

## Compilation of Advisory Panel Recommendations

As part of the inter-agency consultation process, the Council convened its Advisory Panels (AP) to provide recommendations on the draft rule for the Florida Keys National Marine Sanctuary (FKNMS) expansion. The draft rule was published on July 18, 2022 with the public comment period closing on October 26, 2022. The Council was granted additional time to provide comments. The following sections include excerpts from all of the AP meetings where the draft rule was discussed.

### Joint Coral, Shrimp, and Spiny Lobster AP – September 12, 2022

Mr. Stephen Werndli (FKNMS staff) presented the proposed rule for the FKNMS expansion. Additional FKNMS staff also attended the webinar and were able to answer questions specific to their expertise. The Council has been granted an extension to provide comments until February 17, 2023.

The Shrimp AP expressed concerns regarding the steps in which the FKNMS evaluated the comments received for the 2019 Draft Environmental Impact Statement (DEIS). Specifically, a Shrimp AP member recounted the minutes of the discussions held during the September 16, 2019, Joint Meeting of the Special Coral Scientific and Statistical Committee and Coral and Shrimp APs during which FKNMS staff indicated that the purposes of the northwest and southwest extensions of the FKNMS were to protect the habitat from large vessel damage from groundings and to provide a boundary line that was easier to enforce. The Shrimp AP member further noted that there was only minimal reference in that discussion to any ecological benefits in the proposed expansion other than a general reference to some research being conducted that suggested some ecological and genetic connectivity between Pulley Ridge and the Florida Keys. The Shrimp AP requested additional explanation of the benefits of the proposed boundary change and expressed concern about what this would mean for the changes in fishing regulations after the entire Area to be Avoided and Dry Tortugas region become part of the FKNMS. Council staff reminded the Joint APs that the final letter submitted by the Gulf Council in 2020<sup>1</sup> incorporated multiple AP recommendations over a series of meetings.

Members of the Shrimp AP and a member of the Coral AP recounted the process in which the Flower Garden Banks (FGBNMS) engaged stakeholders and modified its boundaries to closely follow the contours of the hard-bottom habitat. When discussing the process by which boundaries for the various zones were selected, Mr. Werndli responded that the previous condition report provided recommendations on which areas needed to be modified, removed, or created to meet the report's goals and objectives. This applied to zones that would protect birding, coral, ecosystem services, artificial habitat, and permit procedures. Additionally, working groups, partner agencies, and the FKNMS Advisory Council also provided feedback.

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<sup>1</sup> <https://gulfcouncil.org/wp-content/uploads/04.c.-Ltr-to-Fangman-on-FKNMS-DEIS-Comments-022020.pdf>

The Shrimp AP also inquired about compliance of FKNMS regulations given the complexity of the Proposed Rule and the large amount of people that visit the region. A member of the Spiny Lobster AP echoed concerns about better monitoring of recreational use of FKNMS resources, as the commercial sector is heavily monitored. The group suggested the development of a permit for recreational activities within the FKNMS, such as SCUBA diving and snorkeling, to manage the amount of people that use FKNMS resources. Mr. Werndli mentioned that the primary violations in the FKNMS are fishing in FKNMS preservation areas and vessel groundings. Regarding permits, the DEIS included a proposal to limit access to three areas by only allowing usage by Blue Star operators<sup>2</sup>, which would prevent use by private vessel operators. This action has been removed from the Proposed Rule. Mr. Werndli also mentioned the development of a new GPS-enabled app that will provide location-based regulations in the hopes of increasing awareness among FKNMS users.

The Shrimp AP asked about additional efforts to ensure the protection of habitat and the management of water quality issues. Mr. Werndli referred to the Draft Management Plan published on the FKNMS website, which has additional information on the inter-agency coordination that would take place to address extra-jurisdictional issues.

When discussing shrimp effort data and the proposed expansion around the Dry Tortugas region, the Shrimp AP pointed out that shrimp activity would not occur in areas with coral habitat where nets could get entangled, and requested specific information on the type and amount of habitat that was considered important. Dr. Andy Bruckner (FKNMS staff) mentioned that deep water remotely operated vehicle and multibeam surveys have reported the presence of important habitat and that, although an area may not have a well-developed coral reef structure, rubble fields and other low relief habitat still provide the substrate for smaller coral colonies. These colonies can be a source of larvae to promote the recovery of coral reefs in the FKNMS, given the issue of coral mortality due to disease and environmental stressors. The Shrimp AP asked to be provided with the specific scientific documentation identifying these important habitats. In addition, the Shrimp AP commented the economic effects to shrimp revenue would be \$5 dollars in the proposed rule which seemed lower than expected.

Members of the Spiny Lobster AP expressed how difficult it is to understand the changes by zone when looking at the interactive map. A member of this AP is also concerned about offshore areas with idle speed regulations, like what is being proposed near the Marquesas, again raising the concern about the enforceability of the regulations.

Another member of the Spiny Lobster AP inquired about including additional protections in the proposal by also prohibiting the recreational harvest of spiny lobster in the areas that are currently closed to commercial trap gear. The AP member also encouraged allocating more funds to increase enforcement efforts, and encouraged providing a plan on how the proposed regulations would be enforced. A member of the Coral AP inquired about the definition of a

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<sup>2</sup> <https://floridakeys.noaa.gov/onthewater/bluestar.html>

traditional fishery and how this will be addressed via the update to the FKNMS Protocol for Cooperative Fisheries Management. The Coral AP member asked if the Council will have an opportunity to comment on the agreement before the FKNMS rule goes final. Ms. Joanne Delaney (FKNMS staff) replied that all of the inter-agency management agreements are undergoing a comprehensive review between now and any final EIS that the FKNMS publishes.

Based on the discussions that took place, the Shrimp AP provided the same recommendations as those from their September 2019 meeting. The Spiny Lobster AP requested to be added to the motions as well. The group highlighted that the intent is not to be against habitat protection, but that the rationale for the boundary expansion needed to be clearer and that additional stakeholder engagement was requested. Based on the fact the proposed rule did not incorporate the additional justification previously requested by the Shrimp AP, the following motions were passed opposing the westward and southward FKNMS boundary expansion.

**Motion: The Shrimp and Spiny Lobster APs oppose the proposed northwestern expansion of the Florida Keys National Marine Sanctuary boundary.**

*Motion carried with no opposition.*

**Motion: The Shrimp and the Spiny Lobster APs are not in favor the Florida Keys National Marine Sanctuary boundary expansion westward from the Tortugas Ecological Reserve South and the boundary expansion between the Tortugas Ecological Reserve South and the Dry Tortugas.**

*Motion carried with no opposition.*

**Motion: The Shrimp and the Spiny Lobster APs are not in favor of the southerly expansion of the Florida Keys National Marine Sanctuary boundary which encompasses the Area to be Avoided.**

*Motion carried with no opposition.*

A member of the Spiny Lobster AP asked if there are any data on the transplanted corals and their resiliency to coral stressors. Dr. Bruckner responded that a lot of progress has been made with coral restoration techniques and that the current work is focusing on transplanting corals with genetic traits that allow them to be more resilient to disease, bleaching, and other stressors in the hopes of increasing genetic variability on the reef when these corals reproduce. The member of the Spiny Lobster AP acknowledged the work that is being done, but is concerned that the Proposed Rule is not appropriately addressing the issues of enforcement and human impacts for the many users of the FKNMS.

**Motion: The Spiny Lobster AP supports the status quo of the Florida Keys National Marine Sanctuary boundary until they provide industry and all user groups with a detailed law enforcement plan.**

*Motion carried with one in opposition*

The motion received opposition from Ms. Butler (FWC biologist and Spiny Lobster AP member). She stated that the proposal does include a plan to address law enforcement issues with FWC and stressed the importance of protecting the habitat that will sustain the spiny lobster fishery.

Due to running out of time, the Shrimp AP requested the opportunity to have an in-person meeting to further discuss the proposed rule and look at the changes being proposed within the South Atlantic Council's jurisdiction, as well as to fully examine the fishing effort data within each of the individual FKNMS Preservation Areas, Conservation Areas, Restoration Areas, and Wildlife Management Areas being proposed.

### **Reef Fish AP – October 11, 2022**

Mr. Steve Werndli (FKNMS Staff) presented an overview of the Proposed Rule for the FKNMS expansion. The Reef Fish AP originally provided recommendations on the Draft Environmental Impact Statement in 2019 and these recommendations were included in the Council's letter to the Sanctuary in 2020. Mr. Werndli presented portions of the Proposed Rule that directly incorporated comments from the public and Council.

In addition to summarizing the contents of the Proposed Rule and describing the modifications to the management zone descriptions, Mr. Werndli highlighted sections of the Proposed Rule where extra clarification had been recommending during public scoping. These include the incorporation of more contemporary data for the socioeconomic analysis and updating the FKNMS Management Plan. The majority of the modifications to the FKNMS boundaries would expand protection areas for increased conservation connectivity, create new designations to particular areas depending on management goals, and standardize regulations across protection areas to reduce confusion for the public and improve enforcement.

The Reef Fish AP Chair commended the Sanctuary for incorporating the public comments received in 2019-2020 into the Proposed Rule, while maintaining its conservation goals. A Reef Fish AP member asked whether lobster traps would no longer be allowed in areas that were prohibited to anchoring and Mr. Werndli indicated that was correct. He also added that these regulatory designations (i.e., no anchoring, idle speed, no motor, etc.) were specifically implemented to individual areas to best achieve conservation goals. A Reef Fish AP member asked for clarification on the regulations in the areas surrounding Woman Key and Boca Grande Key Wildlife Management Areas including anchoring and fishing for bait. Mr. Werndli indicated that the marine zone designation would not change and that the 100 ft expansion into

deeper waters would provide a buffer to protect sea turtle and bird habitat. The expansion would not include an area of the beach popular to the public. He continued that exemptions for bait fishing would be removed in areas closed to fishing for consistent implementation of that regulation to avoid confusion and increase enforcement.

A Reef Fish AP member asked if the economic analysis conducted was localized and Mr. Werndli replied that the scope of those analyses was used to broadly examine economic effects at an industry level (i.e., tourist diving, recreational fishing, etc.) and it is possible that some individuals may be more affected than others. Another Reef Fish AP member inquired about potential increases in large *Sargassum* mats that wash ashore and how algal decay could affect the local coral reefs. After the meeting, Mr. Werndli contacted staff and indicated these effects are currently being researched by Dr. Brian Lapointe at Harbor Branch Oceanographic Institute.

*(No motions from this AP)*

### **Coral AP – November 9, 2022**

Ms. Beth Dieveney (FKNMS staff) presented the proposed rule for the FKNMS expansion. Additional FKNMS staff also attended the webinar and were able to answer questions specific to their expertise. This is the second time the Coral AP has been presented with this information, as the AP was not able to provide formal recommendations to the Council due to lack of time at the September 12<sup>th</sup>, 2022 meeting.

An AP member asked if any specific zones have been receiving many more or controversial comments from the public. Ms. Dieveney responded that the FKNMS has received comments in support of protecting benthic habitat, as well as comments in opposition referring to government overreach and no need for additional fishing regulations. The latter comment was specific to the Pulley Ridge Habitat of Particular Concern (HAPC), which already has restrictions on fishing with bottom-tending gear and anchoring by fishing vessels. Another AP member was in support of the sanctuary boundary change to align with the ‘Area to Be Avoided’ and the inclusion of Pulley Ridge, as this would allow for consistency in regulations and provide additional protection to important benthic habitat. The AP agreed that the inclusion of Pulley Ridge as part of FKNMS does not modify the current fishing regulations inside the Pulley Ridge HAPCs, and extending the no anchoring prohibition to include all vessels would strengthen the Council’s efforts to protect important mesophotic coral habitat.

**Motion: To support the FKNMS boundary expansion, including Pulley Ridge and Tortugas South, as proposed in the draft.**

***Motion carried with no opposition.***

Another Coral AP member was in support of the establishment of nursery and coral restoration areas, as well as the proposed expansion of sanctuary preservation areas (SPA) and no anchor

provision. The AP agreed that these zones would protect the bottom habitat. Although some of the newly designated nursery areas are not located on hard bottom, the no anchor and no take regulations would prevent entanglement with the equipment utilized for coral propagation (e.g., trees) as well as protect the SCUBA divers working in the area. The AP debated whether to support the no take regulation for all SPAs and nursery/restoration areas. An AP member expressed hesitation to support this regulation as bait fishing and trolling would pose minimal impact on bottom habitat. Another AP member argued that fishing practices could pose a risk to divers and equipment in the coral nursery and restoration areas. The AP requested clarification on the differences between a restoration area and a SPA as the regulations are similar. Ms. Dieveney responded that although the regulations are similar, designating nursery and restoration areas as a new type of marine zone would allow for focused management and community engagement on areas with a defined purpose. Currently, there are four SPAs where bait fishing is permitted. The proposed regulation to extend no take to all SPAs would allow for consistency in regulations and reduce stakeholder confusion whether fishing can take place or not.

Dr. Sweetman (Council liaison) addressed the group and suggested that the recommendations to the Council regarding no take be focused to SPAs, habitat restoration areas, eliminating of catch and release and bait fishing, and the designation of new marine zones. The AP decided to address the issue of no take on a separate motion and passed the following:

**Motion: To support the expansion of the existing sanctuary preservation areas as proposed in the draft rule to protect the deeper spur and groove coral habitat with the restrictions on anchoring and no discharge.**

*Motion carried with no opposition.*

**Motion: To support the creation of the restoration and nursery area marine zones as included in the draft rule.**

*Motion carried with no opposition.*

An AP member mentioned that perhaps it would make sense to allow fishing activities that would not interact with the bottom, but that the issue would be with enforcement as stakeholders may have trouble differentiating if bottom fishing versus pelagic fishing is allowed in an area, so having consistent regulations would make sense.

While discussing the topic of future changes in marine zone designation, an AP member emphasized the need to have a concrete plan that would incorporate adaptive management, especially given the amount of interest and efforts to protect and restore coral reef habitat in the Florida Keys. The AP member recommended the Council to be involved in this process and that it should be an endeavor separate from the emergency rule process as to not be constrained by time, and work with people beyond the co-trustees. The AP member also recommended that adaptive management should be deliberate and forward-thinking. Ms. Dieveney clarified that

emergency and temporary regulations are one part of the many other tools the sanctuary has for adaptive management and not just a response to an emergency.

**Motion: To recommend that the Council support the concept of adaptive management but recommend that the sanctuary create a separate process for adaptive management, separate from emergency and temporary regulations.**

*Motion carried with no opposition*

An AP member recommends the protection of zones known to sustain spawning aggregations. Ms. Dieveney mentioned that the proposed rule does include protection to areas where fish spawning aggregation takes place such as: the expansion of the Tortugas South Conservation Area, the creation of the Western Dry Rocks Wildlife Management Area, and the expansion in Carysforth Reef SPA. The AP member was concerned that allowing surface trolling activities makes it very difficult for law enforcement to determine if there are other illegal fishing activities occurring. A similar issue was addressed by the Council by prohibiting trolling and possession of reef-fish year-round inside the Madison-Swanson and Steamboat Lumps Marine Protected Areas<sup>3</sup>. Ms. Dieveney mentioned that designating these areas as transit only would prohibit fishing with trolling motors, or spot-lock fishing. Continuing the discussion of protecting spawning aggregations, the AP member suggested that this topic could be considered in the Council's Fishery Ecosystem Plan. Another AP member reminded the group that zone closures are not the only way to protect fish spawning, and that spawning events are also protected with the enforcement of species-specific seasonal closures. The AP passed the following motion, which aligns with current Florida Fish and Wildlife Conservation Commission (FWC) regulations for Western Dry Rocks:

**Motion: To recommend the creation of the Western Dry Rocks Wildlife Management Area.**

*Motion carried with no opposition.*

The AP discussed the types of gears used for bait fishing and although most of them do not have contact with the bottom, cast nets could still pose a threat. Mr. Werndli mentioned that the number of permits for bait fishing in the SPAs was reviewed. He mentioned the number was very limited and that many of the users reporting not using them. The AP is not against bait fishing in the SPAs but would support a modification to the practice so the bottom contact is minimized, such as modifying allowable fishing gear.

**Motion: The Coral AP supports bait fishing activities in the SPAs, so long as gear type does not interact with bottom habitat.**

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<sup>3</sup> <https://gulfcouncil.org/wp-content/uploads/Final-Modifications-of-Fishing-in-MPAs-508-081420.pdf>

*Motion carried with no opposition.*

The AP also discussed the definition of traditional fishing and stated that the definition as it's stated is vague and would not allow for the development of novel fishing practices.

**Motion: To recommend the Council support revising the definition of traditional fishing to allow for use of innovative gears and practices that reduce impacts on Sanctuary resources.**

*Motion carried with no opposition.*

Since the draft rule mentions that the definition of traditional fishing would be further clarified on an updated Protocol for Cooperative Fisheries Management, an AP member asked about the status of this document and if stakeholders would have the opportunity to weigh in on it. Council staff updated the group on the status of the document. At this point staff from the Gulf and South Atlantic Councils, NOAA General Counsel, FWC, and FKNMS have begun working on a draft, although a timeline has not been established yet. The plan is to present this document to the Council, which would become part of the public record, thus stakeholders can voice their recommendations for the Council to consider.

**Motion: To consider allowing input from the public on the draft protocol for cooperative fisheries management before it is finalized.**

*Motion carried with no opposition.*

The AP discussed the issue of law enforcement and delineating marine zones with straight lines. The rationale behind delineating boundaries with straight lines has been to increase enforcement and reduce confusion among user groups. An AP member mentioned that with advancements in chart plotting technology, this should not be a justification. The AP's opinion was divided, thus did not provide specific recommendations on eliminating catch and release from SPAs. The AP recognizes the difficulties in balancing sustainable management practices while maintaining access to a marine sanctuary that is basically "people's backyard", as stated by one of the AP members.

### **Shrimp AP – November 15, 2022**

Ms. Dieveney (NOAA/FKNMS) provided information on the proposed boundary expansion of the Florida Keys National Marine Sanctuary (FKNMS) supplementing the presentation given to the Joint Coral, Shrimp, and Spiny Lobster AP meeting on September 12, 2022.

An AP member asked how an emergency is determined for the temporary regulation for emergency and adaptive management. Ms. Dieveney explained that two emergency regulations for closures had been applied in the past: one for a disease event and another for a vessel

grounding. The emergency regulations would depend on the specific need to protect and restore the habitat. Another AP member noted that commercial fishing data used for the socioeconomic analysis only came from Florida Fish and Wildlife Conservation Commission (Florida FWC) and asked if the data were pulled for the entire state or only for Monroe County. Dr. Schwartzman (NOAA/FKNMS) responded that landings were examined for the statistical areas associated with the FKNMS, regardless of where they were landed in Florida. The AP member noted that landings could have occurred outside of Florida, in another state and would not have been reported through this query. Mr. Gill (Council member) noted that the data were roughly four years old, as the last year for commercial data was 2019 and for recreational data was 2018. Ms. Dieveney responded that, at the time of developing the proposed rule, it was the most recent data; the data will be updated for the final rule. An AP member inquired why Rock Key and French Reef were proposed for elimination from FKNMS Preservation Areas. Ms. Dieveney responded that it was in response to public and agency feedback and that those two areas have either achieved their goal or are no longer in the position to achieve their goal.

An AP member inquired why effort data was not showing in the map of the southern area of the FKNMS. Council staff responded that data provided in the map were for the Gulf only. Another AP member responded that the cellular electronic logbook (cELB) requirement does not exist for the South Atlantic region. Council staff also noted that, for confidentiality purposes, some fishing effort may not be shown on the map, if fewer than three vessels had made a tow in a grid. An AP member also commented that only the 2018 – 2020 years of shrimp fishing effort are shown on the map and that additional years before 2018 need to be included. Dr. Travis (Southeast Regional Office, SERO) responded that going back to 2004 was not necessary because the fleet, as well as the effort, was larger back then, so perhaps only including a few years prior to 2018 might make more sense so that effort would be reflective of current usage. The AP member replied that the confidentiality issue could be reduced if more years were included. Another AP member encouraged the FKNMS staff to work with the National Centers for Coastal Ocean Science (NCCOS) staff for data and mapping purposes. Dr. Gloeckner (SEFSC) replied that his staff could work with NCCOS and FKNMS staff on cELB data requests for mapping purposes.

An AP member asked what it meant for something to be included or not included in the proposed rule. Ms. Dieveney explained that some topics were in the 2019 Draft Environmental Impact Statement (DEIS) that may or may not have been carried forward for inclusion in the proposed rule, based on comments received by the public and partner agencies. The AP member noted that enforcement is one of the priority themes for the management plan, which coincides with one of the recurring concerns by stakeholders with the proposed regulations. The AP member noted the motion from the September 12, 2022, Joint AP meeting for status quo of the FKNMS boundary until a detailed enforcement plan was provided. Ms. Dieveney responded that they are working closely with NMFS Office of Law Enforcement, Florida FWC, U.S. Coast Guard, and others. Mr. Werndli (FKNMS) noted the FKNMS itself does not have law enforcement capabilities and therefore relies on its partnerships. Another AP member commented that any phone app for FKNMS regulations would not be useful due to cellular service issues offshore

and stated that there were no repercussions for the recreational users. Mr. Gill noted that, in 2018, the shift from MRIP-CHTS to MRIP-FES, which generally found the recreational landings to be considerably greater, so the economic estimates may need to account for that. An AP member then asked if wind turbines would be allowed in the proposed FKNMS expansion. Ms. Dieveney responded that there would not be wind turbines allowed in the proposed expansion, as it currently stands.

An AP member stated the proposed rule selects a sample of the full range of alternatives for implementation and that it is difficult for members of the public to look into each analysis individually and attempt to reach a comprehensive view. Ms. Dieveney responded that the proposed rule is the single alternative and that the preamble provides much of the context behind what is proposed. The AP member stated that the definition of traditional fishing needs to be included in the proposed rule, particularly highlighting that shrimping is included in that definition. The AP member commented that, for the emergency rule, the steps need to be outlined; in comparison, NOAA has to consider whether an issue was unforeseen, when determining an emergency action for fishery management.

The AP highlighted that the area west of the Tortugas Ecological Reserve North is heavily utilized by the shrimp fleet. Ms. Dieveney, explained that the northwest proposed expansion of the boundary would still allow for shrimping. An AP member is concerned about future closure of those shrimping grounds if the area becomes part of the FKNMS, such as an extended closure due to emergency ruling or the creation of a future marine zone with fishing restrictions. An AP member stated that the concern with expanding the southern boundary of the FKNMS is that, if the proposed new area was ever closed to shrimping, then that would encompass all the shrimping grounds in that area.

Council staff reviewed the three motions from the September 12, 2022, Joint Coral, Shrimp, and Spiny Lobster AP meeting and inquired if any modifications needed to be made. Several Shrimp AP members confirmed that no changes were needed to those motions.

An AP member commented that it would be beneficial for the South Atlantic Council's Shrimp AP to provide feedback on boundary expansions that affect waters within the South Atlantic Council's management.

**Motion: To recommend the South Atlantic Council convene a Shrimp AP to comment on the FKNMS proposed rule prior to the deadline. A link for this meeting would be emailed to the Gulf Shrimp AP members so that they can listen and give public comment during the meeting if they so desire.**

***Motion carried with no opposition.***

An AP member commented how the Gulf Council has defined what an emergency is and what steps can be taken. The AP member stated that it would be preferable for the same to be applied

for the FKNMS, as it currently seems broad and vague as well as the fact that emergency management has been taken in the past to stop fishing.

**Motion: To recommend that, prior to the approval of any proposed rule, the FKNMS define the parameters for what constitutes an "emergency" for which emergency management actions and regulations can be taken. The Shrimp AP opposes actions taken under emergency management being enacted for any more than 6 months.**

*Motion carried with no opposition.*

An AP member stated that it is currently difficult for stakeholders to understand the proposed rule and that a clean approach would assist in garnering feedback.

**Motion: To recommend that the FKNMS creates a new alternative in the DEIS which encompasses the actions in the proposed rule and provides a comprehensive analysis of that new alternative prior to the approval of any proposed rule.**

*Motion carried with no opposition.*

Several AP members requested that the Gulf Council representative to the South Atlantic Council's December 2022 meeting convey three motions made during this meeting by the Gulf Council's Shrimp AP.

### [Coastal Migratory Pelagics \(CMP\) AP – December 1, 2022](#)

Mr. Stephen Werndli (FKNMS staff) provided a presentation reviewing a recently published draft rule to modify conservation measures for the FKNMS. The draft rule was published on July 2022 which details the proposed FKNMS boundary expansion and provides updates and additions to management area descriptions. The recommendations provided by the AP will be presented to the Council during its January 2023 meeting.

An AP member asked Mr. Werndli to characterize the public comments received to date. Mr. Werndli responded that the FKNMS received comments in support of the draft rule and protection of the habitat. Other comments expressed concerns with enforceability of proposed FKNMS modifications. The AP had concerns about the definition of traditional fishing, which it considered outdated and did not account for the development of new fishing techniques. The AP inquired about which agency has the final say in management implementation, given the Council has authority of fishing regulations within the sanctuary. The AP was concerned about future fishing restrictions should Pulley Ridge become part of the FKNMS. Specifically, the AP inquired about the rationale to include Pulley Ridge as part of the FKNMS boundary expansion and suggested that area be managed as a separate sanctuary. The AP further noted that Pulley Ridge is visited by user groups outside of the Florida Keys and contains a mesophotic reef

system that is different from the shallow water reefs in the Florida Keys. The AP also discussed the benefits of restricting anchoring of all vessels in Pulley Ridge, as the area can be used as a staging point for larger vessels waiting for access to Gulf ports.

**Motion: The CMP AP recommends that Pulley Ridge be excluded from the FKNMS expansion.**

*Motion carried 10-1.*

The AP also discussed the issue of enforceability and delineating marine zones with straight lines instead of a more shaped designation like what was used in the Flower Garden Banks (FGBNMS). An AP member shared that the Shrimp and Spiny Lobster APs expressed similar concerns during their joint meeting in September 2022. Another AP member asked about the management plan to address water quality issues, as nutrient runoff and spillage of untreated water has been a continuing issue affecting the region's coral reefs. The AP member recommended the FKNMS be more involved in regional water quality management.

An AP member disagreed with the socio-economic analyses' conclusion that the draft rule would mostly affect small entities and not large businesses. The AP member argued that the main asset in the Florida Keys is access to the water, which is something that is being reduced with the proposed regulations. He mentioned that, compared to previous years, many shrimp docks, as well as recreational and commercial waterfront access points, have disappeared. He contended that anything that affects small users is going to echo up the economic chain. Keys residents are already subject to transitioning from septic to sewer to improve water quality, the cost of which adds additional strain to low-income households. This and other cost of living increases may be exacerbating gentrification and displacement of the working class in Monroe County.

The AP also discussed enforcement of a limited entry permit, similar to how some National Parks limit the number of visitors. An AP member used Bahia Honda as an example, where visitors receive a pamphlet outlining the activities that are allowed inside the State Park. The AP explained that reefs in the worst condition tend to be those with mooring buoys and high visitor traffic by snorkel and diving charters.

**Motion: The CMP AP recommends no expansion to the FKNMS.**

*Motion carried 7-4.*

### **Spiny Lobster AP Recommendations – December 7, 2022**

Ms. Beth Dieveney (FKNMS staff) presented the draft rule for the FKNMS expansion. This is the second time the Spiny Lobster AP has been presented with the opportunity to ask questions to FKNMS staff and provide recommendations to the Council.

When discussing fishing activities allowed in the FKNMS, the AP asked if the sanctuary boundary expansion would affect fishing activities, specifically shrimping as this concern had been raised during the joint Coral, Spiny Lobster, and Shrimp AP meeting. Ms. Dieveney responded that fishing is still allowed inside the FKNMS, unless otherwise specified by a special marine zone designation. The AP also asked about the definition of traditional fishing and how this may affect the development of novel fishing practices. Ms. Dieveney indicated that the procedure to allow novel fishing gear will be outlined in the Protocol for Cooperative Fisheries Management.

The AP also asked about the installment of buoys to clearly mark the marine zones, as the FKNMS is visited by many tourists who may not know the regulations on the water. Ms. Dieveney mentioned that there is a newly formed working group tasked with evaluating the need of installing buoys for the various Sanctuary Preservation Areas (SPAs), as well as researching the number of mooring buoys allowed for recreational use. The AP commented that many reefs with high traffic of snorkel and SCUBA charters seem to be in worse condition.

An AP member asked the reasoning behind closing new areas for coral nursery and restoration instead of using areas that are already closed. Ms. Dieveney responded that this practice already takes place in areas that are already closed. Council staff also mentioned that the Coral AP had a similar discussion and that the proposed regulations would prevent entanglement with the coral-nursery gear, and would protect the divers that may be working at the bottom.

The AP also asked if using baiting lobster traps would be prohibited under the “fish feeding” restrictions. Ms. Dieveney responded that the draft rule does not prohibit chumming or the use of bait for traditional fishing practices, but that activities such as chumming for recreational shark diving would be prohibited. An AP member who also has a bait fishing permit, is against the phase out of these permits as the practice of fishing for ballyhoo does not have a negative interaction with the bottom as these fish congregate close to the surface.

The AP asked if the temporary and emergency regulations give the FKNMS the authority to close a zone for any reason. It was explained that this type of action has only been used twice since its inception two decades ago: once to aid habitat recovery after the grounding of a vessel, and another one for the recovery of corals after a disease event. The proposed change would extend the amount of days emergency rulemaking can be in effect to match the same number of days outlined under MSA. It is also being used as a tool for the FKNMS to integrate adaptive management technique and reduce response time. The draft rule includes three categories in for which emergency rulemaking could take place. Although emergency rulemaking does not require a public comment period, the FKNMS would still reach out to the affected constituents before undertaking any kind of emergency rulemaking.

An AP member asked why the draft rule expected to double the economic impact (~2% annual revenue loss) to the spiny lobster fishery, when compared to other commercial fishing practices (~1% loss). He also mentioned that although 2% sounds small, it still amounts to approximately

one million dollars in dockside value, and that this value would be higher once it gets to the consumer. FKNMS staff recognized the economic value of the spiny lobster fishery and explained that the difference compared to other fishing practices is due to the reduction in benthic spiny lobster habitat that could be accessed to prosecute the fishery.

The AP suggested the FKNMS should simplify the process, make regulations consistent with other management authorities in the region as much as possible, and engage with partner agencies, especially as it pertains to water quality issues. An AP member stated that the smaller turnout for this round of public meetings compared to when the draft environmental impact statement (DEIS) was released, was due to poor public perception of how their input was considered.

The AP did not modify its previous motions from the September 2022 meeting<sup>4</sup>, which were:

**Motion: The Shrimp and Spiny Lobster APs oppose the proposed northwestern expansion of the Florida Keys National Marine Sanctuary boundary.**

*Motion carried with no opposition.*

**Motion: The Shrimp and the Spiny Lobster APs are not in favor the Florida Keys National Marine Sanctuary boundary expansion westward from the Tortugas Ecological Reserve South and the boundary expansion between the Tortugas Ecological Reserve South and the Dry Tortugas.**

*Motion carried with no opposition.*

**Motion: The Shrimp and the Spiny Lobster APs are not in favor of the southernly expansion of the Florida Keys National Marine Sanctuary boundary which encompasses the Area to be Avoided.**

*Motion carried with no opposition.*

**Motion: The Spiny Lobster AP supports the status quo of the Florida Keys National Marine Sanctuary boundary until they provide industry and all user groups with a detailed law enforcement plan.**

*Motion carried with one in opposition.*

The group is very interested in the protection of habitat, but feels that something is lacking since the condition of the sanctuary continues to deteriorate since 1997 when it was placed under

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<sup>4</sup> [https://gulfcouncil.org/wp-content/uploads/04b.-Jt-Coral-Shrimp-Spiny-Lobster-AP-meeting-summary-September-2022\\_11012022.pdf](https://gulfcouncil.org/wp-content/uploads/04b.-Jt-Coral-Shrimp-Spiny-Lobster-AP-meeting-summary-September-2022_11012022.pdf)

federal management. The AP further reiterated their concerns that non-fishing impacts (e.g., water quality) are not being addressed. The AP also has concerns on the enforceability of the draft rule, given the reduction of funds to hire additional law enforcement officers.

The AP recommends figuring out a way to mitigate the impacts of recreational use of the sanctuary and that the FKNMS should explore the alternative of user-fees. Ms. Dieveney reminded the group that the FKNMS explored this option in the DEIS, but received many comments from locals in opposition.