

Keri O'Brien

From: Cheri Smith
Sent: Tuesday, May 19, 2020 3:17 PM
To: Keri O'Brien
Subject: FW: Public Comments Regarding Sanctuary Resolution
Attachments: 20200519151315.pdf

Can you please post letter on item #3

From: Karen R. Horan <karen@horan.law>
Sent: Tuesday, May 19, 2020 3:15 PM
To: Cheri Smith <csmith@cityofkeywest-fl.gov>
Cc: David P. Horan <dph@horanhiggins.com>
Subject: Public Comments Regarding Sanctuary Resolution

To Mayor Johnson and City Commission:

Attached is a copy of the 5/19/1997 "Co-Trustees Agreement for Cooperative Management". This should be in front of every Commissioner. In addition, I submit my comments on the FWC comment the Proposed Resolution Endorses.

The FWC comment is supported by 94 citations to published research – and in his letter to the Commission, the Chair of the Sanctuary Advisory Council attempts to characterize the FWC comment as "one perspective". In fact, public comment over the past year shows that the Keys business community, boaters, [et.al.](#) are in near unanimous opposition to further restrictions by the Sanctuary.

Regulation for regulation's sake is the problem. As pointed out in the FWC comments, it is the FWC that has **exclusive** fishery management jurisdiction in State waters. The Sanctuary has no such authority.

David Paul Horan
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David P. Horan

From: Karen R. Horan <karen@horan.law> on behalf of Karen R. Horan
Sent: Tuesday, May 05, 2020 2:06 PM
To: David P. Horan
Subject: Email for Robert Spottswood

Robert Spottswood

Robert,

I reviewed your FWC April 29, 2020 comment on the Sanctuary DEIS. The “Co-Trustees Agreement for Cooperative Management” effectively gives the Governor and FWC an administrative “veto” over proposed restrictions related to Florida Resources. The position taken by a majority of Florida recreational and commercial fishermen is that a majority of the proposed restrictions are “regulations to justify the continued existence (and growth) of NOAA’s Marine Sanctuary programs”.

When the FKNMS was designated after local (vote) opposition, what was the problem? Water quality and coral decline. How has the Sanctuary helped us?

Here are my observations on the FWC April 29th, 2020 comments on the Sanctuary DEIS.

We now have 23 years of 1997 and 13 years of 2007 Sanctuary Management strategies to study and evaluate. What has been the cost of all of this and is there even a reasonable argument that the “benefit” (if any) justifies the cost?

The Magnuson-Stevens Act (as amended through January 12th 2007) exercises exclusive fishery management authority in the EEZ beyond Florida boundaries and the Florida Fish and Wildlife Conservation Act (Chamber 379.2401) does not provide any basis for allowing the FKNMS to even participate in fishery management (much less attempt to take the lead in federal and state fishery management decisions).

Your comment points out that the DEIS does not “appropriately address” water quality/water flow etc. What should be made clear is that the Sanctuary lacks any jurisdiction over most of Florida Bay and no jurisdiction over the Everglades National Park.

Your comment speaks of the need to update the “Protocol for Cooperative Fisheries Management”. I did not know that such a “protocol” exists. Please have someone provide me a copy.

Since the “five year review” requires that all (1997 and 2007) of the Plan and regulations are subject to FWC “veto” or modification as to State waters, it provides FWC with opportunity to require (not merely support) a primary focus on coral restoration and recovery.

Any FKNMS proposal having to do with fishery management should not only be deleted, but clearly disallowed now or in the future. Sanctuary spent a lot of time and money on attempting to take over fishery management within the Sanctuary. Mote Marine should have been able to put that time and money into coral restoration.

Of particular importance to the Lower Keys is the FWC disapproval of regulations and area closures of lands and refuge islands. What the Sanctuary fails to realize, much less address, is that the refuges (Panther, Crocodile, White Heron, Key Deer and Key West National Wildlife Refuge) are under the U.S. Department of the Interior, not NOAA. Next, only the islands are federally owned, the submerged lands are owned by Florida and “leased” by the Trustees of the Internal Improvement Trust Fund to the refuges.

Florida Statute 253.03(7)(b) covers the powers of the Trustees in the Administration of State lands. The Trustees cannot pass any rules that . . . “interfere with commerce or the transitory operation of vessels through navigable water”. This is a direct quote. Look at this and ask yourself: How can the Trustees’ Refuge lease allow the Refuges more regulatory power than the Trustees have?

Your relationship with Ron DeSantis and the FWC should allow an effective “veto” Sanctuary Fishery Management and proposed regulations as well as area closures of Marquesas, Boca Grande, Woman, Snipes, Marvin and similar areas.

You are really my very favorite Democrat!

David Paul Horan
David@horan.law

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This Memorandum of Agreement (hereinafter "Co-Trustees Agreement") is made between the Governor and Cabinet of the State of Florida, acting as the Board of Trustees of the Internal Improvement Trust Fund, and the National Oceanic and Atmospheric Administration of the United States Department of Commerce (hereinafter collectively referred to as the "Co-Trustees").

I. Purpose and Scope

The purpose of this Co-Trustees Agreement is to clarify the relative jurisdiction, authority, and conditions of Co-Trustee management of the Florida Keys National Marine Sanctuary. It clarifies the State's continuing authority and jurisdiction over submerged lands and other State resources within the Sanctuary. It also sets forth provisions on how NOAA and the State will cooperate on specific matters such as regulatory amendments, permits, and other matters. This "Agreement" and its provisions are primarily based upon the Interim Memorandum of Agreement signed by the Co-Trustees on September 15, 1992.

II. Definitions

Florida Trustees - means the Board of Trustees of the Internal Improvement Trust Fund, consisting of the Governor and Cabinet, as Trustees for the People of Florida, vested and charged with the acquisition, administration, management, control, supervision, conservation, protection, and disposition of all State lands, including sovereignty submerged lands, as set forth in Chapter 253 of the Florida Statutes.

NOAA - means the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce, as trustee for the People of the United States of America.

Co-Trustees - means the Florida Trustees and NOAA.

Sanctuary - means the Florida Keys National Marine Sanctuary, as described in Section 5 of the Florida Keys National Marine Sanctuary and Protection Act.

Sanctuary Resource - means any living or nonliving resource within the Sanctuary, whether State or Federally owned or controlled, that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the Sanctuary as provided in Section 302 of the National Marine Sanctuaries Act.

Emergency Regulations - means any temporary regulation, including prohibitions necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource, including the temporary establishment or modification of any zones.

Civil action - means actions arising under the National Marine Sanctuaries Act or under authorities supporting state claims within the Sanctuary, including amounts recovered under section 312 and civil penalties recovered under section 307.

Management Plan - means the Final Management Plan and Regulations for the Florida Keys National Marine Sanctuary.

Regulations - means the Final Sanctuary Regulations implementing the Management Plan.

III. Authorities

Under the Florida Keys National Marine Sanctuary and Protection Act (P.L. No. 101-605, Nov. 16, 1990) and the National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.) (also known as title III of the Marine Protection, Research and Sanctuaries Act), the Secretary of

Commerce, through the National Oceanic and Atmospheric Administration, has been vested with the jurisdiction and authority to protect and manage the resources of this Sanctuary in trust for the People of the United States and is specifically charged with implementation of the policy of the United States.

The Florida Trustees derive their authority from Section 7 of Article II and Section 11 of Article X of the Florida Constitution. Pursuant to Section 11 of Article X and Chapter 253 of the Florida Statutes, the Florida Trustees hold title to State lands, including sovereignty submerged lands, for the use and benefit of the People of the State of Florida. Pursuant to Section 7 of Article II and Chapter 253, the Florida Trustees are charged with the duty to conserve and protect natural resources and scenic beauty associated with those State lands.

IV. Provisions for Cooperative Sanctuary Management

The NOAA and the Florida Trustees agree that:

A. the Management Plan of the Florida Keys National Marine Sanctuary (FKNMS) will apply throughout the Sanctuary, including the portion of the Sanctuary within the State's lands and waters, except for those terms certified by the Governor of Florida as unacceptable;

B. NOAA and the State, as Co-Trustees, will cooperatively manage the Sanctuary and Sanctuary resources consistent with the Management Plan and the underlying Memoranda of Agreements and Protocols:

- 1) Protocol for Cooperative Fisheries Management - establishes the procedures and mechanisms for the unified and cooperative State/Federal management of fishery resources within the Sanctuary, including a process for promulgating consistent fishing regulations;
- 2) Submerged Cultural Resources Management Agreement - establishes the procedures for cooperative management of historical sanctuary resources as well as the underlying substantive requirements consistent with the National Marine Sanctuaries Act, the Abandoned Shipwreck Act (ASA), the ASA Guidelines and State law;
- 3) Cooperative Enforcement Agreement - establishes the procedures and mechanisms for coordinating State and Federal law enforcement operations within the Sanctuary;
- 4) Certification/Authorization of Permits Agreement - establishes the procedures and mechanisms for addressing state authorization of activities prohibited by sanctuary regulations;
- 5) Agreement for Coordination of Civil Claims - establishes the procedures and mechanisms for State and Federal civil claims for damages to sanctuary resources, including: (a) initial notification and response, (b) incident screening, (c) coordination of joint and other civil claims, (d) coordination of policy, and e) the use of recovered sums;
- 6) Protocol for Emergency Response Notification - establishes an operational protocol to ensure coordination and cooperation between sanctuary management and other Federal, State and local authorities with jurisdiction within or adjacent to the Sanctuary regarding notification, response and action taken in response to boat groundings and other physical damage to sanctuary resources;

C. the Florida Trustees have 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;

D. the Florida Department of Environmental Protection (FDEP) employee who has been designated by the Secretary of FDEP and confirmed by the Florida Trustees shall represent the Florida Trustees as an equal partner to work in consultation with the Sanctuary superintendent for the oversight of Sanctuary operations; 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 Co-Trustees will cooperate in the implementation of the Management Plan through the process and mechanisms of cooperative decision making set forth in the separate "Interagency Compact Agreement for the Integrated

Management of the Florida Keys National Marine Sanctuary" which is to be signed by the Federal, State and local governments which have roles in implementing the Management Plan;

E. any amendments to the Management Plan will be submitted and reviewed pursuant to the State's clearinghouse process; any amendments to Sanctuary Regulations require the approval of the Governor on behalf and with the approval of the Florida Trustees in order to be effective in the State's waters and submerged lands, except for merely editorial amendments, technical corrections, and emergency regulations;

F. emergency regulations shall become effective in State waters upon approval of the Governor:

- 1) NOAA shall provide the Governor with a written notice of intent to promulgate any emergency regulation in State waters as soon as possible, but no later than one day prior to publication of the Notice in the Federal Register or other notice of emergency regulation;
- 2) in the case of emergency regulations for the closure of areas to activities which include recreational or commercial fishing, NOAA shall also provide the Executive Director of the Florida Marine Fisheries Commission with such notice as soon as possible, but not later than one day prior to publication of such notice;

G. The state reserves the right to initiate proposed changes to the FKNMS management plan; if necessary, NOAA shall initiate the federal rule promulgation process required to make revisions requested by the Florida Trustees to the regulations of the FKNMS management plan;

H. to the maximum extent not inconsistent with section 312(d) of the National Marine Sanctuaries Act, any monetary recovery that may result from any civil action will be used for the exclusive benefit of the Sanctuary; amounts recovered under section 312 of the Act will be used in accordance with the Memorandum of Agreement for Coordination of Civil Claims; civil penalties recovered under section 307 of the Act shall be used by NOAA consistently with the strategies and priorities of the Management Plan, and amounts recovered under section 307 with respect to incidents within areas subject to state jurisdiction shall be used in consultation with the State and in the area where the incident occurred, with priority given to addressing injuries, including restoration and prevention, unless NOAA and the State agree that the sums should be used on Management Plan strategies elsewhere in the Sanctuary.

I. Section 304(e) of the National Marine Sanctuaries Act requires the Secretary of Commerce to review the management plan and regulations for the Sanctuary every five years, evaluate the substantive process 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 regulation for the FKNMS 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.

V. Reservation of Rights

The Co-Trustees each retain full authority and reserve all rights to take whatever actions are deemed necessary to pursue, preserve or protect any legal right, interest, or remedy available. Nothing contained in this Co-Trustee Agreement is intended nor shall be construed to waive or foreclose any such authority, right, interest, or remedy.

VI. Modification Provisions

It is the expressed intent of the Co-Trustees to revise and make additions to this Memorandum of Agreement to reflect the continuing development of the cooperative relationship of the Co-Trustees in the protection and management of Sanctuary resources and implementation of the comprehensive management plan. Any modifications, revisions, or amendments to this MOA shall only be in writing and executed by the Co-Trustees and shall be incorporated into the Memorandum of Agreement and become effective only upon the signature of all Co-Trustees.

VII. Period

This agreement will become effective on the date of the last signature of the approving official or either party and will continue in force unless and until terminated in conjunction with the five year review of the management plan by NOAA and the State.

VIII. Savings Clause

Nothing herein is intended to conflict with current State or Federal laws, policies, regulations, or directives. If any of the terms of this Co-Trustee Agreement are inconsistent with existing NOAA or State laws, policies, regulations, or directives, then those portions of this Co-Trustee Agreement which are determined to be inconsistent shall be invalid; but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect.

At the first opportunity for review of the agreement, all necessary changes will be accomplished by either an amendment to this agreement or by entering into a new agreement.

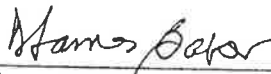
Should disagreement arise on the interpretation or implementation of the provisions of this agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the matter shall be forwarded to respective higher officials for appropriate resolution.

All requirements of this agreement are subject to the availability of funds of the parties.

IX. Execution by Counterpart

This Co-Trustee Agreement may be executed in counterpart and shall be deemed effective upon execution by all parties.

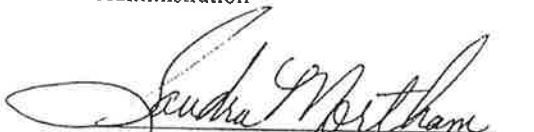
MAY 19 1997



D. James Baker Date
National Oceanic and Atmospheric Administration




Lawton Chiles Date
Governor of Florida



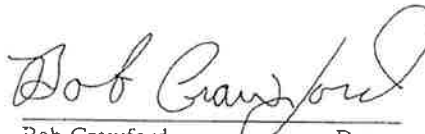
Sandra Barringer Mortham Date
Secretary of State



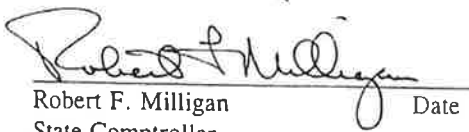
Bill Nelson Date
State Treasurer and Insurance Commissioner



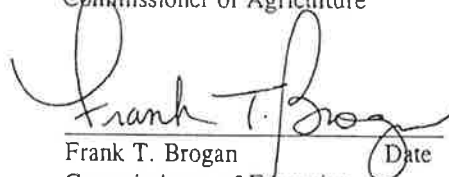
Robert A. Butterworth Date
Attorney General



Bob Crawford Date
Commissioner of Agriculture



Robert F. Milligan Date
State Comptroller



Frank T. Brogan Date
Commissioner of Education