

**DRAFT LETTER TO FLORIDA KEYS NATIONAL MARINE SANCTUARY ON
PROPOSED RULE for COUNCIL REVIEW**

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

Dear Superintendent Fangman,

The Gulf of Mexico (Gulf) Fishery Management Council (Council) greatly appreciates the collective efforts of you and your staff to ensure a transparent and inclusive consultation process as it relates to the development of the Florida Keys National Marine Sanctuary (FKNMS) proposed rule. In that regard, the Council thanks the FKNMS for allowing an extension to the comment period. As a result of the granted extension, the Council was able to convene five of its advisory panels to solicit important stakeholder input on the proposed rule. Key concerns expressed by the Council and its advisory bodies are summarized below.

Protocol for Cooperative Fisheries Management

Given the Council's charge to manage fishery resources, the Council has some concerns about the implications of the proposed rule as it relates to the joint management of fishing activities with the Florida Fish and Wildlife Conservation Commission (FWC), the South Atlantic Council, and FKNMS. The Council strongly believes that the Protocol for Cooperative Fisheries Management needs to be updated and finalized before the proposed rule takes effect. The protocol should clearly lay out the steps by which fishing regulations will be formulated and implemented. This is particularly important given the proposed boundary expansions and potential for large area fishery closures as discussed further below.

Definition of Traditional Fishing

The Council does not support the definition of traditional fishing as described in the draft rule. However, the Council looks forward to working with the partner agencies to update the definition so that it could allow for the future development and use of innovative gear types that would reduce impacts on FKNMS resources. The Council also recommends that the final rule includes the complete definition of traditional fishing, instead of being included as a reference to another section or document. This action would increase transparency by making it easier for the public to identify and navigate what type of fishing activities are allowed in the FKNMS. This is particularly important for out of state visitors to the FKNMS.

The draft rule proposes that the definition of traditional fishing will live inside the Protocol for Cooperative Fisheries Management, a document that has not been updated since its inception in 1997. This definition should be at the forefront of any discussions involving fisheries management, should be easily accessible by the stakeholders, and should not hinder the development of novel fishing techniques that would enhance efficiency, reduce negative impacts to the ecosystem, and would address management of invasive species.

Sanctuary Boundary Expansion

The Council received mixed input regarding the proposed westward and southward expansion of the sanctuary boundary. Some sanctuary-wide regulations, such as no discharge, were recognized by the Council and its broad suite of stakeholders as inherently protective of coral reefs and other important fisheries habitats that continue to be threatened by degraded water quality, disease, and other human-induced stressors. Accordingly, there was general support for these regulations. However, expanded sanctuary boundaries suggest the potential for area closures and reduced access to fishery resources that are not well justified. These concerns point to the need for a better-aligned effort by regulatory authorities in the region to ensure protections that do not unnecessarily disadvantage key fishery stakeholders.

Pulley Ridge

The Council is of the opinion that the proposed integration of the Pulley Ridge habitat of particular concern (HAPC) into the FKNMS is premature. Although restrictions on discharge and anchoring are likely provide additional protections to this ecologically important mesophotic reef and adjacent habitats, there is not a clear understanding of the process that might result in additional fishing regulations. As a consequence, the Council opposes this measure.

Sanctuary Preservation Areas (SPAs) Expansion and Bait Fishing Permits

The Council recognizes the importance of protecting coral habitat and is in support of the proposed expansions to the identified SPAs. However, the Council does not support the phase-out of bait fishing permits at Conch Reef, Alligator Reef, Sombrero Key, and Sand Key based on extensive discussion with affected stakeholders including the Council's advisory bodies. Although the Council agrees with streamlining regulations to enhance enforcement, the Council recommends allowing bait fishing with gear that does not interact with the bottom. The Council is in favor of a no anchor designation for all SPAs and commends the FKNMS for establishing a working group to evaluate the need to install or remove mooring buoys for recreational vessels in the SPAs.

Restoration Area (Nursery and Habitat Zones)

The Council supports the establishment of a new marine zone designation for coral and habitat Restoration Areas and associated regulations. The Council recognizes that coral reefs in the FKNMS have been severely affected by a combination of stressors such as excess nutrient delivery, elevated seawater temperatures and various diseases and efforts to restore degraded reefs is of paramount importance. A prohibition on fishing and anchoring within the Restoration

Areas would reduce the potential for entanglement with the coral nursery structures, minimize physical impact and damage to corals and other bottom habitat where restoration activities are focused and also protect divers working on restoration projects. The Council commends the FKNMS for its various efforts to restore and protect coral reef habitat.

Western Dry Rocks Wildlife Management Area (WMA)

The Council supports the creation of the Western Dry Rocks WMA and the seasonal prohibition of anchoring from April 1 to July 31. Given that this WMA is in state waters, the Council suggests that the FWC be designated explicitly as the lead agency in developing fishing regulations for this area.

Water Quality

Degraded water quality has been and continues to be a major concern of the Council and its stakeholders. The Council recognizes, however, that many water quality issues affecting the sanctuary and its natural resources originate beyond the FKNMS's jurisdiction. It is imperative that the full suite of water management agencies and environmental regulatory authorities, including the FKNMS, are engaged in efforts to improve water quality in the south Florida landscape including the sanctuary. Although the issue of water quality is acknowledged in the updated Management Plan goals and activities, the Council suggests that the sanctuary take a stronger role in advocating for improved water quality and engage more fully in regional water management discussions.

Law Enforcement

A primary concern of the Council's advisory bodies is the FKNMS's ability to enforce regulations in the draft rule, especially given the limited number of law enforcement officers assigned to patrol the region. Although the commercial and charter for-hire sectors are monitored electronically in the Gulf, monitoring of private vessels and other recreational users presents a tremendous challenge for law enforcement. The Council fully supports the FKNMS plan to increase its education and outreach campaign to better inform recreational fishermen of regulatory changes including closed areas and other fishing restrictions. The development of the Florida Keys Marine Sanctuary Explorer app to improve compliance is a step forward, but this approach has its limitations. Cellphone reception, for example, is dependent on carrier, cellphones can overheat in the sun, and users may keep their phones out of reach and protected from water damage. Because the draft rule proposes changes to many discrete areas, the Council encourages the FKNMS to engage private industry (makers of electronic navigational products) in its efforts to more effectively communicate to stakeholders where rules and regulations are in affect.

Temporary Regulation for Emergency and Adaptive Management

The Council recognizes the need for emergency rulemaking procedures to respond to unexpected events in the management area. However, the Council also recognizes that rulemaking that prohibits or modifies fishing access can negatively impact stakeholders. The Council urges great caution in the use of emergency rulemaking and requests that rulemaking be limited to 180 days when possible.

Live Rock Aquaculture

The Council supports the development of a Memorandum of Agreement with the National Marine Fisheries Service and the Florida Department of Agricultural and Consumer Services to enhance inter-agency collaboration without requiring an additional permit.

Thank you for allowing the Council to comment on the draft rule and address its stakeholders concerns on how the proposed regulations would affect the fishing community.

Respectfully,

Dale Diaz
Council Chairman

cc: Council Members / Council Staff / Beth Dieveney / Stephen Werndli / Jack McGovern /
Andy Strelcheck / Peter Hood / Jessica McCawley / John Carmichael