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MEMORANDUM TO: South Atlantic Fishery Management Council

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FOR: SAFMC and National Marine Sanctuaries Act

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This memorandum provides guidance to the South Atlantic Fishery Management Council (Council) for the March 2020 Council Meeting regarding the role of the Council in the process of reviewing and developing regulations for fishing in the Florida Keys National Marine Sanctuary (FKNMS).¹

On August 22, 2019, the FKNMS sent the Council a letter requesting the Council's review and comment on any aspect of the Draft Environmental Impact Statement-Florida Keys National Marine Sanctuary Marine Zoning and Regulatory Review (DEIS), also referred to as the "Restoration Blueprint."² The DEIS analyzes a range of alternatives for changes to the FKNMS, including proposals to expand the sanctuary boundary, update sanctuary regulations, modify and establish new marine zones and update marine zone regulations, and revise the sanctuary's non-regulatory management plan. Some of the alternatives in the DEIS, if implemented, would change fishery regulations in federal waters within the boundary of the FKNMS.

The August 22, 2019, letter from the FKNMS also initiated discussion with the Council pursuant to section 304(a)(5) of the National Marine Sanctuaries Act³ (Sanctuaries Act), to request that the Council make recommendations and, if appropriate, prepare draft fishing regulations applicable to the portion of the FKNMS within the exclusive economic zone (EEZ), as described in the DEIS. The FKNMS sent a similar letter to the Gulf of Mexico Fishery Management Council (Gulf Council) requesting review and comment on the DEIS with the opportunity to prepare draft fishing regulations.

Under the Sanctuaries Act regulations, the Council has 120 days from the date the Council was notified to make recommendations and, if appropriate, prepare draft fishing regulations and to submit them to the Secretary.⁴ The 120 days started on August 26, 2019, when the Council received the FKNMS's letter of August 22, 2019, and the FKNMS has extended the Council's time to respond to March 13, 2020.⁵ If the Council decides to prepare draft fishing regulations, the draft regulations can be presented to the Secretary in the form of a letter and need not be presented as a proposed rule.

¹ The FKNMS is administered by NOAA, and because 60 percent of the sanctuary falls within state waters, the sanctuary is jointly managed by NOAA and the state of Florida under a co-trustee agreement.

² DEIS Notice of Availability, 84 Fed. Reg. 45728; August 30, 2019.

³ 16 U.S.C. § 1434(a)(5).

⁴ 15 C.F.R. § 922.22(b).

⁵ FKNMS's November 8, 2019, letter to the Council.



At the December 2019 Council Meeting, FKNMS personnel presented an overview of the proposed regulatory and management actions and alternatives contained in the DEIS, and their August 22nd letter suggested the proposed changes in the DEIS that may be of most interest to the Council include: the creation of new or updated regulations in 20 areas which are wholly or partially within the Council's jurisdiction; the 3-year phase out of FKNMS permits for bait fishing in any sanctuary preservation area (SPA) wholly or partially within federal waters; the elimination of catch and release trolling in Conch, Alligator, Sombrero, and Sand Key SPAs; and a proposal to develop a memorandum of agreement or understanding with the state of Florida and the National Marine Fisheries Service for management and permitting of live rock aquaculture activities in the sanctuary.

The Council is also a party to the agreement, "Protocol for Cooperative Fisheries Management," which concerns fishery regulations in the FKNMS. Recognizing that separate regulations developed by the state of Florida and the South Atlantic and Gulf Councils existed within the boundary of the FKNMS, the Protocol was developed for the future management and regulation of fishing activities in the FKNMS and was signed in 1997-1998. Parties to the Protocol are the Florida Marine Fisheries Commission (now the Florida Fish and Wildlife Conservation Commission), the South Atlantic and Gulf Councils, the National Marine Fisheries Service and the National Ocean Service. The Protocol sets forth the procedure for the initiation, development and implementation of fisheries regulations within the FKNMS when rulemaking is initiated by any of the parties (in the present case, the FKNMS). One of the objectives of the Protocol is to have consistent regulations within the FKNMS, stating that the parties acknowledge and agree that the rules developed under the Protocol shall be consistent with the goals and objectives of the FKNMS's comprehensive management plan, the Sanctuaries Act and other applicable federal law, using the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) national standards as guidance, "to the extent such standards are consistent with the goals and objectives of the Sanctuary designation."⁶ The parties to the Protocol agreed that fishery rules developed under the Protocol would "be adopted as Sanctuary regulations in accordance with Federal rulemaking procedure and the comprehensive management plan for [FKNMS]."⁷ In addition, the Protocol states that federal fishery regulations for the FKNMS "shall be published as final Sanctuary regulations" pursuant to the Sanctuaries Act.⁸

In accordance with section 304(a)(5) of the Sanctuaries Act, the Council is required to use the Magnuson-Stevens Act national standards as guidance, to the extent that the national standards are consistent and compatible with the goals and objectives of the FKNMS management plan. The Sanctuaries Act provides that regulations drafted by the Council, or a determination by the Council that regulations are not necessary, will be accepted and shall be issued as the proposed regulations for the FKNMS, unless the Secretary of Commerce finds that the Council's action does not fulfill the purposes and policies of the Sanctuaries Act and the goals and objectives of the designation of the FKNMS. The Secretary will draft the fishery regulations if the Council declines to make a determination with respect to the need for regulations, makes a determination which is rejected by the Secretary, or fails to prepare the draft regulations in a timely manner.

⁶ Protocol, section III.5.

⁷ Protocol, section III.6.

⁸ Protocol, section IV. 13.

Thus, the current options before the Council to be discussed at the March 2020 Council Meeting are to (1) make recommendations and, if appropriate, prepare draft fishery regulations for the FKNMS under the Sanctuaries Act or agree with the FKNMS preferred alternatives, or (2) determine that fishery regulations under the Sanctuaries Act are not necessary, or (3) decline to make a determination with respect to the need for regulations. If the Council determines that fishery regulations under the Sanctuaries Act are not necessary because the Magnuson-Stevens Act can be used to fulfill FKNMS goals and objectives, the Council will need to explain how its decision fulfills the purposes and policies of the Sanctuaries Act and the goals and objectives of the FKNMS.

If the Council is going to make a recommendation and/or prepare draft fishery regulations, it needs to do so by March 13, 2020. The Secretary will then determine whether the Council's action fulfills the purposes and policies of the Sanctuaries Act and the goals and objectives of the FKNMS, and will determine whether to accept or reject the Council's determination. The Secretary will prepare fishery regulations if the Council declines to make a determination with respect to the need for regulations, makes a determination which is rejected by the Secretary, or fails to prepare draft regulations in a timely manner.

The FKNMS welcomes general comments from the Council on the DEIS, but the purpose of the section 304(a)(5) Sanctuaries Act process is to receive the Council's recommendations specifically pertaining to federal fishery regulations under the Council's jurisdiction.