Fish and Wildlife Conservation Commission (FWC) Division of Law Enforcement.

The sanctuary also works with multiple state and federal agencies, universities, and non-governmental organizations to understand and protect the complex coral reef ecosystem in the Keys. The relationship with some of these groups, such as the U.S. Environmental Protection Agency, is based on the legislation that created the sanctuary. Other relationships have evolved through cooperative agreements or arrangements based on shared geographic boundaries, missions, goals, or interests.

There are two primary pieces of legislation that govern the FKNMS. First, the National Marine Sanctuary Act (NMSA) authorizes the Secretary of the U.S. Department of Commerce to designate and protect areas of the marine environment with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities as national marine sanctuaries. Second, the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA) designated FKNMS to be managed as a national marine sanctuary under the National Marine Sanctuary Act.

NOAA's Florida Keys National Marine Sanctuary



Section 3. Why do we need regulations in the Sanctuary?

Regulation of various human uses is necessary to achieve the purposes for which the Sanctuary was created. The waters and marine resources of the Florida Keys are amazing national ecological treasures, are the lifeblood of the local economy, and create lasting memories for over a million visitors each year. Congress recognized that such places of national significance existed when it passed the National Marine Sanctuaries Act. This country created the national marine sanctuary system 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;
- Comprehensively conserve and manage marine areas and activities that affect them,
- Maintain natural biological communities and protect habitats,
- Enhance public awareness, appreciation, and sustainable use of the marine environment,
- Support scientific research of the marine resources, and
- Facilitate public and private uses of marine resources to the extent they are compatible with the primary objective of resource protection.

Most sanctuaries are designated under the National Marine Sanctuaries Act by the U.S. Secretary of Commerce. However, because of the special nature of the Keys, Congress declared it was “the policy of the United States to protect and preserve living and other resources of the Florida Keys marine environment”. In doing so, Congress itself created the Florida Keys National Marine Sanctuary for the purposes of protecting natural resources, educating and interpreting for the public the Keys marine environment, and managing human uses of the Sanctuary.

So, the Sanctuary has a multi-purpose mandate that includes conserving marine resources, educating the public, conducting scientific research, and facilitating public and private use to the extent compatible with resource protection. To meet this mandate, it is necessary to have regulations that govern activities that affect the Sanctuary, and to periodically revise them as needed.

Marine zoning is a conduit for applying regulations to specific areas of the Sanctuary. The FKNMSPA included consideration of the use of temporal and geographic zoning to further protect the marine resources of the Florida Keys. The creation of marine zones within the Sanctuary allows regulations to be applied to smaller discrete locations, instead of the entire Sanctuary. Marine zones can help protect sensitive natural resources from overuse, separate conflicting uses, and preserve the diversity of marine life in an area. For instance, whereas sustainable fishing may be appropriate for most of the Sanctuary, certain types of scientific research may need to be conducted in areas that are free from fishing pressure. Rather than issue regulations that would affect the entire Sanctuary to allow for this research, marine zones are established within the Sanctuary that apply regulations to separate incompatible uses in certain locations.

Section 4. Why is the Sanctuary undertaking a Comprehensive Regulatory Review?

NOAA is undertaking a comprehensive regulatory review of the Florida Keys National Marine Sanctuary for several reasons.

Public Input and Interest

First and foremost, the FKNMS strives to be responsive to our stakeholders. Many members of the public, including members of the Sanctuary Advisory Council, have requested the FKNMS revise various regulations including the various marine zones and boundaries. These requests have come as part of the management plan review completed in 2007, various public meetings of the advisory council, and through direct communication with FKNMS staff. Groups of dive operators and members of the diving public, academic and governmental research organizations, individual commercial fishermen and their association, and charter fishing guides and recreational fishermen, among others, have voiced desires to see changes to existing boundaries, regulations, permitting procedures or marine zones. NOAA wants to be responsive to the issues that the public has raised concerning regulations in the Sanctuary. Instead of addressing each issue with individual *ad hoc* regulatory changes, a more effective and efficient process would be to look at all such input as part of a broader, comprehensive analysis.

Adaptive Management

Even without legal requirements or public input requesting regulatory changes, it is good business to periodically evaluate and reassess management activities to ensure they continue to be the best for changing natural resources and patterns of human use. Such adaptive management is critical for matching the dynamic and evolving situation in the water.

New Scientific Findings

Since the Sanctuary's original management plan and regulations were issued in 1996, scientific understanding of coral reef ecosystems, both in the Keys and globally, has dramatically improved. In late 2011, the FKNMS expects to release its first Condition Report, which will detail the status and trends of water quality, living resources, habitat, and maritime archaeological resources. The conclusions of the draft Condition Report are that about half of the 17 indicators classify current status as being in "poor" or "fair/poor" condition, the two lowest classifications. In addition, many indicators will show a declining trend, meaning the situation for certain key habitats and living resources is deteriorating.

Because there is such a vital need for scientific knowledge to feed into management decisions, the University of Florida, NOAA, FWC, Department of the Interior's National Park Service and U.S. Geological Survey co-hosted a four-day conference in October 2010 dedicated to "Linking Science to Management" in the Florida Keys marine ecosystem. The conference brought together managers and scientific experts on the Keys ecosystem, ecological restoration, biological connectivity, and climate change to discuss the current state of knowledge and how management measures may be improved by incorporating results from scientific research. The best practices in linking science to management outlined at this conference will be used throughout the comprehensive regulatory review.

Emerging Issues and Threats to Resources

In the past 15 years we have also become aware of threats that were, for the most part, unknown in the early and mid-1990s when the Sanctuary's first regulations were developed. Threats such as climate change, ocean acidification, and sea level rise are global-scale phenomena that are affecting the local Florida Keys environment. Exotic species introductions were an abstract concern then, but the Indo-Pacific lionfish invasion now has the true potential to disrupt commercial and recreational fishing, native biodiversity, and employment in the Keys. In addition, two species of coral found in the FKNMS have been listed as threatened with extinction under the Endangered Species Act and seven others are currently in review for potential listing. Each of these issues has become prominent since the Sanctuary's first regulations were developed, and consideration should be given to these and other emerging topics in a periodic regulatory review.

Legal Mandates

A review of the regulations is required by both Federal law¹ and the State of Florida. In 1992, when Congress reauthorized the National Marine Sanctuaries Act, it required all sanctuaries to review their management plan every five years in order to monitor and evaluate the progress of the mission to protect national resources. The Florida Governor and Cabinet, as trustees for the state, also mandated a five-year review of the FKNMS management plan in their January 28, 1997 resolution. Reviews of the management plan reevaluate the goals and objectives, management techniques, strategies, and actions identified in the existing management plan. It provides the opportunity to take a close look at outcomes and plan for future management. Because so much of the protection afforded the resources in the Sanctuary comes through regulating human use, a comprehensive regulatory review will be a key component of the next management plan review.

Management Plan Direction

In addition, NOAA committed to conducting a review of its regulations in its current management plan. The 2007 management plan has separate regulatory and marine zoning action plans that include six strategies related to the Comprehensive Regulatory Review, which will address 36 enumerated actions. By undertaking the Comprehensive Regulatory Review, the FKNMS would be addressing the following management plan actions:

¹ NMSA §304(e) and FKNMSPA §7(a).

Regulatory Review and Development Actions

Evaluate need for channel and reef marking	Consider need for fishing gear/methods regulations
Evaluate boat groundings	Consider need for spearfishing regulations
Consider pollution discharge controls	Consider need for fish feeding regulations
Reduce impacts from salvaging and towing	Consider need for bait fishing regulations
Reduce impacts from PWC and other vessels	Consider regulations on catch & release trolling in SPAs
Ensure consistency among fishing regulations	Consider need for dredging regulations
Consider need for mariculture regulations	Consider regulations specific to touching coral
Consider need for artificial reef regulations	Evaluate allowable activities in existing zones
Consider need for exotic species regulations	

Sanctuary Preservation Areas Actions

Establish & implement management responsibilities	Evaluate allowable activities & change if needed
Assess existing zone boundaries & adjust if needed	Evaluate existing & new zones & manage impacts
Identify & evaluate areas for additional marine zoning	and establish and implement new zones if needed

Ecological Reserves Actions

Establish & implement management responsibilities	Evaluate allowable activities & change if needed
Assess existing zone boundaries & adjust if needed	Evaluate existing & new zones & manage impacts
Identify and evaluate areas for additional marine zoning,	and establish and implement new zones if needed

Special Use Areas Actions

Establish & implement management responsibilities	Evaluate allowable activities & change if needed
Assess existing zone boundaries & adjust if needed	Determine high impact activities or user conflicts
Determine and establish appropriate zones for high-impact or user-conflict activities	

Wildlife Management Areas Actions

Assess existing zone boundaries & adjust if needed	Evaluate allowable activities & change if needed
Evaluate existing & new zones & manage impacts	
Identify and evaluate areas for additional marine zoning,	and establish and implement new zones if needed

Section 5. What would a Comprehensive Regulatory Review entail?

The comprehensive regulatory review would be a methodical process for assessing whether the current sanctuary regulations are sufficient to achieve the purposes for which the FKNMS was established, and, if not, what regulations need to be changed, added, or eliminated. As its name suggests, the Comprehensive Regulatory Review would be holistic in evaluating the scope of the FKNMS designation, resource conditions, patterns of human use, and operations that may affect rules within the Sanctuary. Among other things, the review could include:

- An evaluation of the FKNMS boundaries to determine whether they should be modified.
- An assessment of the current Sanctuary-wide regulations to determine whether they need to be changed, added to, or reduced.

- A review of the types, locations, individual and cumulative size, shape, and number of marine zones to determine whether existing zones should be changed or new areas designated.
- An assessment of the current zone-specific regulations to determine whether they need to be changed, added to, or reduced.

NOAA would conduct a Comprehensive Regulatory Review in coordination with State and Federal partners through a full and open public process. Management of the FKNMS is governed by a co-trustee agreement between NOAA and the State of Florida. Therefore, the Florida Department of Environmental Protection and the Florida Fish and Wildlife Conservation Commission will be integral to the process. In addition, both the South Atlantic and Gulf of Mexico Fishery Management Councils have additional jurisdiction over fishery management in federal waters of the Sanctuary, and will be involved throughout the review process. Other government entities, including the U.S. Fish and Wildlife Service, National Park Service, U.S. Environmental Protection Agency, Monroe County, and various municipalities, have additional roles in managing the Keys' environment and will be consulted for their input and advice.

Public participation will be vital for a regulatory review, and FKNMS will be very proactive in reaching out to stakeholders. FKNMS would seek the public's input through extensive discussion with the Sanctuary Advisory Council early in the process, public scoping meetings, solicitation of comments on potential alternatives, and meetings with individual stakeholder constituencies. The Sanctuary Advisory Council, a body created by NOAA to provide the Sanctuary Superintendent advice regarding the management of the FKNMS, will be integrally involved throughout the Comprehensive Regulatory Review, as it was during the creation of the original *FKNMS Management Plan* and initial regulations. Composed of members representing diverse stakeholder groups, the Council is ideally situated to help determine the topics for regulatory exploration covered by the review, provide input on potential changes to marine zoning or other regulations, and aid the FKNMS in ensuring their constituencies are aware of and engaged in the review process.

The following are stakeholder groups represented on the FKNMS Sanctuary Advisory Council:

<i>Voting Representatives (20 seats)</i>	
Boating Industry	Fishing: Commercial Marine/Tropical
Conservation & Environment (2 seats)	Fishing: Charter Fishing Flats Guide
Diving: Lower Keys	Fishing: Charter Sports Fishing
Diving: Upper Keys	Fishing: Commercial Shell/Scale
Education & Outreach	Fishing: Recreational
Elected County Official	Citizen-at-Large: Lower Keys
Research & Monitoring	Citizen-at-Large: Middle Keys
Submerged Cultural Resources	Citizen-at-Large: Upper Keys
South Florida Ecosystem Restoration	Tourism: Lower Keys
	Tourism: Upper Keys
<i>Non-Voting Government Agency Representatives (11 seats)</i>	
FL Fish & Wildlife Conservation Commission, Fish & Wildlife Research Institute	FL Fish & Wildlife Conservation Commission, Division of Law Enforcement
FL Dept. of Environmental Protection	National Park Service
South Florida Water Management District	U.S. Fish and Wildlife Service
NOAA Office of General Counsel	U.S. Environmental Protection Agency
NOAA Office of Law Enforcement	U.S. Navy
	U.S. Coast Guard

Section 6. What are the existing regulations in the Sanctuary?

As discussed in Section 3, regulations are necessary for the FKNMS to ensure that resources are protected in a manner consistent with the purposes for which the Sanctuary was designated. In addition, regulations are sometimes necessary to separate conflicting uses of the Sanctuary.

This section provides a brief overview of the FKNMS regulations and its designated marine zones. It is intended to serve as a primer on the existing regulatory framework within the Sanctuary and to serve as a starting point for the Comprehensive Regulatory Review². It must be noted that many other State and Federal regulations, including many NOAA regulations pertaining to fishing, apply within the Sanctuary's boundaries but are not issued under the FKNMS regulations.

The FKNMS finalized its first management plan and initial regulations in 1997. It then made a few technical changes to those regulations in 2009 and issued new regulations prohibiting vessels from discharging sewage from marine sanitation devices within the Sanctuary in 2010. The regulations can be divided into those that apply to the entirety of the FKNMS and those that apply to designated marine zones.

² The complete regulations may be found at 15 CFR 922 Subpart P.

Section 6.1 Regulations that Apply Sanctuary-Wide

With certain exceptions, it is unlawful within the FKNMS to:

1. Conduct mineral or hydrocarbon exploration, development, and production.
2. Remove, injure, or possess coral or live rock, including touching live or dead coral.
3. Alter or construct on the seabed, including drilling, dredging, or placing any material on the seabed.
4. Discharge or deposit trash, sewage, or other pollutants.
5. Operate a vessel:
 - a. In such a manner as to strike or otherwise injure coral, seagrass, or other immobile organisms attached to the seabed, including causing propeller scarring.
 - b. Anchoring on living coral in water less than 40 feet deep when the seabed can be seen from the surface.
 - c. Except within officially designated channels, operating a vessel at more than 4 knots (no wake speed) within 100 yards of:
 - i. An area designated as an idle speed only/no wake zone,
 - ii. A navigational aid marking shallow reefs,
 - iii. Residential shorelines,
 - iv. Stationary vessels, and
 - v. "Divers down" flags.
 - d. In such a manner as to injure or take birds or marine mammals.
 - e. In such a manner as to endanger life, limb, marine resources, or property.
6. Dive or snorkel without a dive flag.
7. Release exotic species of plant, invertebrate, fish, amphibian, or mammal.
8. Damage or remove markers, mooring buoys, boundary buoys, trap buoys, signs, or scientific equipment.
9. Move, injure, or possess historical resources.
10. Take or possess any marine mammal, sea turtle, or seabird.
11. Possess or use explosives or electrical charges.
12. Harvest, possess, or land any marine life species except as allowed by the Florida Fish and Wildlife Conservation Commission³.
13. Interfere with enforcement activities.

Section 6.2 Marine Zones in the FKNMS

In addition to those regulations that apply Sanctuary-wide, it is sometimes necessary to regulate certain activities in specific parts of the sanctuary - or zones. The purpose of zoning is to protect and preserve sensitive components of the ecosystem while facilitating activities compatible with resource protection. Marine zoning ensures that areas of high ecological importance evolve naturally, with minimal human influence. Marine zoning also promotes sustainable uses, protects diverse habitats, and preserves important natural resources and ecosystem functions.

The objectives for marine zoning are to:

³ Rule 68B-46.F.A.C.

- Reduce stress from human activities by establishing areas that restrict access to sensitive wildlife populations and habitats
- Preserve biological diversity and the quality of resources by protecting large, contiguous and diverse habitats that provide natural spawning, nursery, and permanent residence areas for the replenishment and genetic protection of marine life
- Protect resources and separate conflicting uses by establishing a number of non-consumptive zones in areas that are experiencing conflict between consumptive and non-consumptive uses and in areas experiencing significant resource declines
- Prevent injury to critical or sensitive habitats
- Disperse concentrated collection of marine organisms
- Prevent heavy concentrations of uses that degrade Sanctuary resources
- Provide undisturbed locations for research and control sites to help determine the effects of human activities

There are five types of NOAA-designated zones in the Sanctuary. They are:

Sanctuary Preservation Areas (SPAs): SPAs protect shallow, heavily used areas where conflicts occur among user groups and where concentrated visitor activity has led to resource degradation. These zones encompass discrete, biologically important areas and are designed to reduce user conflicts and sustain critical marine species and habitats. Regulations for SPAs prohibit consumptive activities while continuing to allow activities with limited impact to sensitive resources (e.g., diving, snorkeling, boating). There are currently 18 SPAs in the FKNMS.

Ecological Reserves (ERs): ERs seek to protect biodiversity by setting aside areas with minimal human disturbance. ERs encompass large, contiguous, diverse habitats, in order to protect and enhance natural spawning, nursery, and permanent-residence areas for the replenishment and genetic protection of fish and other marine life. Allowing certain areas to evolve in or return to a natural state preserves the diverse range of resources and habitats throughout the Sanctuary. ERs protect the food and home of commercially and recreationally important species, as well as the hundreds of marine organisms not protected by fishery management regulations. Regulations for ERs prohibit consumptive activities while continuing to allow activities with limited impact to sensitive resources (e.g., diving). ERs therefore restrict all consumptive activities and allow non-consumptive activities only where such activities are compatible with resource protection. There are currently two Ecological Reserves in the Sanctuary: the Western Sambo ER and the Tortugas ER.

Special-Use Areas: Special-Use Areas are set aside for research and education, or for the recovery or restoration of injured or degraded resources. Special-Use Areas may also be established to facilitate access to or use of Sanctuary resources, or to prevent user conflicts. Regulations for Special-Use Areas can prohibit various activities ranging from consumptive activities to access restrictions. The four current Special-Use Areas in the Sanctuary are designated as Research-Only Areas, and are located at Conch Reef, Tennessee Reef, Looe Key Patch Reef, and Eastern Sambo.

Wildlife Management Areas (WMAs): WMAs seek to minimize disturbance to especially sensitive or endangered wildlife and their habitats. These zones typically include bird nesting,

resting, or feeding areas, turtle-nesting beaches, and other sensitive habitats. Regulations protect these species or the habitat while providing for public use through access restrictions including no-access buffers, no-motor zones, idle-speed only/no-wake zones, and closed zones. Some restrictions may apply to certain times of the year, while others apply year-round. There are currently 27 WMAs in the Sanctuary. Twenty WMAs are co-managed with the U.S. Fish and Wildlife Service as part of the backcountry portions of the Key West, Key Deer, Great White Heron, and Crocodile Lake National Wildlife Refuges. The FKNMS manages the remaining seven WMAs independently.

Existing Management Areas (EMAs): EMAs are resource management areas that were established prior to the designation of the Florida Keys National Marine Sanctuary. Sanctuary regulations supplement the existing authorities to facilitate comprehensive protection of resources. EMAs are managed in partnership with FKNMS as seamlessly as possible. There are four EMAs: Key Largo and Looe Key National Marine Sanctuaries and Great White Heron and Key West National Wildlife Refuges. The additional regulations for EMAs prohibit certain activities such as spearfishing in the Key Largo and Looe Key National Marine Sanctuaries or use of personal watercraft in the Great White Heron and Key West National Wildlife Refuges.

Appendix I lists the current FKNMS marine zones and their size, and provides a brief description. Areas managed by other governmental entities that are contained within the FKNMS boundary are not included.

Section 6.3 Regulations Specific to Designated Marine Zones

Ultimately, the purpose of the FKNMS marine zones is to regulate human use in specific geographic areas. The zone designations are the conduit through which these area-specific regulations are applied. In addition to the regulations summarized in Section 6.1, the following regulations apply to specific marine zones.

Sanctuary Preservation Areas, Ecological Reserves, and Special-Use (Research-Only) Areas: With certain exceptions, the following activities are prohibited within SPAs and ERs:

1. Discharging or depositing any matter except cooling water and engine exhaust.
2. Possessing, moving, harvesting, taking, damaging, or disturbing coral, marine invertebrates, fish, bottom formation, algae, seagrass or any other living or dead organism.
3. Fishing by any means, except that catch and release trolling is allowed at Conch Reef, Sombrero Reef, Alligator Reef, and Sand Key SPAs.
4. Touching living or dead coral, including standing on coral.
5. Anchoring on living or dead coral.
6. Anchoring when a mooring buoy is available or anchoring in other than a designated anchoring area when such an area has been designated.

In addition to these regulations that apply to all SPAs and ERs, additional regulations pertain to the Tortugas ER. Vessels may only enter the Tortugas South ER if they remain in continuous transit through the ER with fishing gear stowed. In the Tortugas North ER, an access permit is

required to stop or use a mooring buoy. It is illegal to anchor anywhere in the Tortugas North ER; moorings must be used. In addition, mooring by a vessel more than 100 feet in length or mooring to a single buoy by vessels with a combined total length greater than 100 feet is prohibited.

Special-Use Areas: Except for passage through the area without interruption, it is illegal to enter or conduct any activity within the four currently designated research Special-Use Areas unless authorized by a permit.

Wildlife Management Areas (WMAs): NOAA regulations for WMAs may include: 1) idle speed only/no wake, 2) no-motor, 3) no-access buffer, and 4) closed areas. It is illegal to operate a vessel in a manner or enter an area counter to these designations.

Existing Management Areas (EMAs): In the Key Largo and Looe Key EMAs, the following activities are prohibited:

1. Removing, taking, damaging, cutting, or spearing any coral, marine invertebrate, plant, soil, rock, or other material, except that commercial take of spiny lobster and stone crab by trap and recreational take of spiny lobster by hand or head gear is allowed.
2. Taking any tropical fish.
3. Fishing with wire fish traps, bottom trawls, dredges, fish sleds, or similar vessel-towed or anchored bottom fishing gear.
4. Fishing with or possessing spearfishing equipment, unless while passing through the EMA without interruption.

In addition, it is illegal to operate a personal watercraft, operate an airboat, or water ski within certain portions of the Great White Heron and Key West National Wildlife Refuges.

Section 7. What guidance has the Sanctuary Advisory Council provided on the Regulatory and Marine Zoning Action Plans?

In December 2007, the FKNMS issued its revised management plan, which contained a marine zoning action plan composed of five strategies. Four months later, in March 2008, the FKNMS Sanctuary Advisory Council (SAC) held a marine zoning workshop. The purpose of this one-day event was to develop recommendations for the use of marine zones within the Sanctuary, which were intended to aid the FKNMS in implementing the actions identified in the five marine zoning strategies.

Eleven members of the SAC, six alternate members, and several individuals from various federal and state government agencies participated in four breakout groups. Each group's discussion was focused on five common questions:

1. Collectively, do the five current zone types and the unzoned area address the FKNMS purpose and the goals and objectives for marine zones? In other words, do we have all the right tools in the toolbox and are we using the tools that we have effectively?

2. Are the current zones sized appropriately to enable them to achieve the purposes for their zone types?
3. Are the current zones located and arranged in such a way that they best meet their intended purposes, or are different locations or arrangements needed?
4. Do any zones or zone types have unintended or undesirable consequences for natural resources?
5. Do the current research and monitoring efforts detect effectiveness of the zones?

This section synthesizes the comments that were recorded by the breakout groups' scribes and the resulting recommendations presented to the SAC at their June 2008 meeting⁴. Perhaps the most over-arching recommendation was that resource users, managers, scientists, and other stakeholders "should engage in a discussion of the principles of zoning changes and reach consensus about what those principles should be prior to discussion of specific changes at specific locations". Thus, the participants expressed a desire to have a higher-order discussion of purposes and philosophies underpinning the use of marine zones in the Sanctuary prior to addressing the details of individual regulations or zone areas.

Though not labeled in the documents nor presented at the SAC meeting as such, at least six of the items included in the recommendations can, in fact, be viewed as marine zoning principles. They include:

1. The FKNMS regulation/zoning review should be conducted with the recognition that there are bordering and overlapping marine management regimes in place, and that these regimes must be considered when contemplating changes to the FKNMS regulation/marine zoning structure.
2. All areas of the FKNMS should be classified as part of a specific zone, therefore the current "unzoned" area should be classified as a recognized zone type such as "general use area" or "multiple use area".
3. Each habitat type⁵ should be represented in a non-extractive marine zone in each of the biogeographically distinct subregions of the FKNMS to achieve replication. The subregions identified were the Tortugas, Marquesas, and Lower, Middle, and Upper Keys.
4. Information on resilient reef areas that can serve as refugia should be taken into account in zoning changes.
5. Temporal zoning should be considered as a tool for protecting spawning aggregations and nesting seasons.

⁴ The breakout group comments are found in a document titled "Florida Keys National Marine Sanctuary (FKNMS) Sanctuary Advisory Council (SAC) Marine Zoning Workshop Summary of Breakout Group Discussions" dated March 25, 2008. The recommendations are found in a document titled "Florida Keys National Marine Sanctuary (FKNMS) Sanctuary Advisory Council (SAC) Recommendations Based on the SAC Marine Zoning Workshop March 25, 2008" dated June 11, 2008 as draft. These recommendations were presented to the SAC at the June 17, 2008 meeting as overarching guidance for the FKNMS staff. No motion was made for the SAC to adopt the recommendations.

⁵ There were nine habitat types identified in the recommendations: inshore patch reefs, mid-channel patch reefs, offshore patch reefs, reef margin, fore reef, deep reef, seagrass, hardbottom, and mangroves.

6. The size of individual non-extractive zoned areas, the cumulative total area included in non-extractive zones, and their spatial relationship with one another matter greatly in achieving the resource protection purposes of the FKNMS.

In addition to providing recommendations such as these that can form the basis of a list of marine zoning principles for the FKNMS, at least eight of the recommendations identified gaps in the current marine zoning structure. Most importantly, the SAC workshop participants determined that:

1. The current cumulative size of non-extractive zoned areas is insufficient to achieve the FKNMS purpose.
2. New large SPAs or ERs and expansion of existing SPAs are warranted.
3. Special Use Areas are not being used to their full potential, particularly the designation of areas for restoration and recovery.
4. Use of temporal zoning is largely absent.
5. Gulf/Bay habitats are almost completely unrepresented in non-extractive zones.
6. Connectivity from inshore to offshore habitats is not fully realized in the Marquesas, Middle Keys, and Upper Keys.
7. Connectivity from Gulf/Bay to Atlantic habitats is not achieved in any subregion.
8. The results of research and monitoring of zones is not getting to the public in an effective manner.

Finally, the SAC workshop participants provided recommendations specific to each of the five questions around which the workshop was organized. Regarding the first question on whether the five current zone types were adequate to meet the FKNMS purpose, the participants indicated that the current zone types were necessary but not sufficient. As has been noted above, the participants recommended including the “unzoned” area as an explicit “multiple use zone” or “general use zone”. Participants also recommended that additional Special Use Areas, particularly for recovery and restoration, be utilized and that temporal zoning should be employed as a tool for protecting spawning aggregations and sensitive bird nesting periods. In addition, greater flexibility in the designation of WMAs is required. The zoning structure must recognize that natural resource spatial patterns change, and the zones must shift with those resources. The specific example cited was the need to move WMAs from one island to another when nesting birds disappear from the original location and occupy a new colony site.

The participants provided a succinct and direct response to the second question regarding the size of current marine zones. They stated that the total area closed to all extractive uses in the FKNMS is insufficient to achieve the Sanctuary’s purposes and that both new large SPAs or ERs and expansion of existing SPAs are necessary.

Participants identified both positive and negative aspects of the current zones’ locations and arrangement. In responding to the third question, participants stated the current collection of zones were located and arranged with some fundamental reserve network design elements. Specifically, they noted that all habitat types are currently represented in the existing zones and that the placement of the Tortugas and Western Sambos ERs meet criteria for oceanographic connectivity to down-current areas of the ecosystem. However, many of the gaps identified

above pertain to the location and arrangement of the current zones. Participants stated there is a need for full replication of habitats in protected zones in each of the five subregions, greater use of protected zones for Gulf/Bay side habitats, connectivity between protected habitats in the Marquesas, Middle Keys, and Upper Keys, and connectivity between Gulf/Bay and Atlantic habitats in each subregion.

Recommendations concerning unintended and undesirable consequences of marine zones (question four) and the result of research and monitoring on marine zones (question five) were brief. Participants noted that installation of mooring buoys concentrated human use within the zones and recommended careful consideration be given to the balance of minimizing anchor damage and the potential increase of other forms of human impact concentrated around moorings. Regarding dissemination of scientific information concerning the zones, participants stated that while data are available on their effectiveness, the results are largely not getting out to the public, and those that are released are done so in a manner that is not easily understood by the general public. Participants recommended that additional effort be spent on translating complex scientific information into language readily understandable by the public.

Section 8. How will the Sanctuary undertake the Comprehensive Regulatory Review and what is the timeline?

At this time, there is not a set process or timeline for undertaking a comprehensive regulatory review in the FKNMS. This would be developed after discussion with the Sanctuary Advisory Council, agency partners, and stakeholders. A regulatory review, particularly one involving changing fishing regulations or modifying the marine zones, is very complicated and must follow a specific pathway. See Appendix II for a flow chart of how regulations may be changed and the agency's required consultations.

Section 9. Who should I contact if I have questions or would like to participate in the Comprehensive Regulatory Review?

Contact Sean Morton, Superintendent of the Florida Keys National Marine Sanctuary, by email at Sean.Morton@noaa.gov. He may also be reached by phone at 305-809-4700 and by regular mail at 33 East Quay Road, Key West, Florida 33040.

Appendix I. Marine Zones in the Sanctuary.

This appendix lists the current marine zones, their approximate size, and their basic description.

Zone	km²	nm²	Description
Florida Keys National Marine Sanctuary	9845	2870.3	
Sanctuary Preservation Areas (total)	16.6	4.97	
Carysfort/South Carysfort Reef	5.1	1.5	Well-developed stand of elkhorn, swept by Gulf Stream current, largest SPA, includes Carysfort Lighthouse
The Elbow	0.9	0.3	Bank reef with spur and groove formation, includes reef crest, rubble horns, and deepwater corals, extends to 30' depth contour
Dry Rocks	0.2	0.05	Good stands of elkhorn coral, "Christ of the Deep" statue
Grecian Rocks	1.1	0.3	Good stands of elkhorn coral
French Reef	0.4	0.1	Caves and arches within the spur and groove reef formation
Molasses	0.9	0.3	Well-developed spur and groove with deep wall, reef crest and portion of rubble field, extends to 60' depth contour
Conch Reef	0.2	0.07	Well-developed reef wall system, up to 45' deep, pillar coral stands, catch-and-release fishing by trolling allowed
Davis Reef	0.6	0.2	Low-relief transitional reef with gorgonians and deep water corals, heavily used dive site
Hen and Chickens	0.6	0.2	Unique mid-channel patch reef complex
Cheeca Rocks	0.2	0.05	Only SPA to protect inshore patch reefs in Middle Keys
Alligator Reef	0.6	0.2	Small bank reef with transitional features, catch-and-release fishing by trolling allowed
Coffins Patch	1.5	0.4	Entire patch reef with some rubble zone, pillar coral stands
Sombrero Key	0.7	0.2	Spur and groove formation with stands of elkhorn, includes Sombrero Reef Lighthouse, catch-and-release fishing by trolling allowed
Looe Key	1.1	0.3	Expands original core area of the Looe Key NMS (now EMA) to include some transitional and intermediate reef features on seaward side, extends to 45' depth

Zone	km²	nm²	Description
Newfound Harbor Key	0.4	0.1	Only inshore patch reef complex protected in Lower Keys
Eastern Dry Rocks	0.3	0.1	Bank reef habitat, zone boundaries are reef crest and 30' depth contour
Rock Key	0.3	0.1	Bank reef habitat, zone boundaries are reef crest and 30' depth contour
Sand Key	1.5	0.5	Bank reef habitat, extends seaward to 30' and 60' depth contour, catch-and-release fishing by trolling allowed
Ecological Reserves (total)	548.8	160	
Western Sambo	30.8	9.0	Great habitat diversity, including spur and groove formations, bank reefs, and patch reefs
Tortugas Ecological Reserve	517.9	151	Remote location, deepwater coral banks, spawning areas for snapper/grouper; No anchoring, includes Sherwood Forest and Tortugas Bank,
Special-use Areas (total)	1.8	0.6	
Conch Reef (Research Only)	0.7	0.2	Rare pillar coral, habitat for conch, well-developed reef wall system, octocorals, basket sponges, contains Aquarius underwater laboratory
Tennessee Reef (Research Only)	0.5	0.2	Deepwater, drowned spur and groove system, slow-growth corals and sponges, extends to 30' depth contour
Looe Key (Research Only)	0.3	0.1	Inshore from Looe Key SPA, only offshore patch reef complex protected in Lower Keys
Eastern Sambos (Research Only)	0.3	0.1	Spur and groove bank reef with excellent coral formations, has good water quality

WMA Zone name	Map No.	Regulation/Restriction	Description & purpose
Sawyer Keys	1	Tidal creeks closed on south side	Sawyer Keys harbor nesting ospreys. The area is also used by 11 species of wading birds. The area south of the two largest islands is an important staging area for migrant shorebirds in autumn.
East Harbor Key	2	No-access buffer zone (300 feet) around northernmost island	All but one of the keys are mangrove islands.
Little Mullet Key	3	No-access buffer zone (300 feet) around island	Small mangrove located about 15 kilometers northwest of Key West.
Upper Harbor Key	4	No-access buffer zone (300 feet) around island	Mangrove island approximately 35 kilometers northwest of Marathon that is surrounded by flats but is accessible at high tide. It is a premier area for wading birds. The island is used by various bird species including ospreys, frigatebirds, double-crested cormorants, and wading birds.
Little Crane Key	5	No-access buffer zone (300 feet) around island	The island contains a large frigatebird roost and nesting areas for great egrets and double-crested cormorants.
Boca Grande Key	6	South half of the beach closed. (Note: The beach above mean high tide is closed by the U.S. Department of the Interior.)	Boca Grande Key has an extensive, narrow, low-energy beach on the west and southwest side, which extends almost to the northern tip of the island. There is a relatively large interior pond on the shallow wash flats behind the dunes on the southwest side. Many species of birds use this area, including some that are listed as federally endangered and threatened.
Woman Key	7	Half of the beach and sand spit (southeast side) closed. (Note: The beach above mean high tide is closed by the U.S. Department of the Interior.)	Woman Key contains an extensive south-facing, low-energy beach and associated dunes. Shallow-water flats (hardbottom) border most of the beach. Loggerhead turtles nest on the beach and dunes. Several species of wading birds also nest in the area and a large number of shorebirds use the sand spits on the southeast side of the island.
Horseshoe Key	8	No access buffer zone around main island. (Note: The main island is closed by the U.S. Department of the Interior.)	Island is bordered entirely by red mangroves; two large openings on the island's interior contain salt prairies. Heron, willet, and osprey nesting sites have been documented.
Cottrell Key	9	No-motor zone (300 feet) around island	Cottrell Key contains a variety of wading birds and mangrove terrapins.

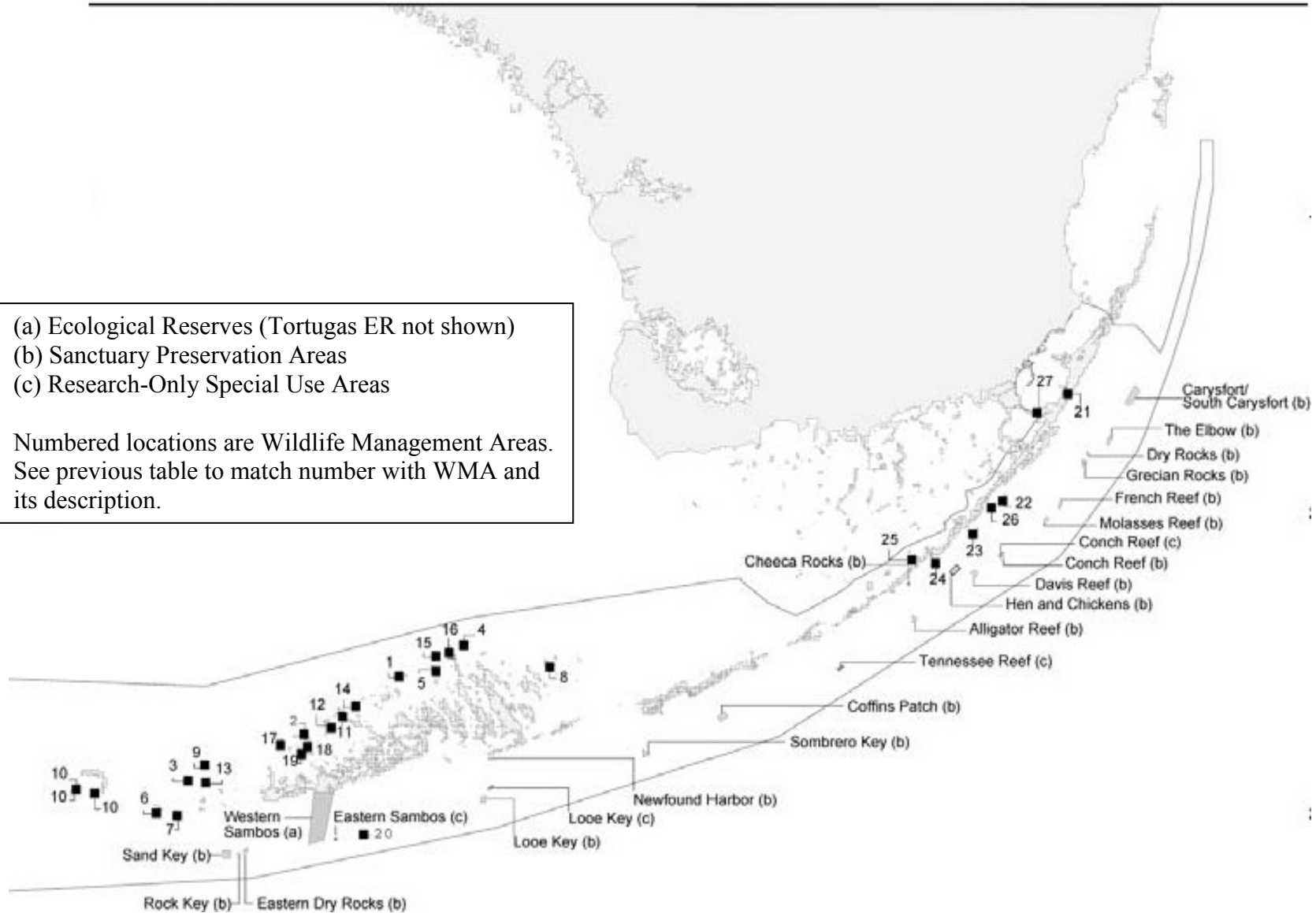
WMA Zone name	Map No.	Regulation/Restriction	Description & purpose
Marquesas Keys	10	a. No-motor zones (300 feet) around three smallest islands; b. No-access buffer zone (300 feet) around one mangrove island; c. Idle speed only/no wake zone through one tidal creek	The Marquesas Keys are characterized by an extensive network of low-energy beaches and dunes. Deepwater channels cut through the interior of the islands. The islands are used by sea turtles and birds for nesting, feeding, and roosting.
Snipe Keys	11	Idle speed only/no wake zone in main Creek; No-motor zone elsewhere	Snipe Keys are a group of small islands dissected by a maze of tidal creeks between Snipe Point and the Outer Narrows. Groups of little blue herons are present on the tidal creeks. Snipe Point is used by terns and various shorebirds.
Mud Keys	12	Idle speed only/no wake zone in two main creeks; two smaller creeks closed	Mud Keys are a series of islands highly dissected by navigable creeks. The islands consist almost entirely of red mangroves, although the northernmost island has considerable upland vegetation. The islands contain nesting ospreys and a small great white heron rookery. Frigatebirds sometimes roost on the islands.
Big Mullet Key	13	No-motor zone (300 feet) around island	The island harbors nesting great white herons and a variety of other wading birds. Mangrove terrapins are also present.
Tidal Flat South of Marvin Key	14	No-access buffer zone	These tidal flats cover one to two acres and are inundated at high tide. Large numbers of resting shorebirds use the flats.
West Content Keys	15	Idle speed only/no wake zone in selected tidal creeks and one no-access buffer zone	The West Content Keys are accessible at high tides. Broad, shallow tidal creeks dissect the area, and nesting ospreys and wading birds inhabit the islands.
East Content Keys	16	Idle speed only/no wake zones in tidal creeks	The East Content Keys are dissected by several shallow tidal creeks and are inaccessible to most vessels at low tide. Herons and white ibises use the interior tidal creeks.
Bay Keys	17	Idle speed only/no wake zone in tidal creeks and no-motor zone (300 feet) around one island	The largest key harbors great white herons and a considerable number of tricolored and little blue herons.
Lower Harbor Keys	18	Idle speed only/no wake zone in selected tidal creeks	The Lower Harbor Keys are dissected by tidal creeks, lack dry land, and are composed primarily of red mangroves. Most of the islands are accessible by navigable channels. The islands contain nesting great white herons, double-crested cormorants, and osprey. A variety of other wading birds use the islands as well.

WMA Zone name	Map No.	Regulation/Restriction	Description & purpose
Cayo Agua Keys	19	Idle speed only/no wake zone in tidal creeks	This series of islands is dissected by tidal creeks. All of the Cayo Agua islands consist largely of red mangroves and are used by great white herons and ospreys.
Pelican Shoal	20	No-landing and no-access zone out to 50 meters from shore between April 1 and August 31. (Note: The shoal is closed by the state of Florida.)	Pelican Shoal is primarily a small rubble island that provides an important nesting site for birds.
Crocodile Lake	21	No-access buffer zone (100 feet) along shoreline between March 1 and October 1	Crocodile Lake has the most extensive stands of tropical hardwood hammocks in the United States. It harbors a number of endangered and threatened species, including the American crocodile and the West Indian manatee.
Rodriguez Key	22	No-motor zone on tidal flat	This site contains areas of very shallow flats that are heavily used by a variety of birds as well as bonefish and other fish species.
Tavernier Key	23	No-motor zone on tidal flat	This site contains areas of very shallow flats that are heavily used by a variety of birds as well as bonefish and other fish species.
Snake Creek	24	No-motor zone on tidal flat	Snake Creek is an area of very shallow flats that are heavily used by a variety of birds, as well as bonefish and other fish species.
Cotton Key	25	No-motor zone on tidal flat	Cotton Key is an area of very shallow flats that are heavily used by a variety of birds as well as bonefish and other fish species. There are also several small mangrove islands that serve as nesting sites for a variety of birds, including pelicans, cormorants, and at least four species of herons. Cotton Key is also a preferred roost for magnificent frigatebirds.
Dove Key	26	No-motor zone on tidal flat; area closed around two small islands	This site contains areas of very shallow flats that are heavily used by a variety of birds as well as bonefish and other fish species.
Eastern Lake Surprise	27	Idle speed only/no wake zone east of US 1	Restriction in place in order to protect the endangered American crocodile and West Indian manatee that inhabit the area from vessel traffic.

Note: Areas in **bold** are marked and managed by NOAA, the FDEP, and Monroe County. Crocodile Lake is marked by NOAA and managed, along with the remaining sites, by the FWS.

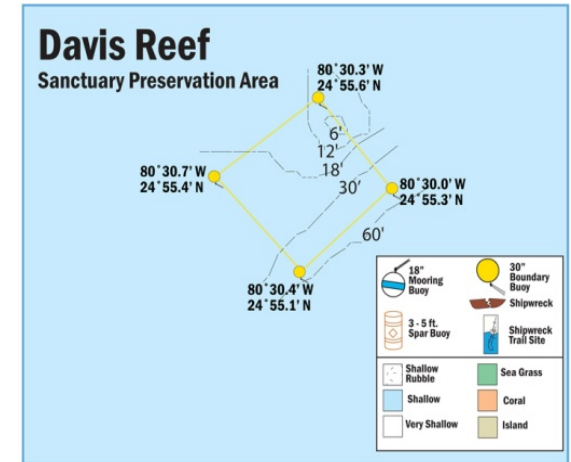
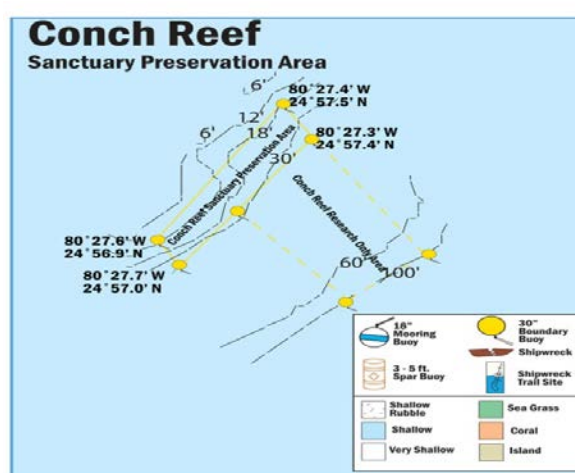
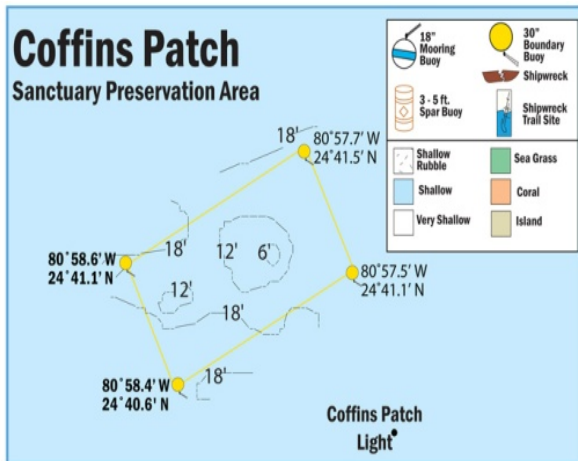
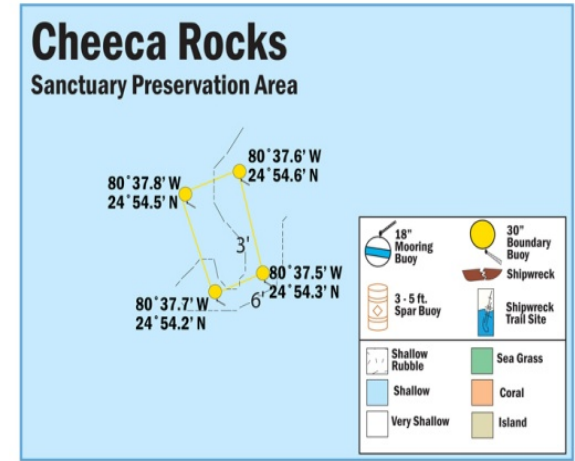
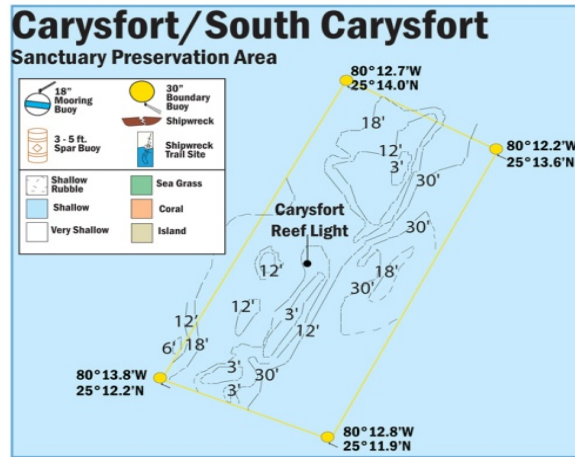
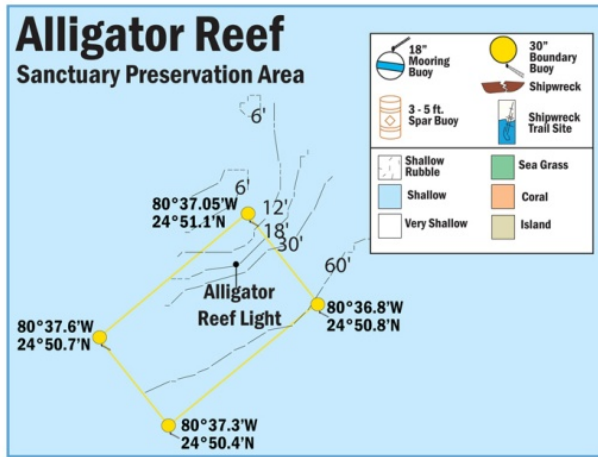
(a) Ecological Reserves (Tortugas ER not shown)
 (b) Sanctuary Preservation Areas
 (c) Research-Only Special Use Areas

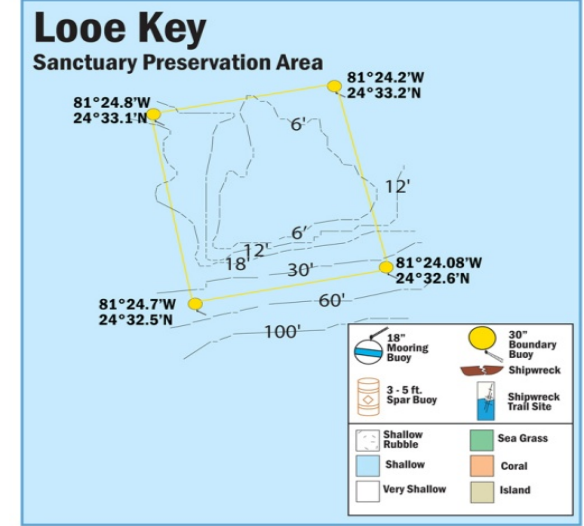
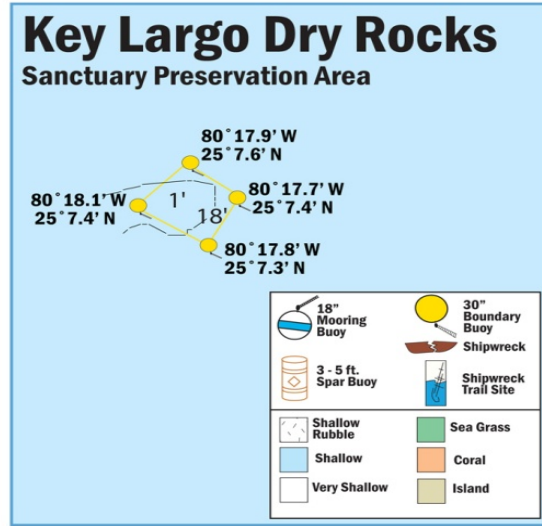
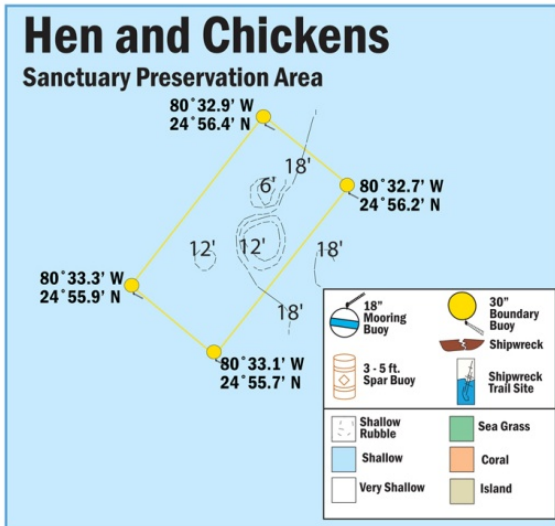
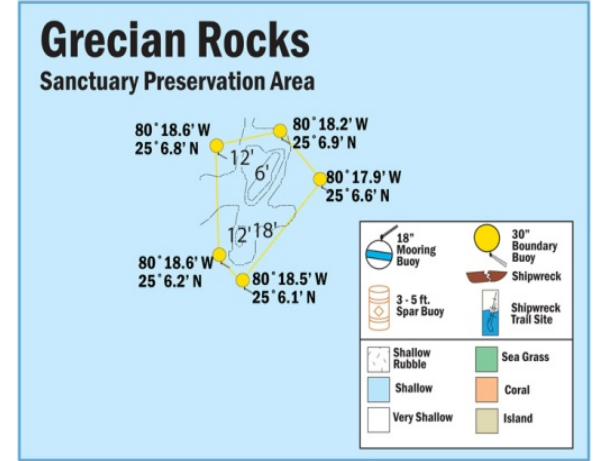
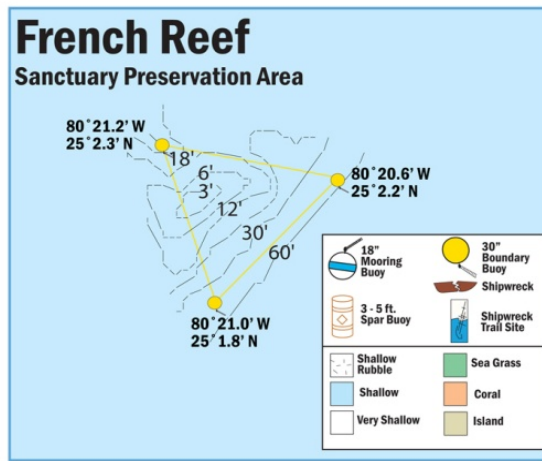
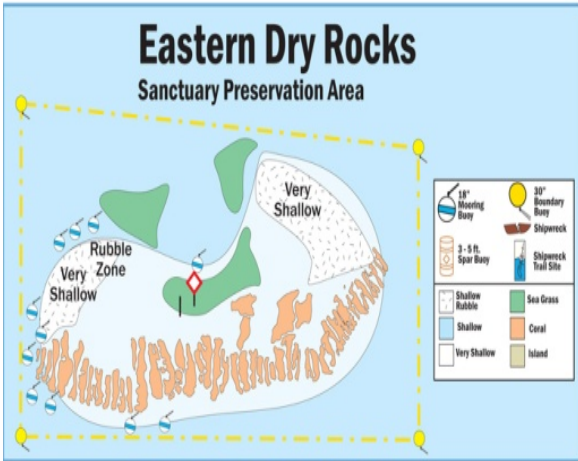
Numbered locations are Wildlife Management Areas.
 See previous table to match number with WMA and
 its description.

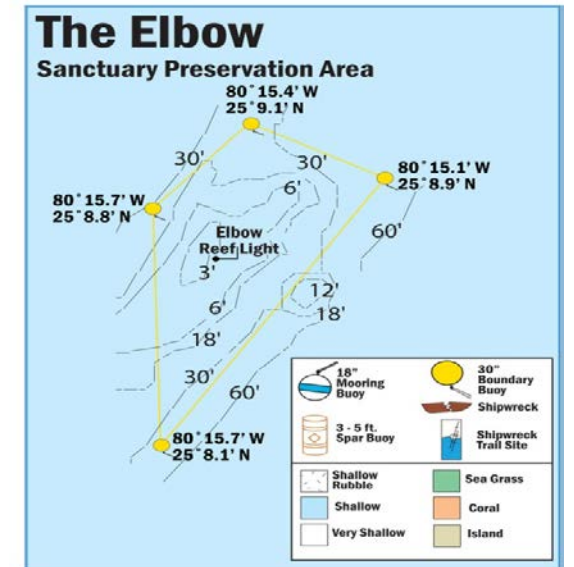
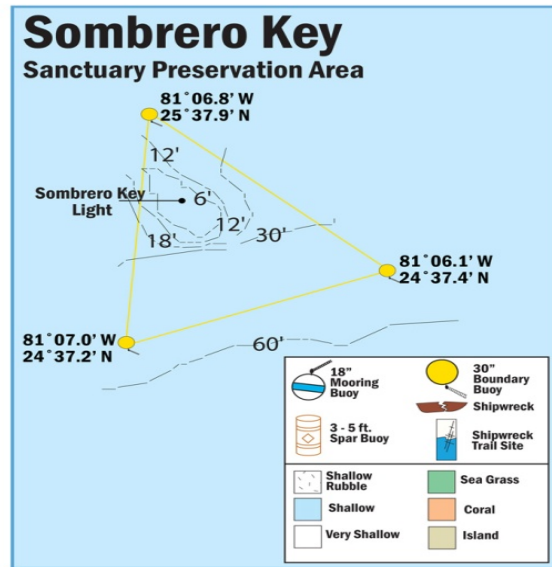
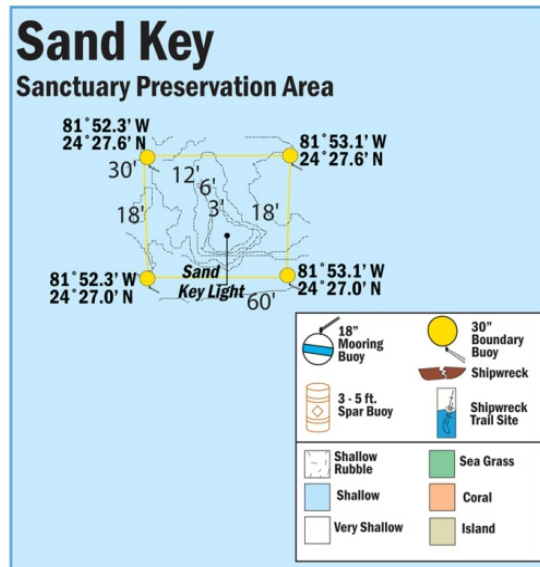
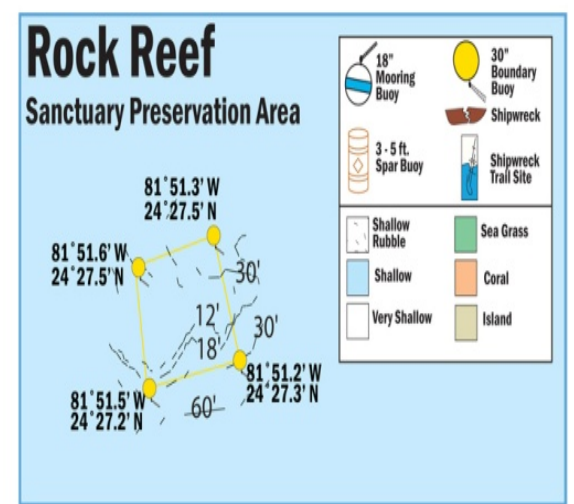
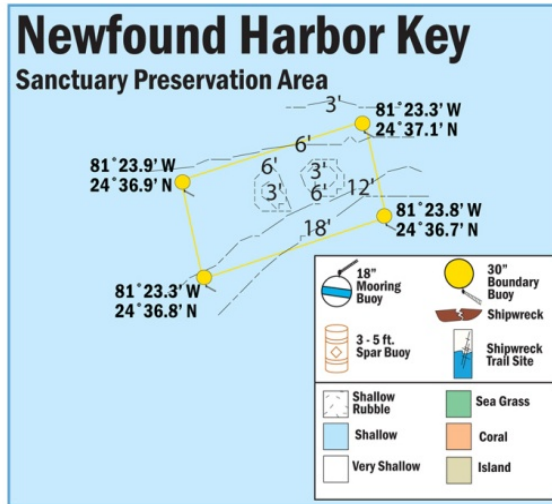
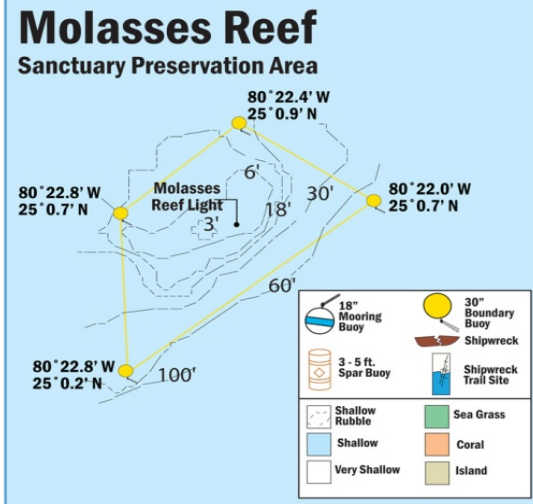


Appendix II. Schematics of Individual Marine Zones.

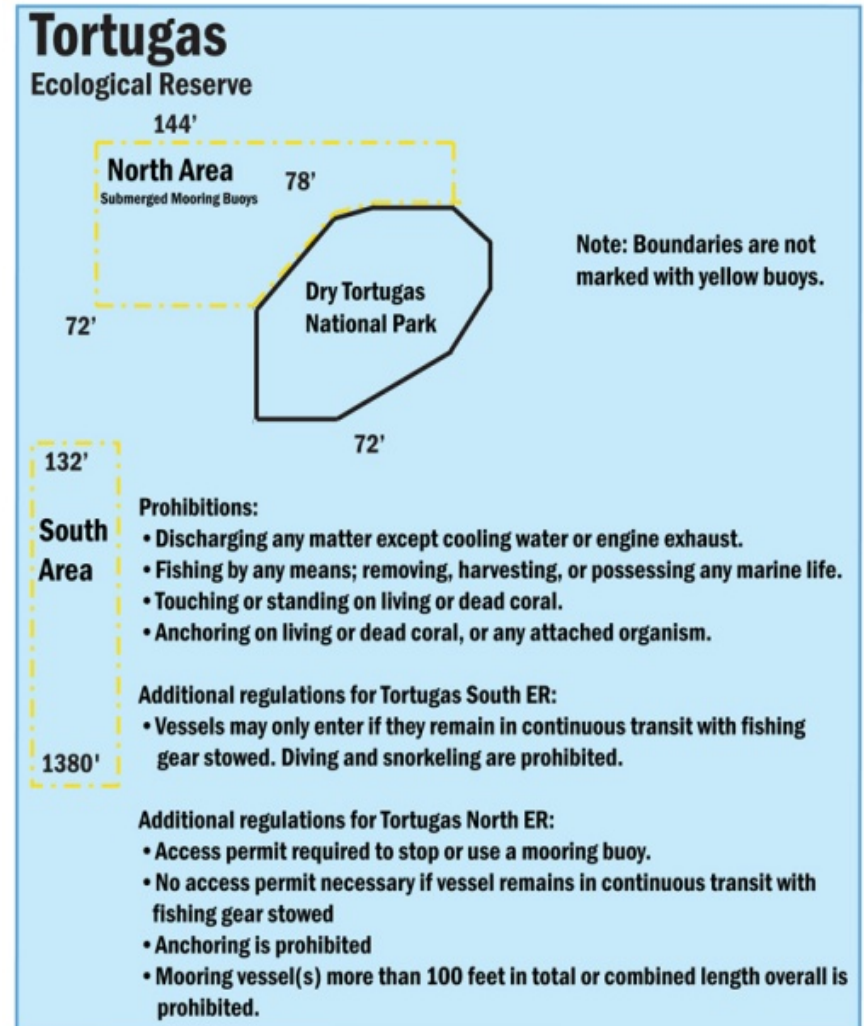
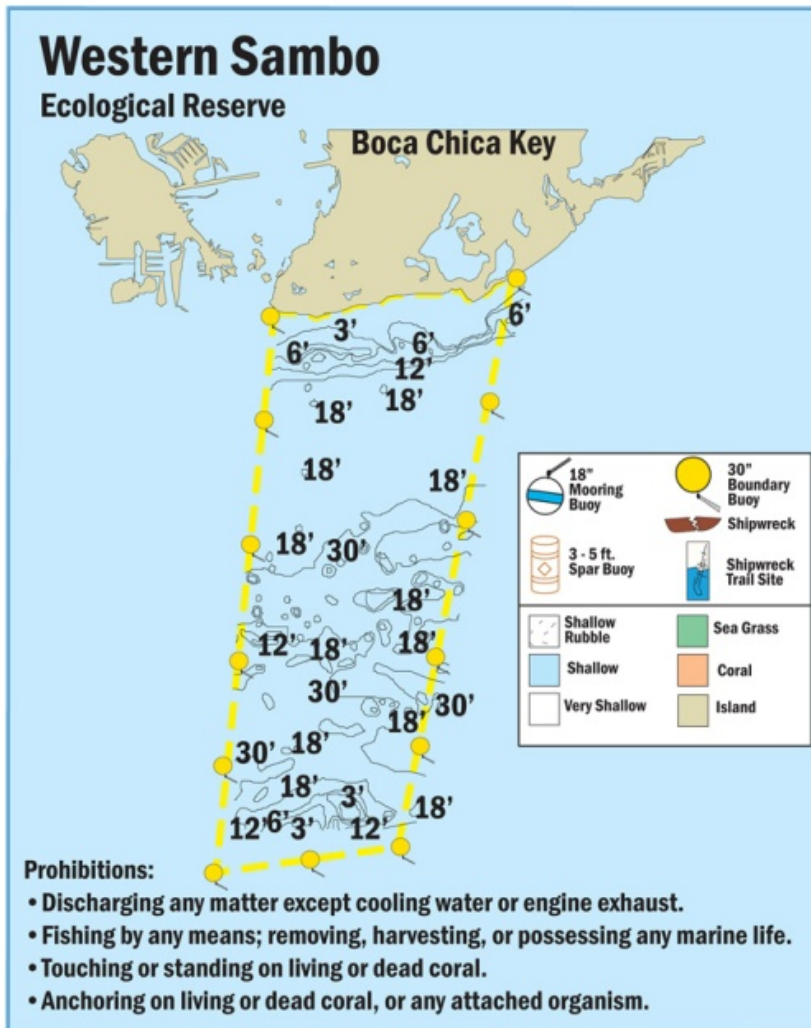
Appendix II.A. Sanctuary Preservation Areas



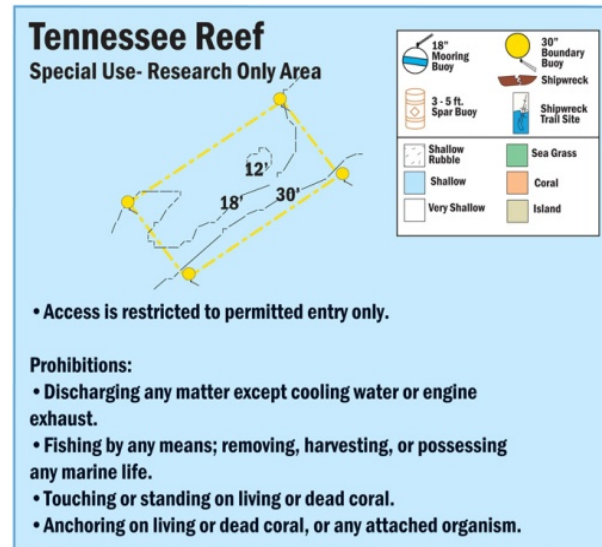
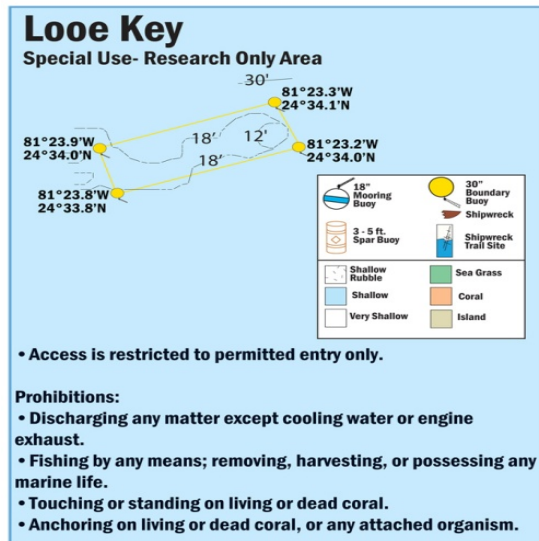
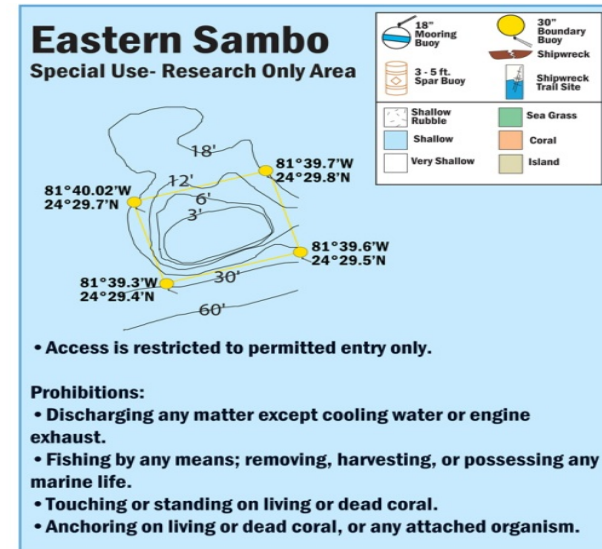
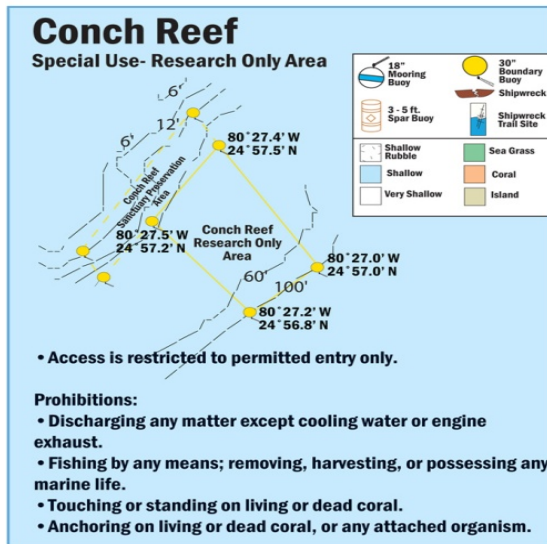




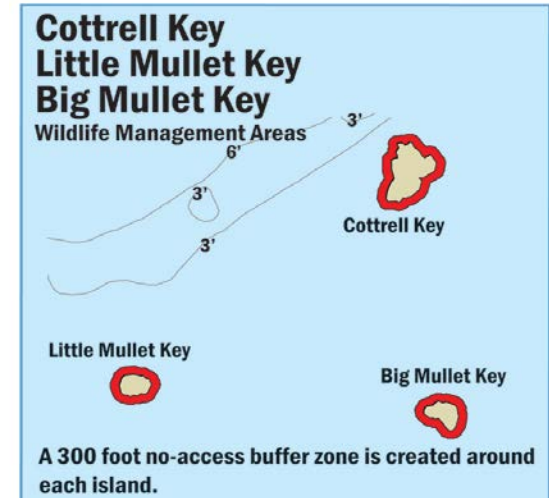
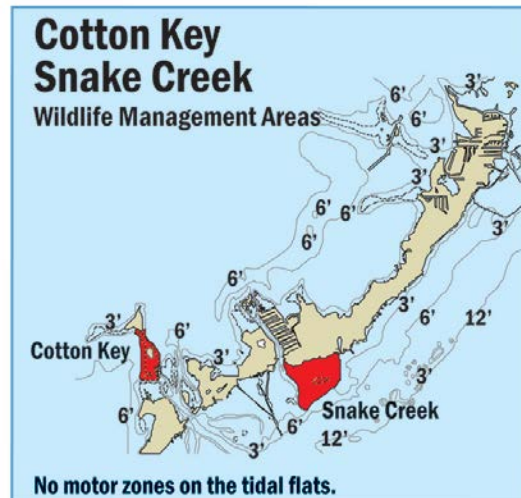
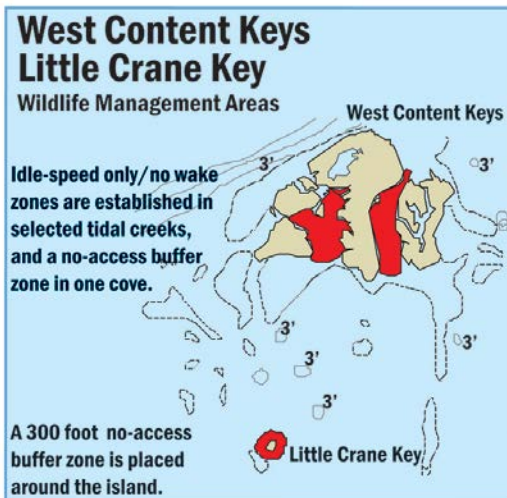
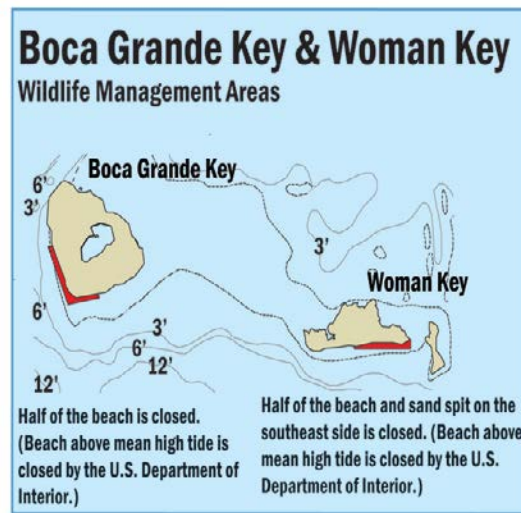
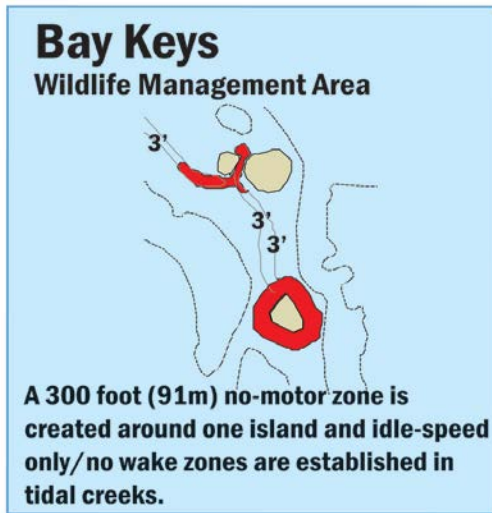
Appendix II.B. Ecological Reserves



Appendix II.C. Special-Use (Research-Only) Areas



Appendix II.D Wildlife Management Areas



Crocodile Lake Wildlife Management Area

There is a 100' no access buffer zone along the shoreline between March 1 and October 1.



East Harbor Key Lower Harbor Keys Wildlife Management Areas

A 300 foot no access buffer zone is established around the northern most island.

Idle speed only/no wake zones are created in selected creeks.



Eastern Lake Surprise Wildlife Management Area

SH = Shoreline

Idle speed/no wake zone east of U.S. Highway 1.



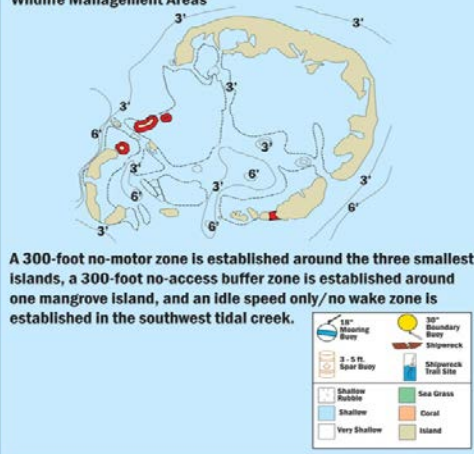
Horseshoe Key Wildlife Management Area

There is a 300' no access buffer zone around the main island. The main island is closed by the U.S. Department of the Interior.



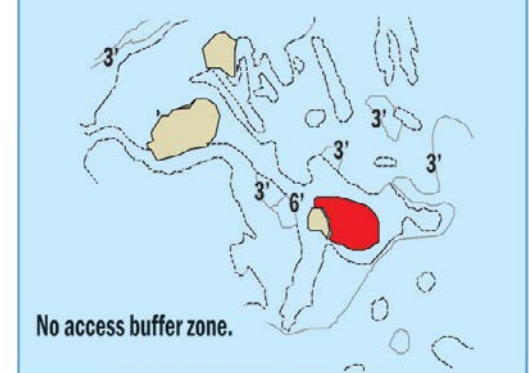
Marquesas Keys Wildlife Management Areas

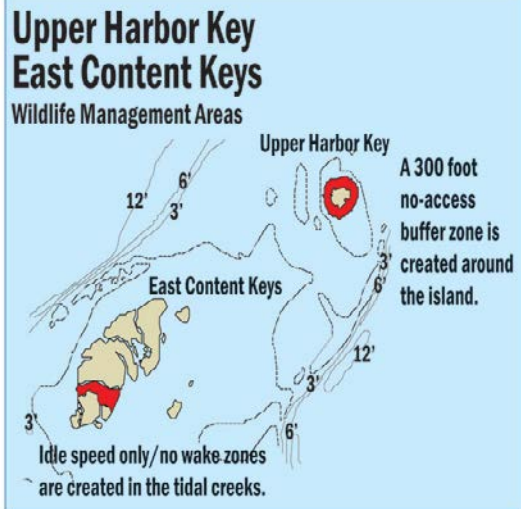
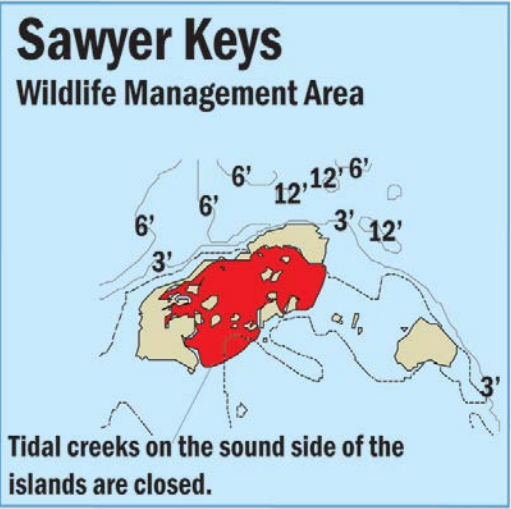
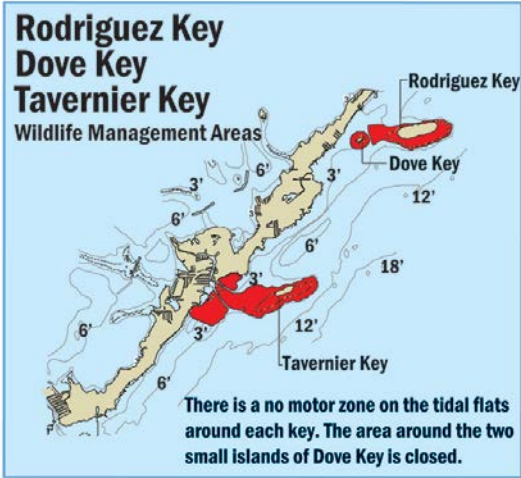
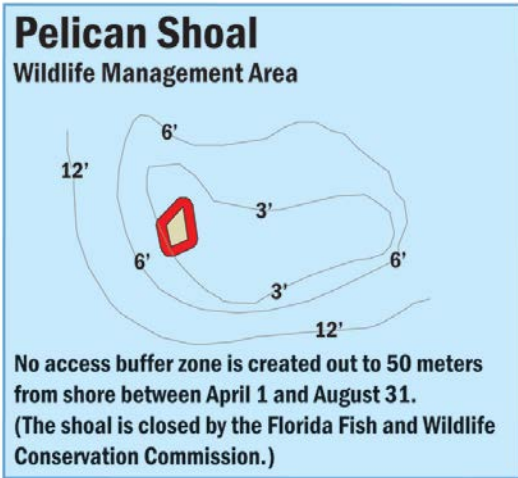
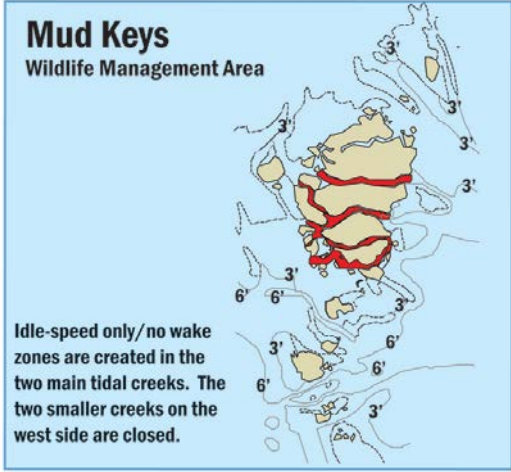
A 300-foot no-motor zone is established around the three smallest islands, a 300-foot no-access buffer zone is established around one mangrove island, and an Idle speed only/no wake zone is established in the southwest tidal creek.



Tidal Flat South of Marvin Key Wildlife Management Area

No access buffer zone.



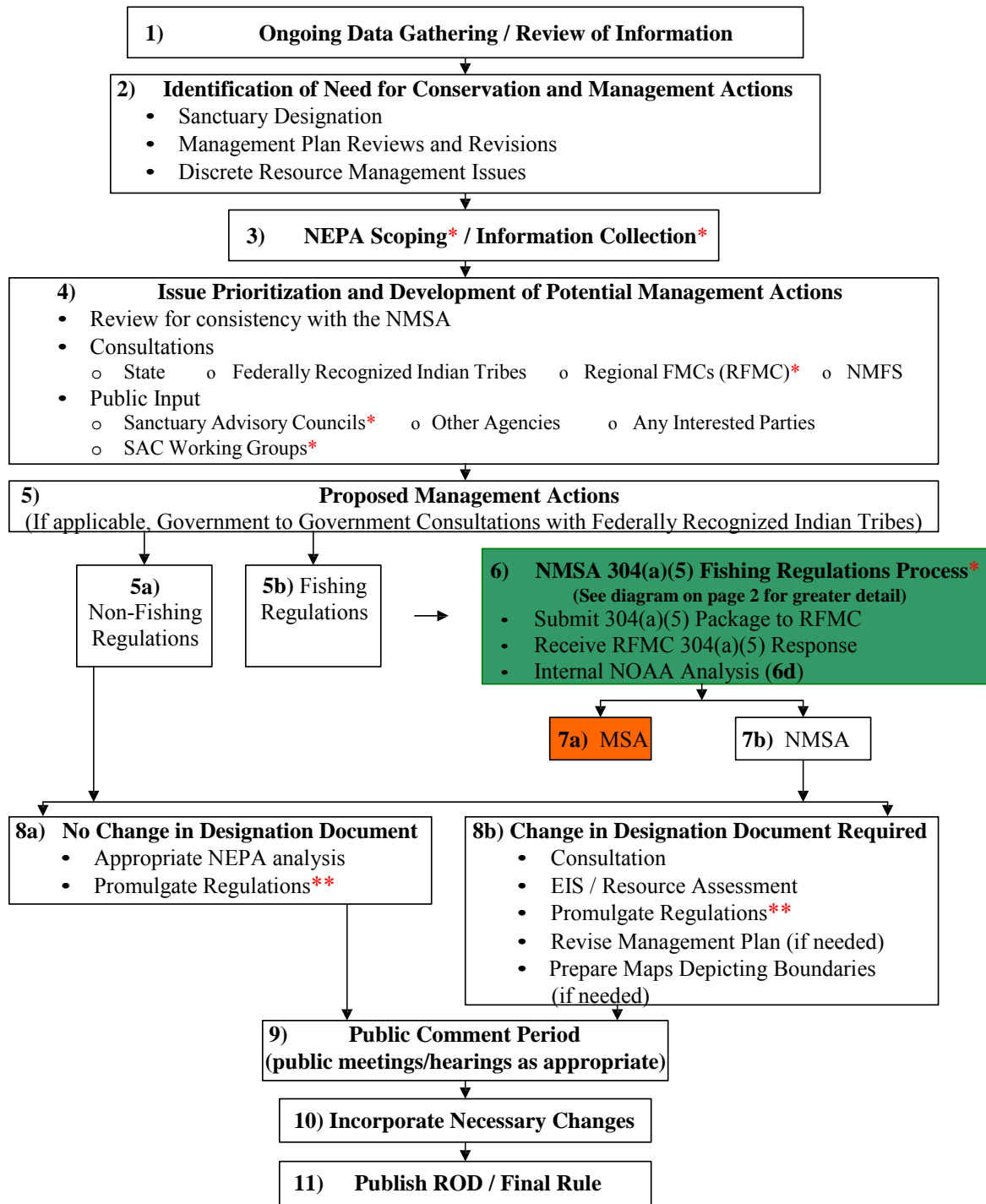


Appendix III. Flowchart for Changes of Designation or Regulations in a National Marine Sanctuary.

This appendix contains a flowchart summarizing the process a National Marine Sanctuary must undergo to either change its designation or regulations. There is a particular emphasis on the steps necessary to address fishing issues from initial concept through implementation, and these steps are described in additional detail in separate flowcharts for Step 6 and Step 6(d).

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National Marine Sanctuaries Act Regulatory Process

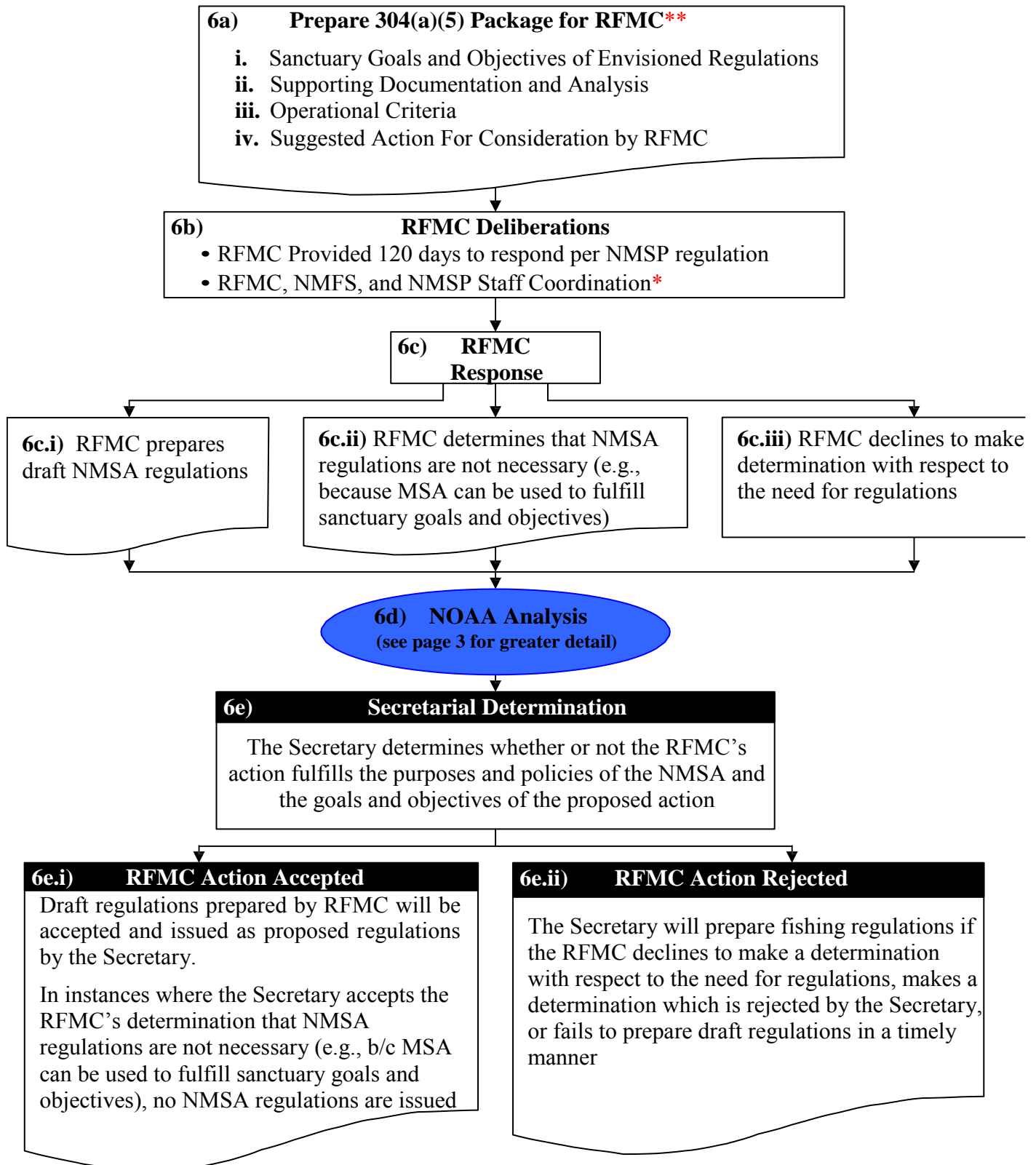


*These highlighted items represent specific steps in the process by which NOAA will actively engage the appropriate RFMC. Please see accompanying text for more detail.

**During final development of draft fishing regulations, staff of the NMSP, NMFS and RFMCs coordinate as appropriate to ensure that any resulting regulation fulfills sanctuary goals and objectives.

6) NMSA §304(a)(5) Fishing Regulations Process

(Expansion of Box 6 on page 1. When this process is complete return to 7a, 7b, or both – p.1)

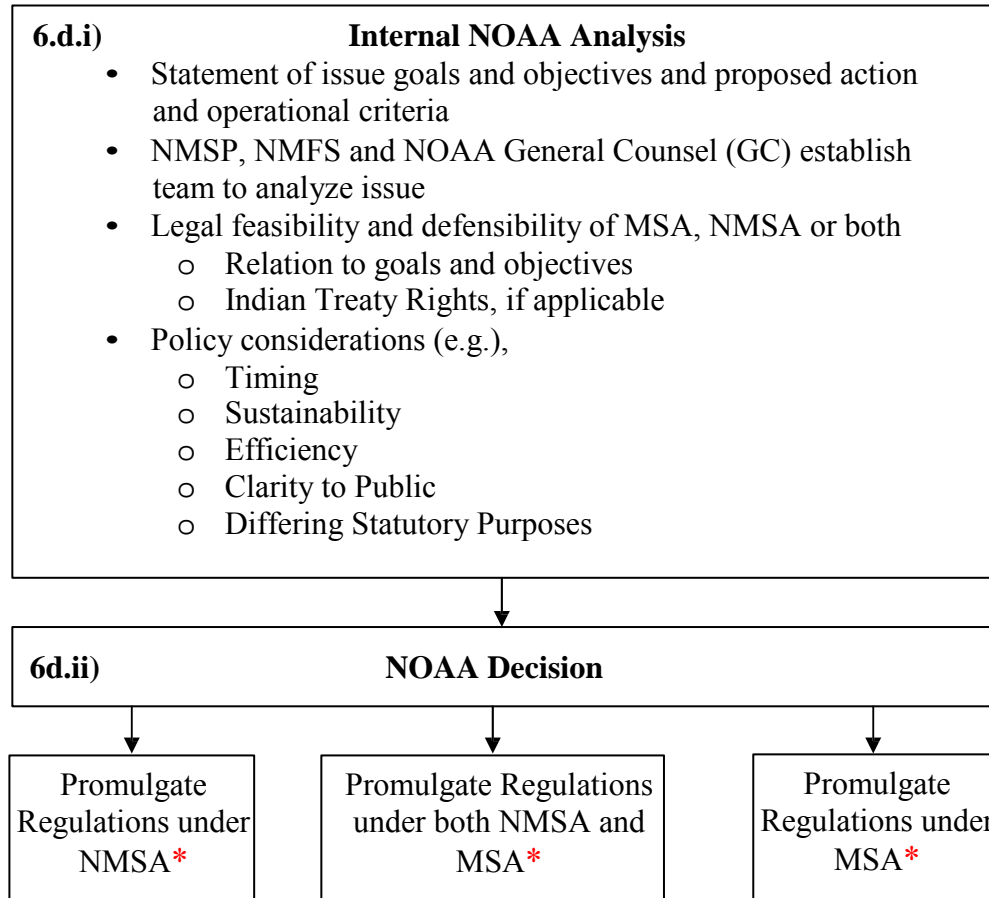


* This highlighted item is a step in the process by which NOAA will actively engage the RFMC. Please see accompanying text for more detail.

** These materials are developed from the Scoping and Issue Prioritization steps in the process.

6d) NOAA Analysis

(Expansion of Box 6d on page 2. When complete, return to 6e – p.2)



* During promulgation of regulations resulting from the NMSA 304(a)(5) process, staff of the NMSP, NMFS and RFMCs will coordinate as appropriate to ensure the resulting regulation fulfills its intended goals and objectives, regardless of the statute(s) under which it is promulgated. NOAA will ensure that any proposed regulations are consistent with Indian treaty fishing rights.