



SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

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Jessica McCawley, Chair | Mel Bell, Vice Chair
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March 13, 2020
LN# 2020-11

Ms. Sarah Fangman
NOAA/NOS – Sanctuary Superintendent
Florida Keys National Marine Sanctuary
33 East Quay Road
Key West, FL 33040

RE: Comments on the Proposed Regulations for the Draft Environmental Impact Statement: Florida Keys National Marine Sanctuary Restoration Blueprint

Dear Ms. Fangman:

Thank you for the opportunity for the South Atlantic Fishery Management Council (Council) to respond to the Draft Environmental Impact Statement (DEIS) for the Florida Keys National Marine Sanctuary (FKNMS). The Council supports the FKNMS's goals to improve natural biological diversity of the Florida Keys and to facilitate, where compatible, public and private use of the resources that are not otherwise prohibited. At the same time, the Council acknowledges that it can be difficult to balance the competing interests of biological conservation and human use of the resources. The comments provided in this letter reflect the Council's recommendations and determinations on how best to meet these goals through the proposed actions of the DEIS that have an impact on fisheries and coral species which are currently managed by the Council in the South Atlantic Exclusive Economic Zone (EEZ) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The Council notes the need for careful management of the FKNMS resources that include the largest barrier reef in the continental U.S. The Council, key stakeholders, and the Councils' advisory bodies emphatically expressed concerns about water quality degradation and how it affects the fisheries and the coral reefs in the Florida Keys. They noted that good water quality is essential to the restoration and recovery of the FKNMS ecosystem and, without addressing water quality concerns, that any restoration efforts and habitat protections will be limited in terms of scope and success. The Council understands that corrective action will require the attention and cooperation of multiple management entities and suggests that the FKNMS take a leadership role in regional water quality efforts. In addition to water quality, the Council is concerned about the adverse effects of climate change and disease on coral populations. In order to ensure that ESA-listed *Acroporid* corals are getting adequate protection, the Council intends to work with the Florida Fish and Wildlife Conservation Commission (FWC) to re-examine the 60 areas in federal waters of the FKNMS that were closed to the use of lobster traps through

Amendment 11 to the Spiny Lobster Fishery Management Plan under the Magnuson-Stevens Act. The Council will determine if these areas are still in the right locations to provide protection to corals, whether different areas need protections, and whether some existing areas need to be removed if they are no longer offering protection for these species following Hurricane Irma.

In addition, the Council and its advisory bodies were emphatic about the need for additional FWC law enforcement in the FKNMS to enforce existing regulations as well as any new proposed changes in the DEIS.

FKNMS Proposed/New Expanded Sanctuary Preservation Areas in the South Atlantic EEZ

The DEIS is proposing a new Sanctuary Preservation Area (SPA) called Delta Shoal. The Council supports a status quo position (Alternative 1) on this area and does not think it should be added as a SPA at this time as doing so would be counterproductive and encourage increased use of the area.

The Council supports the status quo (Alternative 1) for Key Largo Dry Rocks and Grecian Rocks SPAs as they are currently designated, rather than combining them into a continuous SPA, because the current zoning adequately protects the corals within the existing SPAs. The proposed expansion greatly increases the size of the SPA, yet it only marginally increases the amount of coral protected, and thus does not meet the purpose of the DEIS to extend sanctuary protections to areas that have significant marine resources.

The DEIS is proposing to expand the size of the current Sombrero Key SPA, Tennessee Reef Conservation Area (CA), and Alligator Reef SPA. The Council supports the following boundary changes proposed for these areas:

- Sombrero Key SPA – Alternative 4
- Tennessee Reef Conservation Area¹ – Alternative 2
- Alligator Reef SPA – Alternative 2.

Expansion of these areas under the alternatives supported by the Council will significantly increase the amount of protection afforded to coral within the SPAs and CA.

The Council shares the FWC's concern for coral, particularly for unprotected coral nurseries in federal waters of the Council's jurisdiction. There are 5 areas that the Council discussed that need protection. However, the Council noted that they wanted the smallest possible areas closed to fishing. The Council also supports the FWC's proposed suggestion that a process be developed to open and close these areas around active restoration sites in a timely manner, such as for a two-year period of time. With that in mind, the Council supports the following:

- Carysfort Reef SPA – Alternative 2 (extends area into deeper waters and slightly inshore (3.79 sq miles)). This expansion would encapsulate an existing coral nursery.
- The Elbow SPA – A modification of Alternative 4 to expand the boundary and adjust shape of area to incorporate nearby coral nursery.

¹ Tennessee Reef is currently considered a Special Use Area. Proposed Alternative 2 would make it a CA while proposed Alternative 3 would make it a SPA.

- Pickles Reef SPA/Snapper Ledge SPA – A modification of Alternative 4, which would create two smaller polygons that encapsulate 3 coral nurseries, rather than replacing Pickles Reef SPA with the larger Snapper Ledge SPA as proposed by FKNMS.
- Marathon Key SPA – Alternative 2. In addition, the Council suggests adding an additional polygon near the proposed Marathon Key SPA to encapsulate an existing FWC coral nursery.
- Looe Key – Extend the current SPA and CA in this area to encapsulate 2 existing coral nurseries.

The Council agrees that SPAs do afford considerable protection primarily to corals. However, the Council does not support prohibiting all fishing activity within SPAs when that activity has a low probability of interacting with corals. For example, trolling, which occurs higher up in the water column, does not come into contact with corals. The Council’s Marine Protected Areas prohibit anchoring and bottom fishing but do allow trolling because it is a fishing activity that does not interact with coral. To better meet the needs of the DEIS, the Council requests that the FKNMS consider allowing trolling in all SPAs within the South Atlantic EEZ since prohibiting trolling is not necessary to protect corals.

Key Largo Management Area

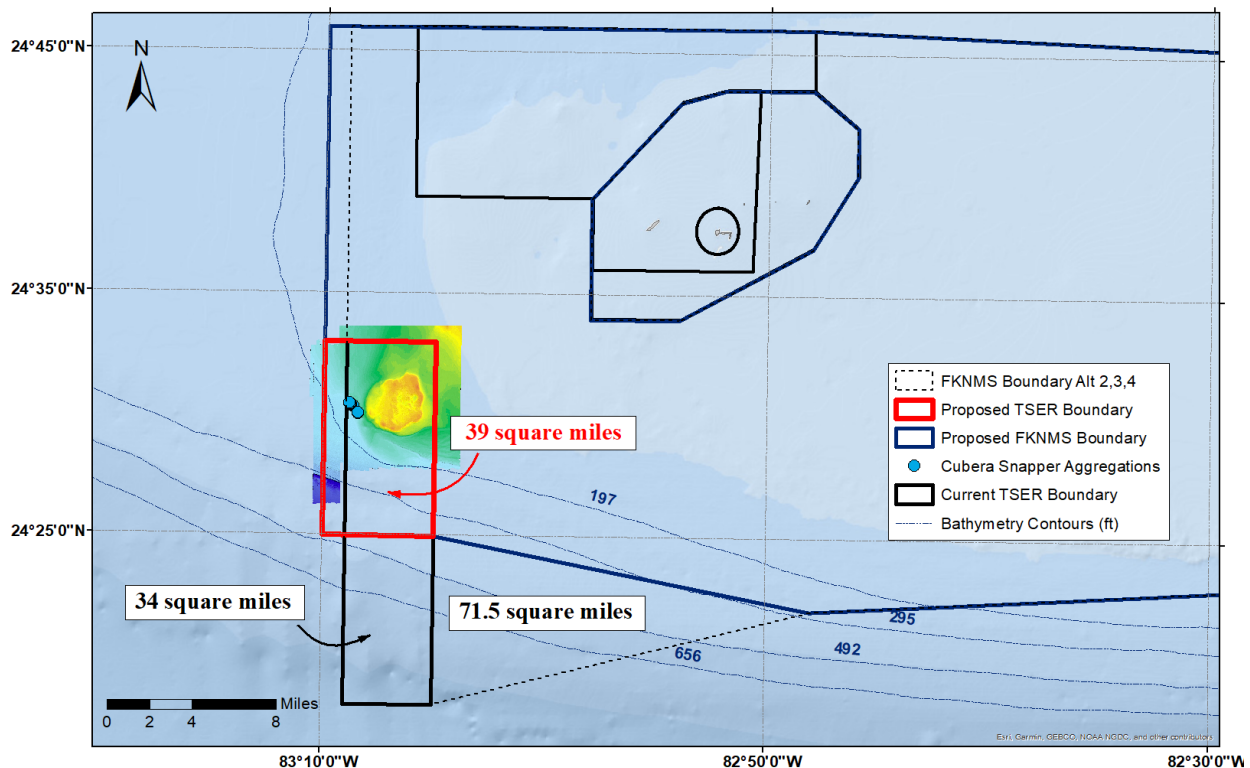
The Council supports the status quo for the Key Largo Management Area. The proposed prohibition on anchoring in this 132 square mile area is too sweeping and too restrictive for such a large and diverse area without adequate need and documentation of potential benefits. The Council did not find that the strict regulation was adequately justified. Furthermore, the Council considered the scientific evidence and documentation of benefits provided in the DEIS to be inadequate. In addition, the United States Coast Guard representative on the Council raised concerns that the extensive no anchoring and idle speed areas proposed in the DEIS, particularly those extending into deep water areas, pose boater and fisher safety issues and should be reconsidered.

Large, Contiguous Area Protections

The Council opposes the proposed designation of three large, contiguous, SPAs for fisheries management. Two of the proposed SPAs run from the shoreline out into the EEZ, and the third joins two other management areas. The two shoreline-to-EEZ SPAs are the Carysfort Reef and Long Key Tennessee Reef SPAs (aka Tennessee Reef CA in Alternative 4). The Council also opposes the proposed Tortugas Spawning Corridor SPA. The reason for the Council’s opposition is that the benefits to the fisheries resulting from the proposed restrictions in these three large areas are poorly understood, and it is not clear how these proposed closures contribute to achieving FKNMS’s goals and objectives. Further ecological and social science research is needed to determine if the proposed regulations in these large management areas are effective and would provide benefits that would offset restricted access. The Council is concerned about the potential for loss of fishing access and opportunity, for no clear conservation benefit, that will result from large closed areas that go from inshore to offshore and cross into the EEZ as proposed by the FKNMS in the DEIS.

Sanctuary Boundary Expansion

The Council supports the FWC's proposed modification to the proposed expansion of the Sanctuary boundary in the Tortugas, including the changes to the boundary of the Tortugas South Ecological Reserve (see the reference map below). The FWC's proposal would open access to the southern portion of Tortugas South Ecological Reserve (TSER) and adjust the proposed sanctuary boundary accordingly. The northern portion of TSER includes Riley's Hump, which has been documented as a known spawning ground for cubera snapper. The FWC has proposed moving the westward boundary of the Sanctuary and TSER slightly further west, to allow for additional protection for previously observed cubera snapper and black grouper spawning aggregations in this region and the Council also supports this westward expansion. However, there is no known fisheries protection afforded by the southern portion of TSER and the proposed expansion (approximately 105 square miles total), thus, FWC and the Council do not believe these areas should be included in the FKNMS.



Baitfish Permits

The Council does not support the proposed three-year phase out of any of the baitfish permits. The Council supports status quo for baitfish permits. Like the FWC, the Council believes that lampara net baitfishers are able to fish within SPAs without interacting with corals because of how the gear is used. Similarly, experienced cast net fishermen can throw their nets without interacting with corals. These fishermen know that getting their nets in coral will damage their gear, and they know to avoid throwing them in areas where corals are present. Banning cast nets altogether in the SPAs is considered by the Council to be too restrictive of an action for an issue that is not documented as a known problem.

Live Rock Aquaculture Permits

The Council supports Alternative 3 that proposes developing a Memorandum of Understanding between the FKNMS, the State of Florida, and the National Marine Fisheries Service for monitoring live rock management and permits. Alternative 4 is seen as overly burdensome for the few participants in the live rock fishery, as it will add an extra layer of bureaucracy requiring fishery participants to get an additional authorization from the Sanctuary in addition to existing permit requirements from the State of Florida and the National Marine Fisheries Service.

Traditional Fishing Definition

The DEIS proposes to modify its definition of “traditional fishing.” The change in definition is important because it will regulate future types of fishing allowed, and more importantly those not allowed, within the sanctuary. It prohibits the use of novel or new gear types, use of previously used or modified gear types in new fisheries, or use of such gears outside of seasons identified in the original management plan. The Council considered the change counterproductive and opposes the adoption of this new definition. If this new definition were put into place, no new innovations in fishing gear would be allowed that could help reduce bycatch of untargeted species. For example, the Florida Keys, like much of the Southeastern U.S., is facing a disruption in ecosystems caused by the invasive lionfish and the DEIS identifies lionfish as an emerging threat to sanctuary resources. Lionfish are currently targeted in spiny lobster traps in the Florida Keys, and experimentation is underway using modified lobster traps to determine the best way to harvest lionfish in an effort to remove as many as possible while minimizing bycatch. The proposed definition would stop all lionfish harvest by traps within the FKNMS. This example demonstrates how the new proposed definition could have unintended consequences and impact the future ability to improve fisheries, fisheries management, and the overall health of the FKNMS in ways that no one is yet able to identify. Further, the proposed definition change is also contrary to one of the purposes of the DEIS, which is to extend sanctuary protections to management strategies concerning emerging threats to the resource.

Emergency Regulations Changes

The Council is concerned that the proposed changes to the emergency regulations, which would allow a 180-day regulation with an extension for another 186-days, would limit the Council’s ability to comment on rule changes. Specifically, the Council is concerned that the FKNMS would enact temporary regulations that affect fisheries and fishing related businesses that operate in the South Atlantic Council jurisdiction without the Council having an opportunity to comment or weigh in on the proposed emergency measures. The Council requests that the FKNMS ensure the process for emergency rules preserves a reasonable opportunity for it to comment on these proposals before they are finalized and not simply be notified of the regulatory changes after the fact.

The current Protocol for Cooperative Fisheries Management for the FKNMS was signed into effect in 1997 and 1998. The Council supports working with the FWC and the FKNMS to revise and update the agreement at the earliest convenience for all parties involved.

In conclusion, the Council again thanks the FKNMS for the opportunity to respond to the DEIS. The Council looks forward to continuing our efforts in working with the FKNMS to protect our Nation’s marine resources.

Sincerely,

A handwritten signature in blue ink, appearing to be 'J. McCawley', with a stylized flourish at the end.

Jessica McCawley
Chair

cc: Carrie Simmons, GMFMC
Monica Smit-Brunello, NOAA GC
John McGovern and Rick DeVactor, NMFS SERO
SAFMC Members & Staff