

Final Rule

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Part II

Department of Commerce

National Oceanic and Atmospheric
Administration

15 CFR Parts 922, 929 and 937

Florida Keys National Marine Sanctuary;
Final Rule

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****15 CFR Parts 922, 929 and 937**

[Docket No. 960712192-6192-01]

RIN 0648-AD85

Florida Keys National Marine Sanctuary Final Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Final rule; removal and revision of regulations; summary of Final Management Plan.

SUMMARY: Pursuant to the Florida Keys National Marine Sanctuary and Protection Act and the National Marine Sanctuaries Act, NOAA has developed the comprehensive final management plan for the Florida Keys National Marine Sanctuary (FKNMS or the Sanctuary). NOAA hereby issues final regulations to implement that plan and govern the conduct of activities within the Sanctuary. This document also summarizes the Final Management Plan—Environmental Impact Statement (FMP/EIS) for the Sanctuary. The FMP/EIS details the goals and objectives, management responsibilities, research activities, educational and outreach programs, and interpretive enforcement activities for the Sanctuary. The intended effect of the final regulations, and FMP/EIS is to protect and manage the conservation, recreational, ecological, historical, research, educational, and aesthetic qualities of the Sanctuary consistent with the Florida Keys National Marine Sanctuary and Protection Act and the National Marine Sanctuaries Act.

EFFECTIVE DATES: Congress and the Governor of the State of Florida have forty-five days of continuous session of Congress beginning on the day on which this document is published to review the regulations before they take effect. After forty-five days, the regulations automatically become final and take effect, unless the Governor of the State of Florida certifies within the forty-five-day period to the Secretary of Commerce that a regulation or regulations is unacceptable. In such case, the regulation (or regulations) cannot take effect in the area of the Sanctuary lying within the seaward boundary of the State of Florida. In no event will § 922.164(d) become effective

in State waters before July 1, 1997. A document announcing the effective dates will be published in the Federal Register.

ADDRESSES: Requests for a copy of the FMP/EIS, the Final Regulatory Flexibility Analysis, or the Federalism Assessment should be submitted to the Sanctuary Superintendent, Florida Keys National Marine Sanctuary, P.O. Box 500368, Marathon, Florida 33050.

FOR FURTHER INFORMATION CONTACT: Billy Causey, Sanctuary Superintendent, 305/743-2437 or Edward Lindelof, East Coast Branch Chief, 301/713-3137 Extension 131.

SUPPLEMENTARY INFORMATION:**I. Introduction**

The FKNMS was designated by an act of Congress entitled the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA, Pub. L. 101-605) which was signed into law on November 16, 1990. The FKNMSPA directed the Secretary of Commerce to develop a comprehensive management plan and regulations for the Sanctuary pursuant to sections 303 and 304 of the National Marine Sanctuaries Act (NMSA) (also known as Title III of the Marine Protection, Research, and Sanctuaries Act of 1972), as amended, 16 U.S.C. 1431 et seq. The NMSA authorizes the development of management plans and regulations for national marine sanctuaries to protect their conservation, recreational, ecological, historical, research, educational, or aesthetic qualities.

The authority of the Secretary to designate national marine sanctuaries and implement designated sanctuaries was delegated to the Under Secretary of Commerce for Oceans and Atmosphere by the Department of Commerce, Organization Order 10-15, § 3.01(z) (Jan. 11, 1988). The authority to administer the other provisions of the NMSA was delegated to the Assistant Administrator for Ocean Services and Coastal Zone Management of NOAA by NOAA Circular 83-38, Directive 05-50 (Sept. 21, 1983, as amended).

II. Summary of Final Management Plan/Environmental Impact Statement

The FMP/EIS sets forth the affected environment of the Sanctuary including the boundary and details its resources and human uses of the Sanctuary. The FMP/EIS also describes the resource protection, research, education and interpretive enforcement programs, and details the specific activities to be conducted in each management program area. The FMP/EIS includes a

discussion, by program area, of agency roles and responsibilities.

The goals and objectives for the Sanctuary are to: (1) Enhance resource protection through comprehensive and coordinated conservation and ecosystem management that complements existing regulatory authorities; (2) support, promote, and coordinate scientific research on, and monitoring of, the site-specific marine resources to improve management decision-making in national marine sanctuaries; (3) enhance public awareness, understanding, and the wise use of the marine environment through public education, and interpretive enforcement; and (4) facilitate, to the extent compatible with the primary objective of resource protection, multiple uses of the Sanctuary.

A. Resource Protection

The highest priority management goal is to protect the marine environment, resources, and qualities of the Sanctuary. The specific objectives of protection efforts are to: (1) Reduce threats to Sanctuary resources; (2) encourage participation by interested agencies and organizations in addressing specific management concerns (e.g., monitoring and emergency-response programs); (3) develop an effective and coordinated program for the interpretive enforcement of Sanctuary regulations in addition to other regulations already in place; (4) promote public awareness of, and voluntary compliance with, Sanctuary regulations and objectives through an educational/interpretive program stressing resource sensitivity and wise use; (5) ensure that the water quality of the Florida Keys is maintained at a level consistent with the purposes of Sanctuary designation; (6) establish cooperative agreements and other mechanisms for coordination among all the agencies participating in Sanctuary management; (7) ensure that the appropriate management agencies incorporate research results and scientific data into effective resource protection strategies; and (8) coordinate policies and procedures among the agencies sharing responsibility for protection and management of Sanctuary resources.

B. Research Program

Effective management of the Sanctuary requires the conduct of a Sanctuary research program. The purpose of Sanctuary research is to improve understanding of the Florida Keys' coastal and offshore environment, resources, and qualities, and to resolve specific management problems. Some of

these management problems involve resources common to coastal and offshore waters, and nearby Federal, State, and local refuges and reserves. Research results will both support management efforts to protect Sanctuary resources and qualities, and be incorporated into interpretative programs for visitors and others interested in the Sanctuary.

Specific objectives for the research program are to: (1) Establish a framework and procedures for administering research to ensure that research projects are responsive to management concerns and that results contribute to improved management of the Sanctuary; (2) focus and coordinate data collection efforts on the physical, chemical, geological, and biological oceanography of the Sanctuary; (3) encourage studies that integrate research from the variety of coastal habitats with nearshore and open ocean processes; (4) initiate a monitoring program to assess environmental changes as they occur due to natural and human processes; (5) identify the range of effects on the environment that would result from predicted changes in human activity or natural phenomena; (6) encourage information exchange and cooperation among all the organizations and agencies undertaking management-related research in the Sanctuary to promote more informed management; and (7) incorporate research results into the interpretive/education program in a format useful for the general public.

C. Education and Outreach

The goal for the Sanctuary education and outreach program is to improve public awareness and understanding of the significance of the Sanctuary and the need to protect its resources and qualities.

The management objectives designed to meet this goal are to: (1) Provide the public with information on the Sanctuary and its goals and objectives, with an emphasis on the need to use Sanctuary resources and qualities wisely to ensure their long-term viability; (2) broaden support for Sanctuary management by offering programs suited to visitors with a diverse range of interests; (3) provide for public involvement by encouraging feedback on the effectiveness of education programs, collaboration with Sanctuary management staff in extension and outreach programs, and participation in other volunteer programs; and (4) collaborate with other organizations to provide educational services complementary to the Sanctuary program.

D. Visitor Use

The Sanctuary goal for visitor use management is to facilitate, to the extent compatible with the primary objective of resource protection, public and private uses of the resources of the Sanctuary not prohibited pursuant to other authorities.

Specific management objectives are to: (1) Provide relevant information about Sanctuary regulations, use policies, and standards; (2) collaborate with public and private organizations in promoting compatible uses of the Sanctuary; (3) encourage the public who use the Sanctuary to respect sensitive Sanctuary resources and qualities; and (4) monitor and assess the levels of use to identify and control potential degradation of resources and qualities, and minimize potential user conflicts.

The Sanctuary is currently managed from offices located in Key Largo and Key West, with the headquarters in Marathon.

III. Summary of the Final Regulations

Two sets of existing regulations are eliminated and replaced by this final rule. Specifically, parts 929 and 937 to title 15 of the Code of Federal Regulations, which govern activities in the Key Largo and Looe Key National Marine Sanctuaries, respectively, are removed and replaced by the new regulations which govern the entire FKNMS. Consistent with the FKNMSPA, the Looe Key and Key Largo National Marine Sanctuaries have been incorporated into the FKNMS as Existing Management Areas (§ 922.164(b)(1)).

Organizationally, these final regulations are revised from the proposed regulations in furtherance of the President's Regulatory Reinvention Initiative to, among other things, consolidate duplicative regulatory provisions. Consequently, the new regulations for the most part appear in a new subpart P to 15 CFR part 922 (15 CFR 922.160—922.167) and in Appendixes I through VIII to subpart P. Existing §§ 922.3, 922.42, 922.45, 922.46, 922.49 and 922.50 of 15 CFR part 922 are also applicable to the Sanctuary. In some instances, this rule makes minor revisions to those and other sections of the National Marine Sanctuary Program Regulations at 15 C.F.R. part 922 to make them meld with the new subpart P.

Section 922.160 sets forth the purpose of the regulations—to implement the comprehensive final management plan for the Sanctuary by regulating activities affecting the Sanctuary in order to protect, preserve, and manage the

conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of the area.

Section 922.161 and Appendix I describe the boundary of the Sanctuary as established by section 5 of the FKNMSPA.

Existing § 922.3 defines terms applicable to all National Marine Sanctuaries. The Marine Protection, Research, and Sanctuaries Act also defines other terms applicable to all National Marine Sanctuaries. The terms "historical resource," and "sanctuary quality" were slightly revised to reflect the Sanctuary's definitions as they appeared in the proposed regulations. The modified definitions further clarify the meaning of these terms, which are applicable to all the sanctuaries found in part 922.

Section 922.162 defines terms only applicable to the FKNMS.

Existing § 922.42 specifies that all activities, including fishing, boating, diving, research, and education, are allowed in the National Marine Sanctuaries except to the extent that those activities are restricted or prohibited by subparts F through P of part 922 (in the case of the FKNMS by §§ 922.163, 922.164), subject to any emergency regulation (in the case of the FKNMS under § 922.165), and subject to all prohibitions, regulations, restrictions, and conditions validly imposed by any Federal, State, or local authority of competent jurisdiction. This section is intended to assure that if activities are not prohibited or otherwise restricted or conditioned pursuant to this part, or by any other Federal, State, or local authority of competent jurisdiction, then they are expressly allowed within the Sanctuary.

Section 922.163 prohibits a variety of activities within the Sanctuary and in limited instances, outside the Sanctuary, thus making it unlawful for any person to conduct them or cause them to be conducted.

The first activity prohibited is exploring for, developing, or producing minerals or hydrocarbons within the Sanctuary. The FKNMSPA already prohibits these activities. The Sanctuary's significant natural resources and qualities are especially sensitive to potential impacts from outer continental shelf minerals or hydrocarbon activities and should be protected. Specifically, the corals, seagrasses, and mangroves of the Florida Keys and the Sanctuary's water quality are especially vulnerable to oil and gas activities in the area. The prohibition on oil, gas and mineral activities will help protect the Sanctuary's resources and qualities.

This specific prohibition is consistent with the general prohibition on drilling into, dredging or otherwise altering the seabed discussed below. The codification of the statutory prohibitions into the Sanctuary regulations is for regulatory cohesiveness (so that all restrictions or prohibitions found in the statute or imposed pursuant to the statute's authority can be found in one place) rather than to provide any additional protections.

The second activity prohibited is the removal of, injury to, or possession of coral or live rock except as authorized by a Federal or State permit. The intent of this prohibition is to conserve the coral reefs, to protect the biodiversity of the Sanctuary, to protect the habitats of commercially and ecologically important species, and to preserve the natural functional aspects of the coral reef ecosystem.

The third activity prohibited is alteration of, or construction on, the seabed. Such actions as drilling, dredging, and prop dredging are prohibited by this regulation. The seabed and the water over the seabed are the basic elements for all marine ecosystems. This prohibition protects the seabed as well as the resources in and on the seabed, such as shipwrecks, and seagrasses. Exceptions are made for anchoring in manners not otherwise prohibited, traditional fishing activities not otherwise prohibited, installation and maintenance of navigational aids, harbor maintenance, repair and replacement of jetties, and breakwaters, and construction, repair, and replacement of docks and piers.

The fourth activity prohibited is the discharge or deposit of materials or other matter. Exceptions are made for such things as fish baits in connection with and during traditional fishing, biodegradable vessel effluents, graywater, and vessel exhaust and cooling water. The primary intent of this prohibition is to protect the Sanctuary resources and qualities against the harmful effects of land and marine based pollution, particularly vessel source pollution, to reduce and prevent contamination by marine debris and related impacts associated with pollution of the marine environment of the Sanctuary. Together with the prohibition on the alteration of, or construction on, the seabed, this provides a safety net for protection of specific resources and the ecosystem.

The fifth activity prohibited is the operation of vessels in a manner which harms significant Sanctuary resources such as operating a vessel in such a manner as to strike or otherwise injure coral, seagrass, other immobile organism

attached to the seabed, or to injure or take wading, nesting, or roosting seabirds or marine mammals. Also specifically prohibited is having a vessel anchored on living coral other than hardbottom in less than 40 feet of water when visibility is such that the seabed can be seen, operating a vessel at a speed greater than idle speed only/no wake within an area designated as idle speed only/no wake, within 100 yards of navigational aids indicating emergent or shallow reefs, residential shorelines, or stationary vessels, within 100 feet of divers flags, and operating a vessel in a manner which endangers life, limb, marine resources, or property.

The sixth activity prohibited is diving without a red and white "divers down" flag or a blue and white "alpha" flag in Federal waters. The intent of this prohibition on divers in conjunction with the previous restriction on vessel operation is to help prevent injury to humans and facilitate safe, multiple use of the Sanctuary.

The seventh activity prohibited is the release of exotic species. Exotic species can permanently alter a natural ecosystem and its assemblages by such things as out competing indigenous species and preying on indigenous species. The intent of this prohibition is to prevent injury to Sanctuary resources, to protect the biodiversity of the Sanctuary, and to preserve the natural functional aspects of the ecosystem. By protecting the natural ecosystem and assemblages, it also addresses concerns from commercial and recreational users dependent upon the natural ecosystem and assemblages.

The eighth activity prohibited is the tampering with official signs or markers or navigational aids. The signs, markers and navigational aids generally are posted to inform the users about regulations as well as the existence of certain Sanctuary resources, primarily corals and seagrasses, in order to prevent injury to those resources. They also address safety concerns for humans and property. Prohibiting tampering is reasonable and necessary for effective prevention and enforcement of regulations.

The ninth activity prohibited is the removing or injuring of Sanctuary historical resources. Submerged historical resources constitute important, irreplaceable, public resources of the Sanctuary because they contain important information about human heritage, history, and culture. This prohibition is designed to protect these resources and ensure their availability for present and future research, education and other uses

compatible with the NMSA and the Abandoned Shipwreck Act (ASA).

The tenth activity prohibited is taking or possessing certain protected wildlife. The Sanctuary is an important staging area, breeding area, and feeding area for a variety of wildlife, including a number of endangered and threatened species. The intent of this prohibition is to protect Sanctuary resources and endangered and/or threatened species.

The eleventh activity prohibited is the possession or use of explosives and electrical charges. The intent of this prohibition is to prevent injury to Sanctuary resources.

The twelfth activity prohibited is the harvest or possession of marine life species (tropical fish and plants), except in accordance with the Marine Life Rule of the Florida Administrative Code reproduced in Appendix VIII to this subpart. The intent of this regulation is to protect Sanctuary resources and biodiversity by adopting relevant portions of the Florida Marine Life rule as a uniform regulation to be applied throughout the Federal and State waters of the Sanctuary.

The thirteenth activity prohibited is interfering with law enforcement officers. The intent of this prohibition is to prevent the obstruction of justice.

Section 922.163 provides certain exemptions from the prohibitions such as when a prohibited activity is conducted by a Federal, State, or local officer while performing enforcement duties and/or while responding to emergencies. Certain activities conducted by the U.S. Department of Defense are also exempt. Also, a prohibited activity may be conducted if specifically authorized by, and conducted in accordance with a National Marine Sanctuary Permit.

Section 922.164 sets forth by Sanctuary zone, restrictions and prohibitions above and beyond those applicable on a Sanctuary-wide basis (most of the Sanctuary is not zoned and, therefore, only the Sanctuary-wide prohibitions of § 922.163 apply). The six type of Sanctuary zones are: (1) Areas to be Avoided (ATBAs); (2) Existing Management Areas; (3) Wildlife Management Areas; (4) Ecological Reserves; (5) Sanctuary Preservation Areas; and (6) Special-use Areas. Details on the location of these zones are specified in Appendices II, III, IV, V and VI to subpart P, respectively. The intent of the zoning regulations is to protect Sanctuary resources, ecosystem and biodiversity, and provide for effective management and facilitation of multiple, compatible uses, consistent with the purposes of the Sanctuary. Activities located within two or more

overlapping Sanctuary zones are concurrently subject to the regulations applicable to each overlapping area.

Section 922.164(a) prohibits the operation of a tank vessel or a vessel greater than 50 meters in registered length in an ATBA. The boundary coordinates for the ATBAs are listed in Appendix VII to this subpart. This prohibition merely codifies into the Sanctuary regulations the prohibition in the FKNMSPA against this activity in the ATBAs. The prohibition should prevent or minimize large or tank vessel groundings on the coral reef, and thus minimize the risk of extensive physical damage, spills and associated, possibly irreparable, injury to Sanctuary resources likely to result from a grounding of a large vessel or tank vessel.

Section 922.164(b) sets forth additional restrictions applicable to Existing Management Areas—areas of the Sanctuary that are already within a resource management area established by NOAA or by another Federal authority of competent jurisdiction, and in need of a level of protection higher than that provided by the Sanctuary-wide prohibitions and restrictions of § 922.163. The Existing Management Areas are the Looe Key and Key Largo National Marine Sanctuaries and the Key West and Great White Heron National Wildlife Refuges. The boundaries of these areas are set forth in Appendix II to subpart P.

The FKNMSPA subsumed the Key Largo and Looe Key National Marine Sanctuaries into the FKNMS. The qualities and values for which those Sanctuaries were originally designated remain and require a continued level of protection above and beyond those applicable Sanctuary-wide. Therefore, consistent with the FKNMSPA, additional restrictions will remain applicable to those two areas. In order to do so, the areas of the two Sanctuaries have been zoned as Existing Management Areas with portions thereof also designated as Sanctuary Preservation Areas and Special-use Areas. Therefore, the special restrictions applicable to the two areas appear in the restrictions applicable to Existing Management Areas, Sanctuary Preservation Areas, and Special-use Areas.

Section 922.164(b)(1) sets forth the special restrictions applicable to the entire Key Largo and Looe Key Existing Management Areas: (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 National Marine Fisheries Service Fishery Management Plans; (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; and (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.

Also designated Existing Management Areas are the Great White Heron and Key West National Wildlife Refuge Management Areas. The Refuges are subject to the continuing management and control of the Department of the Interior, notwithstanding the exercise of concurrent regulatory authority by NOAA in the surrounding marine environment in accordance with this part. The development of these Sanctuary regulations was the result of coordination with the Department of the Interior, U.S. Fish and Wildlife Service. Such coordination will continue in the implementation and enforcement of these rules and regulations in a manner that complements the Sanctuary final management plan as well as existing refuge management plans. The Sanctuary's interpretive enforcement approach will be utilized in these areas to supplement existing enforcement by the U.S. Fish and Wildlife Service.

Section 922.164(b)(2) incorporates existing U.S. Fish and Wildlife Service restrictions which prohibit waterskiing, operating personal watercraft, and operating airboats within the Great White Heron and Key West National Wildlife Refuge Management Areas into Sanctuary regulations. By incorporating those provisions into the Sanctuary regulations, civil penalties can be sought for violation of Sanctuary regulations. Presently, only criminal sanctions, which are more difficult to prove and not always the best means of obtaining compliance, are available.

Section 922.164(c) sets forth the procedures for designating and changing the designation of all or part of the marine portions of the 27 Wildlife Management Areas listed in Appendix III as "idle speed only/no-wake", "no motor", "no access buffer" or "closed" areas. Wildlife Management Areas are areas established for the management, protection, and preservation of wildlife

resources, including such areas established for the protection and preservation of endangered or threatened species or their habitats, within which access is restricted to minimize disturbances to wildlife and to ensure protection and preservation consistent with the Sanctuary designation and other applicable law governing the protection and preservation of wildlife resources. Only the marine portions of these areas are within the Sanctuary, the land portions are under the Department of the Interior's and the State of Florida's jurisdiction and protection.

An "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. A "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. A "no-access buffer zone" means a portion of the Sanctuary where vessels are prohibited from entering regardless of the method of propulsion. "Closed" means all entry or use is prohibited.

The regulations require the Director or designee, in cooperation with other Federal, State, or local resource management authorities, as appropriate, to effect such designations by posting official signs conspicuously, using mounting posts, buoys, or other means according to location and purpose, at appropriate intervals and locations. Appendix III also sets forth the access restrictions applicable to the marine portions of the Wildlife Management Areas. The intent of these rules is to protect wildlife resources from injury or harmful disturbance within sensitive areas and habitats. It is also the intent of these restrictions to protect Sanctuary resources and qualities through coordination with the Department of the Interior and others in a manner that recognizes and complements the existing management of the land portions of these areas. For example, a closure of a beach above the mean high water by the Department of the Interior is complemented by a closure of adjacent marine areas in the Sanctuary regulations. More importantly, the Sanctuary's interpretive enforcement approach will be utilized in these areas to supplement existing enforcement by the Department of the Interior. As discussed above, civil sanctions are available to address violations of

Sanctuary regulations while only criminal sanctions are available to address violations of the Interior's rules.

Section 922.164(d) sets forth prohibitions applicable to activities conducted within Ecological Reserves and Sanctuary Preservation Areas. 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 sets forth the geographic coordinates of the Western Sambos Ecological Reserve—the only Ecological Reserve established by the final regulations. Another Ecological Reserve—the Dry Tortugas Ecological Reserve will be proposed by a separate rulemaking.

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 sets forth the geographic coordinates of the 18 Sanctuary Preservation Areas established by the final regulations.

Above and beyond the activities prohibited Sanctuary-wide, the following activities are prohibited in the Ecological Reserves and Sanctuary Preservation Areas: (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; (iii) except for catch and release fishing by trolling in the Conch Reef, Alligator Reef, Sombrero Reef, and Sand Key Sanctuary Preservation Areas, 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 (baitfishing by net for ballyhoo in SPAs will be allowed pursuant to a Sanctuary permit); (iv) touching living or dead coral, including but not limited to, standing on a living or dead coral formation; (v) 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 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 organisms. No further diving shall take place until the anchor is placed in accordance with these requirements; (vi) 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 a temporary access restriction or closure, violating a temporary access restriction imposed by the Director.

Section 922.164(d)(2) authorizes the Director to 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 must provide for continuous monitoring of the area during the pendency of the restriction. The Director must 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.

It should be noted that § 922.164(d) will not take effect in State waters before July 1, 1997, to allow the State of Florida Marine Fisheries Commission to complete its rulemaking process related to the Sambos Ecological Reserve and those Sanctuary Preservation Areas located in State waters. If the Commission's rule is not substantively the same as NOAA's, then NOAA will modify these regulations to conform with those of the State or will consult with the State on whether the non-conforming portions of the Sanctuary regulations should be withdrawn from applying in State waters.

The intent of the establishment of, and regulation of uses within, the Sanctuary Preservation Areas is 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. The intent of the establishment of, and regulation of uses within, the Ecological Reserves is 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.

Section 922.164(e) sets forth the procedures and criteria pursuant to which the Director or designee may set aside discrete areas of the Sanctuary as Special-use Areas, designate such areas as "recovery areas" to provide for the recovery of Sanctuary resources from degradation or other injury attributable to human uses; "restoration areas" to provide for restoration of degraded or otherwise injured Sanctuary resources; "research-only areas" to provide for scientific research or education relating to protection and management, through the issuance of a Sanctuary General permit for research; or "facilitated use areas" 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, as appropriate, and impose access and use restrictions to

protect the Sanctuary resources and qualities and allow for multiple, compatible uses within the Sanctuary. Special-use Areas must be no larger than the size the Director deems reasonably necessary to accomplish the applicable objective. Appendix VI sets forth the boundaries of the four Special-use Areas established by the final regulations. All four of these areas are "research-only areas".

Persons conducting activities within any Special-use Area are required to comply with the access and use restrictions specified in § 922.164(e)(3) 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.

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, 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: (1) Prevent significant injury to Sanctuary resources where circumstances create an imminent risk to such resources; (2) initiate restoration activity where a delay in time would significantly impair the ability of such

restoration activity to succeed; or (3) initiate research activity where an unforeseen natural event produces an opportunity for scientific research that may be lost if research is not initiated immediately. If the Director determines that a notice of modification must be promulgated immediately, the Director must, 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 must either rescind, modify or allow the modification to remain unchanged through notice in the Federal Register.

Section 922.165 provides that where necessary to prevent, minimize, or minimize the imminent risk of destruction of, loss of, or injury to a Sanctuary resource, any and all activities are subject to immediate temporary regulation, including prohibition. Any such temporary regulation may be in effect for up to 60 days with one 60-day extension. Additional or extended action is subject to the provisions of the Administrative Procedure Act.

Section 922.45 sets forth the maximum civil penalty for violating the NMSA or FKNMSPA, the regulations or any permit issued pursuant thereto—\$100,000. Each day of a continuing violation constitutes a separate violation. Regulations setting forth the procedures for civil penalties, permit sanctions, use of written warnings and release or forfeiture of seized property appear at 15 CFR part 904.

Section 922.46 repeats the provision in section 312 of the NMSA that any person who destroys, causes the loss of, or injures any Sanctuary resource is liable to the United States for response costs, damages and interest resulting from such destruction, loss or injury, and any vessel used to destroy, cause the loss of, or injure any Sanctuary resource is liable in rem to the United States for response costs, damages and interest resulting from destruction, loss or injury.

The purpose of §§ 922.45 and 922.46 is to further notify the public of the liability for violating a Sanctuary regulation, permit issued pursuant thereto, or the NMSA, or for causing the destruction, loss of, or injury to Sanctuary resources.

Section 922.166(a) sets forth the procedures for applying for a National Marine Sanctuary General Permit to conduct a prohibited activity and the criteria governing the issuance, denial, amendment, suspension and revocation of such permits. A General Permit may be issued by the Director or designee if

he or she finds that the activity will: Further research or monitoring related to Sanctuary resources and qualities; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; assist in managing the Sanctuary; or otherwise further Sanctuary purposes, including facilitating multiple use of the Sanctuary, to the extent compatible with the primary objective of resource protection. The Director cannot issue a General Permit without finding that: The applicant has the professional qualifications and financial resources to conduct and complete the activity; the duration of the activity is no longer than necessary and the methods and procedures are appropriate to achieve the stated purpose; the activity will be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities; it is necessary to conduct the activity within the Sanctuary to achieve its purposes; the reasonably expected end value of the activity will further Sanctuary goals and purposes and outweighs any potential adverse impacts of the activity on Sanctuary resources. For activities proposed to be conducted within an Existing Management Area, a Wildlife Management Area, an Ecological Reserve, a Sanctuary Preservation Area, or a Special-use Area, the Director cannot issue a Permit unless he or she also finds that such activities will further and are consistent with the purposes for which such area was established.

Section 922.166(b) sets forth the application procedures and issuance criteria for National Marine Sanctuary Survey/Inventory of Historical Resources Permits. Such permits are not required if such survey/inventory activity does not involve any activity prohibited by §§ 922.163 or 922.164. 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. A Survey/Inventory permit may be issued if the activity 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. Such permit may also be issued if the activities are intrusive but 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. Such permit must be determined to be in the public interest and be consistent with the Programmatic Agreement Among NOAA, the Advisory Council on Historic Preservation, and the State of Florida on Submerged Cultural Resources (hereinafter SCR Agreement).

Pursuant to § 922.166(c), a National Marine Sanctuary Research/Recovery of Sanctuary Historical Resources Permit may be issued for a person to conduct any activity prohibited by §§ 922.163 or 922.164 involving the research/recovery of Sanctuary historical resources. Such research/recovery of resources must be determined to be in the public interest as described in these regulations and the SCR agreement. Intrusive research and/or recovery may destroy the resources and therefore the consideration of such permits will be based upon a balancing of factors and criteria to determine whether the goals of preservation, research, education, and public access are better served by permitting this type of activity as opposed to leaving the historic resources in place.

Pursuant to § 922.166(d) (1) and (2), National Marine Sanctuary Special-use permits may be issued to conduct a commercial or concession-type activity prohibited by §§ 922.163 or 922.164. Such permits may be issued 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 proposed 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 and Sanctuary resource; and for the deaccession-transfer of Sanctuary Historical Resources, unless the activity will be conducted in accordance with all requirements of the SCR Agreement.

Section 922.166(d)(3) allows the Director to assess and collect fees for the conduct of any activity authorized by a Special-use permit issued pursuant to this section. No Special-use permit can be effective until all assessed fees are paid. This section also provides the criteria for determining the appropriate costs and fees.

Section 922.166(e) specifies the information which must be submitted when applying for a permit and the address for submissions and for submitting supplementary information.

Section 922.166(f) states that a permit may be issued for a period not exceeding five years. Renewals must follow the same procedures as those for applying for a new permit. All permits

will be reviewed annually to determine the permittee's compliance.

Section 922.166(g) states that the Director may amend, suspend, or revoke a permit for good cause. Further, the Director may deny a permit if the permittee or applicant has acted in violation of a previous permit, or for other good cause. Procedures governing permit sanctions and denials for enforcement reasons are set forth in subpart D of 15 CFR part 904.

Pursuant to § 922.166(h), the applicant for or holder of a Sanctuary permit may appeal the denial, conditioning, amendment, suspension or revocation of a permit pursuant to the procedures set forth in § 922.50.

Pursuant to § 922.166(i), a permit issued other than a Special-use permit is nontransferable. Special-use permits may be transferred, sold, or assigned with the written approval of the Director as described in this section.

Section 922.166(j) requires that permits (or a copy thereof) issued pursuant to these regulations must be maintained in legible condition on board all vessels or aircraft used in the conduct of the permitted activity.

Pursuant to § 922.166(k), any permit issued pursuant to this section is subject to the following terms and conditions: all permitted activities will be conducted in a manner that does not destroy, cause the loss of, or injury Sanctuary resources or qualities, except as specifically authorized; the permittee agrees to hold the United States harmless against any claims arising from permitted activities; all necessary Federal, State and local permits from all agencies with jurisdiction over the proposed activities shall be secured before commencing field operations.

Pursuant to § 922.166(l), in addition to § 922.166(k), the permits for research/recovery of historical resources require that a professional archaeologist be in charge of the research-recovery planning, field recovery operations, and research analysis; an agreement with a conservation laboratory shall be in place before field recovery operations begin; an approved nautical conservator shall be in charge of conservation activities; and a curation agreement with a museum or facility shall be in place before commencing field operations which addresses the curation, public access, display and maintenance of the recovered historical resources. Deaccession/transfer of historical resources require a Special-use permit pursuant to paragraph (d). Such Special-use permits must also be executed in accordance with the requirements of the SCR Agreement.

In addition to the paragraphs above, § 922.166(m) stipulates that any permit issued pursuant to this section is subject to such other terms and conditions as the Director deems necessary for the purposes for which the Sanctuary is designated, including but not limited to: Any data or information obtained under the permit shall be made available to the public; a NOAA official shall be allowed to observe any activity conducted under the permit, the permittee shall submit one or more reports on the status, progress or results of activity authorized under the permit; the permittee shall submit an annual report; the permittee shall purchase and maintain general liability insurance or other acceptable security against potential claims for loss.

Section 922.167 sets forth procedures for requesting certification of preexisting leases, licenses, permits, approvals, other authorizations or rights to conduct a prohibited activity in existence on the effective date of these regulations authorizing the conduct of an otherwise prohibited activity. The holder of such authorization must notify the Director within 90 days of the effective date of these regulations of the existence of such authorization and request certification of such authorization; the holder must comply with other provisions of this section and must comply with any terms and conditions on the exercise of such authorization by the Director to achieve the purposes for which the Sanctuary was designated. The permit holder may continue the authorized activity without being in violation of these regulations pending final agency action on his or her certification request. Requests for findings or certifications must be addressed to the FKNMS office in Marathon, Florida. The Director may request additional information from the certification requester as is deemed necessary to determine if the activity is consistent with the purposes for which the Sanctuary was designated. This section also provides the appeal process for any action conditioning, amending, suspending, or revoking certifications. Any amendment, renewal or extension made after the effective date of this regulation is subject to the provisions of § 922.168.

Section 922.49 addresses notification and review of applications for leases, licenses, permits, approvals or other authorizations to conduct a prohibited activity in the FKNMS. A person may conduct an activity prohibited by these regulations if such activity is authorized by any valid Federal, State or local lease, permit, license, approval, or other authority after the effective date of these

regulations provided that the applicant notifies the Director in writing within 15 days of filing the application or the effective date of these regulations, whichever is later; the applicant complies with the other provisions of this section; the Director notifies the applicant and authorizing agency that he or she does not object to the issuance of the authorization; and the applicant complies with any terms and conditions the Director deems reasonably necessary to protect Sanctuary resources and qualities.

Pursuant to paragraph (b), any potential applicant for an authorization described in this part may request the Director to issue a finding as to whether the activity is prohibited by §§ 922.163 or 922.164. Paragraph (c) provides that applications be mailed to the address found, in the case of the FKNMS, in subpart P. Paragraph (d) authorizes for the Director to request additional information as necessary for the applicant to enable a determination whether to object to issuance of an authorization described in paragraph (a) above. Paragraph (e) requires the Director to notify the agency to which the application was made in writing whether he or she has an objection to issuance and what terms and conditions he or she deems necessary to protect Sanctuary resources.

Paragraphs (f) and (g) provide the administrative ability for the Director to amend the terms and conditions necessary to protect Sanctuary resources and qualities whenever additional information becomes available and extend any time limit for good cause. Paragraph (h) specifies that an applicant may appeal any objection by, or terms or conditions imposed by, the Director to the Assistant Administrator or designee in accordance with the provisions of § 922.50.

Section 922.50 sets forth the appeals process for administrative actions related to the issuance for permits except for enforcement actions.

Major Issues Addressed in Comments and NOAA's Responses

On March 30, 1995 NOAA published a proposed Designation Document and proposed implementing regulations and announced the availability of the draft management plan and environmental impact statement (DMP/EIS) (60 FR 16399). Public hearings to receive comments on the proposed regulations, and the DMP/EIS were held on November 1 in Miami; November 3 in Key Largo; November 6 in Marathon; November 7 in Key West; November 9 in St. Petersburg; and November 14 in Silver Spring, MD.

The nine month public review period ending on December 31, 1995, resulted in NOAA receiving over 6,400 statements of public comment on the DMP/EIS. In addition, the Sanctuary Advisory Council (SAC) provided NOAA with its comments on the plan. All comments received on the DMP/EIS were recorded in a computerized database and assigned a unique comment identification number. These records consist of the reviewer's name; company, organization, or agency; address; a synopsis of the comment; and NOAA's response. Details of this public review process are provided in the general introduction to Volume I of the final management plan and environmental impact statement (FMP/EIS).

Comments were received about many aspects of the management plan and EIS, however, a majority of the comments focused on a limited number of issues. Comments were received from diverse groups and individuals, including private businesses and organizations, elected officials, the SAC and representatives of Federal, State, and county agencies.

NOAA received a number of specific comments on the DMP/EIS, including recommendations on strategies, activities, and priority levels. Some comments were specific enough to cite page numbers and recommended language revisions. NOAA appreciates the level of public comment and has revised the document based on a balance of these comments in light of the requirements of the NMSA, FKNMSPA, NEPA, and other applicable laws. Consistent with the requirements of NEPA and the Administrative Procedure Act (APA), this section discusses the significant issues and substantive concerns that the commentors have brought to NOAA's attention.

All comments received by NOAA in response to the Federal Register notices and public hearings were considered and, where appropriate, were incorporated. A summary of the significant comments on the proposed regulations and DMP/EIS and NOAA's responses is set forth below. The comments are also presented and responded to in the administrative record.

The Need for the Florida Keys National Marine Sanctuary

Comment: There is no need for a Sanctuary.

Response: NOAA disagrees. In 1990, Congress enacted the FKNMSPA in recognition of the need to provide comprehensive protection and

management of the diverse marine environments of the Florida Keys. These environments possess important and unique living and non-living resources, including seagrass meadows, mangrove islands, and extensive living coral reefs. These habitats support rich biological communities, possessing extensive conservation, recreational, commercial, ecological, historical, research, educational, and aesthetic values which give the area special national significance. Congress found these environments to be the marine equivalent of tropical rain forests in that they support a rich level of biological diversity, are fragile and easily susceptible to damage from human activities, and possess high value to human beings if properly conserved. To this end, the Act expressly prohibits oil drilling within the Sanctuary and prevents tank vessels or ships greater than 50 meters in length from entering the Area to be Avoided within the Sanctuary boundary.

Past resource management efforts in the Florida Keys have only focused on small portions of the coral reef ecosystem in a checkerboard fashion. These efforts have not taken a holistic approach to protecting the marine environment of the Florida Keys and as a consequence, the coral reef resources have declined steadily over the past two decades. Piecemeal management of the marine resources of the Florida Keys, especially the coral reefs, seagrass communities, hardbottom habitats, and mangrove fringed shorelines, combined with a continued decline in the quality of the water that flows over these habitats, has resulted in a threat to the stability of the marine environment in the Keys. Consequently, since the economy of the Florida Keys is so closely linked to a healthy marine environment, the status quo approach to managing the marine resources of the Keys could result in an economic collapse in the near future.

The Act directed NOAA to develop a comprehensive management plan and implementing regulations for the Sanctuary in consultation with appropriate Federal, State and local governments and with the SAC. Pursuant to this mandate, NOAA developed a comprehensive management plan and regulations to protect and manage the living and non-living resources of the Sanctuary. Regulations were developed to protect Sanctuary resources and minimize conflicts among the various users of those resources. For example, establishing zones with special restrictions to protect habitat in those zones and prohibiting potentially

harmful activities such as prop dredging and prop scarring throughout the Sanctuary are effective management tools. Regulations supplement, but do not duplicate, existing management authorities with jurisdiction in the Sanctuary.

The FKNMS will provide a comprehensive and coordinated regime to protect, manage and conserve the nationally significant resources of the Florida Keys so they may be enjoyed by both present and future generations.

The Need for Management of the Sanctuary

Comment: Many commentors asserted that the Sanctuary will add another costly layer of bureaucracy, while others commented on the benefits of integration and the role the FKNMS has played in interagency planning.

Response: The Sanctuary is not an extra layer of bureaucracy and there are many ways in which the National Marine Sanctuary Program will improve management of the Keys' marine resources. National Marine Sanctuaries are designated to protect marine resources that are unique and possess high national significance. Boundaries of National Marine Sanctuaries only extend to the mean-high tide mark and do not include land above that mark. The concept of a National Marine Sanctuary as a "place" seems to be overlooked by some of the public. The Sanctuary is not a thing or an "extra layer of bureaucracy"; and it is not a collection of agencies, environmental groups, or user groups, it is a very special place, deserving of protection for the use and enjoyment of present and future generations. The waters and marine resources surrounding the Keys are unlike any other on earth and they need and deserve our immediate attention. We will lose our coral reefs if the declines we've witnessed over the past two decades continue.

Congress, through the FKNMSPA, designated the Sanctuary, drew a line around the Keys and declared to the world that the marine resources of the Keys are special and unique. The Act also delegated to NOAA, an agency with experience in managing marine protected areas where the economy is highly dependent on healthy marine resources, the responsibility to manage the Sanctuary and make the Sanctuary part of a national program internationally known for its ability to manage marine resources for multiple uses, both recreational and commercial; a program that emphasizes an educational approach to management. The FKNMSPA also places an important safeguard on the agency: "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."

The National Marine Sanctuary Program is not new to the Florida Keys. The program has had a very successful 20 year history in the Keys, protecting some of the most popular coral reef dive sites in the world. The Key Largo National Marine Sanctuary, designated in 1975, protects all the coral reefs along a 20 mile stretch in the upper Keys. The relationship of the Sanctuary with the business community has been excellent. The Key Largo Chamber of Commerce continues to be a tremendous supporter of the Sanctuary where divers, dive operators, recreational and charter fishermen, and commercial fishermen continue to work and play.

Loe Key National Marine Sanctuary was designated in 1981, following a lengthy designation process where local businesses, divers, and commercial fishermen in the vicinity of Big Pine Key reacted in opposition. Rumors, misinformation, and a basic misunderstanding of what a "National Marine Sanctuary" actually is, were the fuels that fired lengthy debates. Shortly after Looe Key became operational and management measures were implemented, many of the fears such as commercial fishermen being "put out of business" disappeared. A good working relationship was established with the regular users of the Looe Key Sanctuary and businesses dependent on a healthy coral reef continued to flourish. As a result of good management, in 1985, a travel writer for the Miami Herald declared Looe Key as one of the top ten dive destinations in the world.

During the past 15 years the Looe Key and Key Largo National Marine Sanctuaries have been used as models for managing marine protected areas, both domestically and internationally. This reputation was well known to the authors of the FKNMSPA that was passed to designate the Sanctuary.

The National Marine Sanctuary Program protects and manages Sanctuary resources for their continued use by present and future generations. A goal of National Marine Sanctuaries is to facilitate compatible use of marine resources by businesses that are economically dependent upon them, to the extent those uses are compatible with the primary objective of resource protection. This is the first step toward sustainability of this marine area for present and future generations.

The Key Largo and Looe Key National Marine Sanctuaries make up about 23 linear miles of the 220 mile long coral

reef tract along the Florida Keys. The designation of the FKNMS provides resource protection to the remaining 197 miles of coral reef and marine ecosystem that were not previously protected. This is not an extra layer of bureaucracy because prior to the Sanctuary's designation little comprehensive resource protection management existed.

National Marine Sanctuaries are known for their integrated comprehensive management through establishing partnerships. In Florida, the Sanctuary Program started "reinventing government" in 1980, by establishing a cooperative agreement with the State of Florida, Department of Natural Resources, for the management of the Key Largo National Marine Sanctuary and later, the Looe Key National Marine Sanctuary. These were areas located entirely in Federal waters, but managed by State staff, through 100 percent Federal (NOAA) funding. Today, more than half of the Sanctuary staff are State employees paid entirely by Federal funds, including the education staff, Sanctuary officers, and the lower Florida Keys' administration.

The concept of interagency partnerships has been expanded in the management plan for the FKNMS. Dozens of representatives from local, State, and Federal agencies came to the table to assist in the development of the most comprehensive management plan ever attempted in a marine protected area. They also assisted in the development of the National Marine Sanctuary Program's first water quality protection plan. As a special place, the Keys are deserving of the best kind of management that could be afforded.

There are many agencies involved in various management activities in the Keys. However, these activities have not been integrated in the past, and consequently there has not been a holistic approach to managing the fragile marine resources of the Keys. The potential benefits of integrated management of marine resources are numerous including better protection of the marine resources, savings to tax payers by agencies sharing resources, less duplication of efforts, opportunities for increased interagency coordination, and the list goes on.

The regulations do not usurp the authority or jurisdiction within the Sanctuary boundary of other agencies to impose regulations more protective of Sanctuary resources than the Sanctuary regulations. The State will continue to have that authority in State waters and other Federal laws, such as the Magnuson-Stevens Fisheries Conservation and Management Act, will

continue to apply. However, other agencies cannot authorize a violation of Sanctuary regulations, just as the Sanctuary cannot authorize a violation of State or Federal agency regulations.

The FKNMSPA prohibits oil, gas and mineral development within the Sanctuary and prohibits tank vessels or ships greater than 50 meters in length from entering the Area to be Avoided within the Sanctuary boundary. No other management program provides this level of comprehensive protection to the marine resources (e.g., seagrasses, hard bottoms, and coral reefs) of the Florida Keys, or provides the legislative mandate and authority to holistically manage and protect all of the marine communities as an ecosystem. This is a charge given specifically to NOAA and is not redundant of other management programs, nor is it an extra layer of bureaucracy.

Furthermore, NOAA has developed regulations that complement, rather than duplicate, existing authorities. In some cases, NOAA regulations supplement and fill gaps in existing authorities. To this end, NOAA has integrated its planning efforts with the Federal, State, and local agencies in the Florida Keys. This will improve management coordination between the agencies and will lessen the amount of agency overlap in key management areas such as education, research, enforcement, damage assessment, and emergency response. Through integrated planning and implementation, the FKNMS will, at a minimum, streamline the use of public funds and programs to achieve resource protection. This will improve coordination between the various agencies responsible for management of the marine environment in the Sanctuary. Increased agency coordination will benefit Sanctuary resources and the public's use of those resources.

Coordination of Fisheries Management

Comment: The fisheries protocol should not be implemented because it will add another layer of regulations.

Response: NOAA disagrees. The existing fisheries management authorities will continue to manage fisheries under State law, the Magnuson Act, and other Federal law. However, there are three separate sets of fisheries regulations within the boundary of the Sanctuary and coordination of the fishing regulations within the Sanctuary was identified as a goal early in the scoping process. Under the current system, there is confusion in the fishing community which leads to less compliance by the public as they may not understand which regulations apply

to a specific geographical area. Uniform regulations would make it easier for the fisherman to comply with the rules and for the agencies to enforce them. This management action will have a positive result on fisheries management by State and Federal agencies. The net result will be beneficial to Sanctuary resources and to the public. Under the protocol, the existing authorities may accomplish this goal under Sanctuary regulations or their own respective authorities. The existing fishery management authorities and NOAA may agree to develop uniform fishing regulations, but they can only be implemented as Sanctuary regulations if there is consensus. The establishment of a consistent set of fishing regulations for the Sanctuary will not result in a fourth set of regulations.

Funding

Comment: There were a variety of comments on the topic of funding of the FKNMS. Some commentors suggested the Sanctuary should be given the necessary funding to implement the management plan and its goals. Other commentors stated NOAA will never have adequate funding to implement all of the programs outlined in the management plan, implying that NOAA could never comprehensively manage the entire Sanctuary. Others suggested that the funding for the Sanctuary be totally directed at solving water quality issues before implementing any other management programs. Suggestions were made that Florida Tourist Development Council (TDC) "bed tax" funds be used for managing Sanctuary activities.

Response: Clearly, implementation of all the programs contained in the management plan would require more funding than the Sanctuary can anticipate presently, or in the near future. However, the management plan is comprehensive and includes suggested actions for the near and long terms. The plan offers a wide variety of management options to address various and diverse management problems in order to give Sanctuary managers the ability to select the most cost effective management tools to address immediate and future problems. It is not NOAA's intent to request funding for immediate implementation of all the management programs outlined in the management plan, but rather use it as a guide for immediate and future plans of action, including the effective use of human and financial resources.

Additionally, the human and financial resource costs for implementing the action plans established to focus Sanctuary

management efforts will be shared among the participating Federal, State, and local agencies responsible for various activities. For example, Monroe County receives Boating Improvement Fund allocations that are designed to enhance boating and have specifically been applied to channel/reef marking needs in the Sanctuary. Further, Sanctuary volunteers perform tasks that benefit the goals at a substantial savings to the program. Finally, in addition to annual appropriations, the Sanctuary has the statutory authority to receive donations to support programs. These funds could be received from foundations, non-profit organizations, the Sanctuary Friends organization and others.

NOAA disagrees that all funding should only be used to address water quality or any other single issue within the Sanctuary. Congress, through the FKNMSPA, directed the Secretary of Commerce to develop a comprehensive plan to manage the Sanctuary and gave specific directions as to what should be considered in the development of the plan. Many of the impacts affecting the health of the coral reef community arise from direct, physical injuries that can be lessened with the implementation of the comprehensive management plan. Additionally, the FKNMSPA requires that EPA, along with the State and NOAA, address Sanctuary water quality issues. Many of these management actions will take years to implement and their positive results will not be realized for some years into the future. By implementing the comprehensive management plan, the FKNMS will be able to address some of the immediate threats confronting the coral reef community as a result of direct human activity.

The State of Florida determines the use of Florida TDC funding (bed tax) for management activities.

User Fees

Comment: Some reviewers raised concern regarding the concept of user fees to fund various programs within the Sanctuary. While some commentors were supportive of the concept, the majority of commentors were against funding Sanctuary management through user fees. A small number of reviewers raised concern that the concept was still contained in the draft plan following a highly publicized workshop on user fees to fund the management of National Marine Sanctuaries where NOAA publicly announced it was not pursuing obtaining the general legislative authority to charge "user fees" to manage Sanctuaries.

Response: NOAA acknowledges that the concept of charging user fees to fund Sanctuary management is not popular, particularly among user groups. The strategy (B.8) for charging user fees to fund the management of the FKNMS has been dropped from the action plans in the FMP/EIS. There are no regulations authorizing the collection of user fees for general access to, or use of, the Sanctuary.

The process used to develop the draft management plan allowed all suggestions to be considered for the draft plan. The concept of user fees was suggested by some during the planning process and remained in the draft plan following the "user fee workshop" because of the process used to develop the draft plan. Considering that some were in favor of "user fees," NOAA felt it was necessary to get public comment on the concept in the draft plan.

Many innovative sources of alternative funding have been identified by the public in the workshop and otherwise. NOAA will work with the SAC to explore some of these options.

Ecosystem-Based Approach

Comment: There were conflicting comments on what NOAA's role should be in managing Sanctuary resources. Some recognized that NOAA has done a good job of managing the coral reefs within the Key Largo and Looe Key National Marine Sanctuaries and suggested that NOAA should focus its management on the coral reef tract. Some of these same reviewers pointed out that the primary cause of water quality decline in the Florida Keys was originating from water management and water quality problems in mainland South Florida and the resultant decline in water quality in Florida Bay. In some instances, the Federal Government was blamed for the cause of water quality decline in south Florida. Some reviewers stated NOAA could not have any influence on the water quality problems that were originating outside the boundary of the Sanctuary.

Other reviewers pointed to the decline of water quality in the near-shore waters of the Florida Keys as a result of improper waste water treatment facilities and poor management of storm water runoff and that NOAA should focus its management on these water quality problems.

Other reviewers recognized the importance of NOAA's role in ecosystem management and the significance of the authority that the FKNMS has to address water quality issues that originate both within its boundary, as well as those problems

that originate outside and upstream of the Sanctuary. These reviewers were supportive of NOAA's active role in the South Florida Ecosystem Restoration Task Force and the Governor's Commission for a Sustainable South Florida.

Response: In light of its experience of the resource protection accomplished at Key Largo and Looe Key National Marine Sanctuaries, its role in ecosystem management in South Florida, and directions under the NMSA and the FKNMSPA, NOAA will continue to take an ecosystem based management approach in this Sanctuary.

The FKNMSPA directed the Federal Government and the State of Florida to develop 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. The FKNMSPA and NMSA direct NOAA's development of a comprehensive ecosystem management plan rather than one based solely on the coral reef tract. In order to be successful, Sanctuary managers must be able to address impacts that occur across the range of habitats that comprise the coral reef community in an ecosystem-based management approach. This is especially important in addressing issues that influence the quality of the water that affects the marine communities of the Sanctuary. Between 1982 and 1989, NOAA sponsored research projects that helped characterize the movement of water in and around the two existing Sanctuaries. The studies concluded that a portion of the water that influences the coral reef flows from Florida Bay and the Keys, before it mixes with water from the Florida Current in the vicinity of the reef tract. Scientists agree that the sources of the decline in water quality that influence the health of the coral reef resources originate upstream of the reef tract, in the direction of the Keys and Florida Bay. No matter how intensely NOAA manages activities on the coral reef, the health of the corals will continue to decline until the sources of the water quality decline upstream are addressed in a comprehensive manner.

The designation of the FKNMS gave NOAA a role in the development and the implementation of a water quality protection program with EPA and the State. Sanctuary legislation directed EPA, the State and NOAA to look beyond the boundary of the Sanctuary toward the problems occurring upstream. The designation also gave NOAA the ability to manage in a

holistic manner, all of the marine communities that are important to maintaining the biodiversity of the Sanctuary. This was the first step toward ecosystem management, the ability to manage all the marine communities of the coral reef component of the south Florida ecosystem.

NOAA disagrees with comments that it cannot influence, or does not have a role in addressing, the water quality problems originating outside the boundary of the Sanctuary, in Florida Bay, and mainland South Florida. The designation of the FKNMS has given NOAA a prominent role in the South Florida Ecosystem Restoration Task Force whose objectives include the restoration of clean water flows into Florida Bay. NOAA is currently funding approximately 40 percent of the research projects in Florida Bay and the South Florida ecosystem restoration effort. These efforts will result in a positive influence on water quality before it enters the Sanctuary. NOAA leadership has recognized the importance of supporting the efforts of the South Florida Ecosystem Restoration Task Force in order to be successful in the management of the Sanctuary.

The most prominent role for the Florida Keys in the south Florida ecosystem restoration effort has been through the representation of the Sanctuary on the Task Force and the roles of EPA and the State in the Water Quality Protection Program as it is represented on the Task Force. Without the efforts of these agencies on behalf of the FKNMS, the Florida Keys coral reef communities would not be represented on the South Florida Ecosystem Restoration Task Force. Thus, the Sanctuary clearly has a role in influencing the impacts of water quality originating outside its boundary.

Concerns over the demise of Florida Bay have been the topic of debate for at least a decade prior to the designation of the FKNMS. At the first SAC meeting in February 1992, members of the SAC familiar with problems in Florida Bay raised the issue of water quality decline in that area. Commercial fishermen and flats guides shared their observations of decline in Florida Bay water quality. In addition, the Water Quality Protection Program for the Sanctuary recognized that some of the sources of the water quality problems affecting the coral reef were originating upstream of the Florida Keys and Florida Bay. In just over a year, all of the agencies responsible for managing components of the South Florida region had signed an interagency agreement directed at restoring the South Florida ecosystem.

The agencies had agreed that the ecosystem begins in the Kissimmee River basin and includes Lake Okeechobee, the Everglades Agricultural Area, the Everglades, Florida Bay, through the Keys, and all the way to the coral reef tract. This was the first time the scope and dimension of the ecosystem had been defined at this scale. It is with this vision that ecosystem management must be implemented in the Sanctuary. The proper water quality and hydrological and ecological linkages throughout the ecosystem must be re-established in order to reverse declines on the coral reef. Each of the agencies responsible for management of components of the ecosystem must work to improve the quality of water in their segment of the ecosystem, while working with other members of the restoration task force to improve the entire ecosystem functions.

Accountability and Power of NOAA

Comment: Some commentors were concerned about the powers of NOAA in general, and some were particularly concerned about the powers of the Director because decisions affecting user groups would be made by authorities in Washington headquarters, as opposed to locally. Some commentors indicated that NOAA should be held accountable for its management actions.

Response: NOAA notes that under various laws and the management plan itself, the powers of other Federal and State authorities remains intact. Moreover, there are a number of checks and balances whereby NOAA is held accountable for their management actions. The Congress holds NOAA accountable through its review of individual Sanctuary management plans and periodic reviews of the National Marine Sanctuary Program. There are also numerous Federal statutes which ensure the accountability of Federal programs, including the Administrative Procedure Act. For example, with the exception of emergency regulations, all substantive changes to Sanctuary regulations will require prior notice and opportunity for public comment before they become effective. In this Sanctuary, the State of Florida, as a management partner, will continue to be a check on NOAA's authority, including the application of Sanctuary regulations in State waters. The EPA and the State of Florida will continue to have the lead in addressing the Water Quality issues that affect the Sanctuary.

To user groups, perhaps the most important check on NOAA's accountability may be SAC. The SAC is comprised of members representing the various Sanctuary user groups

(commercial fishermen, charter boat operators, tourism industry, scientific and educational organizations, and conservation groups, etc.). Consistent with the FKNMSPA, the SAC provides NOAA with advice and recommendations on the management plan and its implementation, including resource protection, research, monitoring, education, outreach and other general policy issues related to Sanctuary management. The SAC is also a forum to enhance communication and cooperation between the public, user groups, the Federal/State and local agencies, and non-governmental entities in furtherance of coordinated, efficient and effective management of the Sanctuary. SAC meetings are open to the public and interested persons are given the opportunity to present oral or written statements to the Council.

Under the NMSA and the FKNMSPA, the Secretary of Commerce is directed to develop a Sanctuary management plan and implement it. Under Departmental Orders, this authority has been delegated to the Director of NOAA's Office of Ocean and Coastal Resource Management. The regulations were drafted accordingly. While the Director has in turn delegated most of the day to day Sanctuary management decisions to local Sanctuary managers with appropriate reservations, the regulations were not changed and will continue to reflect the Departmental Orders. The Director's responsibilities for the FKNMS are commensurate with other sanctuaries.

Designation Document/Appendix K

Comment: Many reviewers expressed concern over the Scope of Regulations contained in the draft Designation Document for the FKNMS (Volume III, Appendix K). The concerns were primarily that the Scope of Regulations was too broad. For example, they were surprised to see that the Scope included airplane flights, dock construction, and a broad range of other activities that seemed outside the authority of the Sanctuary. Many feared that NOAA could easily regulate activities within the Scope of Regulations in the future with little or no public input. Some questioned the need for a designation document as the Sanctuary was designated by statute. Many, including the SAC, urged NOAA to eliminate the Scope of Regulations. However, some reviewers expressed support of the broad Scope of Regulations and urged NOAA to retain what was presented in the draft plan.

Response: The Designation Document is a charter or constitution for the Sanctuary. The Scope of Regulations,

which is part of the Designation Document, sets forth the types of activities which may be subject to future regulation. Consistent with the recommendations of the SAC and other commentors, NOAA has reduced the Scope of Regulations to more closely track the final regulations by eliminating certain activities.

NOAA cannot issue regulations for activities listed in the Scope of Regulations unless NOAA complies with the provisions of the Administrative Procedure Act. These procedures require that the public be given notice and the opportunity for comment. The courts are a check against decisions that are arbitrary and capricious, the State must approve regulations that apply to State waters, and Congress maintains continual oversight.

Degradation of Environmental Resources

Comment: NOAA received many comments providing anecdotal information concerning the state of the Florida Keys' marine environment. These comments were personal observations of significant changes in reef species assemblage, visibility of the water, and number of fish. Comments were also received to the effect that even though all people have a right to use the resources of the Keys, people do not use the resources equally and therefore some regulation of behavior is necessary.

Response: The Sanctuary was designated in recognition of the observed declines in the health of the natural marine resources of the Keys. The primary objective of the management plan is protection of natural resources while facilitating private and public use that does not compromise this objective. Thus, Sanctuary management will address such issues as water quality and habitat protection through various strategies and techniques ecosystem-wide in an effort to preserve or restore the resources to a more natural state.

Support for Sanctuary and Management Plan

Comment: NOAA received many comments of support for the Sanctuary, the management plan, and NOAA's history of protecting national marine sanctuary resources.

Response: NOAA thanks all who commented on the Sanctuary, the draft management plan, and proposed regulations regardless of whether in support or in opposition. NOAA has had a long history of facilitating all compatible public and private uses of its

National Marine Sanctuaries, including those off Florida. The Sanctuary will continue to encourage public involvement, interagency cooperation, and continuous management actions to achieve resource protection.

Limit the Sanctuary Boundary to the Reef Tract

Comment: Some reviewers recognized that NOAA has done a good job of managing the coral reefs within the Key Largo and Looe Key National Marine Sanctuaries but suggested that NOAA should only focus its management on the coral reef tract.

Response: The FKNMSPA directed the Federal Government and the State of Florida to jointly develop and implement a comprehensive program to reduce pollution in the waters offshore the Florida Keys to protect and restore water quality, coral reefs, and other living marine resources of the Florida Keys' environment. The Act set forth the boundary as well as the scale of protection necessary to effectively manage natural and cultural resources in a holistic manner. Thus, NOAA strongly disagrees that it should just focus its management on the coral reef tract. In order to be successful, Sanctuary managers must be able to address impacts that occur across the range of habitats that comprise the coral reef community in an ecosystem-based management approach.

Allowed Activities

Comment: NOAA received comments requesting that the management plan include a list of allowed activities, not only prohibitions. The SAC discussed a bill of rights and ultimately recommended that there be a list of activities that would be allowed in the Sanctuary.

Response: In response to these comments, NOAA has modified the regulations at § 922.42 to state that "all activities (e.g., fishing, boating, diving, research, education) may be conducted unless prohibited or otherwise regulated. * * *." The change is not intended to provide a legal defense for actions against those who violate Sanctuary regulations, but rather to clarify that such activities are allowed to be conducted in the Sanctuary at present and will be allowed in the future, subject to appropriate regulation. There are also specific exemptions to certain prohibited activities to avoid or minimize application to fishermen and other small entities.

Property Rights and Land-Use

Comment: Many comments were received questioning what authority the

Sanctuary will have over land use and property rights.

Response: The regulations were specifically modified to exempt Monroe County land use permits. However, in general there have been no conflicts over property rights because Sanctuary regulations are directed at activities in the marine environment. They may apply to activities that directly threaten or impact marine resources within the Sanctuary, which are those lying below mean-high tide. Sanctuary regulations do not take away rights of property owners or affect activities that do not adversely affect Sanctuary resources.

Special-Use Permits

Comment: Some commented that the section on Special-use Permits needs to be more specific.

Response: This regulatory section reflects the provisions of section 310 of the NMSA regarding Special-use Permits. The National Marine Sanctuary Program has had the authority to issue Special-use Permits since 1988, but has only issued few such permits to date. While the NMSA and its legislative history indicates that section 310 is self-implementing and does not require implementing regulations, NOAA has considered the comments and determined that additional information and public input would be appropriate before the development of more regulations with more specificity than is presently in section 310. To the extent more specificity is needed, it should be done in guidelines for the National Marine Sanctuary Program rather than for this particular Sanctuary. In the interim, the Program will continue to work with individual applicants and the public on Special-use Permits.

Coordination With Other Agencies/ Conflict Resolution

Comment: Some commentors expressed the need for coordination between agencies and a mechanism to resolve conflicts between agencies and the public. Others suggested a mechanism be established that provides an administrative appeals process consistent with the Administrative Procedure Act.

Response: NOAA is establishing an Interagency Group to assist in coordinating the implementation of the final management plan for the FKNMS. Additionally, Appendix J contains a Co-trustees Agreement that is accompanied by a series of draft protocols and memoranda of agreements that will serve to outline the way the agencies will conduct the management of the Sanctuary.

The administrative appeal process for Sanctuary management decisions is set forth at § 922.50. Agency decisions, including any amendments to Sanctuary regulations, must be done in accordance with the procedures and requirements of the Administrative Procedure Act.

Monroe County and/or the State Should Manage the Sanctuary

Comment: Some commentors suggested that the State of Florida or Monroe County be charged with developing a management plan and managing the resources of the Florida Keys.

Response: Under the FKNMSPA and the NMSA, NOAA is required to develop and implement a Sanctuary management plan. However, the Sanctuary planning process has included the State and county as partners in the development of the comprehensive management plan. The continuous management process, as described in Volume I of the FMP/EIS, includes Federal, State and county agency managers in the continuous management of the Sanctuary. This will help NOAA assure the integration of management programs between the various agencies in a comprehensive manner.

Socio-Economic Impacts

Comment: Some reviewers commented that NOAA did not provide a thorough socio-economic analysis of its actions on commercial or recreational fishing. NOAA also received comments that the Sanctuary will negatively impact the economy of the Keys, as well as comments that the Sanctuary is the only hope to sustain the Keys' tourist economy which is heavily dependent on the presence of a healthy marine environment.

Response: NOAA prepared a socio-economic assessment for the Draft Management Plan and Environmental Impact Statement in compliance with the NMSA and National Environmental Policy Act (NEPA). In response to comments, NOAA has provided a more detailed explanation of the careful balancing of environmental and socio-economic impacts in developing the Preferred Alternative/Management Plan section of the Volume I. A more thorough assessment of the socio-economic impacts on various user groups from management alternatives is found in Volume III, Appendix M.

In an effort to maximize resource protection and minimize adverse impacts on users, NOAA considered socio-economic impacts in developing the draft management plan. Based on the public comments and reports

supplied by the fishing industry, NOAA has further detailed this analysis in the final environmental impact statement and modified the final management plan accordingly.

Personal Watercraft

Comment: NOAA received many comments from the public reminding NOAA that personal watercraft owners and users act responsibly and requesting that personal watercraft not be singled out and treated differently from other vessels. NOAA also received comments noting frequent environmental nuisance and safety issues associated with the operation of personal watercraft. These included: reckless operating behavior, harassment of endangered and other species, harassment of other boaters (including disruption of fishing on flats), and noisy operation in canals or adjacent to residential shorelines. These commentors requested limiting, restricting or banning the use of personal watercraft within the Sanctuary.

The SAC recommended that NOAA work with the industry, the SAC, and the public to establish zones for the voluntary use of personal watercraft in specified areas within one year after issuance of the final management plan. The SAC also recommended that if these zones were not voluntarily established within one year, then NOAA should ban the use of personal watercraft throughout the Sanctuary. In addition, the SAC recommended adding to the regulations a prohibition against reckless operation of vessels. The SAC also recommended that the proposed vessel operation regulation (proposed § 929.5(a)(5)(iv)) be modified to restrict vessels from operating at speeds greater than idle speed only/no-wake in designated idle speed only/no-wake zones, and modify the minimum distance requirements in the regulation.

The personal watercraft industry commented that there was no basis to impose severe regulatory restrictions on the use of personal watercraft, but generally supported the strategy of restricting all motorized vessel use in certain buffer zones and establishing idle speed only/no wake areas. The industry also strongly endorsed the strategy of working with NOAA to educate recreational personal watercraft users in the Sanctuary, and develop industry standards for rental operations in the Sanctuary.

The State of Florida questioned whether distance restrictions delineated in the buffer zones could be adequately enforced.

Response: NOAA has developed a multi-pronged approach to address the

public's concern about the use of personal watercraft. NOAA has accepted the SAC's recommendation to add a new section to the final regulations (§ 922.163(a)(v)) which prohibits reckless operation of all watercraft. Additionally, proposed § 922.163(a)(5)(iii) has been modified to prohibit operating a vessel at greater than idle speed only/no wake (except in marked channels) in designated areas within 100 yards from residential shorelines, stationary vessels and navigational aids marking emerging or shallow reefs. NOAA has also incorporated into its regulations the authority to enforce all idle-speed only/no wake areas throughout the Sanctuary. NOAA will use the existing county and State process for designating these areas. NOAA accepts that the industry is seriously committed to self regulation and will develop successful educational efforts geared toward changing user behavior. The final component of NOAA's approach is a modification of the SAC's recommendation. NOAA will begin establishing broad zones with restrictions on the use of personal watercraft (consistent with the SAC recommendation) in one year only if these initial efforts are not successful at significantly reducing or eliminating the nuisance and safety problems, as well as the threats to the natural resources.

Channel/Reef Marking Action Plan

Boater Education

Comment: Channel/reef marking must be supplemented with boater education in order to limit impacts on shallow water marine resources. The channel/reef marking action plan does not contain strategies that address education.

Response: NOAA agrees that boater education is a critical component for protection of shallow water resources of the Sanctuary. The education and outreach strategies directed at boating impacts are contained in other management action plans.

Marking Shallow Water Habitats and Vessel Routes

Comment: The action plan does not address marking coral reefs and other shallow water habitats outside of channels, to warn boaters of sensitive areas. The action plan should be revised to include navigational aides that warn boaters and should be renamed "Navigational Marking Action Plan" or the "Channel/Reef Marking Action Plan".

Response: NOAA agrees that providing navigational aides that warn boaters of sensitive, shallow water

habitats is a necessary component of resource protection. NOAA will work closely with the USCG, the State, and the county to provide appropriate internationally recognized navigational aides to mark sensitive, shallow water habitats such as coral reefs. NOAA also recognizes that providing a logical and clearly marked system of channels in high traffic areas is the preferred method of routing vessel activity away from sensitive habitats. In addition, strategic placement of navigational aides used to warn boaters is necessary in many areas and will be pursued. NOAA has revised the action plan and has renamed the plan as the "Channel/Reef Marking Action Plan."

Channel Marking Criteria

Comment: The criteria for determining the priorities for marking channels as well as the locations of high priority channels should be included in the plan. The SAC recommended draft channel marking criteria and a list of high priority channels to be marked.

Response: The criteria for channel marking prioritization as recommended by the SAC has been included in the final action plan. However, including a list of high priority channels recommended by the SAC is premature. Instead, the action plan establishes a process for identifying and prioritizing channels to be marked.

The list of proposed channels recommended by the SAC has not been subject to review and prioritization by those criteria. All areas to be marked should be reviewed through the process set forth in the action plan. Thus, the list of priority channels has not been included in the final action plan, but the criteria and process have been included.

NOAA's Role

Comment: The draft action plan does not clearly define NOAA's role in the channel/reef marking program.

Response: The final plan (Strategy B.4, Activity 8, Implementation) more clearly defines NOAA's role in this effort.

Effectiveness Assessment

Comment: Expand the activity associated with the assessment of channel marking effectiveness to include on-site monitoring and research, in addition to aerial photography.

Response: NOAA agrees and the final action plan (Strategy B.4, Activity 6) reflects this comment. Further, Strategy B.4, Activity 8 has been expanded to address removal of markers that are found to have a detrimental effect.

Update Status

Comment: Many of the activities originally described in the action plan have already been completed or their status needs to be updated.

Response: NOAA agrees. The final action plan reflects the current status of activities.

Four Point Program

Comment: Some reviewers support the Boating Impact Working Group's (BIWG) "Four Point Program." The final management plan needs to be expanded to include establishment of no access and restricted access areas, as recommended by the BIWG.

Response: NOAA agrees that the establishment of no access and restricted access areas is an effective method to reduce shallow water impacts. The plan recognizes this and adopts a series of restricted access areas associated with the Wildlife Management Areas (see Regulatory Action Plan, Appendix III to Subpart P—Wildlife Management Areas, and the Zoning Action Plan maps). Most of these areas are part of or are adjacent to DOI National Wildlife Refuges, however seven non-associated areas were added. These are the only areas that NOAA received specific input on during the planning process. NOAA will monitor the effectiveness of designating these areas as Wildlife Management Areas and imposing access restrictions and will consider adding other areas in future revisions of the plan.

Removal of Problematic Aides to Navigation

Comment: There is no mechanism in the plan to remove channel markers that prove to be problematic because they increase vessel impacts to shallow water areas.

Response: Strategy B.4, Activity 6 provides a mechanism to evaluate the effectiveness of channel markers for the protection of marine resources. Strategy B.4, Activity 8 has been expanded to address removal of markers that are found to have a detrimental effect on marine resources.

Channel/Reef Marking Is Expensive

Comment: The proposed channel/reef marking program is too costly at a time when the government is trying to economize.

Response: The primary funding source identified in the plan for channel/reef marking is the Boating Improvement Fund (BIF) and the current aides to navigation program administered by the U.S. Coast Guard. The BIF is an existing funding source that is administered by Monroe County.

The money is derived from a portion of State vessel registration fees which are returned to the county where they were generated. This money must be used for projects designed to enhance boating, and is specifically targeted at channel/reef marking, launching facilities and similar projects. Currently, Monroe County receives approximately \$125,000 annually from this source. Therefore, this money is available for channel/reef marking already, and the management plan is designed to provide a coordinated effort at prioritizing expenditures. Additionally, the U.S. Coast Guard continues to fund the installation and maintenance of many of the aides to navigation used in the Sanctuary. These funds do not come directly from NOAA.

Stay in the Channels Only

Comment: There are fears that once the channels are marked, boaters will be prohibited from going outside of the channels. Further, in the interim, boaters—especially fishermen—should not be penalized for prop dredging until the markers are installed.

Response: The regulations do not prohibit vessels from navigating outside marked channels regardless of depth. What the regulations do prohibit is the destruction of seagrass and other shallow marine resources as a result of imprudent operation of vessels.

Deep Water Access

Comment: Several reviewers requested that a definition of deep water access be added to the regulations and questioned how the Sanctuary will address areas that are accessible only at certain tides.

Response: The channel/reef marking action plan assumes a 4 ft mean low water as a threshold criteria for deep water access. This is consistent with current State and local regulation and criteria. Channel/reef marking will not be a substitute for local knowledge or normal prudent navigation skills.

Arrows on Channel/Reef Markers

Comment: Navigational aids should be clearly understandable to guide boaters through channels and warn them of shallow areas. It was also suggested that channel/reef markers include arrows indicating the direction of the channel.

Response: It is necessary that standardized channel marking for the Sanctuary conform to the international rules of the road as required by the US Coast Guard and the State of Florida. The Coast Guard discourages the use of arrows on posts, but will allow gated

(double) markers to mark particularly sensitive areas.

Education and Outreach Action Plan

Education v. Outreach

Comment: A number of reviewers expressed concern that the draft management plan addresses education at the expense of outreach noting that, while compatible, they are distinct and address different needs and audiences.

Response: NOAA agrees, and the final management plan clearly reflects both responsibilities. The Education Action Plan has been renamed the Education and Outreach Action Plan.

Education Supports Resource Protection

Comment: A number of reviewers recommended the inclusion of a new education goal to reflect the intent of the Education Program in achieving resource protection and management goals of the Sanctuary. The National Park Service made several suggestions on how the plan should be modified to reflect that the educational strategies include cultural as well as natural resources. Additionally, some reviewers said that an adequate education program could alleviate the need for additional regulations.

Response: The final management plan states that the intent of the program is to educate the public about Sanctuary resources (natural and cultural), thus complementing the protection and management goals of the plan. Education and regulation are complimentary management tools in resource protection. It is hoped that increased education will result in voluntary compliance with regulations through increased understanding.

Spanish-Speaking Staff

Comment: A number of reviewers recommended the hiring of a Spanish-speaking staff member for the Education program.

Response: In order to address the multi-lingual nature of many Education and Outreach activities, the contracting or hiring of a Spanish-speaking education staff member or intern will be given priority consideration.

Funding for Education and Outreach

Comment: Reviewers recommended increased funding of the Education Action Plan. Additionally, the pursuit of alternative sources of funding was also recommended.

Response: Education is a primary management tool in resource protection and will be considered in budget allocations. The management plan addresses alternative funding.

Priorities

Comment: Many reviewers expressed concern that the education strategies ranged from an overall priority level of three to five and had an anticipated low level of action in year one.

Response: Some of these activities are already underway in the Sanctuary's Education and Outreach program. NOAA agrees that the priority level for education and outreach should be elevated. As a result, the document has been revised and updated.

Enforcement Action Plan

Interpretive Enforcement/Connection Between Enforcement & Education

Comment: Many reviewers did not understand the concept of interpretive enforcement. Others felt that law enforcement officers should supplement the Sanctuary's education program. Others commented that NOAA should educate the resource users rather than using enforcement officers to catch violators who are making mistakes.

Response: The term "interpretive enforcement" refers to the merging of education functions with the enforcement officers' duties. NOAA strongly agrees that an effective enforcement program includes not only enforcement of violations, but education of Sanctuary users to achieve voluntary compliance with regulations. Although Sanctuary officers have full authority to enforce regulations, education is a primary tool of enforcement as outlined in the Enforcement Action Plan and the Education and Outreach Action Plan. The Sanctuary will undertake an outreach effort to make users aware of the regulations. For example, law enforcement officers distribute Sanctuary pamphlets in their contact with boaters during water patrols, and use this education opportunity to gain voluntary compliance.

Standardization

Comment: Wording in the draft management plan is ambiguous, therefore it leaves interpretation to the enforcement officers. The comment also charged that information received from officers is not consistent from officer to officer.

Response: Through coordination and training of law enforcement officers, standardized enforcement procedures, including interpretive enforcement, will be achieved. This is outlined in the Enforcement Action Plan.

Coordination With Existing Agencies

Comment: There are 24 agencies currently responsible for protecting the natural and cultural resources of the

Florida Keys. What is NOAA going to do to make them do their jobs?

Response: There are numerous agencies with responsibilities and somewhat limited ability for full enforcement of all rules everywhere. NOAA will seek to coordinate their activities, thus achieving more effective enforcement of all regulations. To this end, the FKNMS has developed an agreement with other enforcement agencies such as the US Coast Guard, the State of Florida, the US Fish and Wildlife Service, and the National Park Service to maximize and coordinate existing assets concerning Sanctuary enforcement. Since the Sanctuary includes both State and Federal waters, close coordination between the State and NOAA is essential.

Funding/Additional Enforcement

Comment: The management plan states that an additional 30 law enforcement officers will be needed for the Sanctuary. Many reviewers agreed that additional officers are needed to enforce laws, but questions were raised: Where will the funding come from for these officers? What is the timing for hiring additional officers?

Response: NOAA agrees that enforcement is important for successful comprehensive resource protection and management. In balance with other Sanctuary management needs, the expansion of the law enforcement program will be phased in as funding allows. Funding is critical but limited and must be balanced with other management goals such as education and outreach, research and monitoring. The hiring of an additional 30 law enforcement officers is a goal of the enforcement program. NOAA will work actively with the State to identify alternative funding sources for hiring additional law enforcement officers.

Mooring Buoy Action Plan

Use of Volunteers

Comment: Encourage the utilization of volunteer assistance in mooring buoy management and reference the interaction with the Volunteer Action Plan.

Response: The benefit of using volunteers in various stages of mooring buoy management is recognized, and reference to utilizing volunteers and volunteer programs was included in the draft. However, NOAA agrees that more emphasis should be placed upon the use of volunteers and the plan has been revised to reflect this (Strategy B15, Activity 1, Implementation; Activity 8, Implementation). In the area of mooring buoy maintenance, volunteers will be

used at the direction of those responsible under contract for the maintenance program.

Participation by the SAC

Comment: The SAC should be formally involved with all aspects of mooring buoy planning and management.

Response: NOAA agrees, and the Final Management Plan reflects this (Strategy B15, Activity 2, Activity 3, Activity 4, Activity 6, Activity 9).

Streamline Permitting

Comment: The permitting process to install mooring buoys needs to be streamlined to assure easier ability to accept donated mooring buoys or funding to install mooring buoys.

Response: The purpose of the mooring buoy plan is to identify appropriate sites for installation of new mooring buoys within the Sanctuary. Once the plan is finalized, it is NOAA's intent to obtain approval for the installation of all buoys from all applicable agencies.

Carrying Capacity Strategy

Comment: Considerable comment was received on the concept of carrying capacity. Some noted that the implementation of carrying capacity based on mooring buoy placement alone is inappropriate. This is because it is the number of divers on a vessel that is the most important aspect, not the number of vessels. The SAC recommended to remove the Carrying Capacity Strategy (Strategy R.5) from the Mooring Buoy Action Plan. This strategy should only occur in the Research and Monitoring Action Plan. Others suggested to separate the issue of carrying capacity from mooring buoys by developing a carrying capacity action plan. However, comment was also received that carrying capacity must be established for high use coral reef areas and that the use of mooring buoys is one method to implement carrying capacity.

Response: NOAA agrees that the issue of carrying capacity is much larger and more complex than can be addressed in the Mooring Buoy Action Plan alone. Mooring buoys are only one possible tool that could be used in the implementation of carrying capacity. At this time, there are no definitive studies available that could aid in establishing carrying capacity limits. The Research and Monitoring Action Plan will provide the opportunity for studying this topic. Therefore, it is necessary to undertake additional research before such limits can be considered. NOAA has revised the management plan to remove the carrying capacity strategy from the Mooring Buoy Action Plan. It

remains in the Research and Monitoring Action Plan and will be given a high level of priority. It is not advisable to create an entire new action plan for carrying capacity at this time.

No Anchoring in the SPAs

Comment: A large number of comments were received that recommended a no-anchoring policy within Sanctuary Preservation Areas (SPAs) where mooring buoys are present. The SAC recommended that the SPAs become no-anchoring zones, but that this should be phased in as sufficient mooring buoys are placed to accommodate existing uses. They also recommended that this issue be divorced from the Mooring Buoy Action Plan and be inserted into the zoning and regulatory action plans.

Response: NOAA agrees that the SPAs should become no-anchor zones. Before this policy is implemented, there should be a sufficient number of buoys in each SPA to accommodate a reasonable level of demand. The Working Group established in the Mooring Buoy Action Plan (Strategy B.15, Activity 4) will determine the sufficiency of the number of mooring buoys in the SPAs in developing the mooring buoy management plan. In the meantime, the regulations require boaters to use mooring buoys when they are available in SPAs and prohibit anchoring on coral. Thus, anchoring would be allowed on sand.

Support for Mooring Buoy Program

Comment: Numerous comments were received that indicated strong general support for mooring buoys. Some indicated that the buoys should not be just for divers but should consider the needs of fishermen as well.

Response: NOAA feels that the mooring buoy program is one of the most important proactive resource management actions that the Sanctuary has taken. The mooring buoy program will continue to be a major emphasis of the FKNMS. The FKNMS management team will consider mooring buoys for fishing uses in addition to those used primarily by divers.

Installation and Management of Mooring Buoys by Non-Profits

Comment: Several comments were received that stated that the FKNMS should leave the management of mooring buoys in the hands of existing agencies and non-profit organizations. Federal money would be better spent by giving it to non-profits. Some reviewers indicated that NOAA had overestimated the cost of mooring buoy maintenance.

Response: The Mooring Buoy Action Plan calls for encouraging new and continued efforts of non-profits and other organizations, as well as exploring other innovative funding mechanisms for installing and maintaining mooring buoys. The National Marine Sanctuary Program currently maintains approximately two thirds of the mooring buoys in the Florida Keys. It has been found to be a cost effective program utilizing local contractors for maintenance service. The costs in the action plan were somewhat high, as they were originally based on the maximum deployment of mooring buoys throughout the Sanctuary, not on current conditions. Cost was also based on a five year planning time frame, which was not made clear in the plan. The action plan has been revised to consider a more modest deployment of mooring buoys and has been clarified in regard to annual maintenance costs.

Raise the Priority of Mooring Buoy Program in Management Plan

Comment: Raise the overall Sanctuary priority level for mooring buoy activities from 3 to 2, in order to emphasize its importance.

Response: NOAA agrees that mooring buoy management is a high priority and the final management plan reflects the change from a medium to high level of priority.

Limit the Size of Vessels Using Mooring Buoys

Comment: Some reviewers recommended that NOAA limit the size of vessels using mooring buoys.

Response: Considering that the size of the anchoring apparatus increases with the size of the vessel, NOAA is hesitant to limit the size of vessels that use mooring buoys because this action may force large vessels to anchor thus increasing the potential impact to the coral reefs. However, the mooring buoy action plan contains activities that address the management of large vessel use on mooring buoys in high use or sensitive areas and NOAA is committed to improving mooring buoy technology to accommodate large vessel use. Additionally, NOAA has included a restriction on damaging mooring buoys in the regulations which places the burden on large vessel operators to assure that their use of mooring buoys is conducted in a manner so as not to damage the mooring buoy or hardware. This includes adding additional tag line to the mooring buoy in rough seas.

Regulatory Action Plan/Regulations

Definitions

Comment: NOAA received comments suggesting that several definitions be added to the list of definitions in the Sanctuary regulations.

Response: NOAA has added definitions, including those for *coral*, *coral area*, *coral reefs*, *hardbottom*, and *residential shorelines*, to the regulations.

Anchoring

Comment: NOAA has received several comments on the issue of anchoring within the Sanctuary. Comments ranged from requests for a Sanctuary-wide prohibition on anchoring on coral to those suggesting a prohibition only on the shallow reefs. Commentors stated that the bottom is often not visible in 50 feet of water, and therefore the anchoring restriction was impractical.

Response: NOAA has revised proposed § 922.163(a)(5)(ii) to prohibit having a vessel anchored on live coral other than hardbottom in depths less than 40 feet when visibility is such that the seabed can be seen. This restriction does not apply to anchoring on hardbottom. This regulation is necessary to address the impact of anchoring on coral.

Vessel Operation

Comment: Operation of vessels, particularly personal watercraft (jet-skis) generated considerable comment during the review process. Many reviewers were concerned about the operation of personal watercraft in such a way as to create a nuisance, or in a manner that disturbed wildlife or affected the health of Sanctuary resources. One reviewer said, "jet skis take the magic out of the Keys." On the other hand, there were numerous comments that the operation of personal watercraft should not be singled out from the operation of other vessels. Others commented about the adverse impacts from all vessels on shallow water habitats and wildlife in the Sanctuary. Careless operation of all vessels was also an issue of concern by the public.

NOAA received considerable comment from the public, the SAC, and the State of Florida on the proposed regulations for operation of vessels at greater than idle speed only/no wake near islands, residential shorelines, stationary vessels, and emergent reefs. Considerable comment was received on the proposed regulation that restricted vessel operation at a speed greater than idle speed only or no wake within 200 yards of mangrove fringed islands, residential areas, flats, stationary vessels, and other features.

Response: NOAA recognizes the adverse impact on Sanctuary resources and the user conflicts that can occur from the operation of all vessels. The threat to Sanctuary resources is universal to the operation of all vessels, not just any one type. However, the size, maneuverability, and shallow draft of personal watercraft results in operator behavior that makes them a greater source of user conflict and threatens Sanctuary resources more than any other vessel, particularly in shallow water habitat. Approximately 40 percent of the boating accidents in Monroe County in 1995 resulted from personal watercraft. This statistic indicates that the potential for careless operation of personal watercraft is very high. Most of the negative public comments about personal watercraft were behavior related examples.

The final regulations do not single out personal watercraft. Rather, the regulations apply to operation of all vessels to comprehensively address the potential resource impact, user conflicts and safety problems within the Sanctuary. The final regulations specify that, except in marked channels, vessels are prohibited from operating above idle speed or creating a wake in areas marked idle speed only/no wake, and within 100 yards of residential shorelines, stationary vessels, and marked emergent reefs, and 100 feet from a divers down flag. As regards the 100 foot distance requirement from diver down flags, NOAA modified this from the proposed 100 yard requirement to be consistent with State regulations.

Personal Watercraft Rentals

Comment: Many reviewers commented on the use of rented personal watercraft. Some in support, some in opposition, and some in support with appropriate restrictions. The SAC recommended that NOAA work with the personal watercraft (PWC) industry to begin a process to identify whether there is a need to establish restrictive zones. Comments from the personal watercraft industry representatives indicate interest in self regulation.

Response: NOAA plans to work with the PWC industry, the SAC and the public to determine regulatory and non-regulatory steps to address the issue, including the potential need and location of PWC rental use-zones.

Emergency Closures

Comment: Some reviewers were concerned about the ability of the Director or his designee to close areas or impose limited access provisions for unspecified periods of time.

Response: Section 922.165, the authority to impose emergency regulations, including area closures or access restrictions, has been revised to limit the term of an emergency regulation to 60 days, with the option of one 60-day renewal. In addition, under the Co-Trustee Agreement, the Governor and Cabinet will be provided advance notice of all emergency regulations. The Governor has the authority to reopen an area in State waters by certifying his or her objection to NOAA. Similarly, the Florida Marine Fisheries Commission will be provided advance notice of closure of areas to fishing activities. Any closure beyond 120 days would require providing the public the opportunity for notice and comment as required by the Administrative Procedure Act. Such area closures will be limited to the minimum amount of area necessary so as to achieve the purpose of the closure and avoid or minimize adverse impacts to Sanctuary users.

Civil Penalties

Comment: Some reviewers expressed an interest in having a penalty schedule published in the final management plan showing a scale of penalties for various infractions. Many reviewers have expressed concern about the discretion of enforcement officers in handling violations. Reviewers feared that NOAA could abuse its authority and charge the maximum \$100,000 civil penalty per day for a minor infraction. Some commented that civil penalties as outlined in draft regulations implied an "all or nothing" approach to enforcement and that the potential economic consequences if boaters are scared away from using the Sanctuary because of excessive regulations should be noted. Some commented that the penalty structure must be expanded to include degrees of violations, both intentional and unintentional. Some commented that the threat of enforcement for the intentional vandal should be significant while the inadvertent accident of a well-meaning citizen should not be the grounds for a severe penalty. Some asked who would develop the penalty structure and what public review process the penalty structure would go through?

Response: Civil monetary penalties are developed for Sanctuary violations by NOAA's Office of the Assistant General Counsel for Enforcement and Litigation, with input from the Office of Law Enforcement, the Sanctuary program, the Regional Administrator for the Southeast Region, and the U.S. Coast Guard. The schedule will include enforcement actions that may be taken against violators, which may include

verbal warnings, written warnings, civil monetary penalties, permit sanctions, and/or seizures of property. Many factors are taken into account in determining an appropriate penalty for a particular violation, including prior violations, the severity of the offense, and other aggravating or mitigating circumstances. The schedules will be available to the public before the regulations become effective and are enforced.

Sanctuary Certification/Authorization of Permits/Leases/Licenses

Comment: Some reviewers, including the SAC, expressed concern over the application of terms and conditions to leases, permits, licenses particularly those in existence prior to the designation of the Sanctuary. The public's concern was that the regulations on Sanctuary certification of pre-existing permits (proposed § 929.14) and Sanctuary authorization of other agency permits or authorizations after the effective date of the Sanctuary (proposed § 929.15) were too broad and appeared to give the Director the power to change existing authorizations. Commentors indicated that such power should not be handed over to a non-elected official without the right of appeal on the part of the individual holding the permit, lease, license or authorization.

Response: The State, county and other Federal agencies will continue to exercise their authority to issue permits. The Sanctuary will not pre-empt their authority to issue permits. In order to avoid duplicative permits and paperwork requirement, NOAA will seek to address Sanctuary concerns through those existing authorities. However, those authorities cannot authorize something that the Sanctuary prohibits. This regulatory authority is consistent with most sanctuaries and is based on provisions of the NMSA. Although the NMSA authorizes NOAA to regulate existing permits, including adding conditions, such regulations may not terminate any pre-existing permits, licenses or leases. Furthermore, §§ 922.167(i) and 922.49(h) provide that the Director's conditions or other decisions may be appealed. The appeal procedures are set forth in § 922.50. In addition, there are other checks and balances in place that prevent abuse of discretion relating to permits. NOAA and the State have developed a draft interagency agreement which identifies which activities will be subject to certification and authorization, and how the review process will be coordinated.

Sanctuary Permits—Time Limitations

Comment: Some reviewers requested that NOAA place a time limit on itself in which to respond to a permit request. The SAC suggested a 60-day time limit.

Response: Sanctuary concerns will be addressed for most activities and projects in other Federal permits and, if none exist, in State permits. Sanctuary permits are issued only if Sanctuary concerns cannot be addressed in the existing Federal/State permit regimes. NOAA has not imposed any time constraint for responding to permit requests. NOAA agrees that 60 days is a reasonable time in which to respond to most permit applications. NOAA normally responds within 3 weeks to a month after receipt of a complete application for most permits. However, a 60-day time frame may not be appropriate for large or complex projects.

Sanctuary Permit Reporting Procedures

Comment: Some reviewers expressed concern over the reporting requirements for permits.

Response: NOAA has not changed the permit reporting requirements. No reports are required more often than monthly. For permits issued for one year, the reports required are a "quick look" report and final report. Longer permits require a "quick look", annual, and final reports. Reports assist the Sanctuary in assessing the progress and impacts of a permitted activity and provide information useful to Sanctuary management.

Fee Schedule/Special Use Permits

Comment: Some reviewers suggested NOAA develop a fee schedule, based on fair market value, for the issuance of Special-use Permits.

Response: NOAA has not included a fee schedule in the final plan. The need for a Special-use Permit fee schedule is programmatic, not Sanctuary specific, and the details and specifics of Special-use Permits have not been completed by the Sanctuary and Reserves Division of NOAA. Further, the small number of Special-use Permits issued to date has not warranted the administrative review and development of such a schedule. Special-use permits will continue to be considered on a case-by-case basis.

Effectiveness of Enforcement of Regulations

Comment: There was comment expressing concern about the effectiveness of enforcing the Sanctuary regulations.

Response: NOAA feels that effective and efficient resource protection requires coordination with existing

regulations. As a result, the Sanctuary is developing an agreement with other enforcement agencies such as the US Coast Guard, State of Florida, US Fish and Wildlife Service, and the National Park Service to maximize and coordinate existing assets concerning Sanctuary enforcement. Since the Sanctuary includes both State and Federal waters, close coordination between the State and NOAA is essential.

Florida Clean Vessel Act/Vessel Discharge

Comment: The State of Florida and other reviewers recommended that NOAA establish regulations throughout Federal waters that meet the requirements of the Florida Clean Vessel Act.

Response: NOAA has not incorporated the provisions of the Florida Clean Vessel Act in the final regulations. This act does, however, apply to the 65 percent of the Sanctuary in State waters. Further, the final regulations prohibit all discharging and depositing of any material or other matter except cooling water or engine exhaust in Ecological Reserves or Sanctuary Preservation Areas. Thus, discharge from marine sanitation devices in these areas is prohibited. This will protect the shallow coral reefs from discharge of nutrients. In addition, NOAA will work with the State of Florida and the Water Quality Steering Committee concerning incorporation of provisions similar to the Florida Clean Vessel Act throughout the Sanctuary.

Transiting No-Take Zones

Comment: Some fishermen expressed concern over the inability to transit no take zones with their equipment on board and their catch taken from outside the zones.

Response: The final regulations allow transiting an ER or SPA with catch taken outside the ER or SPA, provided it is stowed prior to entering and during transit. The final regulations also allow transiting with otherwise prohibited gear provided it is unbaited and stowed in a cabin, locker, rod holder or similar storage area, or is securely covered and lashed to a deck or bulkhead unbaited, prior to entering and transiting the area.

Live Rock Harvest, Shell and Tropical Fish Collecting

Comment: Many reviewers commented on the collection and harvest of live marine organisms and mollusc shells.

Response: Live rock harvesting is currently prohibited under State and

Federal fisheries law. The prohibition has been added to Sanctuary regulations to protect these Sanctuary resources should the restrictions under other laws be removed. Shell collecting and tropical fish collecting and other consumptive activities are prohibited in the SPAs and Ecological Reserves. In addition, the Florida Marine Life Rule has been incorporated by reference into the Sanctuary regulations and thereby extended into Federal waters. These regulations will address some concerns of exploitation while minimizing economic impact. The marine life rule is referred to in § 922.163(a)(12) of the Sanctuary regulations and is reproduced in Appendix VIII.

Diver Impact

Comment: Some commented that stronger regulations were needed to prohibit coral touching and recommended specific regulations dealing with diver and snorkeler impacts on the coral reefs. Some suggested prohibiting the use of gloves or requiring float coats for snorkelers. There was also a comment that there should be no prohibition against impacts to dead coral.

Response: Section 922.164(d)(iv) of the Sanctuary regulations prohibits divers and snorkelers from touching or standing on living or dead coral formations in the SPAs and ERs. Approximately eighty to eighty-five percent of the year-round diving and snorkeling activity within the Sanctuary takes place in the 18 SPAs and one ER established by the final regulations. This single regulation will address the issue of diver impact on coral reefs without having to develop a series of regulations on gear requirements that accomplishes the same goal. NOAA included "living or dead" coral formations with the understanding that some visitors to the Sanctuary do not know the difference between living and dead corals. Additionally, impacts to dead coral formations may disrupt new coral recruits. The removal or injury to corals is also prohibited Sanctuary-wide.

Spearfishing

Comment: Some reviewers expressed concern about spearfishing within the Sanctuary, while others urged NOAA to allow it to continue in a managed manner.

Response: In balancing the public's concern and interest over the issue of spearfishing within the Sanctuary, NOAA has prohibited spearfishing in the SPAs, ERs, Research-only Special-use Areas, and some of the Existing Management Areas. NOAA has addressed the concerns of over-harvest

by this fishing technique in eighty to eighty-five percent of the total area within the Sanctuary dived by recreational divers and snorkelers. However, spearfishing will continue to be allowed and managed under fisheries management regulations in the remainder of the Sanctuary. This balance of concerns on the issue will have positive impacts on the resources.

Military Activities Within the Sanctuary

Comment: Some commented that a prohibition on the use of explosives within the Sanctuary should be extended to the military.

Response: The final regulations provide that all military activities shall be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities. Sections 922.163 and 922.164 do not apply to existing classes of military activities as identified in the final environmental impact statement. New military activities may also be exempted from all or part of these two sections upon consultation with the Director. NOAA has been assured by the Navy that live (explosive) ordinances are not currently used within the Sanctuary. The Patricia Range is the only target site within the Sanctuary and live explosives are not used.

Research & Monitoring Action Plan

Management Should Be Based on Good Science

Comment: Management actions should be based on good science and should not occur until the science is done to back it up.

Response: Management actions should be based on the best available science. However, there is always a degree of uncertainty associated with science and, in some cases, it is imprudent to suspend management actions until the science is completed. A precautionary approach to management of Sanctuary resources should be taken in order to ensure that lack of scientific certainty does not preclude implementation of reasonable management measures. An adaptive management approach will be used in the Sanctuary when necessary.

Studies Are Needed To Determine Sustainability

Comment: Studies are needed to determine the level of human activity sustainable by the resources.

Response: NOAA agrees and has included a carrying capacity strategy in the Research and Monitoring Action Plan. The strategy calls for carrying capacity research to be conducted at

several of the SPAs and Research-only Special-use Areas.

Too Much Emphasis on Research and Monitoring

Comment: The draft management plan places too much emphasis on research and monitoring.

Response: Research and monitoring is an essential component of effective resource management. The reason many strategies have a research or monitoring component is to assess the strategies' effectiveness or feasibility in order to determine whether it needs to be modified, continued, or terminated prior to committing additional resources in the future.

Queen Conch Stocking

Comment: A moratorium on stocking would adversely effect the State's queen conch stocking program.

Response: NOAA has revised Strategy F.3 by eliminating the moratorium on stocking and replacing it with a requirement for permitting of all stocking programs.

Monitoring of Zones

Comment: Research and monitoring of zones needs to be a top priority.

Response: Scientific monitoring to determine the effectiveness of the zones is a top priority for NOAA. In 1993, NOAA began to collect baseline data on reef fish populations in and around the proposed no-take zones in preparation for their implementation. Research in the zones is also a top priority and will begin once the zones are finalized. The Research and Monitoring Action Plan explains how the zones will be used for research and monitoring.

Volunteer Research and Monitoring Programs

Comment: Some reviewers pointed out the need to incorporate volunteer monitoring efforts such as some of those currently underway by groups like Reef Relief, The Nature Conservancy, and R.E.E.F. They also pointed out the importance of using the knowledge of local experts to help better understand the health of Sanctuary resources.

Response: NOAA has incorporated the use of monitoring projects by the public and volunteers in the Research and Monitoring Action Plan. The long-term goals of the Sanctuary include using such monitoring programs as a basis of detecting change in the coral reef environment.

Submerged Cultural Resources Action Plan

Prevent Treasure Hunting & No Permits for Private Profit

Comment: Several reviewers, including the National Park Service, Minerals Management Service, and the Department of the Navy stated that no treasure hunting should be permitted in the Sanctuary and that the proposed Submerged Cultural Resources (SCR) permit system was in conflict with the Federal Archaeological Program and particularly the Abandoned Shipwreck Act (ASA) guidelines. Other reviewers indicated that some commercial treasure salvage should be permitted, but should be strictly regulated to prevent any harm to the natural resources of the Sanctuary.

Response: NOAA agrees that "treasure hunting" that is, the search for and recovery of intrinsically valuable artifacts with little, if any, regard for the archaeological context and historical significance of the finds, should not be allowed in the Sanctuary.

However, the Submerged Cultural Resources (SCR) Action Plan does provide for public and private sector recovery of shipwrecks consistent with protecting historical values and the environmental integrity of the shipwrecks and sites. NOAA and the State of Florida have agreed that the SCR plan, consistent with the multiple use mandates of the NMSA and the ASA, should provide for the in situ preservation of highly significant historical Sanctuary resources under strict regulations protecting historical values and the environmental integrity of the shipwrecks and sites and that the recovery of SCRs should only be permitted when it is determined to be in the public's interest and done in an environmentally and archaeologically sound manner.

No recovery permits will be issued in areas where there is coral, seagrass or other significant natural resources. However, private recovery of certain SCRs may be permitted in other areas of the Sanctuary which are relatively devoid of natural resources. In such recovery efforts, the highly significant resources will be required to be preserved in a museum of public access consistent with the standards of the Federal Archaeological Program. Objects of low to moderate historic or archaeological significance may be deaccessioned or transferred for sale or other disposition.

As regards the ASA guidelines, NOAA acknowledges that the accommodation of commercial salvage, that is, the search for and the recovery

of shipwreck artifacts using archaeological recovery techniques and historical documentation to maximize the intrinsic value of the finds, does appear to conflict with certain ASA guidelines suggesting that no commercial salvage be permitted in marine sanctuaries. However, NOAA's position is that the SCR Action Plan is consistent with the ASA guidelines when read as a whole. In other words, there is no commercial salvage permitted in the zoned areas and other areas of significant natural resources. Commercial salvage will be permitted only in areas relatively devoid of significant natural resources. NOAA does not suggest that the FKNMS SCR Action Plan be used as a model for other national marine sanctuaries, or for other Federal/State protected areas or preserve systems. There are several distinguishing reasons for the departure from those ASA Guidelines in the FKNMS: (1) 65 percent of the Sanctuary is in State waters—under the NMSA and the ASA due deference must be given to the State's interests in managing Sanctuary resources, particularly abandoned shipwrecks to which the State has title; (2) treasure hunting and commercial salvage of historic shipwrecks has been a traditional activity in the Keys for decades and is part of the local culture; (3) the NMSA and the ASA are multiple use statutes; (4) the establishment of multiple use areas where commercial salvage can occur as well as not permitting any recovery where there is coral, seagrass or other significant natural resources is analogous to the zoning approach proposed for protecting natural resource habitat areas; (5) the SAC recommended that some commercial salvage be permitted in the Sanctuary; and (6) numerous other public comments recommended that some commercial salvage should be permitted in the Sanctuary.

Consistent with the recommendations of the SAC, the State, and public comments, the SCR Action Plan provides a permit system which will strictly regulate private, for profit, recovery of SCRs, to ensure that it is done in an environmentally and archaeologically sound manner. Private, for profit, recovery will not be allowed unless it is in the public interest and will include public display of the recovered SCRs. Certain SCRs will be required to be maintained in museums and similar institutions of public access while duplicative objects may be deaccessioned and transferred to the permittee for sale or other disposition, but only after there has been a proper

recording and reporting of the archaeological information. Under the multiple use mandate of the NMSA and the ASA, some SCRs may be recovered while other more significant SCRs will remain in the Sanctuary for *in situ* preservation and use by present and future generations.

Comment: The National Park Service commented that the Antiquities Act applies in National Marine Sanctuaries and therefore an Antiquities Act permit should be required for the excavation and recovery of SCRs.

Response: NOAA agrees that the Antiquities Act applies in the Sanctuary. However, as the Federal agency that exercises control over Sanctuary resources, NOAA is the appropriate Federal agency to issue permits for the management of Sanctuary resources, including antiquities. Moreover, as the Sanctuary SCR permits will be issued in compliance with the NMSA, the ASA, the NHPA, and the standards and guidelines of the Federal Archaeological Program, an additional permit under the Antiquities Act appears unnecessarily duplicative.

Comment: The Department of the Navy objected to the SCR permits and expressed concern about the Navy's historic shipwrecks in the Sanctuary as well as the potential precedent for other Navy historic shipwrecks outside the Sanctuary.

Response: The permits for private recovery and deaccession/transfer only apply to abandoned vessels. As a trustee for such resources, NOAA will continue to respect the interests of the owners of the vessels and the sovereigns that represent those interests consistent with domestic and international law. Sunken warships and other public vessels entitled to sovereign immunity, regardless of location, remain the property of the nation to which it belonged at the time of sinking, unless that nation has taken formal action to abandon it or to transfer title to another party. It is a long-standing Navy policy that it does not abandon its public vessels. Therefore, no permits will be issued for the private recovery of Navy vessels without the express written permission of the Department of the Navy. In considering permits for the private recovery of other vessels entitled to sovereign immunity, NOAA may require the express permission of the appropriate sovereign representatives, or otherwise consider their interests in the vessel and its recovery.

SCR Plan/Permits & Costs to Treasure Salvors Business

Comment: At the scoping meetings, workshops, SAC meetings, other public meetings, and in public comments the treasure salvors have continuously asserted that the FKNMS would put them out of business and commented that the Sanctuary should adopt the State's existing contract system. Others commented that commercial treasure salvage should be permitted, but should be strictly regulated to prevent harm to natural resources from various commercial treasure salvage methodologies, including "mail-boxing" (propeller dredging device).

Response: The Florida contract system and the division ratio (80 percent salvor to 20 percent State) was considered as an alternative, but was not preferred because it is inconsistent with the Federal Archaeological Program and with the ASA Guidelines. Prohibiting commercial salvage throughout the Sanctuary was also considered and rejected for reasons indicated in the response to the comments above. The SCR Action Plan is the result of a careful balancing of resource protection and reasonable accommodation for commercial salvage in certain areas for certain SCRs. If the cargo from a wreck is of little or no historical or archaeological significance and duplicative, then nearly all of the recovered objects will likely be transferred to the permittee. On the other hand, if the artifacts are of high historical significance, then the permittee will have possession of the artifacts and may seek return on the investment through other means. However, in this instance there would be no transfer of ownership of a public resource to a private party unless and until it is determined that the resource is of little or no historical or archaeological value. In developing the SCR Action Plan, NOAA considered the threats to natural and historical resources and sought to develop strict regulations to ensure that recovery will be environmentally and archaeologically sound, while at the same time, taking into account the socio-economic considerations of the commercial salvors and others. In response to comments, changes were made to the proposed regulations and draft management plan in an effort to make the permit management system more pragmatic from the perspective of the commercial salvors without compromising the primary objectives of protecting significant natural and historic Sanctuary resources. Between the draft and the final, NOAA issued

several permits to commercial salvors with pre-existing admiralty rights. While the permit conditions may be more rigorous than the requirements of the Admiralty Court or the State contract system, and thus may involve additional costs, those permittees continue to work their sites.

Comment: The Historic Shipwreck Salvage Policy Council (HSSPC) (treasure salvors group) and other treasure salvors also raised specific concerns about the economic burden to permittees in the SCR Action Plan such as requiring performance bonds, general liability insurance, permanent public display of certain SCRs, professional nautical conservators and supervision by professional archaeologists.

Response: Pursuant to consultation with the State of Florida, NOAA has deleted the requirement for a performance bond for all applicants. As the treasure salvors noted, the regulations elsewhere require all permittees to demonstrate their financial ability to carry out proposed projects and activities requiring permits. NOAA agrees that the underlying purpose of requiring a performance bond (to ensure that there are ample funds to finish research-recovery work once initiated) appears to be covered by the other regulations and that by removing the regulatory requirement for a performance bond, there will be more flexibility in the permit system. While the removal of the regulatory requirement should reduce the costs for meeting the permit criteria for most applicants, requiring such a performance bond may still be reasonable and appropriate in certain cases where applicants historically have not finished projects or have difficulty demonstrating their financial ability to complete a proposed project.

General liability insurance is required by Section 310 of the NMSA. However, NOAA has modified the regulatory provision implementing that requirement to clarify that other security instruments may be utilized in lieu of an insurance policy. In addition, NOAA has modified the regulatory language to clarify that the scope of coverage required is for potential claims for destruction, loss of or injury to Sanctuary resources arising out of permitted activities and to clarify that the amount of insurance or security should be equivalent to the estimated value of the Sanctuary resources in the vicinity of the permitted area and activities.

With regard to the requirement that SCRs be publicly displayed, NOAA did not intend to require that all SCRs be publicly displayed for all time. Instead,

it was expected that this would be addressed in the curation agreements and that standard museum practices would be followed, consistent with the FAP. The regulations have therefore been modified to indicate that public access and "periodic" public display must be provided.

With regard to the requirement that a professional archaeologist be in charge of the archaeological research and recovery, that requirement has not been changed or modified. Recovery of historical resources inherently involves the destruction of contextual and other important archaeological information. The only way that such information is preserved is through scientific recording of the recovery efforts consistent with standard archaeological principles. It is therefore imperative that a professional archaeologist supervise the recovery operations. That is not to say that, as supervisor, the archaeologist needs to be on site all the time. However, the archaeologist needs to oversee the operations. The public's interest in the preservation of this archaeological information justifies the additional costs to the permittee. In addition, the administrative record indicates that many commercial salvors already employ an archaeologist.

With regard to the requirement of a professional nautical conservator, the regulations have been modified to delete "professional" and insert "authorized" as suggested in comments in order to provide more flexibility in the permit system and allow for the consideration of field experience. As the professional archaeologist is responsible for supervising the operations, NOAA will give due deference to the supervising archaeologist's selection for nautical conservator in considering its authorization.

Special Use Permits; Fees/Waiver in SCR Context

Comment: The HSSPC suggested adding a third criteria for Special-use Permits, i.e., "to promote private sector participation when advantageous to the taxpayers" and shifting the costs for Special-use Permits from the permittee to NOAA and the State. The HSSPC also suggested that the costs for Special-use Permits should be limited to the costs of issuing the permit. Other administrative costs such as monitoring activities should not be included. The fair market value for use of Sanctuary resources also should not be included.

Response: Section 310 of the NMSA provides the authority, and sets forth the two criteria, for issuing Special-use Permits. Section 310 also provides for the assessment of associated fees which

are to cover the administrative costs as well as a fair market value return to the public for use of public resources. This portion of the management plan merely describes these statutory provisions and remains consistent with section 310.

With regard to adding the third criterion, promotion of private participation, it is not a section 310 criterion or even a general statutory purpose or policy. However, facilitation of compatible multiple use is a statutory policy and the SCR Action Plan has been modified accordingly.

With regard to the assessment of costs and waiver of fees in implementing Special-use Permit authority, NOAA has the discretionary authority to consider waiver of costs and/or fees on a case by case basis when permitted activities result in a public benefit, whose value can be determined. For example, in the SCR context, the preferred policy is that the SCR be preserved on site. Waiver of fees for the removal of SCRs which are not under threat is unlikely. However, if it is determined that the SCR is being threatened by remaining in the Sanctuary, the research and recovery would appear to be in the public interest and reduction and/or waiver may therefore be considered in the cost and/or fee determination. The extent that private use is furthering resource protection, research, education and similar FKNMS management strategies is given due consideration in determining the amount of costs and fees.

Public Access to SCRs (Land v. Sea)

Comment: The HSSPC suggested that the plan should require SCRs to be managed in a manner that brings SCRs to the largest segment of the populations noting that scuba divers amount to less than 1% of the population. Several others, including the National Park Service, commented that SCRs should be preserved in the Sanctuary but that non-intrusive public access for research, education and recreation should be allowed, and that intrusive public access should be strictly regulated.

Response: The policy preference under the FKNMS SCR Action Plan, consistent with the preservation policy in the Federal Archaeological Program, and the resource protection mandate in the NMSA, is that SCRs be preserved on site in the Sanctuary, unless the SCRs are under threat and removal is required to preserve them. As indicated in the comments above, there has been some accommodation for commercial salvage in certain areas of the Sanctuary and for certain SCRs to facilitate multiple use of the SCRs. However, besides being inconsistent with resource protection,

the suggestion that all or most of the SCRs be removed from the Sanctuary is not consistent with the multiple use mandates of the NMSA and the ASA and has therefore not been incorporated. The ASA and the NMSA are both concerned about public access to SCRs for boaters, divers and others within the Sanctuary. The suggested change in policy appears to primarily benefit one special interest group, the commercial salvors. Access to Sanctuary resources for members of the public unable to enter the Sanctuary itself is accomplished through a variety of education and outreach and research products and mediums, including print, film, and computer informational products. The public access goal does not require physical access to the SCRs, nor does it require their removal for land based exhibits. However, as previously indicated, in this Sanctuary, the SCR Action Plan provides for commercial salvage which will in turn result in the public display of certain recovered SCRs in museums and similar institutions of public access.

Inventory of SCRs: Responsibility & Expense

Comment: The HSSPC suggests that the Florida Department of State/Bureau of Archaeological Resources have the lead responsibility in the inventory of SCRs and that NOAA's role be limited to a financial assistance role. The HSSPC also suggested that the inventory be accomplished through the use of the private sector, when funding is available, in order to lessen the burden on taxpayers.

Response: No change was made to the plan regarding NOAA's lead responsibility for the inventory of SCRs because it is NOAA, not the State, that is legally responsible for accomplishing this task. Section 110 of the National Historic Preservation Act requires Federal agencies to inventory historic resources such as SCRs under the Federal agencies' management responsibility. However, as indicated in the plan, NOAA will work with the State and any other public and private entities interested in activities which fulfill this responsibility. Accordingly, the SCR Agreement has been revised to indicate that NOAA will also consider all public and private opportunities for accomplishing the inventory in a reasonable and cost-effective manner, including private sector funding through permits and otherwise.

Survey/Inventory Permits

Comment: The HSSPC suggested that the regulations expressly state that no Sanctuary permit is required for non-

intrusive, non-exclusive remote sensing activities, but also suggested that the survey/inventory permits expressly grant exclusive rights to explore the permitted areas. The HSSPC also suggested that these permits provide for limited manual alteration of the seabed, including hand fanning, provided there is no negative impact to coral, seagrass, sponges and other natural resources.

Response: Section 922.42 of the regulations states that unless an activity is prohibited, it is expressly allowed. In addition, the sections on Sanctuary permits, certification, and authorizations indicate that they are only required for conducting activities which are prohibited by Sanctuary regulations. Non-intrusive remote sensing is not prohibited. Therefore, the regulations expressly state that such activity does not require a permit. The regulations will indicate that permits may provide for limited manual alteration of the seabed, including hand fanning, provided there is no adverse effect on Sanctuary resources. Such activity will continue to be considered on a case-by-case basis as part of the public interest balancing on whether to issue a permit and for determining the appropriate conditions to protect resources and manage multiple uses.

The HSSPC suggestion for exclusive rights for a survey-inventory permit is not entirely consistent with the suggestion that remote sensing not require a permit. NOAA cannot prevent non-intrusive remote sensing in an area unless it is prohibited in the regulations and the regulations do not prohibit remote sensing. However, NOAA and the State of Florida are cognizant of the underlying economic concerns of applicants and permittees in investing and expending financial resources. Therefore, in an effort to reconcile these comments, the regulations have been modified to indicate that NOAA will not grant survey and inventory permits or research and recovery permits for areas covered by existing permits, unless authorized by such permittee. There is no entitlement to these and other permits, rather it involves the discretionary authority of NOAA and the State of Florida in granting a privilege which is determined to be in the public's interest.

Volunteer Action Plan

Recruitment of Volunteers

Comment: A number of reviewers, including the SAC, recommended the development of a new strategy in the Volunteer Action Plan which targets the recruitment, training and recognition of Sanctuary volunteers.

Response: NOAA agrees with this comment and the management plan has been revised accordingly.

Volunteer Coordinator

Comment: Some reviewers expressed concern that the Sanctuary's Volunteer Coordinator is not a full-time NOAA employee and recommended that this be changed. Others stated their satisfaction with the Nature Conservancy's role in the volunteer program because of its stability and broad geographic influence.

Response: The Sanctuary's Volunteer Coordinator continues to effectively administer and oversee the Sanctuary's Volunteer Program. In the future, NOAA will consider whether it is either necessary or appropriate to modify the Volunteer Coordinator's role or position.

Water Quality Action Plan

Support the Water Quality Action Plan

Comment: Many reviewers of the draft management plan and Environmental Impact Statement commented on the issue of water quality within the Sanctuary. There was almost unanimous agreement that deteriorating water quality is the major threat to the health of Sanctuary resources and most supported actions to correct the problems. Many reviewers specifically expressed support for the Water Quality Action Plan (WQAP).

Response: NOAA agrees that the major threat to the health of the Florida Keys coral reef ecosystem is deteriorating water quality. The FKNMSPA directed EPA, in coordination with the State of Florida and NOAA, to develop a Water Quality Protection Program (WQPP) for the Sanctuary. This was the first Congressionally mandated Water Quality Protection Program for a National Marine Sanctuary and was established to take corrective actions to restore water quality in the Sanctuary. The Water Quality Action Plan reflects strategies developed under the Water Quality Protection Program.

Water Quality Is an Issue Broader Than the Sanctuary

Comment: Although the majority of the reviewers recognized that deteriorating water quality was the major threat to marine resources, the source or cause of problems was questioned. Many claimed the problems originate outside Sanctuary boundaries in the upper portions of Florida Bay, or come as a result of poor water management practices in south Florida. Reviewers stated that the problem is outside the FKNMS boundary, thus, the Sanctuary does not have the authority to

address these significant water quality issues.

Response: Some of the water quality problems in the Florida Keys occur outside and upstream of the Sanctuary's boundary. Deteriorating water quality in Florida Bay is largely a result of water management practices in south Florida as has been documented by scientists. Other scientists point to possible sources of nutrients and pollutants that enter Florida Bay through the Everglades drainage. The Florida Keys are at the end of the south Florida ecosystem and are the recipient of degraded water quality that originates upstream. While EPA, the State of Florida and other agencies will continue to address the land-based sources of pollution and water quality in the Sanctuary, particularly through the Water Quality Steering Committee and the South Florida Ecosystem Task Force, NOAA has an appropriate supplementary role in these efforts.

Water Quality Problems in Nearshore Waters

Comment: Some reviewers stated that there are no water quality problems in the Florida Keys. Other reviewers cited the poor wastewater treatment practices in the Florida Keys, such as septic tanks, injection wells, and cess pits, as the main source of water quality degradation in the Sanctuary. Storm water runoff was also viewed to as a contributing factor to poor water quality. Some reviewers cited the findings from a recently released State hearing officer's report.

Response: NOAA disagrees with the implication that there is not a water quality problem in the Florida Keys. Scientists have documented the decline of water quality in the nearshore waters of the Florida Keys. This deterioration is caused by a variety of sources including excessive nutrients entering the nearshore waters because of inadequate sewage treatment practices and problems related to storm water runoff. The findings of a State Hearing Officers were that the nearshore waters of the Florida Keys have exceeded their carrying capacity and are in danger of collapsing. In addition, the report identified nutrients originating from inadequate treatment facilities as the primary cause of nearshore water quality degradation in the Florida Keys.

The WQPP was established to take corrective actions to restore water quality in the Sanctuary. This must be accomplished at the same time as, or prior to, the restoration of water quality upstream in Florida Bay in order to be successful. Improvement of water quality in the FKNMS will not be

successful if only the upstream or nearshore portion of the ecosystem is restored. All parts of the ecosystem, all the way to the coral reefs, must be restored and relieved of increasing human impacts.

Implementation

Comment: Some reviewers stressed that the implementation of the water quality action plan should supersede the implementation of other action plans such as zoning. They emphasized cleaning up the water quality problems before continuing with other management actions. Other reviewers stressed the importance of addressing the deteriorating water quality issue in the Sanctuary, but advocated implementation of a variety of management programs, including those that protect Sanctuary resources from continued degradation. In addition, some reviewers supported a plan with direct action strategies to correct water quality problems.

Response: NOAA agrees that the major issue affecting the health of the Florida Keys coral reef ecosystem is deteriorating water quality. Implementation of the WQAP and the WQPP for the FKNMS will lead to improvement of the water quality in the Sanctuary. Currently, some of the corrective actions identified in the WQPP are being implemented both within the boundaries of the Sanctuary and upstream in the South Florida ecosystem. These on-going activities will have a net positive benefit to Sanctuary resources.

However, NOAA disagrees that all other management actions should be deferred until the implementation of the WQPP and the WQAP for the FKNMS. Many of the management actions necessary to halt the decline of water quality in the Florida Keys will take years to implement, and the physical stresses and impacts currently placed on Sanctuary resources from other sources could be lessened with management actions such as mooring buoys to prevent anchor damage, channel markers to mark boating routes through sensitive habitats, and outreach programs to educate users about the resources of the Florida Keys.

Mosquito Spraying

Comment: Several reviewers expressed concern about NOAA's role in addressing current mosquito control practices in Monroe County.

Response: Representatives from FKNMS and Monroe County will work together through the Water Quality Protection Program to refine aerial mosquito spraying based on research

findings. This action will reduce threats to marine resources which may result from mosquito spraying over the near-shore waters of the Florida Keys.

Zoning Action Plan

The Term Replenishment Reserve

Comment: Some reviewers expressed that the term Replenishment Reserve is confusing because it implies that these areas are for fisheries replenishment.

Response: NOAA has changed the name Replenishment Reserve to Ecological Reserve (ER). Ecological Reserve more accurately represents the purpose of this zone, that is, to restore natural ecosystem dynamics and habitat, by setting aside a portion of the coral reef environment (including seagrass beds, hardbottom, rubble habitat, patch reefs and sand areas) that is protected from all forms of "harvesting".

Establishment of Zones

Comment: Many commented on the Zoning Action Plan and proposed regulations regarding Sanctuary Preservation Areas, Wildlife Management Areas, Special-use Areas, and Ecological (formerly Replenishment) Reserves. Some recommended deleting all marine zoning; others recommended the zoned areas be expanded; while still others supported the zoning concept but recommended delay in implementation until there was more detailed scientific research and economic impact analysis of certain proposed zones. Some reviewers recommended zoned areas be closed to all human uses, except for boat transit. Many reviewers supported the proposed Zoning Action Plan including, in some instances, an increase in the amount of area proposed as Ecological Reserves.

As regards the Key Largo ER, some reviewers suggested that because of the existing protection afforded by the John Pennekamp Coral Reef State Park and the existing Key Largo National Marine Sanctuary, that the Key Largo ER would not provide significant additional protection for the area and should, therefore, be eliminated. A number of reviewers suggested that if not eliminated, the boundaries of the Key Largo ER should be shifted to the south. Several reviewers suggested that the elimination of the Key Largo ER be accompanied by an increase in the size of the Carysfort SPA to protect additional patch reef and coral habitat. Other reviewers suggested that the boundaries of the Dry Tortugas ER be reconfigured to minimize impacts on fishers. In addition, a number of

reviewers suggested reconfiguring the Dry Tortugas ER to encompass more of the reef community as opposed to low-profile, barren habitat, but not reducing its overall size. A number of reviewers also expressed concerns about commercial fishing displacement as a result of establishment of the Western Sambos ER.

Comments from some representatives of the recreational and commercial fishing industries and some individuals recommended elimination of all or some SPAs and ERs. These reviewers cited unreasonable burdens and negative economic impacts resulting from the closures, primarily due to displacement from closed areas. Examples of the uses most commonly cited as likely to be displaced are baitfishing, shrimping, and lobster trapping. Some recommended that bait fishing and catch and release trolling be allowed, while others were opposed to all fishing in SPAs.

The State of Florida Marine Fisheries Commission generally supported the proposed zoning, but recommended the elimination of the Key Largo ER and suggested making provisions to allow certain baitfish harvest. Other State and Federal agencies supported the proposed zoning and one recommended establishing an additional replenishment zone in the back country of the Keys. Other reviewers supported the Zoning Action Plan as proposed or recommended additional areas for inclusion.

The SAC recommended that the management plan: (1) Keep the proposed Special Preservation Areas as configured with provisions to allow bait fishing and catch and release trolling in selected SPAs; (2) keep the research-only areas; and (3) keep the Western Sambos ER but eliminate the proposed Key Largo ER; and reconfigure the Dry Tortugas ER.

Response: NOAA developed the Ecological Reserves to protect some of the most significant habitat, but in a manner to avoid or minimize impacts to fishers and other users. In the DMP/EIS, NOAA proposed boundaries based on distribution of the most significant coral habitats and spur and groove configurations and a user survey identifying where fishing, diving and other uses occur. NOAA also used maps provided by the SAC members that indicated specific information about the resources and uses of the marine resources. The goal was to include the most coral reef communities in a manner which avoids or minimizes economic impact to users, particularly fisherman. NOAA has modified the final regulations and management plan to

reflect several of the recommendations made in the comments. Consistent with recommendations from the SAC and others, and upon careful weighing the environmental and socio-economic impacts, NOAA has retained the Western Sambos ER but revised its Zoning Plan to eliminate the Key Largo and defer the Dry Tortugas Ecological Reserves, add the Eastern Sambos Research-only Special-use Area and slightly expand the Carysfort SPA to include additional intermediate reef, back reef, and patch reef areas. In weighing the socio-economic impacts on commercial and recreational users against the additional benefit of the Key Largo ER, NOAA eliminated that Reserve from the final plan and regulations. The resource protection provided by the existing protected areas, John Pennekamp Coral Reef State Park, Key Largo National Marine Sanctuary, and Biscayne National Park contributed to this decision. NOAA has, however, enlarged the SPA at Carysfort Reef to protect additional patch reef and coral habitat.

Public comment also identified serious adverse economic impacts which would result from implementation of the no-take regulations within the proposed boundary of the Dry Tortugas ER. Recommendations suggested reconfiguring the boundary of that Reserve to minimize such impacts. Others recommended the Dry Tortugas ER be reconfigured to include additional reef communities. Consequently, NOAA did not set forth a boundary or regulations for the Dry Tortugas ER. Rather, NOAA will continue the process for establishing a proposed final boundary of the Dry Tortugas ER in coordination with the National Park Service, fishing representatives, scientists, and others to identify an appropriate final boundary for the Reserve, which may include portions of the Dry Tortugas National Park. NOAA and the National Park Service will use the information gathered as part of the public review of the draft management plan, and hold workshops with users, agency representatives, environmental organizations, scientists, and the public. Prior to making a final decision, the proposed final boundary of the Dry Tortugas ER will be published for public comment.

In summary, public comments indicated that the impacts on fishers from the proposed Replenishment Reserves were greater than considered in the DMP/EIS. As a result, the final regulations designate the Western Sambos area as an ER. The Key Largo and Dry Tortugas areas were not made

ERs in order to minimize adverse impacts to fishers. An area of the Dry Tortugas with a boundary with less of an adverse impact on fishers will be proposed to be designated at a later date.

Bait Fishing

Comment: Some reviewers recommended allowing baitfishing in SPAs and ERs or reducing the number or size of SPAs to lessen the impact on baitfishing.

Response: NOAA has revised the management plan to provide for the issuance of permits for limited bait fishing in SPAs rather than reduce the number of SPAs. NOAA will issue permits for catching ballyhoo for bait by net.

Catch and Release Trolling

Comment: Some reviewers recommended allowing catch and release trolling in SPAs and ERs or reducing the number or size of SPAs to lessen the impact on this activity.

Response: Catch and release fishing will continue to be allowed throughout greater than 98 percent of the Sanctuary. In addition, NOAA has modified the management plan and regulations to allow catch and release trolling in four of the eighteen SPAs: Conch Reef, Alligator Reef, Sombrero Key, and Sand Key. This will facilitate multiple uses and allow for comparisons to be made between SPAs, therefore determining the impact of catch and release trolling.

Snorkeling/Diving Access

Comment: Some reviewers expressed concern about the lack of restrictions on divers and snorkelers in the zones, asserting they harm coral and other Sanctuary resources, while others commented that there should be no access at all to any zones where access is restricted to any one group.

Response: NOAA does not agree that all zones should be entirely closed to public access. Non-consumptive use of SPAs and ERs is compatible with the purposes for which they were established. Consumptive activities (e.g., spearfishing, fish collecting, shell collecting, lobstering) are prohibited in SPAs and ERs. Non-consumptive activities (e.g., diving, snorkeling) are not expressly prohibited, however regulations prohibit consumptive activities such as spearfishing, and prohibit physical impacts to corals and coral reef habitat by prohibiting contact (e.g., touching and standing). Snorkeling and diving will be allowed in the Research-only Special-use Areas only by permit. By being closed to snorkeling and diving, these areas may then be

compared to SPAs and ERs to examine diver impacts.

Support the Zoning Plan

Comment: NOAA received a number of comments generally supporting the Zoning Action Plan as proposed or requesting a larger proportion of zoned areas.

Response: The zoning plan is the first attempt at large scale marine zoning in the USA. Five years after the zones are implemented, NOAA will lead a team to evaluate the effectiveness of zoning in ecosystem protection. At that time the zones will be re-evaluated and may be modified as necessary and/or appropriate.

Zoning Is Too Overbearing or Will Limit Work/Play

Comment: A number of reviewers expressed concern that the zoning scheme is too restrictive and will unduly limit their ability to conduct recreational and commercial activities.

Response: NOAA does not agree that the Zoning Action Plan overly restricts traditional uses of the resources. The area encompassed by the zones, including a Dry Tortugas ER, a boundary for which will be proposed in the future, will comprise no more than five percent of the Sanctuary. Moreover, non-consumptive uses (e.g., diving, snorkeling) will not be prohibited in all zones. Consumptive uses (e.g., commercial and sport fishing) will be restricted in SPAs and ERs and some Special-use Areas. However, based on aerial surveys and visitor use data, approximately 94 percent of the recreational fishers fish outside these zones on a regular basis. Commercial fishers agreed early in the planning process that they do not rely on SPAs as areas to conduct their activities. The impact of ERs has been raised as a concern because of the perceived displacement of commercial activities (e.g., fishers). The ERs have been re-designed to minimize impacts to such activities through a process that relied on input from commercial fishers. This input, in part, led NOAA to eliminate the Key Largo ER, and postpone the establishment of a Dry Tortugas ER.

Sanctuary Preservation Areas and Ecological Reserves

Comment: Some reviewers expressed opposition to all SPAs and ERs.

Response: The purpose of a SPA is to protect a heavily used area of the marine environment (e.g., coral reefs) where conflicts often occur between user groups. These areas are critical for protecting the coral reefs and biodiversity of the FKNMS. The purpose

of an ER is to minimize human influences, to provide natural spawning, nursery, and permanent residence areas for the replenishment and genetic protection of marine life, and to protect and preserve natural assemblages of habitats and species, and restore natural ecosystem dynamics. The FKNMSPA directed NOAA to consider temporal and geographic zoning. Zoning is a proven tool for marine conservation and is consistent with NOAA's mandate to accommodate multiple, compatible uses by providing long-term benefits to all consumptive and non-consumptive users through increased biodiversity.

Ecological Reserves are Redundant With Fisheries Management

Comment: Eliminate all ERs because they are redundant with traditional fisheries management.

Response: NOAA does not agree. Zoning in the FKNMS is for habitat protection and to preserve biodiversity, not for fisheries management. Traditional fisheries management focuses on managing stocks of a small number of the over 6000 species reported in the FKNMS. The primary purpose of an ER is to protect a portion of the coral reef environment (including seagrass beds, hardbottom, rubble habitats, patch reefs and sand areas) from all forms of harvesting in order to restore natural ecosystem dynamics.

The establishment of no-take areas in specific portions of the coral reef tract should lead to replenishment of reef inhabitants that are currently being lost, or whose balance in the ecosystem has been altered. Moreover, with respect to fish stocks, some fisheries scientists suggest that ERs provide ancillary benefits to fisheries, similar to "harvest refugia" and other protected fisheries areas. The ERs are an important tool for effective ecosystem management in the FKNMS. NOAA will monitor the effectiveness of zoning in ecosystem protection and consider modifications as necessary and reasonably appropriate.

A Monitoring Program Is Needed To Determine the Viability of Zoning

Comment: A number of reviewers recommended the establishment of a monitoring program to assess the viability of the zoning scheme.

Response: The Zoning Action Plan provides for the establishment of a five-year monitoring program to assess the effectiveness of zoning in the Sanctuary.

Western Sambos Ecological Reserve

Comment: A number of reviewers expressed concerns about commercial fishing displacement as a result of

establishment of the Western Sambos ER.

Response: NOAA believes there will be some displacement of fishermen, but that the long-term environmental benefits will far outweigh short-term economic losses. The ecological value of protecting the area does not warrant eliminating or modifying the boundary of the ER.

Establishment of a Back Country ER and/or an Alligator Reef ER

Comment: Several reviewers recommended the establishment of an ER in the Back Country and/or Alligator Reef. The State of Florida recommended the establishment of a Back Country ER.

Response: A full ecosystem representation in a comprehensive zoning plan should include Back Country marine habitats. However, given the priorities established in the Zoning Action Plan, this cannot be accomplished in the short-term, but will be considered for future implementation in the five year review cycle.

Jewfish and Steamboat Creek Wildlife Management Areas

Comment: Some reviewers indicated that fishers and others regularly transit through Jewfish Creek and Steamboat Creek and raised concern over the proposed designation of no-access buffers in the Crocodile Lake Wildlife Management Area.

Response: NOAA agrees. There was no intent to prohibit the use of this area for transit. Thus, consistent with existing US Fish and Wildlife Service regulations, the no-access designation was removed from the final management plan and regulations.

Crocodile Lake Wildlife Management Area

Comment: Some reviewers indicated that the Crocodile Lake Wildlife Management Area no-access restriction was too limiting.

Response: NOAA agrees and, upon consultation with the US Fish and Wildlife Service and the Florida Game and Freshwater Fish Commission, changed the designation of Crocodile Lake Wildlife Management Area to a no-access buffer zone (100 feet) along the shoreline between the dates March 1 and October 1.

Pelican Shoal Research-Only Special-Use Area

Comment: Many reviewers requested that Pelican Shoal be kept open to public access. The Department of the Interior requested that a 50 meter buffer be established during Roseate Tern nesting season.

Response: NOAA agrees and has eliminated Pelican Shoal as a Research-only Special-use Area. It has been replaced with the Eastern Sambos Research-only Special-use Area. The new area will provide a better research and monitoring site, while simultaneously lessening impact on the public from limiting access to the reef around Pelican Shoal. However, in order to complement the State's seasonal closure of the land area, NOAA has designated a no-access 50 meter buffer as a Wildlife Management Area around Pelican Shoal between April 1 and August 31. These dates coincide with those established by the Florida Game and Freshwater Fish Commission for the protection of nesting terns.

Research Only Areas

Comment: Many comments supported the establishment of research-only zones.

Response: NOAA agrees that some zones should be used to determine the impacts of specific activities, such as diving and fishing. The final management plan and regulations establish four Research-only Special-use Areas. Pelican Shoal was eliminated as a Research-only Special-use Area and a Research-only Special-use Area surrounding the foreereef habitat at Eastern Sambos has been added in its place. The Eastern Sambos area will serve as a control to determine the impacts of specific activities such as diving, snorkeling and fishing. Furthermore, Eastern Sambos, which is located in an area of good water quality, can be compared with the Tennessee Reef Research-only Special-use Area, located in an area of poor water quality. The impacts associated with water quality as compared to those from human uses can also be determined from research and monitoring at these sites.

V. Miscellaneous Rulemaking Requirements

National Marine Sanctuaries Act

Section 304 of the NMSA requires the Secretary to submit to the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, on the same day as this notice is published, the final terms of the designation, the final regulations, a FEIS, and a FMP detailing the final goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement and surveillance activities, for the area. In accordance with Section 304, the required

documents are being submitted to the specified Congressional Committees.

Executive Order 12866

Under Executive Order 12866, if a regulatory action is significant as defined in section (3)(f) of the Order, an assessment of the potential costs and benefits of the action must be prepared and submitted to the Office of Information and Regulatory Affairs (OIRA) of OMB. The Administrator of NOAA has determined that although this regulatory action is not expected to "have an annual effect on the economy of \$100 million or more," or otherwise meet the definition of a significant regulation under section 3(f) (1), (2), or (3), it is significant under section 3(f) (4) in that certain controversial and innovative aspects of the regulations may "[r]aise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in [the] Executive Order."

Therefore, NOAA's assessment of the potential socio-economic impacts on various user groups in the environmental impact statement has been designed to also satisfy the Regulatory Impact Review (RIR) requirements of Executive Order 12866. The assessment is contained in three sections of the FMP/EIS:

(1) Volume III, *Appendix M, Assessment of the Potential Costs and Benefits of the Final Management Plan Regulations.*

This appendix constitutes the primary component of both the RIR and NOAA's FEIS. Appendix M reviews the problems and policy objectives prompting the regulatory proposals and evaluates the major alternatives that were considered. It demonstrates that NOAA systematically and comprehensively considered all available alternatives in order to ensure that the public welfare would be enhanced in the most efficient and cost effective way possible.

(2) Volume II, pp. 175-96, *The Socioeconomic Impacts of Management Alternatives.*

This section is the socio-economic impact analysis of the final plan and supplements Appendix M.

(3) Volume I, pp 9-40, *The Preferred Alternative/Management Plan.*

This section is the heart of the EIS and describes the process and reasoning of selecting the preferred alternative upon consideration of public comments on the FMP/EIS and balancing the goals and requirements of the NMSA and NEPA. It provides a narrative explanation of the way in which resource protection and the public welfare were considered together in building the FMP.

NOAA's socioeconomic assessment places special emphasis on the marine zones established by the regulations, and the conduct of activities in those zones. Particular attention is paid to the ERs and SPAs, since the concept of no-take zones or reserves is the most innovative and controversial element of the management plan and regulations, and has aroused significant public interest and debate. NOAA has concluded that these regulations will have broad benefits to most users of the Florida Keys, especially the tourist industry which is very significant from a local and State perspective. No significant adverse socioeconomic impacts are anticipated to non-consumptive users. Among consumptive users, most will not be affected greatly by the marine zoning regulations but a small percentage will undergo some costs from displacement from no-take areas. These costs are expected to be offset with time as better habitat protection and protection of biodiversity within the zones improves the ecological health of the area.

Other regulations which received considerable public scrutiny include those affecting the operation of vessels, particularly personal watercraft (PWC) (e.g., jet-skis); and to a lesser extent the SCR permit system regulation of commercial treasure salvage. NOAA's approach to the PWC issue was multi-pronged and resulted in regulations that apply to PWC as well as other vessels, and non-regulatory management strategies which specifically apply to PWC. NOAA took public input into account, as in its approach to all the regulations. The final preferred alternative attempts to address user conflicts and environmental concerns by avoiding regulatory impacts as much as possible consistent with the major objectives of the Sanctuary. The process is described in Vol. 1, pp. 16-17, in Appendix L (Comments Received on the DMP/EIS and NOAA's Response), and in Appendix M.

NOAA also considered public comments, particularly those from the commercial treasure salvage community, in revising the SCR permit system to make it more pragmatic from the perspective of commercial salvors while maintaining the primary objective of protecting the submerged cultural resources. (See Vol. 1, pp. 20-24, and the relevant sections in Appendix L and Appendix M.)

NOAA's preferred alternative in the FMP for zoning, PWC, the SCR permit system and other issues has taken public comment into full account and represents a considerable alteration from the draft plan so as to disrupt users

as little as possible, without compromising the objectives of the Sanctuary.

Regulatory Flexibility Act

As indicated in the FMP/EIS, and the response to comments, the proposed Sanctuary regulations have been revised in careful consideration of the impacts to the environment including socioeconomic impacts on Sanctuary users, the large majority of which are small business entities. Representatives of the user groups, including the small entities were identified in the earliest stages of program development and have participated throughout the public process. Small entities were represented on the SAC, including fishing entities, vessel-charter operators, recreation-tourism industry and commercial treasure salvors.

The FMP/EIS sets forth the extensive public process which included participation from the small entities operating in the Sanctuary at SAC deliberations, as well as numerous Sanctuary user group workshops and other public meetings. The economic impacts to the Sanctuary user groups, which are almost entirely small entities, were considered throughout the public process of plan-rule development. The impacts on small entities which use the Sanctuary were considered as part of the delicate balancing of protecting resources, and facilitating compatible multiple use of the Sanctuary in a manner which ensures a sustainable use of the Sanctuary for present and future generations. The socioeconomic assessment briefly summarized the impacts on users from various management strategy alternatives. Over 6,000 public comments were received on the DEIS/MP and the proposed regulations. In addition to comments from the aforementioned small entities, thousands of comments were received from individuals working in the PWC industry. Some representatives of the fishing industry criticized the DEIS socioeconomic assessment of the zoning scheme.

In developing the final management plan and regulations, the SAC's recommendations and the public comments were fully considered.

The final regulations specifically allow all activities to be conducted in the Sanctuary other than those activities that are specifically prohibited by the regulations or by other applicable regulations and laws. Many of the activities that these regulations prohibit are already prohibited by the terms of the FKNMSPA, as well as by other State and Federal laws and regulations.

The regulatory procedures for requesting certifications for pre-existing leases, licenses, permits, approvals, other authorizations or rights authorizing the conduct of a prohibited activity or an activity that would be prohibited, and for notifying NOAA of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity or an activity that would be prohibited will all act to lessen any adverse economic effects on small entities.

Because the Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed regulations, if adopted, would not have a significant economic impact on a substantial number of small entities, an Initial Regulatory Flexibility Analysis (IRFA) was not prepared. Nevertheless, because the final regulations will affect a substantial number of small entities, although not in an economically significant way, and particularly because some representatives of the small entity fishing industry criticized the DEIS socioeconomic assessment of the zoning scheme, a Final Regulatory Flexibility Analysis (FRFA) was prepared that fully complies with the requirements of Regulatory Flexibility Act. Those requirements are found in section 604 of Title 5, United States Code.

Section 604(a)(1) requires that the FRFA contain a succinct statement of the need for, and objectives of, the rule. The FKNMSPA mandated the development of a FMP and implementing regulations in order to protect and manage Sanctuary resources in manner which facilitates multiple use of the Sanctuary which are compatible with the primary objective of resource protection. The FMP/EIS and responses to comments provide more specific details on the need for, and objectives of, particular rules.

Section 604(a)(2) requires a summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments. While an IRFA was not prepared, small business entities, including fisherman, charter boat operators, commercial treasure salvors and tourist related industries did comment on the draft regulations. NOAA's response to the comments is set forth above, and is further explained in

summary form in the selection of the preferred alternative.

Section 604(a)(3) requires a description of, and an estimate of, the number of small entities to which the rule will apply or an explanation of why no such estimate is available. The small businesses that directly use the Sanctuary and its resources and therefore will be subject to the Sanctuary regulations include fisherman, salvors, commercial treasure salvors, recreational charter boat operators, and other tourist related operations. The FRFA sets forth the number of small entities that may be affected by the regulations. The small entities include: 1,875 fisherpersons with restricted species licenses, 535 licensed for-hire fishing firms, 100 dive charter businesses, 186 marinas, 75 boat rental businesses, 73 seafood dealers, 26 marine salvage companies (recent casualties), and 8 to 12 commercial treasure salvage companies (does not include individuals who have not incorporated).

Section 604(a)(4) requires that the FRFA contain a description of the reporting, record keeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record. The Sanctuary regulations require that permittees submit status reports for activities covered by Sanctuary permits. The permittee must submit one or more reports on the status, progress, or results of any activity authorized by a permit. The permittee must submit an annual report which describes all activities conducted under the permit and all revenues derived from such activities during the year and/or the term of the permit. The reporting requirement for SCR permits may be more rigorous than the existing State contracts, but they are necessary to preserve historical and archaeological information consistent with existing Federal historic preservation laws. The number of small entities which must comply with this requirement depends on the number of applicants, and this is expected to be less than 20 applicants per year.

Section 604(a)(5) requires a description of the steps taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect

the impact on small entities was rejected. Nearly every user of the Sanctuary is a small entity. Thus, no broad accommodation for small entities could be selected without compromising the resource protection mandated of the NMSA and the FKNMSPA. However, as indicated in the comments and responses, the selection of the preferred alternative and the socio-economic impact analysis, particular regulations were revised based on comments from user groups which are small business entities to lessen adverse economic impacts on them where not inconsistent with the objectives and purposes of the Sanctuary. For example, two ERs were deleted in light of comments of the socioeconomic impacts on fishermen. The SCR permit regulations were revised pursuant to comments of commercial treasure salvors in order to make the permit requirements more reasonable, practical and economically feasible from the user's perspective.

As noted earlier, the final regulations specifically allow all activities to be conducted in the Sanctuary other than those activities that are specifically prohibited by the regulations or by other applicable regulations and laws. The procedures in these regulations for applying for National Marine Sanctuary permits to conduct otherwise prohibited activities, for requesting certifications for pre-existing leases, licenses, permits, approvals, other authorizations or rights authorizing the conduct of a prohibited activity, and for notifying NOAA of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity would all act to lessen any adverse economic effect on those conducting activities small entities. The final regulations, in total, are not expected to have a significant economic impact on a substantial number of small entities. A copy of the FRFA may be obtained upon request (See Addresses).

Paperwork Reduction Act

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection-of-information, subject to the requirements of the Paperwork Reduction Act (Pub. L. No. 96-511), unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This final rule contains collection of information requirements subject to the requirements of the Paperwork Reduction Act. These requirements are as follows: general permits, historical

resource permits, special use permits, notifications, certifications, and appeals. The collection of information requirement applies to persons seeking permits to conduct otherwise prohibited activities and is necessary to determine whether the final activities are consistent with the management goals for the Sanctuary. The collection of information requirement contained in the final rule has been approved by the Office of Management and Budget. The public reporting burden per respondent for the collection of information contained in this rule is estimated to average 1.5 hours for general permit applications and reports, 6 hours for historical resource and special use permit applications and reports, 0.5 hours for requests for notifications or certifications of applications, and 0.25 hours for appeals. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments from the public on the collection of information requirement, the burden estimates, and ways of reducing these burdens are specifically invited and should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (Attn: Desk Officer for NOAA); and to Richard Roberts, Room 724, 6010 Executive Boulevard, Rockville, MD 20852.

Executive Order 12612

A Federalism Assessment (FA) was prepared for the proposed designation document, draft management plan, and proposed implementing regulations. The FA concluded that all would be fully consistent with the principles, criteria, and requirements set forth in sections 2 through 5 of Executive Order 12612, Federalism Considerations in Policy Formulation and Implementation (52 FR 41685). Copies of the FA are available upon request to the Office of Ocean and Coastal Resource Management at the address listed in the address section above.

National Environmental Policy Act

In accordance with section 304(a)(2) of the Act (16 U.S.C. 1434(a)(2)), and the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370(a)), a draft and final EIS were prepared for the designation and the regulations. As required by section 304(a)(2), the EIS' include the resource assessment report required by section 303(b)(3) of the Act (16 U.S.C. 1433(b)(3)), maps depicting the boundaries of the designated area, and

the existing and potential uses and resources of the area. Copies of the FEIS are available upon request to the Office of Ocean and Coastal Resource Management at the address listed in the address section above.

Executive Order 12630

This final rule does not have takings implications within the meaning of Executive Order 12630 because it does not appear to have an effect on private property sufficiently severe as effectively to deny economically viable use of any distinct legally potential property interest to its owner or to have the effect of, or result in, a permanent or temporary physical occupation, invasion, or deprivation. While the prohibition on the exploration for, development, production of minerals and hydrocarbons from the Sanctuary might have a takings implication if it abrogated an existing lease for Outer Continental Shelf (OCS) tracts within the Sanctuary or an approval of an exploration or development and production plan, no OCS leases have been sold for tracts within the Sanctuary and no exploration or production and development plans have been filed or approved.

Unfunded Mandates Reform Act of 1995

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA)) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of the UMRA.

List of Subjects in 50 CFR Parts 922, 929 and 937

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

Dated: January 21, 1997.

David Evans,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR part 922 is amended as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

1. The authority citation for Part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

2. Section 922.1 is revised as follows:

§ 922.1 Applicability of regulations.

Unless noted otherwise, the regulations in subparts A, D and E apply to all eleven National Marine Sanctuaries for which site-specific regulations appear in subparts F through P, respectively. Subparts B and C apply to the site evaluation list and to the designation of future Sanctuaries.

3. Section 922.3 is amended by revising the definitions of "Historical resource", "National Marine Sanctuary", and "Sanctuary quality" as follows:

§ 922.3 Definitions.

* * * * *

Historical resource means any resource possessing historical, cultural, archaeological or paleontological significance, including sites, contextual information, structures, districts, and objects significantly associated with or representative of earlier people, cultures, maritime heritage, and human activities and events. Historical resources include "submerged cultural resources", and also include "historical properties," as defined in the National Historic Preservation Act, as amended, and its implementing regulations, as amended.

* * * * *

Sanctuary quality means any of those ambient conditions, physical-chemical characteristics and natural processes, the maintenance of which is essential to the ecological health of the Sanctuary, including, but not limited to, water quality, sediment quality and air quality.

* * * * *

§ 922.3 [Amended]

4. In § 922.3, in the first sentence of the definition of "Sanctuary resource" the word "none-living" is revised to read "non-living".

5. In § 922.3, in the first sentence of the definition of "State" the word "Samos" is revised to read "Samoa".

6. In § 922.3, in the first sentence of the definition of "Take or taking" the word "would" is revised to read "wound".

7. Section 922.40 is revised to read as follows:

§ 922.40 Purpose.

The purpose of the regulations in this subpart and in subparts F through P of this part is to implement the designations of the eleven National Marine Sanctuaries for which site specific regulations appear in subparts F through P of this part, respectively, by regulating activities affecting them, consistent with their respective terms of designation in order to protect, preserve

and manage and thereby ensure the health, integrity and continued availability of the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of these areas. Additional purposes of the regulations implementing the designation of the Florida Keys National Marine Sanctuary are found at § 922.160.

8. Section 922.41 is revised to read as follows:

§ 922.41 Boundaries.

The boundary for each of the eleven National Marine Sanctuaries covered by this part is described in subparts F through P of this part, respectively.

9. Section 922.42 is revised to read as follows:

§ 922.42 Allowed Activities.

All activities (e.g., fishing, boating, diving, research, education) may be conducted unless prohibited or otherwise regulated in subparts F through P of this part, subject to any emergency regulations promulgated pursuant to §§ 922.44, 922.111(c), or § 922.165, subject to all prohibitions, regulations, restrictions, and conditions validly imposed by any Federal, State, or local authority of competent jurisdiction, including Federal and State fishery management authorities, and subject to the provisions of section 312 of the Act. The Assistant Administrator may only directly regulate fishing activities pursuant to the procedure set forth in section 304(a)(5) of the NMSA.

10. Section 922.43 is revised to read as follows:

§ 922.43 Prohibited or otherwise regulated activities.

Subparts F through P of this part set forth site-specific regulations applicable to the activities specified therein.

11. Section 922.44 is revised to read as follows:

§ 922.44 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 such activities are subject to immediate temporary regulation, including prohibition. The provisions of this section do not apply to the Cordell Bank and Florida Keys National Marine Sanctuaries. See §§ 922.111(c) and 922.165, respectively, for the authority to issue emergency regulations with respect to those sanctuaries.

12. Section 922.45 is amended by revising paragraph (a) as follows:

§ 922.45 Penalties.

(a) Each violation of the NMSA or FKNMSPA, any regulation in this part, or any permit issued pursuant thereto, is subject to a civil penalty of not more than \$ 100,000. Each day of a continuing violation constitutes a separate violation.

* * * * *

13. Section 922.47 is amended by revising paragraph (b) as follows:

§ 922.47 Pre-existing authorizations or rights and certifications of pre-existing authorizations or rights.

* * * * *

(b) The prohibitions listed in subparts F through P of this part do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in this subpart P, and issued by any Federal, State or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P, provided that the holder of such authorization or right complies with certification procedures and criteria promulgated at the time of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P of this part, and with any terms and conditions on the exercise of such authorization or right imposed by the Director as a condition of certification as the Director deems necessary to achieve the purposes for which the Sanctuary was designated.

14. Section 922.48 is amended by revising paragraphs (a) and (b) as follows:

§ 922.48 National Marine Sanctuary permits—application procedures and issuance criteria.

(a) A person may conduct an activity prohibited by subparts F through O of this part if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subparts F through O of this part. For the Florida Keys National Marine Sanctuary, a person may conduct an activity prohibited by subpart P if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under § 922.166.

(b) Applications for permits to conduct activities otherwise prohibited by subparts F through O of this part

should be addressed to the Director and sent to the address specified in subparts F through O of this part. An application must include:

* * * * *

15. Section 922.49 is revised to read as follows:

§ 922.49 Notification and review of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by subparts L through P of this part if such activity is specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary after the effective date of the regulations in subpart P of this part, provided that:

(1) The applicant notifies the Director, in writing, of the application for such authorization (and of any application for an amendment, renewal, or extension of such authorization) within fifteen (15) days of the date of filing of the application or the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P of this part, whichever is later;

(2) The applicant complies with the other provisions of this § 922.49;

(3) The Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization (or amendment, renewal, or extension); and

(4) The applicant complies with any terms and conditions the Director deems reasonably necessary to protect Sanctuary resources and qualities.

(b) Any potential applicant for an authorization described in paragraph (a) of this section may request the Director to issue a finding as to whether the activity for which an application is intended to be made is prohibited by subparts L through P of this part.

(c) Notification of filings of applications should be sent to the Director, Office of Ocean and Coastal Resource Management at the address specified in subparts L through P of this part. A copy of the application must accompany the notification.

(d) The Director may request additional information from the applicant as he or she deems reasonably necessary to determine whether to object to issuance of an authorization described in paragraph (a) of this section, or what terms and conditions are reasonably necessary to protect Sanctuary resources and qualities. 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 application.

(e) The Director shall notify, in writing, the agency to which application has been made of his or her pending review of the application and possible objection to issuance. Upon completion of review of the application and information received with respect thereto, the Director shall notify both the agency and applicant, in writing, whether he or she has an objection to issuance and what terms and conditions he or she deems reasonably necessary to protect Sanctuary resources and qualities, and reasons therefor.

(f) The Director may amend the terms and conditions deemed reasonably necessary to protect Sanctuary resources and qualities whenever additional information becomes available justifying such an amendment.

(g) Any time limit prescribed in or established under this § 922.49 may be extended by the Director for good cause.

(h) The applicant may appeal any objection by, or terms or conditions imposed by, the Director to the Assistant Administrator or designee in accordance with the provisions of § 922.50.

16. In § 922.50 paragraphs (a)(1) and (a)(1)(iii) are amended by moving "L through O" and adding "L through P".

17. Part 922 is amended by adding a new subpart P immediately following subpart O as follows:

Subpart P—Florida Keys National Marine Sanctuary

Sec. 922.160 Purpose.

Sec. 922.161 Boundary.

Sec. 922.162 Definitions.

Sec. 922.163 Prohibited activities—Sanctuary-wide.

Sec. 922.164 Additional activity regulations by Sanctuary area.

Sec. 922.165 Emergency regulations.

Sec. 922.166 Sanctuary permits—application procedures and issuance criteria.

Sec. 922.167 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.

Appendix I to Subpart P of Part 922—Florida Keys National Marine Sanctuary boundary coordinates

Appendix II to Subpart P of Part 922—Existing Management Areas boundary coordinates

Appendix III to Subpart P of Part 922—Wildlife Management Areas access restrictions

Appendix IV to Subpart P of Part 922—Ecological Reserves boundary coordinates

Appendix V to Subpart P of Part 922—Sanctuary Preservation Areas boundary coordinates

Appendix VI to Subpart P of Part 922—Special-use Areas boundary coordinates and use designations

Appendix VII to Subpart P of Part 922—Areas To Be Avoided boundary coordinates

Appendix VIII to Subpart P of Part 922—Marine Life Rule

Subpart P—Florida Keys National Marine Sanctuary

§ 922.160 Purpose.

The purpose of the regulations in this part 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.

§ 922.161 Boundary.

The Sanctuary consists of all submerged lands and waters from the mean high water mark to the boundary described in Appendix I to this part, with the exception of areas within the Dry Tortugas National Park. Appendix I to this subpart sets forth the precise Sanctuary boundary established by the Florida Keys National Marine Sanctuary and Protection Act. (See FKNMSPA section 5(b)(2)).

§ 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.

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.), coralline 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 part sets forth the geographic coordinates of these areas.

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.

§ 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 pro-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 [insert effect date of these regulations], 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.

(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 a 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.

§ 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 to 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.

(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) 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 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 organisms. No further diving shall take place until the anchor is placed in accordance with these requirements.

(vi) 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.

(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; 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.

§ 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. Any such 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—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 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.

The SCR Agreement is reproduced in the "Submerged Cultural Resources Action Plan" set forth in Volume 1 of the Florida Keys National Marine Sanctuary Management Plan, dated 1996. 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, PO 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.

(3) 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) of this section 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 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 (insert the effective date of these regulations), or by any valid right of subsistence use or access in existence on (insert the effective date of these regulations), provided that:

(1) The holder of such authorization or right notifies the Director, in writing, within 90 days of (insert the effective date of these regulations), 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 § 922.167; 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 § 922.163 or § 922.164 may conduct the activity without being in violation of applicable provisions of § 922.163 or § 922.164, pending final agency action on his or her certification request, provided the holder is in compliance with this § 922.167.

(c) Any holder of an authorization or right described in paragraph (a) above 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 § 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 § 922.167 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 § 922.167, 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 § 922.167 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 (insert the effective date of these regulations), to a lease, permit, license, approval, other authorization or right is subject to the provisions of § 922.49.

**Appendix I to Subpart P of Part 922—
Florida Keys National Marine Sanctuary
boundary coordinates**

(Appendix 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 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;

(iv) 25 degrees 16 minutes north latitude, 80 degrees 8 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 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;

(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 southeastern most point of Biscayne National Park; and

(g) then follows the eastern boundary of Biscayne National Park to the beginning point specified in paragraph (a).

**Appendix II to Subpart P of Part 922—
Existing Management Areas boundary
coordinates**

The Existing Management Areas are located within the following geographic boundary coordinates:

National Oceanic and Atmospheric Administration, Preexisting National Marine Sanctuaries:

Key Largo Management Area (Key Largo National Marine Sanctuary):

Point	Latitude	Longitude
1	25°19.45'N	80°12.00'W
2	25°16.02'N	80°08.07'W
3	25°07.05'N	80°12.05'W
4	24°58.03'N	80°19.08'W
5	25°02.02'N	80°25.25'W

Looe Key Management Area (Looe Key National Marine Sanctuary):

Point	Latitude	Longitude
1	24°31.62'N	81°26.00'W
2	24°33.57'N	81°26.00'W
3	24°34.15'N	81°23.00'W
4	24°32.20'N	81°23.00'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°43.8'N	81°48.6'W
2	24°43.8'N	81°37.2'W
3	24°49.2'N	81°37.2'W
4	24°49.2'N	81°19.8'W
5	24°48.0'N	81°19.8'W
6	24°48.0'N	81°14.4'W
7	24°49.2'N	81°14.4'W

Point	Latitude	Longitude
8	24°49.2'N	81°08.4'W
9	24°43.8'N	81°08.4'W
10	24°43.8'N	81°14.4'W
11	24°43.2'N	81°14.4'W
12	24°43.2'N	81°16.2'W
13	24°42.6'N	81°16.2'W
14	24°42.6'N	81°21.0'W
15	24°41.4'N	81°21.0'W
16	24°41.4'N	81°22.2'W
17	24°43.2'N	81°22.2'W
18	24°43.2'N	81°22.8'W
19	24°43.8'N	81°22.8'W
20	24°43.8'N	81°24.0'W
21	24°43.2'N	81°24.0'W
22	24°43.2'N	81°26.4'W
23	24°43.8'N	81°26.4'W
24	24°43.8'N	81°27.0'W
25	24°43.2'N	81°27.0'W
26	24°43.2'N	81°29.4'W
27	24°42.6'N	81°29.4'W
28	24°42.6'N	81°30.6'W
29	24°41.4'N	81°30.6'W
30	24°41.4'N	81°31.2'W
31	24°40.8'N	81°31.2'W
32	24°40.8'N	81°32.4'W
33	24°41.4'N	81°32.4'W
34	24°41.4'N	81°34.2'W
35	24°40.8'N	81°34.2'W
36	24°48.0'N	81°35.4'W
37	24°39.6'N	81°35.4'W
38	24°39.6'N	81°36.0'W
39	24°39.0'N	81°36.0'W
40	24°39.0'N	81°37.2'W
41	24°37.8'N	81°37.2'W
42	24°37.8'N	81°37.8'W
43	24°37.2'N	81°37.8'W
44	24°37.2'N	81°40.2'W
45	24°36.0'N	81°40.2'W
46	24°36.0'N	81°40.8'W
47	24°35.4'N	81°40.8'W
48	24°35.4'N	81°42.0'W
49	24°36.0'N	81°42.0'W
50	24°36.0'N	81°48.6'W

Key West National Wildlife Refuge:

Point	Latitude	Longitude
1	24°40'N	81°49'W
2	24°40'N	82°10'W
3	24°27'N	82°10'W
4	24°27'N	81°49'W

When differential Global Positioning Systems data becomes available, these coordinates may be revised by Federal Register notice to reflect the increased accuracy of such data.

Appendix III to Subpart P of Part 922—
Wildlife Management Areas access
restrictions

Area and 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 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 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 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
 One Ecological Reserve—the Western Sambos Ecological Reserve—is designated in the area of Western Sambos reef. NOAA has committed to designating a second Ecological Reserve within two years from issuance of this plan in the area of the Dry Tortugas. The establishment of a Dry Tortugas Ecological Reserve will be proposed by a notice of proposed rulemaking with a proposed boundary determined through a joint effort among the Sanctuary, and the National Park Service, pursuant to a public process involving a team consisting of managers, scientists, conservationists, and affected user groups.
 The Western Sambos Ecological Reserve (based on North American Datum of 1983,

aerial photos, charts, and Geographic Information Systems data) is located within the following geographic boundary coordinates:

WESTERN SAMBOS

Point	Latitude	Longitude
1	24°33.70' N	81°40.80' W
2	24°28.70' N	81°41.90' W
3	24°28.50' N	81°43.70' W
4	24°33.50' N	81°43.10' W

When differential Global Positioning Systems data becomes available, these coordinates may be revised by Federal Register notice to reflect the increased accuracy of such data.

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

The Sanctuary Preservation Areas (SPAs) (based on North American Datum of 1983, aerial photos, charts, and Geographic Information Systems data) are located within the following geographic boundary coordinates:

ALLIGATOR REEF

Point	Latitude	Longitude
1	24°50.8' N	80°36.8' W
2	24°50.4' N	80°37.3' W
3	24°50.7' N	80°37.6' W
4	24°51.1' N	80°37.5' W

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

CARYSFORT/SOUTH CARYSFORT REEF

Point	Latitude	Longitude
1	25°13.6' N	80°12.2' W
2	25°11.9' N	80°12.8' W
3	25°12.2' N	80°13.8' W
4	25°14.0' N	80°12.7' W

CHEECA ROCKS

Point	Latitude	Longitude
1	24°54.6' N	80°37.6' W
2	24°54.3' N	80°37.5' W
3	24°54.2' N	80°37.7' W
4	24°54.5' N	80°37.8' W

COFFINS PATCH

Point	Latitude	Longitude
1	24°41.5' N	80°57.7' W
2	24°41.1' N	80°57.5' W
3	24°40.6' N	80°58.4' W
4	24°41.1' N	80°58.6' W

CONCH REEF

Point	Latitude	Longitude
1	24°57.5' N	80°27.4' W
2	24°57.4' N	80°27.3' W
3	24°57.0' N	80°27.7' W
4	24°56.9' N	80°27.6' W

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

DAVIS REEF

Point	Latitude	Longitude
1	24°55.6' N	80°30.3' W
2	24°55.3' N	80°30.0' W
3	24°55.1' N	80°30.4' W
4	24°55.4' N	80°30.7' W

DRY ROCKS

Point	Latitude	Longitude
1	25°7.6' N	80°17.9' W
2	25°7.4' N	80°17.7' W
3	25°7.3' N	80°17.8' W
4	25°7.4' N	80°18.1' W

GRECIAN ROCKS

Point	Latitude	Longitude
1	25°6.9' N	80°18.2' W
2	25°6.6' N	80°17.9' W
3	25°6.1' N	80°18.5' W
4	25°6.2' N	80°18.6' W
5	25°6.8' N	80°18.6' W

EASTERN DRY ROCKS

Point	Latitude	Longitude
1	24°27.9' N	81°50.5' W
2	24°27.7' N	81°50.4' W
3	24°27.5' N	81°50.6' W
4	24°27.7' N	81°50.8' W

THE ELBOW

Point	Latitude	Longitude
1	25°9.1' N	80°15.4' W
2	25°8.9' N	80°15.1' W
3	25°8.1' N	80°15.7' W
4	25°8.8' N	80°15.7' W

FRENCH REEF

Point	Latitude	Longitude
1	25°2.2' N	80°20.6' W
2	25°1.8' N	80°21.0' W
3	25°2.3' N	80°21.2' W

HEN AND CHICKENS

Point	Latitude	Longitude
1	24°56.4' N	80°32.9' W
2	24°56.2' N	80°32.7' W
3	24°55.7' N	80°33.1' W
4	24°55.9' N	80°33.3' W

LOOE KEY

Point	Latitude	Longitude
1	24°33.2' N	81°24.2' W
2	24°32.6' N	81°24.8' W
3	24°32.5' N	81°24.7' W
4	24°33.1' N	81°24.8' W

MOLASSES REEF

1Point	Latitude	Longitude
1	25°0.9' N	80°22.4' W
2	25°0.7' N	80°22.0' W
3	25°0.2' N	80°22.8' W
4	25°0.7' N	80°22.8' W

NEWFOUND HARBOR KEY

Point	Latitude	Longitude
1	24°37.1' N	81°23.3' W
2	24°36.7' N	81°23.8' W
3	24°36.8' N	81°23.3' W
4	24°36.9' N	81°23.9' W

ROCK KEY

Point	Latitude	Longitude
1	24°27.5' N	81°51.3' W
2	24°27.3' N	81°51.2' W
3	24°27.2' N	81°51.5' W
4	24°27.5' N	81°51.6' W

SAND KEY

Point	Latitude	Longitude
1	24°27.6' N	81°53.1' W
2	24°27.0' N	81°53.1' W
3	24°27.0' N	81°52.3' W
4	24°27.6' N	81°52.3' W

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

SOMBRERO KEY

Point	Latitude	Longitude
1	24°37.9' N	81°6.8' W
2	24°37.4' N	81°6.1' W
3	24°37.2' N	81°7.0' W

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

When differential Global Positioning Systems data becomes available, the coordinates for all these areas may be revised

by Federal Register notice to reflect the increased accuracy of such data.

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

The Special-use Areas (based on North American Datum of 1983) are located within the following geographic boundary coordinates:

CONCH REEF (RESEARCH ONLY)

Point	Latitude	Longitude
1	24°56.8' N	80°27.2' W
2	24°57.0' N	80°27.0' W
3	24°57.2' N	80°27.5' W
4	24°57.5' N	80°27.4' W

EASTERN SAMBOS (RESEARCH ONLY)

Point	Latitude	Longitude
1	24°29.4' N	81°39.3' W
2	24°29.7' N	81°40.2' W
3	24°29.5' N	81°39.6' W
4	24°29.8' N	81°39.7' W

LOOE KEY (RESEARCH ONLY)

Point	Latitude	Longitude
1	24°34.1' N	81°23.3' W
2	24°34.0' N	81°23.2' W
3	24°33.8' N	81°23.8' W
4	24°34.0' N	81°23.9' W

TENNESSEE REEF (RESEARCH ONLY)

Point	Latitude	Longitude
1	24°45.9' N	80°45.6' W
2	24°45.7' N	80°45.4' W
3	24°46.0' N	80°44.9' W
4	24°46.2' N	80°45.1' W

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

In 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	25°45.00' N	80°06.10' W
2	25°38.70' N	80°02.70' W
3	25°22.00' N	80°03.00' W
4	25°00.20' N	80°13.40' W
5	24°37.90' N	80°47.30' W
6	24°29.20' N	81°17.30' W
7	24°22.30' N	81°43.17' W
8	24°28.00' N	81°43.17' W
9	24°28.70' N	81°43.50' W
10	24°29.80' N	81°43.17' W
11	24°33.10' N	81°35.15' W
12	24°33.60' N	81°26.00' W
13	24°38.20' N	81°07.00' W
14	24°43.20' N	80°53.20' W

Point	Latitude	Longitude
15	24°46.10' N	80°46.15' W
16	24°51.10' N	80°37.10' W
17	24°57.50' N	80°27.50' W
18	25°09.90' N	80°16.20' W
19	25°24.00' N	80°09.10' W
20	25°31.50' N	80°07.00' W
21	25°39.70' N	80°06.85' W
22	25°45.00' N	80°06.10' W

In the Vicinity of Key West Harbor (Reference Chart: United States 11434, 21st Edition—August 11, 1990.)

Point	Latitude	Longitude
23	24°27.95' N	81°48.65' W
24	24°23.00' N	81°53.50' W
25	24°26.60' N	81°58.50' W
26	24°27.75' N	81°55.70' W
27	24°29.35' N	81°53.40' W
28	24°29.35' N	81°50.00' W
29	24°27.95' N	81°48.65' W

Area Surrounding the Marquesas Keys (Reference Chart: United States 11434, 21st Edition—August 11, 1990.)

Point	Latitude	Longitude
30	24°26.60' N	81°59.55' W
31	24°23.00' N	82°03.50' W
32	24°23.60' N	82°27.80' W
33	24°34.50' N	82°37.50' W
34	24°43.00' N	82°26.50' W
35	24°38.31' N	81°54.06' W
36	24°37.91' N	81°53.40' W
37	24°36.15' N	81°51.78' W
38	24°34.40' N	81°50.60' W
39	24°33.44' N	81°49.73' W
40	24°31.20' N	81°52.10' W
41	24°28.70' N	81°56.80' W
42	24°26.60' N	81°59.55' W

Area Surrounding the Dry Tortugas Islands (Reference Chart: United States 11434, 21st Edition—August 11, 1990.)

Point	Latitude	Longitude
43	24°32.00' N	82°53.50' W
44	24°32.00' N	83°00.05' W
45	24°39.70' N	83°00.05' W
46	24°45.60' N	82°54.40' W
47	24°45.60' N	82°47.20' W
48	24°42.80' N	82°43.90' W
49	24°39.50' N	82°43.90' W
50	24°35.60' N	82°46.40' W
51	24°32.00' N	82°53.50' W

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 § 922.163(a)(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 Gobiessocidae.

(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) Wrasselfish—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 capricornis*.

(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 *Lysemata*.

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 Caulerpaceae.

(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, noncrusting 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 or 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 (1½) inches for:

a. Gray angelfish (*Pomacanthus arcuatus*).

b. French angelfish (*Pomacanthus paru*).

2. One-and-three-quarters (1¾) 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 goby (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 (46-42.005) 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 (46-42-005).

(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 (46-42-005) and shall be counted for purposes of the 20 individual bag limit specified therein. Each person harvesting any octocoral as authorized by this rule (46-42-005) 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 $\frac{3}{4}$ inch stretched mesh.

(c) Drop net, with a mesh size not exceeding $\frac{3}{4}$ 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 $\frac{3}{4}$ 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 1-1-95.2222.

PARTS 929 AND 937—[REMOVED]

18. Under the authority of 16 U.S.C. 1431 *et seq.*, Parts 929 and 937 are removed.

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