

October 26, 2022

Sarah Fangman
Superintendent
Florida Keys National Marine Sanctuary
33 East Quay Road
Key West, FL 33040

Re: Florida Keys National Marine Sanctuary Restoration Blueprint Draft Rule

Dear Superintendent Fangman:

The National Marine Manufacturers Association (NMMA) appreciates the opportunity to provide comments on the National Oceanic and Atmospheric Administration's (NOAA) Proposed Rule for the Florida Keys National Marine Sanctuary (FKNMS) Management Review: Blueprint for Restoration. The FKNMS is a critical marine habitat and destination for recreational boaters and anglers worldwide, with millions visiting each year. Understanding the significant pressure on the Sanctuary and changing environmental conditions, we support proposed changes in the draft rule that responsibly balances resource protection with user access.

By way of background, NMMA is North America's largest recreational marine industry trade association. Our nearly 1,400 members represent boat, engine, accessory, and trailer manufacturers and collectively produce eighty percent of marine products sold in the United States. Recreational boating is a significant contributor to the U.S. economy contributing \$170 billion in economic impact and supporting 35,000 marine businesses and 700,000 employees. Florida is the largest boating state in the country, with an economic impact of \$23.3 billion. As part of its fundamental mission to grow boating participation, NMMA recognizes the need to ensure the environmental health of our waterways.

We appreciate NOAA's collaborative and deliberative work in developing this specific rule proposal. Consistent outreach to industry, consumers, and stakeholder partners is valued. NMMA has been highly engaged with the considerations contained herein for the past decade, participating in Sanctuary Advisory Council meetings and public engagement opportunities.

Recreational boaters and anglers are our country's original conservationists. Whether our members' customers are fishing, waterskiing, swimming, or cruising, they not only support but demand clean water and healthy ecosystems. NMMA supports NOAA's efforts to develop workable, uniform national standards for recreational boaters that will promote environmental sustainability and protect important marine environments for future generations.

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General Support for Restoring FKNMS

In general, it is imperative to our community, industry, and way of life that the Florida Keys remain healthy for generations to come. The need for the proposed action is based on widespread, acute, chronic, and emerging threats to marine resources in the Florida Keys. The existing marine zones and management plan activities designed and implemented by FKNMS in 1997 are no longer adequate to ensure the long-term health and protection of this ecosystem. We appreciate NOAA for presenting a comprehensive and detailed plan for management and attempting to present narrowly targeted resource management.

Since the 2011 FKNMS Condition Report – which found that resources in the Florida Keys generally appear stable or in decline – the FKNMS has been impacted by Hurricane Irma, a coral disease outbreak, a seagrass die-off, and many other threats. Most recently, NOAA announced findings that 2019 was the second hottest year on record for Earth and recorded the second highest global sea surface temperature in NOAA’s 140-year climate record. In addition to rising temperatures and an increased frequency of extreme weather events, we cannot ignore other factors that are causing environmental degradation in the Florida Keys, particularly poor water quality runoff from the Everglades. We recognize, however, this plan cannot address factors outside NOAA’s jurisdiction, but it also should not place all the burden on recreational boaters and anglers to fix environmental issues that they have not precipitated.

The Florida Keys support more than 77,000 residents and approximately 5.5 million visitors, who collectively contribute to the \$4.7 billion economy. Approximately 60 percent of the economy is tied directly to marine-related activities, including recreational fishing and boating. When National Marine Sanctuaries were first established, Congress made it clear that sanctuaries are to be managed in a way that maintains environmentally sustainable public and private access. Section 304 of the National Marine Sanctuaries Act (NMSA) recognizes recreation as a designated purpose that deserves protection and consideration in sanctuary management. (16 U.S.C. 1431). Maintaining the status quo of a declining marine environment will put the economy and jobs at risk. Considering how these regulations will impact the economy of the Florida Keys, south Florida, and overall visitation to the Sanctuary must be factored in. Extensive restrictions on access will discourage visitation to the FKNMS and may unnecessarily move pressure to a nearby area.

Allocating Appropriate Resources to Law Enforcement

NMMA and the recreational boating and angling community are concerned regarding the lack of sufficient law enforcement presence and resources within FKNMS. Most of the current law enforcement within FKNMS is directed by FWC, with an estimated fifty-six officers patrolling nearly 4,000 square miles of water. With the anticipated expansion of the Sanctuary that would encompass an additional 1,000 square miles -- along with many new and modified zones -- the absence of sufficient law enforcement, so desperately needed to achieve the goals of the Restoration Blueprint, is concerning. An increase in law enforcement officers and equipment dedicated to FKNMS is imperative to the success and longevity of the Sanctuary. Additionally, increasing the presence of law enforcement within FKNMS would address concerns regarding nighttime activity inside the Sanctuary.

Expansion of the Sanctuary Boundary

This proposed rule would expand the FKNMS boundary from 3,800 to 4,800 square miles to include the area to be avoided (ATBA) and encompasses the Tortugas region between the existing Sanctuary boundary and the

Tortugas South Ecological Reserve and includes a non-contiguous sanctuary area at Pulley Ridge. NMMA believes this expansion provides additional protections and connectivity for important ecological resources and establishes consistency with neighboring and interconnected waters that boaters frequently navigate.

Sanctuary-wide Regulations

In general, these proposed regulations provide NOAA additional authority to ensure the protection of Sanctuary resources, rapidly respond to impacts, and in some cases, create consistency with other sanctuary and state regulations. NMMA offers the following comments and recommendations.

- **Discharge** – NMMA supports the updated proposed rule that would make technical corrections to the discharge exceptions since it primarily encompasses cruise ships and clarifies that cooling water, deck washdown, and graywater are allowable discharges from vessels other than cruise ships, but oily wastes from bilge pumping are not. Additionally, NMMA supports that the proposed regulation would not affect the existing exception that allows the discharge of “Fish, fish parts, chumming materials, or bait used or generated incidental to and while conducting traditional fishing in the sanctuary.”
- **Emergency Regulation** – Extending the use of emergency regulations from a 60-day period to 180 days with an option for an additional 186-day extension is a lengthy amount of time. NMMA understands that this proposed update would not change the rulemaking requirement for public notice and comment under the *Administrative Procedures Act* (APA); however, we do express concern for the extended length of time and encourage this authority to be used in a judicious manner. NMMA understands this proposed rule sets out the procedure by which a temporary regulation would be promulgated, including complying with the APA, addressing notice and comment requirements, and requiring state approval for any temporary regulations proposed in state waters. However, NMMA would support applications in narrow instances, with regular reviews during the period and opportunities for public comment.
- **Historical Resources Permitting** – NMMA supports updating the Historical Resources Permitting program. It will be beneficial to update the FKNMS historical resource permitting program to better align with the state permitting regulations and enhance the quality of research. It will also help optimize compliance with the federal archeology program.
- **Fish Feeding** – In general, NMMA supports the proposed fish feeding regulation, as it addresses the potential impact that the feeding of fish, sharks, or other marine species poses for human and environmental safety. This proposal would not impact recreational anglers’ ability to chum with live or dead bait from their vessels or shore-based fish feeding, which is popular in the Florida Keys. It should be noted that the proposed rule is slightly more restrictive than the current state regulations. The FWC fish feeding prohibition only applies to divers in the water, whereas the FKNMS rule language denotes the practice of feeding fish while diving and/or from a vessel. We again suggest that NOAA coordinate and allow FWC to lead a unified fisheries rule within the Sanctuary concerning fish feeding.
- **Derelict Vessels** – NMMA supports the creation of the derelict vessel regulation, as outlined in the proposed rule. This rule would protect the marine sanctuary from potential threats to the marine environment, prohibiting anchoring, mooring, or occupying a vessel at risk of becoming derelict or

deserting a vessel aground, at anchor, or adrift in the Sanctuary. This would be beneficial as it would be consistent with Florida state law and protects our waterways.

- **Mooring Buoys** - NMMA suggests expanding the quantity of mooring buoys available to the public, as well as the aforementioned allocation of resources to law enforcement so that they can appropriately execute existing regulations. NMMA supports the proposed rule of designating large mooring buoys for vessels greater than 65' in length to help prevent buoy hardware damage. Additionally, NMMA supports NOAA in exploring innovative partnerships and funding streams to install and maintain the marker and mooring buoy system, as well as identifying additional technological options for alerting the public to marine zone locations and regulations.

Proposed Modifications to Marine Zones

This proposed rule would establish 17 Sanctuary Preservation Areas (SPAs), 4 Habitat Preservation Areas, 9 Nursery Restoration Areas (a new permitting designation), as well as 23 newly proposed Wildlife Management Areas (WMAs), which puts the total number of WMAs being addressed in this rule at 47. Given the number of proposed changes and the parameters surrounding them, NMMA expresses serious concern and strongly opposes the following elements.

Sanctuary Preservation Areas:

- **Anchoring:** The proposed changes to SPAs would eliminate the issuing of bait fish permits and catch and release trolling exceptions. SPAs would also become no anchor zones and create a new restrictive definition of anchoring. Defining anchoring as “securing a vessel to a seabed by any means” would directly prohibit the use of power poles. Power poles are an entirely different system than traditional anchoring and are popularly used in shallow waters for flats fishing. Their impact on the sea floor is minimal and should not be prohibited. In general, NMMA recognizes the prohibition of anchoring will alleviate potential concerns of coral damage from improper anchor setting. However, any additional restrictive anchoring measures should subsequently be supported by a plan to install sufficient mooring fields. While this proposal has briefly addressed mooring fields/buoys, there has not been an adequate amount deployed to alleviate no anchoring. Without mooring fields in a no-anchor zone, boats wishing or needing to anchor for fishing, diving, or recreation purposes will be prohibited. This could create de-facto access closures. NMMA recommends, rather, a phased-in prohibition to allow for the sequential installation of a sufficient amount of mooring buoys.

- **Long Key/Tennessee Reef** not including exceptions for fishing in the expanded boundary that encompasses more deep water. NMMA appreciates NOAA's decision not to designate this reef as a SPA due to comments provided in the 2019 DEIS proposal. NMMA understands this is an important ecological resource area and some protection is needed; however, we believe NOAA should address this area in coordination with FWC due to its extensive impact on recreational fisheries and access.

- As priorly mentioned, NMMA opposes the expansion of SPAs into deeper water such as **Carysfort, Alligator Reef, and Tennessee Reef** as these areas are critical for deep water recreational fishing. There must be sounder, science-based evidence to properly balance the fishery and user access. It is imperative that NOAA consult with FWC and industry partners to allow as much user access as possible while still protecting coral reef habitats from physical damage.

- We are disappointed NOAA did not support FWC’s recommendations for hook and line trolling or drift fishing to be allowed in the **Carysfort, Sombrero, and Sand Key**. SPAs need to be more clearly described to users. Recreational anglers are the original conservationists, and while we strongly support conserving this ecosystem, NOAA should not limit boater access.

Conservation Areas:

- The creation of this zone type encompasses two existing zones (Ecological Reserves and Special Use Areas), which exhibit no change in regulatory rules. NMMA does not view this zone type as a major change to the existing management plan and would support such a new zone type.

Wildlife Management Areas (WMAs):

- These areas restrict vessel operation to protect wildlife and minimize disturbances. Currently, there are 47 WMAs being addressed within the proposed FKNMS rule with 23 of them being newly designated areas. While this would be a dramatic increase in the total number of WMAs, our main concern is regarding the over-complication of regulations. The current proposed plan outlines that WMAs rules would vary by zone and would include vessel restrictions on access, anchoring, and speed, which are specific to each of the potentially 47 protected areas. Instead of the current proposals, NMMA recommends replacing the proposed regulation as it applies to WMAs in the backcountry with the existing Shoreline Slow Speed regulation [15 C.F.R. § 922.163(a)(5)(iii)(D) – which prohibits operating a vessel at a speed greater than four knots or in a manner which creates a wake within 100 yards of residential shorelines. This allows for across-the-board management of all WMA, protecting the environment through consistent slow speed rules and without varied and complex zones. This would provide clarity and relief for visitors wishing to enjoy the Sanctuary while ensuring a slow enough speed to protect ecologically sensitive resources.

Management Areas:

- This proposed rule creates an exception in Key West National Wildlife Refuge to allow relief and passage of personal watercraft (PWC) operations around marker G13. NMMA and our subsidiary, the Personal Watercraft Industry Association (PWIA), were involved in the negotiated agreement presented by local PWC liveries and the FKNMS advisory council. Liveries are an important contributor to the Florida Keys economy, and this compromise helps PWCs easily traverse the waterways, ensures safety, and properly protects the habitat.

Key Largo Management Area:

- NMMA appreciates that NOAA did not impose a blanket anchoring restriction for the entire Key Largo Management Area, as that would restrict anchoring for 134 square miles. While we understand certain no anchor regulations are included in SPAs in this area, we appreciate NOAA did not opt for the blanket approach. However, we will continue to support appropriate mooring fields where anchoring is not allowed.

Education

NMMA recommends that the FKNMS proposed rule should be accompanied by a robust and deliberate public education campaign. With such dramatic changes in Sanctuary-wide regulations and numerous targeted rules

around SPAs, WMAs, and other land masses, the public will need time to understand and adapt to the new regulations. Recreational boaters and anglers strive to be the best stewards of the environment, but additional resources and partnerships are needed to ensure users are aware of the changes and boundaries.

NMMA encourages NOAA to coordinate with state-wide boater education programs to provide comprehensive information on the final regulations. While NMMA does not support mandatory education for a specific waterway jurisdiction, we do support statewide education. Components of public education should include the publication of all rules with supporting electronic and paper copy maps, integration of rule publication on NOAA sanctuary sites, and coordinated links to boater education and state-wide visitation programs.

Providing online maps displaying zone locations, promoting the newly developed IOS and Android platform application, and exploring public-private partnerships with marine electronics manufacturers are all important considerations of how to appropriately educate FKNMS locals and visitors.

Signage and maps at visitor centers, public boat ramps, hotels, and local liveries should also be considered. Recreational boaters do not see boundaries on the water and transit among different areas frequently. On water signage, when appropriate, to indicate zones, no anchoring, speed limits, and transient corridors should be utilized. Additionally, innovative technology such as “smart buoys” and QR codes will help to ensure robust but appropriate information dissemination for the environment.

Education, and a phased-in implementation timeline, will reduce public confusion and enhance voluntary compliance while also enabling FWC law enforcement to coordinate resources in a more efficient manner.

Conclusion

NMMA greatly appreciates the opportunity to provide these comments for your consideration. We look forward to continuing to work with NOAA and the FKNMS staff to ensure a proper balance of recreational access and resource protection. We stand ready to work with you on and ensure the FKNMS is maintained for generations to come. Please contact Clay Crabtree at ccrabtree@nmma.org or Ben Murray at bmurray@nmma.org with any questions or concerns.

Sincerely,



Clay Crabtree

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Ben Murray

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