

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 15 CFR Parts 922, 929, and 937

[Docket No. 9607292-6192-03]

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:** Notice of effective date; modifications to final rule.

**SUMMARY:** Pursuant to the Florida Keys National Marine Sanctuary and Protection Act and the National Marine Sanctuaries Act, NOAA developed the comprehensive final management plan for the Florida Keys National Marine Sanctuary (FKNMS or the Sanctuary). NOAA issued final regulations on January 30, 1997, to implement that plan and govern the conduct of activities within the Sanctuary. Congress and the Governor of the State of Florida (Governor) had forty-five days of continuous session of Congress beginning on the day on which the final regulations were published to review those regulations and management plan. After the forty-five day review period, the regulations would become final and take effect, except that any term or terms of the regulations or management plan the Governor certified to the Secretary of Commerce as unacceptable would not take effect in the area of the Sanctuary lying within the seaward boundary of the State.

During the forty-five day review period the Governor submitted to the Secretary of Commerce a certification that implementation of the management plan and certain regulations were unacceptable unless specific amendments were made to the regulations. In response to the Governor's certification, NOAA amended those regulations certified as unacceptable to incorporate the Governor's changes. Consequently, upon their effective date the regulations, as modified by this notice, and management plan, in their entirety, will apply throughout the Sanctuary, including within State waters of the Sanctuary.

This notice amends the regulations published in the January 30, 1997,

**Federal Register**, in response to the Governor's certification, and announces the effective date of the regulations.

**EFFECTIVE DATE:** The final rule published on January 30, 1997, at 62 FR 4578 and the revision of 15 CFR part 922, subpart P in this document are effective July 1, 1997.

**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, Sanctuaries and Reserves Division, 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. Forty-Five Day Review Period Under the National Marine Sanctuaries Act**

NOAA published the final Sanctuary regulations on January 30, 1997, (62 FR 4578) to implement the management plan and govern the conduct of

activities within the Sanctuary. Under the NMSA, Congress and the Governor had forty-five days of continuous session of Congress beginning on the day on which the final regulations were published to review the terms of designation (i.e., management plan and regulations). After forty-five days, the regulations would become final and take effect, except that any term or terms the Governor certified within the forty-five day period to the Secretary of Commerce as unacceptable would not take effect in the area of the Sanctuary lying within the seaward boundary of the State. Congress could also act on the terms of designation. The following discusses the Governor and Congress' actions during the forty-five day period and corresponding modifications to the final regulations made by NOAA in response to those actions.

*Certification by the Governor of Florida*

On March 20, 1997, during the forty-five day review period under the NMSA, the Governor of the State of Florida certified by letter to the Secretary of Commerce that implementation of the management plan and certain regulations were unacceptable in State waters. However, the management plan and regulations certified as unacceptable would be acceptable if NOAA amended the regulations and the Co-Trustees Agreement for Cooperative Management (Co-Trustees Agreement), contained in the management plan, as requested in the Governor's certification letter. NOAA has amended the regulations and the Co-Trustees Agreement to incorporate the modifications requested by the Governor in his letter. By doing so, the regulations and management plan, as modified, are accepted by the Governor and, therefore, will apply within State waters of the Sanctuary upon the effective date of these regulations.

The following is the text of the March 20, 1997, letter from the Governor of Florida to the Secretary of Commerce. Per the Governor's request, the letter is followed by the text of the Resolution passed by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (Board of Trustees). The Resolution was adopted on January 28, 1997, and provides the basis for many of the items in the Governor's certification.

Lawton Chiles  
Governor  
State of Florida  
Office of the Governor  
The Capitol  
Tallahassee, Florida 32399-0001  
March 20, 1997.

Honorable William M. Daley, Secretary,  
United States Department of Commerce,  
Herbert C. Hoover Building, 14 Street  
and Constitution Avenue Northwest,  
Washington, DC 20230.

Dear Mr. Secretary:

On January 28, 1997, the Florida Cabinet and I, sitting as the Board of Trustees of the Internal Improvement Trust Fund, adopted a resolution to include state sovereign submerged lands within the boundary of the Florida Keys National Marine Sanctuary (FKNMS). It is our intention to create a partnership with the National Oceanic and Atmospheric Administration (NOAA) for management under the provisions of the FKNMS Management Plan and the Memoranda of Agreement included in the management plan, with certain conditions to be applied to the portions of the sanctuary within Florida Territorial Waters. A copy of the resolution is enclosed. We request that the resolution be placed in the preamble to the final notice for the FKNMS regulations.

In accordance with subsection 304(b)(1) of the National Marine Sanctuaries Act and that resolution, the following terms are certified as unacceptable in state waters:

1. Sanctuary fees for allowed public uses unless first approved by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida.
2. Sanctuary emergency regulations unless and until first approved by the Governor. Accordingly, the following sentence shall be added to section 922.165 CFR as published January 30, 1997: "Emergency regulations shall not take effect in Florida territorial waters until approved by the Governor of the State of Florida."
3. Requirements for governmental entities within the state, including but not limited to the State of Florida and Monroe County, to provide funding for the implementation of sanctuary regulations or other actions.
4. Sanctuary fisheries regulations unless established by the Florida Marine Fisheries Commission following promulgation under the provisions of section 370.025(2), F.S. (1995), which requires public input and final approval by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida. Accordingly, the following sentence shall be added to section 922.42 CFR as published January 30, 1997: "Any fishery regulations in the Florida Keys National Marine Sanctuary shall not take effect in Florida Territorial Waters until established by the Florida Marine Fisheries Commission."
5. Sanctuary regulation of 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, if the discharging or depositing is authorized under

Monroe County land use permits or under state permits. Accordingly, 15 CFR section 922.163(a)(4)(ii), concerning prohibited activities, shall be amended to read as follows: "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 or under state permits."

6. The implementation of any additional ecological reserves or any other type of zoning or regulation unless first approved by the Board of Trustees. Accordingly, the following provision shall be added to 15 CFR section 922.163 as published January 30, 1997: "(h) Any amendment to these regulations shall not take effect in Florida Territorial Waters until approved by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida;" and the following provision shall be added to 15 CFR section 962.164: "(f) Additional wildlife management areas, ecological reserves, sanctuary preservation areas, or special use areas, and additional restrictions in such areas, shall not take effect in Florida Territorial Waters unless first approved by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida."

7. Implementation of the management plan in its entirety unless the Co-Trustees agreement is amended to provide as follows:

a. The Florida Department of Environmental Protection (FDEP) employee who has been designated by the Secretary of FDEP and confirmed by the Board of Trustees shall represent the Board of Trustees as an equal partner to work in consultation with the Sanctuary superintendent for the oversight of Sanctuary operations.

b. The FDEP and NOAA shall manage the FKNMS through a cooperative partnership and consult on all management activities throughout the Sanctuary. The intent of this partnership is that the final resolution of any management issues resulting in policy conflicts between the state and NOAA shall be decided by the managing partners consistent with state and federal laws.

c. The state reserves the right to initiate proposed changes to the plan, and NOAA, if necessary, shall initiate the federal rule promulgation process required to make revisions to sanctuary regulations requested by the Board of Trustees.

d. Section 304(e) of the National Marine Sanctuary Act requires the Secretary of Commerce to review the management plan and regulations for the Sanctuary every five years, evaluate the substantive progress toward implementing the management plan and goals for the Sanctuary; especially the effectiveness of site-specific management techniques, and revise the management plan and regulations as necessary to fulfill the purposes and policies of the Act. When the management plan and regulations for the FKNMS are re-evaluated, the Secretary of Commerce will re-propose the management plan and regulations in their entirety and the State of Florida will have the opportunity to

review the management plan and regulations, in their entirety, and indicate if any or all of the terms are unacceptable, in which case the unacceptable terms shall not take effect in state waters.

Accordingly, the following provisions shall be added to 15 CFR section 922.160: "Section 304(e) of the NMSA requires the Secretary to review management plans and regulations every five years, and make necessary revisions. Upon completion of the five year review of the Sanctuary management plan and regulations, the Secretary will repropose the regulations in their entirety with any proposed changes thereto, including those regulations in subparts A and E of this part that apply to the Sanctuary. The Governor of the State of Florida will have the opportunity to review the re-proposed regulations before they take effect and if the Governor certifies such regulations as unacceptable, they will not take effect in State waters of the Sanctuary."

We also call to your attention the now erroneous reference in section 922.166(b)(2)(iii) to the Submerged Cultural Resources Agreement contained in Volume 1 of the management plan. We suggest striking that reference. The final agreement is that considered by the Board of Trustees on January 28, 1997 and executed by the signatory parties.

We believe that implementation of the plan provides balanced, common sense protection of this fragile, unique and endangered marine treasure and advances the state and federal commitment to jointly manage these resources. We look forward to that continuing relationship.

With kind regards, I am  
Sincerely,

Lawton Chiles

LC/khw/mlp

Enclosure

cc: Honorable Frank Brogan  
Honorable Bob Butterworth  
Honorable Bob Crawford  
Honorable Debbie Horan  
Honorable Bob Milligan  
Honorable Sandra Mortham  
Honorable Bill Nelson

#### Resolution

WHEREAS, the United States Congress passed the Florida Keys National Marine Sanctuary and Protection Act (PL 101-605, "the Act") to protect the unique and invaluable natural and cultural resources of the Florida Keys; and

WHEREAS, the President of the United States signed this legislation into law on November 16, 1990; and

WHEREAS, the Florida Keys National Marine Sanctuary (FKNMS) boundary encompasses 2800 square nautical miles of the Atlantic Ocean, Gulf of Mexico, and Florida Bay, of which approximately 65% is Florida state territorial waters; and

WHEREAS, the Board of Trustees of the Internal Improvement Trust Fund ("the Board of Trustees") is vested with the authority and charged with the responsibility for the acquisition, administration, management, control, supervision, conservation, protection, and disposition of

all state lands, including sovereignty submerged lands, as set forth in Chapter 253, Florida Statutes; and

WHEREAS, upon enactment of the Act, the Board of Trustees resolved on December 16, 1990, to include state waters within the sanctuary boundary under certain specified conditions; and

WHEREAS, the Florida Coastal Resources Interagency Management Committee resolved in February of 1991 to include appropriate state representation in the Florida Keys National Marine Sanctuary Management Plan development process; and

WHEREAS, an "Interim Memorandum of Agreement" was executed on September 15, 1992, between the National Oceanic and Atmospheric Administration (NOAA) and Board of Trustees specifying the conditions under which state sovereign submerged lands were to be included in the Sanctuary and managed during the management plan development process; and

WHEREAS, the management plan development period was extended to six years to provide the maximum opportunity for participation by all segments of government, industry, and the citizens of Florida and the United States; and

WHEREAS, Memoranda of Agreement to manage the marine ecosystem of the Florida Keys through a cooperative partnership have been developed and included in the management plan, including the:

- (1) Interagency Compact Agreement
- (2) Co-Trustees Agreement for Cooperative Management
- (3) Submerged Cultural Resources Agreement
- (4) Cooperative Enforcement Agreement
- (5) Agreement for Coordination of Civil Claims
- (6) Protocol for Cooperative Fisheries Management
- (7) Protocol for Emergency Response Notification
- (8) Certification/Authorization of Permits Agreement
- (9) Water Quality Program Steering Committee By-laws; and

WHEREAS, the citizens and government of the State of Florida have expressed continuing interest in issues not specifically addressed or resolved in the management plan or memoranda of agreement relating to the:

- (1) Imposition of fees for public use of the marine resources;
- (2) Disposition of funds recovered from natural resource damage claims;
- (3) Imposition of emergency regulations on state sovereign submerged lands;
- (4) Obligation of governmental entities, including the State of Florida, to implement the regulations of the management plan without having been allocated additional funding for that specific purpose;
- (5) Promulgation of federal fisheries regulations that are more restrictive than those established by the Florida Marine Fisheries Commission under Florida statutory authority;
- (6) Imposition of restrictions on the use of adjacent uplands exceeding those established by the State of Florida;

(7) Purpose, goals and measures of success associated with the Western Sambos Ecological Reserve;

(8) Parity of state and federal management authority for the implementation and ongoing operations of the FKNMS;

(9) Prospects of designating additional ecological reserves in the future as proposed in the draft management plan;

(10) Periodic evaluation of the effectiveness of the sanctuary management plan in the protection and preservation of the marine resources of the Florida Keys;

(11) Resolution of differences between the respective government agencies with Sanctuary management authority for the State of Florida and the United States of America;

(12) Right of the State to initiate changes to the plan;

(13) Article V of the Designation Document; and

(14) Right of the State to revisit the plan and regulations in their entirety.

NOW, THEREFORE, BE IT RESOLVED that the sovereign submerged lands of the State of Florida located within the boundaries of the Florida Keys National Marine Sanctuary, as specified by the United States Congress in PL 101-605, are hereby included in the Sanctuary for management in partnership between the Board of Trustees and NOAA under the provisions of: the Florida Keys National Marine Sanctuary Management Plan; the Memoranda of Agreement included in the management plan; and, the following conditions to be applied to the portions of the Sanctuary within Florida territorial waters:

(1) Federal sanctuary fees for allowed public uses of the marine resources shall not be imposed without having first been approved by the Board of Trustees;

(2) The Memorandum of Agreement for the Coordination of Civil Claims shall be amended to provide that, with regard to proceedings to recover compensation for injury to state resources within the Sanctuary, Board of Trustees' approval on the use of funds recovered by NOAA under section 312 is required;

(3) The imposition of federal sanctuary emergency regulations shall not be authorized without the Governor's approval;

(4) No provision of the management plan will require governmental entities within the state, including but not limited to the State of Florida and Monroe County, to provide funding for the implementation of regulations or other actions;

(5) The implementation of fisheries regulations is unacceptable unless established by the Florida Marine Fisheries Commission following promulgation under the provisions of section 370.025(2), F.S. (1995), which requires public input and final Board of Trustees' approval;

(6) The Certification/Authorization of Permits Agreement shall be amended to provide that NOAA will have only a review and comment role on state permits for activities beyond the boundary of the Sanctuary. To the maximum extent possible the state will consider NOAA's comments as specified in the agreement. However, NOAA shall not require an additional permit. In

addition, 15 CFR section 922.163(a)(4)(ii), concerning prohibited activities, shall be amended to read as follows: "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) above and those authorized under Monroe County land use permits or under state permits.";

(7) The purpose of the Ecological Reserve in the Western Sambos is to maintain a natural assemblage of living marine resources by setting aside an area that assures minimal human disturbance and is not designed to perform any fishery enhancement or fishery management functions. Monitoring of ecological parameters will be performed to provide information on the status of fish, coral and other benthic components of the Reserve. At the end of five years the success of the Ecological Reserve in the Western Sambos will be assessed. If the state or NOAA finds the area is not fulfilling the purpose for which the reserve was established, the Board of Trustees may take action to initiate the removal of the site;

(8) The Secretary of the FDEP shall designate, with subsequent confirmation by the Board of Trustees, a DEP employee as its representative as an equal partner to work in consultation with the Sanctuary superintendent for the oversight of Sanctuary operations;

(9) The implementation of any additional ecological reserves, or any other type of zoning or regulation, which is applicable to state waters shall require advance Board of Trustees' approval;

(10) The FDEP, in cooperation with NOAA, shall submit to the Board of Trustees an annual status report of the Sanctuary, and a five-year evaluation of the overall effectiveness of the implementation of the Sanctuary management plan toward the goal of protecting the marine resources of the Florida Keys including recommendations for change;

(11) The FDEP and NOAA shall manage the FKNMS through a cooperative partnership and consult on all management activities throughout the Sanctuary. The intent of this partnership is that the final resolution of any management issues resulting in policy conflicts between the state and NOAA shall be decided by the managing partners consistent with state and federal laws. The Board of Trustees has not conveyed title to or relinquished authority over any state-owned lands or other state-owned resources by agreeing to include state-owned land and resources within the Sanctuary boundary. If necessary, NOAA shall initiate the federal rule promulgation process required to make Board of Trustees' requested revisions to the regulations of the FKNMS management plan;

(12) The state reserves the right to initiate proposed changes to the plan. The FDEP will monitor public opinion and provide a process for consideration of grievances and petitions for change;

(13) Article V of the Designation Document shall be amended to strike the first paragraph which states: "If any valid regulation issued

by any Federal, State or local authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation the regulation deemed by the Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, or his or her designee to be more protective of Sanctuary resources and qualities shall govern." Further, it shall be amended to strike the last sentence of the second paragraph which states: "However, the Secretary of Commerce or designee may regulate the exercise (including, but not limited to, the imposition of terms and conditions) of such authorization or right consistent with the purposes for which the Sanctuary is designated."; and

(14) The Co-Trustees Agreement for Cooperative Management shall be amended to add: Section 304(e) of the National Marine Sanctuary Act requires the Secretary of Commerce to review the management plan and regulations for the Sanctuary every five years, evaluate the substantive progress toward implementing the management plan and goals for the Sanctuary, especially the effectiveness of site-specific management techniques, and revise the management plan and regulations as necessary to fulfill the purposes and policies of the Act. When the management plan and regulations for the Florida Keys National Marine Sanctuary are re-evaluated, the Secretary will re-propose the management plan and regulations in their entirety. The State of Florida will have the opportunity to review the management plan and regulations, in their entirety, and indicate if any or all of its terms are unacceptable in which case the unacceptable terms shall not take effect in state waters.

IN TESTIMONY WHEREOF, the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida have hereunto subscribed their names and have caused the Official Seal of the State of Florida to be hereunto affixed in the City of Tallahassee on the 28th day of January, 1997.

Lawton Chiles,  
Governor.

Sandra B. Mortham,  
Secretary of State.

Bob Butterworth,  
Attorney General.

Robert F. Milligan,  
Comptroller.

Bill Nelson,  
Treasurer.

Bob Crawford,  
Commissioner of Agriculture.

Frank T. Brogan,  
Commissioner of Education.

NOAA's Response to Governor's Certification

In response to the Governor's certification of March 20, 1997, NOAA has amended those regulations certified by the Governor as being unacceptable in State waters. With the modifications, the entire regulations and management

plan are accepted by the Governor and will apply throughout the Sanctuary, including within State waters of the Sanctuary, upon their effective date. The basis and purpose of the changes to the regulations are as follows.

(1) Per item number 2 of the Governor's letter which certified as unacceptable in State waters emergency regulations unless approved by the Governor, § 922.165 of subpart P is amended by adding "Emergency regulations shall not take effect in Florida State waters until approved by the Governor of the State of Florida." This is consistent with the management plan which provides that any new regulation or substantive modification to existing Sanctuary regulations will require the Governor's approval in order to take effect in State waters of the Sanctuary.

(2) Per item number 4 of the Governor's letter which certified as unacceptable in State waters Sanctuary fishing regulations unless established by the Florida Marine Fisheries Commission pursuant to section 370.025(2), F.S. (1995), § 922.163 of subpart P is amended by adding a new paragraph (h) to read in pertinent part "Any fishery regulations in the Sanctuary shall not take effect in Florida State waters until established by the Florida Marine Fisheries Commission." The Governor's certification proposed including this language in § 922.42 of part 922, which is a programmatic sanctuary regulation applicable to all sanctuaries. NOAA determined that a more appropriate place for the language is in the Sanctuary specific regulations at a new § 922.163(h) of subpart P, which has been added in response to item number 6 of the Governor's certification.

Item number 4 of the Governor's certification reflects actions already initiated by NOAA. In the January 30 **Federal Register** notice publishing the final regulations and triggering the forty-five day review period under the NMSA, NOAA stated that § 922.164(d), which pertains to Ecological Reserves (Reserves) and Sanctuary Preservation Areas (SPAs), will not take effect in State waters before July 1, 1997, to allow the State of Florida Marine Fisheries Commission (Commission) time to complete its rulemaking process related to the Western Sambos Ecological Reserve and those Sanctuary Preservation Areas located in State waters. The Commission's rule was adopted on May 13, 1997, and is substantively similar to NOAA's except in two instances. First, the Commission's Rule 46-6.003(1)(B), pertaining to the issue of possession of

fishing gear, which essentially mirrors 15 CFR § 922.164(d)(1)(iii) of NOAA's regulations, does not contain the phrase "no presumption of fishing activity shall be drawn" from possession of gear, because, according to the State, the Commission has no authority to address the issue of presumptions. Further, the Commission's Rule 46-6.003(1)(a), pertaining to possession of marine organisms within a Reserve or SPA, which mirrors 15 CFR § 922.164(d)(1)(ii) of NOAA's regulations, adds the element that to fall within the exception allowing possession of marine organisms in such areas, a vessel must be in "continuous transit" through the Reserve or SPA. NOAA's regulation did not require continuous transit.

In the January 30 **Federal Register** notice, NOAA stated that if the Commission's rule is not substantively the same as NOAA's, then NOAA would modify its regulations to conform with the State's, or would consult on whether the non-conforming portions of the Sanctuary regulations should be withdrawn from applying in State waters. NOAA consulted with the State and agreed that no changes are necessary to 15 CFR § 922.164(d)(1)(iii). As regards § 922.164(d)(1)(ii), the Governor requested that NOAA revise it to conform to the Commission's Rule 46-6.003(1)(a). In response to the Governor's request, and consistent with NOAA's January 30 **Federal Register** notice, therefore, NOAA has amended § 922.164(d)(1)(ii) to read as follows:

(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, provided further that in an Ecological Reserve or Sanctuary Preservation Area located in Florida State waters, such vessel is in continuous transit through the Ecological Reserve or Sanctuary Preservation Area.

Therefore, § 922.164(d)(1)(ii), consistent with the Commission's rule, now requires vessels possessing fish, invertebrates, or marine plants that are transiting through a Reserve or SPA located in State waters to be in continuous transit through the Reserve or SPA. These areas are the Western

Sambos Ecological Reserve, and the Cheeca Rocks, Eastern Dry Rocks, Hens and Chickens, Newfound Harbor Key, Rock Key, and Sand Key Sanctuary Preservation Areas.

The conforming change to § 922.164(d)(1)(ii) is made to the regulation only as it applies to Reserves and SPAs located in State waters because under the National Marine Sanctuaries Act, the Governor's actions during the forty-five day review period apply to the management plan and regulations as they pertain to the area of the Sanctuary lying within the seaward boundary of the State. Further, under the sanctuary program regulations as 15 CFR § 922.42, all activities may be conducted unless specifically prohibited by a sanctuary's regulations, "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." Consequently, as regards State waters of the Sanctuary, regardless of whether NOAA amends § 922.164(d)(1)(ii), users would be subject to the State prohibition requiring continuous transit through a Reserve or SPA in State waters if such vessel possesses fish, invertebrates or marine plants. Finally, under the amended Sanctuary regulation, vessels possessing such marine organisms are not precluded from transiting the Reserve or SPA, which addresses the primary concern raised in the public comments NOAA received on the proposed regulation. In addition, during the State's rulemaking proceeding, it received no comments regarding the provision requiring continuous transit, supporting that there appear to be no significant concerns over the provision.

For consistency throughout the Sanctuary, NOAA will propose to amend the regulation as it pertains to the Ecological Reserves and Sanctuary Preservation Areas in federal waters in a separate rulemaking.

(3) Per item number 5 of the Governor's letter which certified as unacceptable in State waters the prohibition of discharging or depositing from beyond the Sanctuary boundary any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, § 922.163(a)(4)(ii) of subpart P is amended by adding "or under state permits" after "Monroe County land use permits." This modification broadens the subject exception to include discharge or deposit activities authorized under State permits. Many upland projects that could result in

discharges or deposits outside the Sanctuary that end up in the Sanctuary require Monroe County land use permits, which were already excepted from the Sanctuary prohibition.

(4) Per item number 6 of the Governor's letter which certifies as unacceptable in State waters the implementation of any additional Ecological Reserves or any other type of zoning or regulation unless first approved by the Board of Trustees, § 922.163 of subpart P is amended by adding new paragraph (h) to read "Any amendment to these regulations shall not take effect in Florida State waters until approved by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida." Further, § 922.164 is amended by adding a new paragraph (f) to read: "Additional Wildlife Management Areas, Ecological Reserves, Sanctuary Preservation Areas, or Special-use Areas, and additional restrictions in such areas, shall not take effect in Florida State waters unless first approved by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida." As discussed above, this modification merely codifies in the regulations what is contained in the management plan.

(5) Per item number 7 of the Governor's letter which certifies as unacceptable in State waters the implementation of the management plan unless the Co-Trustee Agreement and § 922.160 is amended to add a provision regarding the five year review of the management plan and regulations, § 922.160 of subpart P is amended by adding:

Section 304(e) of the NMSA requires the Secretary to review management plans and regulations every five years, and make necessary revisions. Upon completion of the five year review of the Sanctuary management plan and regulations, the Secretary will repropose the regulations in their entirety with any proposed changes thereto, including those regulations in subparts A and E of this part that apply to the Sanctuary. The Governor of the State of Florida will have the opportunity to review the re-proposed regulations before they take effect and if the Governor certifies such regulations as unacceptable, they will not take effect in State waters of the Sanctuary.

A corresponding amendment, as well as other amendments, have also been made to the Co-Trustees Agreement per item 7 of the Governor's letter. The modification to the regulation essentially codifies the requirement under the NMSA to conduct reviews of sanctuary management plans and regulations every five years. In the FKNMS context, NOAA has determined that at the conclusion of the five year

review of the Sanctuary, it will repropose the regulations for the Governor's review, similar to the forty-five day review period under the NMSA that preceded this notice.

(6) The erroneous reference to the Submerged Cultural Resources Agreement has been corrected by eliminating the reference to Volume I of the management plan.

For clarity, this notice publishes the revised Sanctuary specific regulations at 15 CFR part 922, subpart P in their entirety, which will replace subpart P as published in the January 30, 1997 **Federal Register** notice. Consequently, subpart P as published in this notice and all remaining regulations in the January 30, 1997, notice shall become effective on July 1, 1997.

#### *Congressional Action on the Final Regulations*

During the comment period on the draft management plan/environmental impact statement (DMP/EIS), the Sanctuary Advisory Council (SAC) and other public commentators singled out the operation of personal watercraft (PWC) in the Sanctuary as a matter of concern. In response to comments received on the DMP/EIS, NOAA stated the following in the FMP/EIS, and January 30 **Federal Register** notice regarding the operation of personal watercraft (PWC) in the Sanctuary:

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.

FMP/EIS Vol. III, page L-10; 62 FR 4578, 4591.

During the forty-five day review period under the NMSA, no

Congressional hearings were held. However, NOAA received inquiries from Representative Don Young, Chair of the House of Representatives Committee on Resources, and Representative Walter B. Jones, Jr. regarding how NOAA was going to measure "success" of the PWC industry's educational efforts at significantly reducing or eliminating threats to natural resources and the nuisance and safety problems posed by the operation of personal watercraft, and how evaluation criteria will be developed. There was also one meeting with Congressional aides where concern was expressed about the Sanctuary regulating the safety of vessel operations in general and PWC (e.g., jet skis) in particular.

As indicated above, the FMP/EIS carefully considered the SAC recommendations and public comments, including those from the PWC industry in setting forth its multi-pronged approach to the PWC issue. In general, the success of any Sanctuary action plan or management strategy is measured primarily against whether the Sanctuary resource protection goals are being met, and whether the multiple uses of the Sanctuary are being facilitated consistent with the primary objective of resource protection. The FMP/EIS is the result of a long and laborious public process to identify the threats to Sanctuary resources and qualities, and then to develop management strategies and action plans to address these resource management issues, including resource protection and multiple use management, which includes addressing user conflicts.

The FMP/EIS sets forth an action plan and strategies to address the concerns arising from the use of PWCs in regards to protecting Sanctuary resources, and facilitating compatible multiple use of the Sanctuary. The FMP/EIS therefore provides additional criteria for the measurement of success. The *STRATEGY FOR STEWARDSHIP* (Overview or Executive Summary of the FKNMS MP/EIS—pages 9, 11–12, 19–20, 23) discusses these concerns, and a plan to address problems arising from PWCs, as well as other vessels. NOAA's decision to modify the SAC's recommendations on PWC regulation was in part based on PWC industry statements on how it should be given an opportunity to "self-regulate" PWCs, work with NOAA on education geared toward changing user behavior, and establish criteria for the management of commercial PWC rental operations.

The problems regarding operation of PWCs and the planned solutions are identified and discussed throughout the

FMP/EIS and therefore provide criteria against which success can be measured. See Volume I pp. 16–17 (noise and operation harass wildlife as well as other users), pp. 108–109 (PWC strategy B–17 discussed under NOAA Regulatory Actions); Vol. II Environmental Impact Analysis, p. 124 (user conflicts and habitat impacts), p. 141 (alternative strategies); p. 151 (strategy Z–5 Special Use Zones to address PWC problems), pp. 182, 203 (PWC strategy B–17); Vol. III H–3, K–3, L–9, L–10, L–17, M–1, M–2, M–3, M–6, M–11, M–12, M–22, M–26, M–27, M–28. The public comments on this issue also provide important input for developing criteria to measure the success for both the PWC industry and NOAA.

NOAA is already working with the PWC industry to develop broad measurable milestones by which the industry will increase public awareness and educate the public about the use of PWCs in the Sanctuary. When these are achieved by the PWC industry, NOAA is confident that the proposed education and self-regulation activities should address concerns that surfaced during the development of the final management plan. Such measures include the industry conducting training workshops and school programs, information distribution, and community awareness. In addition, the PWC industry, NOAA and Florida Department of Environmental Protection will also develop a two to five year work plan for the industry based on strategies included in the Education and Outreach Action Plan contained in the management plan for the Sanctuary. Further, the PWC industry will conduct research on the effects of PWC operation on shallow-water seagrass and hardbottom communities in the Florida Keys. If the PWC industry adequately implements these measures within the first year after the effective date of these regulations, NOAA would view this as a significant effort to address the concerns raised during the development of the final management plan. In the event zones are subsequently determined to be necessary, NOAA would seek to discuss such measures with the PWC industry early in the process. Further, at a minimum under the Administrative Procedure Act, there would have to be a public notice of a proposed rule as well as a public comment period. This would likely involve public hearings before any rule would become final. Moreover, the rule would also have to be approved by the Governor through the Board of Trustees

in order to become effective in State waters.

#### *Other Modifications to the Final Regulations*

In the **Federal Register** notice of January 30, 1997, appendices II, IV and V of subpart P, which delineate the boundary coordinates of Existing Management Areas, Ecological Reserves, and Sanctuary Preservation Areas, respectively, stated that "When differential Global Positioning Systems [GPS] data becomes available, these coordinates may be revised by **Federal Register** notice to reflect the increased accuracy of such data." Since publication of the final regulations on January 30, NOAA has ground-truthed, using differential GPS, the Western Sambos Ecological Reserve, the Sanctuary Preservation Areas, and the four Special-use Areas (listed in appendix VI to subpart P). Consequently, NOAA has modified the regulations to incorporate the more accurate coordinates for those areas it has ground-truthed using differential GPS. When differential GPS data become available for the Existing Management Areas, their coordinates may be revised by **Federal Register** notice to reflect the increased accuracy of such data.

#### **III. Summary of the Changes to the Final Regulations at Subpart P**

The following summarizes the Sanctuary regulations at 15 CFR part 922, subpart P, modified by this notice. Except as noted below, this section remains the same as in the January 30, 1997, **Federal Register** notice. With the changes, the final rule published on January 30, 1997, at 62 FR 4578, and the revision of 15 CFR part 922, subpart P, in this document shall apply throughout the Sanctuary, including within State waters of the Sanctuary, on July 1, 1997.

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 922.160 also describes the five-year review of the management plan and regulations for 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 fourth activity prohibited, § 922.163(a)(4), 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. Under § 922.163(a)(4)(ii), upland discharge or deposit activities conducted pursuant to Monroe County and State permits are also excepted from the prohibition against discharging or depositing outside the Sanctuary any material or other matter that subsequently enters the Sanctuary and injures any Sanctuary resource.

Section 922.163(h) provides that any substantive (non-technical, non-editorial) amendment to the regulations will not take effect in State waters until approved by the Florida Board of Trustees. Fishing regulations will not take effect in State waters until established by the Florida Marine Fisheries Commission.

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 types 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(d)(1)(ii) prohibits 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, provided further that in an Ecological Reserve or Sanctuary Preservation Area located in Florida State waters, such vessel is in continuous transit through the Ecological Reserve or Sanctuary Preservation Area.

Section 922.164(f) provides that any additional Wildlife Management Areas, Ecological Reserves, Sanctuary Preservation Areas, or Special-Use Areas, and additional restrictions in such areas will not take effect in State waters unless first approved by the Florida Board of Trustees.

Section 922.165 provides that where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource, or imminent risk of such destruction of, loss of, 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 is subject to the provisions of the Administrative Procedure Act. No emergency regulation will take effect in State waters of the Sanctuary until approved by the Governor of Florida.

#### IV. Miscellaneous Rulemaking Requirements

Except as noted below, this section remains the same as in the January 30, 1997 **Federal Register** notice.

##### *National Marine Sanctuaries Act*

Section 304 of the National Marine Sanctuaries Act provides that Congress and the Governor have forty-five days of continuous session of Congress beginning on the day on which the final regulations were published to review the terms of designation (i.e., regulations and management plan). After forty-five days, the regulations would become final and take effect, except that any term or terms of designation the Governor certified to the Secretary of Commerce as unacceptable would not take effect in the State waters portion of the Sanctuary. The forty-five day review period began on January 30, 1997, the date the final regulations were published in the **Federal Register**, and concluded on April 16, 1997. During that period the Governor submitted to the Secretary a certification that the management plan and certain regulations were unacceptable unless specific amendments were made to such regulations. NOAA amended those regulations certified as unacceptable by incorporating the Governor's changes. Consequently, upon their effective date the regulations, as revised by this

**Federal Register** notice, and management plan, in their entirety, will apply throughout the Sanctuary, including within State waters of the Sanctuary.

##### *Administrative Procedure Act*

The final Sanctuary regulations at 15 CFR part 922, subpart P, which were promulgated on January 30, 1997, through notice and comment rulemaking, have been amended pursuant to and consistent with the procedures required under the National Marine Sanctuaries Act. The NMSA provides that during the review period of forty-five day continuous session of Congress, the Governor may certify to the Secretary of Commerce any regulation as unacceptable and, if the Governor so certifies, the regulation shall not take effect in the State waters portion of the Sanctuary. As the changes requested by the Governor and herein made by NOAA are within the scope of the proposed rule, additional prior notice and opportunity for public comment are not required by the Administrative Procedure Act (APA), 5 U.S.C. 553. The basis and purpose of the changes to the final regulations requested by the Governor have been set forth above.

The Assistant Administrator for Ocean Services and Coastal Zone Management has determined that, pursuant to 5 U.S.C. 553(d)(3), there is good cause for making the modifications to the final regulations published in this document effective without a thirty day delay in effective date. The primary purpose of the delayed effective date is to provide the public a reasonable time to prepare to comply with the regulations. The modifications to the final regulations pertaining to the Governor's approval of new and emergency regulations, and the five year review of the management plan and regulations do not require compliance by the general public and, therefore, a delayed effective date is unnecessary. Further, the requirement that vessels possessing fish, invertebrates or marine plants must be in continuous transit through SPAs and Reserves located in State waters is currently a requirement under State regulations and, therefore, a delayed effective date is also unnecessary as the general public must already comply with that corresponding restriction. Finally, the modification to the exception to the prohibition against discharging and depositing outside the Sanctuary any material or other matter that subsequently enters and injures a Sanctuary resource broadens the exception to include activities authorized by State permit and,

therefore, relieves a restriction, specifically excepted from a delay in effective date under 5 U.S.C. 553(d)(1). Consequently, the final rule published on January 30, 1997, at 62 FR 4578 and the revision of 15 CFR part 922, subpart P in this document are effective July 1, 1997.

#### Regulatory Flexibility Act

The January 30, 1997 **Federal Register** notice stated:

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.

The changes made in response to the Governor's request do not change the basis for that certification. In response to the FRFA, the Office of the Chief Counsel for Advocacy of the Small Business Administration (SBA) received several comments critical of certain portions of the FRFA, specifically as regards the treatment of submerged cultural resources and the impacts to treasure salvors. Comments were also received from the Florida Keys Marine Life Association raising concerns that the impacts to their industry have not been properly qualified in the economic impact analysis. Because of the time provided by the forty-five day review period under the National Marine Sanctuaries Act, NOAA is supplementing the FRFA to address the comments received by the SBA. The final supplemental FRFA will be completed prior to the effective date of these regulations. Upon its completion, NOAA will publish a **Federal Register** notice summarizing the supplemental FRFA and announcing its availability, and, if appropriate, making any changes to the regulations NOAA determines are necessary as a result of the supplemental FRFA.

#### List of Subjects in 15 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: June 5, 1997.

**Nancy Foster,**

*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. Part 922 is amended by revising subpart P to read as follows:

#### Subpart P—Florida Keys National Marine Sanctuary

Sec.

922.160 Purpose.

922.161 Boundary.

922.162 Definitions.

922.163 Prohibited activities—Sanctuary-wide.

922.164 Additional activity regulations by Sanctuary area.

922.165 Emergency regulations.

922.166 Permits—application procedures and issuance criteria.

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 [As Excerpted From Chapter 46–42 of the Florida Administrative Code]

#### Subpart P—Florida Keys National Marine Sanctuary

##### § 922.160 Purpose.

(a) The purpose of the regulations in this subpart 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.

(b) Section 304(e) of the NMSA requires the Secretary to review management plans and regulations every five years, and make necessary revisions. Upon completion of the five year review of the Sanctuary management plan and regulations, the Secretary will repropose the regulations in their entirety with any proposed changes thereto, including those regulations in subparts A and E of this part that apply to the Sanctuary. The Governor of the State of Florida will have the opportunity to review the re-proposed regulations before they take effect and if the Governor certifies such regulations as unacceptable, they will not take effect in State waters of the Sanctuary.

##### § 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 subpart, 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 § 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 subpart 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 July 1, 1997, 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 or under State 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 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.

(h) Any amendment to these regulations shall not take effect in Florida State waters until approved by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida. Any fishery regulations in the Sanctuary shall not take effect in Florida State waters until established by the Florida Marine Fisheries Commission.

#### § 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 of 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, provided further that in an Ecological Reserve or Sanctuary Preservation Area located in Florida State waters, such vessel is in continuous transit through the Ecological Reserve or Sanctuary Preservation Area.

(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 of these regulations; 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**.

(f) Additional Wildlife Management Areas, Ecological Reserves, Sanctuary Preservation Areas, or Special-use Areas, and additional restrictions in such areas, shall not take effect in Florida State waters unless first approved by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida.

#### § 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. Emergency regulations shall not take effect in Florida territorial waters until approved by the Governor of the State of Florida. Any 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. 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, P.O. 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.

(2) 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) 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 July 1, 1997, or by any valid right of subsistence use or access in existence on July 1, 1997, provided that:

(1) The holder of such authorization or right notifies the Director, in writing, within 90 days of July 1, 1997, 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) of this section 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 July 1, 1997, 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 southeasternmost 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:

Point	Latitude	Longitude
<b>Key Largo Management Area (Key Largo National Marine Sanctuary)</b>		
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

Point	Latitude	Longitude
<b>Looe Key Management Area (Looe Key National Marine Sanctuary)</b>		
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)

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
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

Point	Latitude	Longitude	Point	Latitude	Longitude	Point	Latitude	Longitude
30	24°41.4' N	81°31.2' W	42	24°37.8' N	81°37.8' W	<b>Key West National Wildlife Refuge</b>		
31	24°40.8' N	81°31.2' W	43	24°37.2' N	81°37.8' W			
32	24°40.8' N	81°32.4' W	44	24°37.2' N	81°40.2' W			
33	24°41.4' N	81°32.4' W	45	24°36.0' N	81°40.2' W			
34	24°41.4' N	81°34.2' W	46	24°36.0' N	81°40.8' W			
35	24°40.8' N	81°34.2' W	47	24°35.4' N	81°40.8' W	1	24°40' N	81°49' W
36	24°48.0' N	81°35.4' W	48	24°35.4' N	81°42.0' W	2	24°40' N	82°10' W
37	24°39.6' N	81°35.4' W	49	24°36.0' N	81°42.0' W	3	24°27' N	82°10' W
38	24°39.6' N	81°36.0' W	50	24°36.0' N	81°48.6' W	4	24°27' N	81°49' W
39	24°39.0' N	81°36.0' W				When differential Global Positioning Systems data becomes available, these coordinates may be revised by <b>Federal Register</b> notice to reflect the increased accuracy of such data.		
40	24°39.0' N	81°37.2' W						
41	24°37.8' N	81°37.2' W						

**Appendix III to Subpart P of Part 922—Wildlife Management Areas Access Restrictions**

Area	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 the 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 the 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 the 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 differential Global Positioning 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°28.85' N	81°41.90' W
3	24°28.50' N	81°43.70' W

**\* WESTERN SAMBOS—Continued**

Point	Latitude	Longitude
4	24°33.50' N	81°43.10' W

(\* Denotes located in State waters)

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

The Sanctuary Preservation Areas (SPAs) (based on differential Global Positioning Systems data) are located within the following geographic boundary coordinates:

Point	Latitude	Longitude
<b>Alligator Reef</b>		
1 .....	24°50.98'N	80°36.84'W
2 .....	24°50.51'N	80°37.35'W
3 .....	24°50.81'N	80°37.63'W
4 .....	24°51.23'N	80°37.17'W

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

Carysfort/South Carysfort Reef		
1 .....	25°13.78'N	80°12.00'W
2 .....	25°12.03'N	80°12.98'W
3 .....	25°12.24'N	80°13.77'W
4 .....	25°14.13'N	80°12.78'W

* Cheeca Rocks		
1 .....	24°54.42'N	80°36.91'W
2 .....	24°54.25'N	80°36.77'W
3 .....	24°54.10'N	80°37.00'W
4 .....	24°54.22'N	80°37.15'W

Coffins Patch		
1 .....	24°41.47'N	80°57.68'W
2 .....	24°41.12'N	80°57.53'W
3 .....	24°40.75'N	80°58.33'W
4 .....	24°41.06'N	80°58.48'W

Conch Reef		
1 .....	24°57.48'N	80°27.47'W
2 .....	24°57.34'N	80°27.26'W
3 .....	24°56.78'N	80°27.52'W
4 .....	24°56.96'N	80°27.73'W

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

Davis Reef		
1 .....	24°55.61'N	80°30.27'W
2 .....	24°55.41'N	80°30.05'W
3 .....	24°55.11'N	80°30.35'W
4 .....	24°55.34'N	80°30.52'W

Dry Rocks		
1 .....	25°07.59'N	80°17.91'W
2 .....	25°07.41'N	80°17.70'W
3 .....	25°07.25'N	80°17.82'W
4 .....	25°07.41'N	80°18.09'W

Grecian Rocks		
1 .....	25°06.91'N	80°18.20'W
2 .....	25°06.67'N	80°18.06'W
3 .....	25°06.39'N	80°18.32'W
4 .....	25°06.42'N	80°18.48'W
5 .....	25°06.81'N	80°18.44'W

* Eastern Dry Rocks		
1 .....	24°27.92'N	81°50.55'W
2 .....	24°27.73'N	81°50.33'W
3 .....	24°27.47'N	81°50.80'W
4 .....	24°27.72'N	81°50.86'W

The Elbow		
1 .....	25°08.97'N	80°15.63'W
2 .....	25°08.95'N	80°15.22'W
3 .....	25°08.18'N	80°15.64'W

Point	Latitude	Longitude
4 .....	25°08.50'N	80°16.07'W

French Reef		
1 .....	25°02.20'N	80°20.63'W
2 .....	25°01.81'N	80°21.02'W
3 .....	25°02.36'N	80°21.27'W

* Hen and Chickens		
1 .....	24°56.38'N	80°32.86'W
2 .....	24°56.21'N	80°32.63'W
3 .....	24°55.86'N	80°32.95'W
4 .....	24°56.04'N	80°33.19'W

Looe Key		
1 .....	24°33.24'N	81°24.03'W
2 .....	24°32.70'N	81°23.85'W
3 .....	24°32.52'N	81°24.70'W
4 .....	24°33.12'N	81°24.81'W

Molasses Reef		
1 .....	25°01.00'N	80°22.53'W
2 .....	25°01.06'N	80°21.84'W
3 .....	25°00.29'N	80°22.70'W
4 .....	25°00.72'N	80°22.83'W

* Newfound Harbor Key		
1 .....	24°37.10'N	81°23.34'W
2 .....	24°36.85'N	81°23.28'W
3 .....	24°36.74'N	81°23.80'W
4 .....	24°37.00'N	81°23.86'W

* Rock Key		
1 .....	24°27.48'N	81°51.35'W
2 .....	24°27.30'N	81°51.15'W
3 .....	24°27.21'N	81°51.60'W
4 .....	24°27.45'N	81°51.65'W

* Sand Key		
1 .....	24°27.58'N	81°52.29'W
2 .....	24°27.01'N	81°52.32'W
3 .....	24°27.02'N	81°52.95'W
4 .....	24°27.61'N	81°52.94'W

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

Sombrero Key		
1 .....	24°37.91'N	81°06.78'W
2 .....	24°37.50'N	81°06.19'W
3 .....	24°37.25'N	81°06.89'W

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

(\* denotes located in State waters)

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

The Special-use Areas (based on differential Global Positioning Systems data) are located within the following geographic boundary coordinates:

Point	Latitude	Longitude
<b>Conch Reef (Research Only)</b>		

1 .....	24°56.83'N	80°27.26'W
2 .....	24°57.10'N	80°26.93'W
3 .....	24°56.99'N	80°27.42'W
4 .....	24°57.34'N	80°27.26'W

Eastern Sambos (Research Only)		
1 .....	24°29.84'N	81°39.59'W
2 .....	24°29.55'N	81°39.35'W
3 .....	24°29.37'N	81°39.96'W
4 .....	24°29.77'N	81°40.03'W

Looe Key (Research Only)		
1 .....	24°34.17'N	81°23.01'W
2 .....	24°33.98'N	81°22.96'W
3 .....	24°33.84'N	81°23.60'W
4 .....	24°34.23'N	81°23.68'W

Tennessee Reef (Research Only)		
1 .....	24°44.77'N	80°47.12'W
2 .....	24°44.57'N	80°46.98'W
3 .....	24°44.68'N	80°46.59'W
4 .....	24°44.95'N	80°46.74'W

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

Point	Latitude	Longitude
<b>In The Vicinity of the Florida Keys</b> (Reference Charts: United States 11466, 27th Edition—September 1, 1990 and United States 11450, 4th Edition—August 11, 1990)		

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
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)

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

Point	Latitude	Longitude
29 .....	24°27.95'N	81°48.65'W

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

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)

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 this Part 922.163(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) Damsel fish—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 capriscus*.
- (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 *Lysmata*.
    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, nonencrusting 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 and 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 (1 1/2) inches for:

- a. Gray angelfish (*Pomacanthus arcuatus*).
- b. French angelfish (*Pomacanthus paru*).

2. One-and-three-quarters (1 3/4) 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 gobie (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, 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.

(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 and shall be counted for purposes of the 20 individual bag limit specified therein. 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.

(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 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

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