

Appendix V: Protocol for Cooperative Fisheries Management

The Protocol for Cooperative Fisheries Management directly relates to the future management and regulation of fishing activities in the FKNMS.

I. Problems

1. Separate regulations developed by the State of Florida, the South Atlantic Fishery Management Council (SAFMC) and the Gulf of Mexico Fishery Management Council (GMFMC) exist within the Florida Keys National Marine Sanctuary (Keys Sanctuary).

2. The existence of inconsistent State and Federal regulations makes it difficult to coordinate, implement and enforce management measures and may lead to overfishing. Inconsistent management measures create public confusion and hinder voluntary compliance.

II. Objectives

1. Develop consistent (or one set of) regulations within the Keys Sanctuary.

2. Provide for a flexible management system that minimizes regulatory delays while retaining substantial State, Federal and public involvement in management decisions, and rapidly adapts to changes in resource abundance, new scientific information and changes in fishing patterns among user groups.

3. Promote public comprehension of, voluntary compliance with and effective enforcement of the fisheries regulations within the Keys Sanctuary.

III. Protocol

The Florida Marine Fisheries Commission (FMFC), the SAFMC and GMFMC (Councils), the National Marine Fisheries Service (NMFS), and the National Ocean Service (NOS) hereby adopt the following protocol which describes the roles of the Federal and State governments in the ongoing management of the fishery resources of the Florida Keys National Marine Sanctuary (Keys Sanctuary):

1. The FMFC, Councils, NMFS and NOS acknowledge that the Florida Keys National Marine Sanctuary (Keys Sanctuary) comprises approximately 65% Florida state waters and 35% Federal Economic Exclusive Zone waters. The convergence of three jurisdictions within the Keys Sanctuary caused numerous regulatory and enforcement problems in marine resources management. The situation calls for unified and cooperative State-Federal management consistent with the Congressional intent in the Sanctuary designation.

2. The FMFC, Councils, NMFS and NOS acknowledge that they share the responsibility of managing the fisheries and fishery habitats within the Keys Sanctuary to increase long-term yields, to prevent depletion and provide for enhancement of the stocks, to ensure conservation of fishery resources and habitats, and to further the goals and objectives of the Sanctuary designation, including the purposes, policies and objectives listed under section 301 of the National Marine Sanctuaries Act (NMSA), and sections 2, 3, 7 and 8 of the Florida Keys National Marine Sanctuary and Protection Act.

3. The FMFC will serve generally as the lead agency for purposes of initiating, developing and implementing ongoing marine fishery regulations for the Keys Sanctuary in accordance with this Protocol and the procedures established herein. The Councils, NMFS or NOS also may initiate regulatory action for the Sanctuary through cooperation with the FMFC under this Protocol and its procedures, and in accordance with the comprehensive management plan for the Keys Sanctuary.

4. The rulemaking standards which govern the FMFC (Section 370.025, Florida Statutes) are consistent with the goals of the Sanctuary designation, and the administrative procedures governing FMFC rulemaking (Chapter 120, Florida Statutes) are comparable to those of the Federal Administrative Procedures Act. Utilizing these state rulemaking standards and procedures in accordance with this Protocol, the FMFC will ensure opportunities for full public participation in developing or modifying fishery rules for the Sanctuary and in Governor and Cabinet proceedings to approve FMFC rules.

5. The FMFC, Councils, NMFS and NOS acknowledge and agree that rules developed under this Protocol shall be consistent with the goals and objectives of the comprehensive management plan for the Keys Sanctuary, the NMSA and other applicable federal law, utilizing as guidance the national standards of section 301(a) of the Magnuson Act to the extent such standards are consistent with the goals and objectives of the Sanctuary designation.

6. Fishery rules developed under this Protocol for all or portions of the Sanctuary area generally will be adopted as Sanctuary regulations in accordance with Federal rulemaking procedure and the comprehensive management plan for the Keys Sanctuary. This Protocol may be adopted as an amendment to applicable fishery management plans.

7. The FMFC will have responsibility for developing and collating the supporting information for Sanctuary fishery rules, with assistance, as needed, from NMFS and NOS. Specifically, the FMFC will provide to the NOS, and as appropriate, to the Councils and NMFS, written explanations of its decisions related to each of the rules (including a statement of objectives of the proposed rulemaking, how the rule will accomplish the stated objectives, how the rule will further the goals and objectives of the Sanctuary management plan, and how interested parties were involved in the rulemaking), summaries of public comments, biological, economic and social analyses of the impacts of the proposed rule and alternatives, and such other information that is relevant and necessary for review purposes.

8. The Councils, NMFS, and NOS shall have the right to fully participate in FMFC rulemaking proceedings for Sanctuary fishery regulations, including the right to attend all relevant meetings (both formal and informal) and to actively participate in discussion and debate relating to the proposed rule(s). The FMFC agrees to provide each with full record documentation of each rule proposed for the Sanctuary as necessary to facilitate such participation. Where practicable, the FMFC further agrees to coordinate the effective date of such regulations promulgated by the State so as to coincide with the beginning of the calendar year.

IV. Procedure

The following procedure may be utilized for the initiation, development and implementation of fishery regulations for the Keys Sanctuary in accordance with the above Protocol for Cooperative Fishery Management:

1. The FMFC may initiate a coordinated rulemaking process by drafting a proposed fishery rule for the Keys Sanctuary. The FMFC shall provide such draft rule to NOS, NMFS and the Councils at the earliest practicable time in the rulemaking process. Through a process of informal consultation on the draft rule, the parties shall determine how best to proceed (i.e., through state rulemaking, Federal rulemaking, or a combined State-Federal rulemaking process). Early, informal consultation also may be used to determine whether significant involvement or action by the Councils will be necessary. Any tentative consensus reached at this stage of informal consultation shall not bind the parties for purposes of subsequent review and approval under this Protocol.

2. The Councils, NMFS or NOS also may initiate rulemaking by developing a draft rule and initiating informal consultation in a manner similar to paragraph 1 above. In such cases, the FMFC will be afforded a reasonable opportunity to propose companion state fishery regulations or to propose conforming modifications to existing state fishery regulations. Through consultation, the parties shall seek to coordinate rulemaking processes, development of the administrative record, policy, legal and technical reviews, effective dates and implementation. In cases where only federal regulations are proposed, the FMFC shall assist as appropriate in developing the administrative record and cooperate in submitting the proposed Sanctuary regulations for the conceptual approval of the Governor and Cabinet.

3. The FMFC, shall develop a record of supporting information and analysis for proposed Sanctuary regulations, with assistance, as needed, by NMFS and NOS. Such record, at a minimum, shall include: a background statement regarding the objectives of the proposed rule; an analysis of how the proposed rule will accomplish the stated objectives; an analysis of how the proposed rule will further the goals and objectives of the Sanctuary management plan; a statement of how interested parties are involved in the rulemaking process; summaries of public comments; biological, economic and social analyses of the impacts of the proposed rule and alternatives; and such other information that is relevant for review purposes.

4. At the earliest practicable time, the FMFC shall transmit the record of supporting information and analysis developed pursuant to paragraph 3 above to NOS, and for species that the Council(s) manage, or for which NOS requests transmittal, the FMFC shall concurrently transmit such record to the relevant Council(s) and NMFS. The Council(s), upon receipt of relevant biological or statistical information from the FMFC, NOS or both, may refer such information to appropriate scientific and statistical committees and advisory panels for their advice. As necessary and appropriate to expedite coordination between the parties, an incomplete record may be transmitted for consultation and preliminary review, to be supplemented as information becomes available.

5. As soon as practicable following transmittal of the record pursuant to paragraph 4 above, NOS shall grant or deny preliminary approval of the proposed regulations based on a preliminary determination of consistency with the comprehensive management plan for the Keys Sanctuary, and with the goals and objectives of the NMSA. Concurrently, for proposed regulations transmitted for review by the Council(s), the Council(s) also shall make a preliminary determination of consistency with the management plan for the Keys Sanctuary, using the Magnuson Act national standards as guidance, and may either grant or deny preliminary concurrence in the proposed regulations. Such preliminary determinations by NOS and the Councils shall be subject to final approval (and concurrence) following a "final public hearing" under Chapter 120, Florida Statutes.

6. Immediately following such preliminary approval (and preliminary concurrence), the Council(s) will prepare the proposed rule in the form of a draft Federal rule for the Sanctuary, in accordance with section 304(b)(5) of the NMSA. The Council(s) may elect to refer to NMFS (or in some cases NOS) the task of preparing the draft Federal rule.

7. Following preliminary approval by NOS (and concurrence of the Council(s)), the FMFC shall conduct a "final public hearing" in accordance with Chapter 120, Florida Statutes. The Councils, NMFS, and NOS may participate in both the final hearing and FMFC discussions relating to development of the final draft of the proposed rule. If preliminary approval (and/or concurrence) pursuant to paragraph 5 above is not granted or denied within a reasonable period of time following transmittal of the record pursuant to paragraph 4 above, or in any case involving a resource emergency, the FMFC may proceed to a final public hearing barring subsequent disapproval by NOS (and/or the Councils).

8. Concurrent with notification of the final public hearing under the State rulemaking procedure, NOS (in cooperation with NMFS) generally shall initiate a Federal (notice and comment) rulemaking process for the proposed Federal rule. Federal rulemaking shall be initiated by publication in the Federal Register. If required by exceptional circumstances, the Federal rulemaking process may be deferred until after the final public hearing by the State and approval by the Federal parties as provided for under paragraph 9 below.

9. After the final public hearing, NOS shall conduct a final review of the entire administrative record and, within a reasonable time following the final public hearing, shall either grant or deny its final approval of the proposed rule. The Council(s) also may conduct a final review, in order to make a final determination regarding consistency with the management plan for the Keys Sanctuary, using the Magnuson Act national standards as guidance, and may either grant or deny concurrence within a reasonable time, not exceeding 60 days, following the final public hearing. In cases where the Council(s) granted preliminary concurrence and no material change results from the final public review, or where final concurrence is not granted or denied within a reasonable time, the final concurrence of the Council(s) will be deemed automatic without further Council action.

10. In cases where Federal rulemaking is deferred until after the Chapter 120, Florida Statutes process is completed, the NOS (in cooperation with NMFS) shall initiate Federal (notice and comment) rulemaking based on the entire administrative record by publishing a proposed Federal rule in the Federal Register.

11. If substantially differing comments result from the Federal and State public review processes requiring changes that would produce material differences between the Federal or State proposed rules, any one of the previously reviewing parties may request an opportunity to review the proposed changes and determine whether it will be necessary to alter or amend its previous determination(s), and/or whether it will be necessary to repeat any of the preceding procedural steps (thereby initiating a "feedback loop"). Any such request and determination shall be made within a reasonable time, not exceeding 60 days, following completion of the Federal and State public review processes and prior to submission to the Governor and Cabinet or publication of final Federal regulations.

12. Following completion of the final public review and final approval by NOS (and the Council(s)), the FMFC shall submit the proposed rule for an "up" or "down" vote by the Governor and Cabinet. In cases that do not involve State regulatory changes, the proposed Sanctuary regulations shall be submitted to the Governor and Cabinet for "conceptual approval" in accordance with the comprehensive management plan for the Keys Sanctuary and applicable National Oceanic and Atmospheric Administration - State Memoranda of Agreement.

13. Federal fishery regulations for the Keys Sanctuary developed in accordance with this Protocol shall be published as final Sanctuary regulations pursuant to the NMSA. Enforcement of existing or new Federal fishery regulations for the Keys Sanctuary shall be conducted in accordance with a cooperative arrangement entered into between relevant State and Federal enforcement agencies.

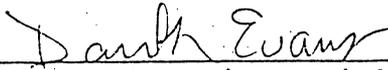
V. Signatories



Executive Director
Florida Marine Fisheries Commission

1/25/98

Date

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National Marine Fisheries Service

11/25/97

Date


National Ocean Service

9/17/97

Date

*The signature of a National Marine Fisheries Services representative, acting as a designee of the Secretary of Commerce, is provided based on the recommendations of the Gulf of Mexico and South Atlantic Fishery Management Councils, and operates as the Councils' endorsement. The Councils were established by the Magnuson-Stevens Act, 16 U.S.C. 1801, et seq., to develop management plans for domestic fisheries of the United States. Under the National Marine Sanctuaries Act, specially 16 U.S.C. 1434 (a) (5), the Councils are also authorized to make recommendations for sanctuary regulations. The Councils' recommendations are subject to the approval of the Secretary of Commerce.