

DRAFT FOR INTERAGENCY DISCUSSIONDRAFT

MEMORANDUM OF AGREEMENT

**PURSUANT TO THE
NATIONAL MARINE SANCTUARIES ACT
16 U.S.C. 1442(a)**

BETWEEN THE

**U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL OCEAN SERVICE
OFFICE OF NATIONAL MARINE SANCTUARIES
AND THE
NATIONAL MARINE FISHERIES SERVICE**

AND THE

**GULF OF MEXICO FISHERY MANAGEMENT COUNCIL
SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL**

AND THE

FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION

**FOR THE PURPOSE OF
*COORDINATION OF FISHING REGULATIONS IN FLORIDA KEYS
NATIONAL MARINE SANCTUARY***

NOS Agreement Code: MOA-20XX-XXX/xxxx

Partner's Acronym]Agreement Code: [Partner's Agreement Code]

DRAFT FOR INTERAGENCY DISCUSSIONDRAFT

[Delete the previous line if the partner does not have an agreement number/code.]

DRAFT FOR INTERAGENCY DISCUSSIONDRAFT

I. PARTIES AND PURPOSE

- A. This Memorandum of Agreement (Agreement) is between the U.S. Department of Commerce (DOC), National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), Office of National Marine Sanctuaries (ONMS), through the Florida Keys National Marine Sanctuary (FKNMS); the National Marine Fisheries Service, (NMFS); Florida Fish and Wildlife Conservation Commission (FWC); the Gulf of Mexico Fishery Management Council (GMFMC); and the South Atlantic Fishery Management Council (SAFMC).
- B. The purpose of this Agreement is to:
1. strive for consistent regulations, where possible, but also recognize that there may be reasons why inconsistent regulations exist throughout the FKNMS;
 2. develop a procedure and protocol, consistent with each Party's existing authorities, by which all parties provide notice, comment and coordinate on proposed pertinent fishing regulations within FKNMS that affect fisheries resources, fishing activities, and fisheries habitats; and
 3. provide for a flexible management system that minimizes regulatory delays while retaining substantial State, Federal and public involvement in proposed fishing regulations, and that efficiently adapts to changing conditions.

II. BACKGROUND

NOAA's FKNMS was established in 1990 under the Florida Keys National Marine Sanctuary and Protection Act, P.L. 101-605 (H.R. 5909) (FKNMSPA). The sanctuary encompasses approximately 4,539 square miles of coastal and ocean waters and shares trusteeship of marine resources with the State of Florida, as 49 percent of the sanctuary falls within state waters (2,223 square miles, 49%). In addition, the sanctuary overlaps with the Exclusive Economic Zone (EEZ) waters under GMFMC jurisdiction (505 square miles, 11%) and SAFMC jurisdiction (1,809 square miles, 40%). The overlap of three agencies (i.e., FWC, ONMS, and NMFS, as advised by GMFMC and SAFMC) with authority to regulate fisheries and fishing activity calls for cooperative, and where applicable, coordinated State and Federal management consistent with the National Marine Sanctuaries Act (NMSA), the FKNMSPA, the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and the laws of the State of Florida.

III. AUTHORITIES

- A. The authority of ONMS to enter into this Agreement is the NMSA, 16 U.S.C. §§ 1431 et seq., which provides NOAA the authority to designate and manage areas of the marine environment as national marine sanctuaries, Section 308 of the

DRAFT FOR INTERAGENCY DISCUSSIONDRAFT

NMSA (16 U.S.C. § 1439), which authorizes NOAA to issue regulations as may be necessary to carry out the Act, and Section 311(a) (16 U.S.C. § 1442), which authorizes NOAA to enter into agreements with States, local governments, regional agencies, interstate agencies, or other persons to carry out the purposes and policies of the NMSA. NOAA's management of FKNMS is directed by the purposes and policies of the NMSA and the FKNMSPA P.L. 101-605). Those purposes and policies include:

16 U.S.C. § 1431(b)(2) to provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities;

16 U.S.C. § 1431(b)(3) to maintain the natural biological communities in the national marine sanctuaries, and to protect, and, where appropriate, restore and enhance natural habitats, populations, and ecological processes;

16 U.S.C. § 1431(b)(4) to enhance public awareness, understanding, appreciation, and wise and sustainable use of the marine environment, and the natural, historical, cultural, and archaeological resources of the National Marine Sanctuary System;

16 U.S.C. § 1431(b)(5) to support, promote, and coordinate scientific research on, and long-term monitoring of the resources of these marine areas;

16 U.S.C. § 1431(b)(6) to facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities;

16 U.S.C. § 1431(b)(7) to develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas; and

16 U.S.C. § 1431(b)(8) to create models of, and incentives for, ways to conserve and manage these areas, including the application of innovative management techniques.

- B. The authority for FWC to enter this Agreement is Section 9 of Article IV of the Florida Constitution, Title 68 of the Florida Administrative Code (F.A.C.), and Chapter 379 of the Florida Statutes (F.S). The FWC exercises the regulatory and

DRAFT FOR INTERAGENCY DISCUSSIONDRAFT

executive powers of the state with respect to wild animal life, freshwater aquatic life, marine life, which includes corals (in consultation with the Florida Department of Environmental Protection) and coral reef associated species, and exercises regulatory authority for vessel speed and operations and vessel safety upon waters of this state within the Sanctuary boundary pursuant to delegated authority from the Florida Legislature pursuant to Chapter 327, F.S., with associated rules in Title 68 of the F.A.C. FWC's authority falls within Florida State waters of the Gulf of Mexico and Atlantic Ocean and within adjacent federal waters for fisheries for which FWC has the authority to extend regulations under 16 U.S.C. §1856(a)(3).

- C. The authority for the NMFS to enter into this Agreement is the MSA. Section 304(b) (16 U.S.C. § 1854(b)) requires NMFS to evaluate proposed regulations transmitted by the Councils for consistency with any fishery management plan (FMP) and applicable law, and publish proposed rules, solicit public comment, and promulgate final rules. Section 304(c) (16 U.S.C. § 304(c)) allows NMFS, under certain circumstances, to prepare Secretarial FMPs and propose regulations to implement those FMPs. In addition, section 305(d) (16 U.S.C. § 305(d)) allows NMFS to promulgate regulations necessary to carry out any FMP or FMP amendment prepared by the Councils or to carry out any other provision of the MSA.
- D. The authority for the GMFMC and the SAFMC to enter into this Agreement is the MSA and the NMSA. The Councils are advisory bodies that assist in federal fisheries management, each with responsibilities over a specific geographic region within the EEZ. The GMFMC is responsible for the EEZ of the Gulf of Mexico. The SAFMC is responsible for the EEZ off the coasts of North Carolina, South Carolina, Georgia, and east Florida to Key West. MSA sections 302(h)(1) and 303(c) (16 U.S.C. § 1852(h)(1) and 16 U.S.C. § 1853(c)) direct the Council to prepare and submit to NMFS an FMP "for each fishery under its authority that requires conservation and management," as well as proposed regulations that the Council "deems necessary or appropriate" to implement the FMP. In addition, under section 304(a)(5) (16 U.S.C. 1434(a)(5)) of the NMSA, the Councils are provided the opportunity to prepare draft fishing regulations within the EEZ as the Councils may deem necessary to fulfill the purposes and policies of the NMSA and the goals and objectives of the FKNMS.

IV. DEFINITIONS AND SCOPE

- A. The scope of this Agreement is the coordination of rulemaking processes for pertinent fishing regulations within the boundaries of FKNMS and updates to the traditional fishing definition.
- B. *Rulemaking process* means the process for developing and promulgating fishing

DRAFT FOR INTERAGENCY DISCUSSIONDRAFT

regulations within FKNMS by NOAA/NOS/ONMS under the NMSA, NOAA/NMFS with the advice of the GMFMC or SAFMC under the MSA, and/or by FWC under rule 68.1008, F.A.C., and Florida's Administrative Procedure Act.

- C. *Pertinent fishing regulations* means rules pertaining to the management of fisheries within the FKNMS.
1. For the purpose of this agreement, *pertinent fishing regulations* shall include:
 - a. modifications to prohibited or restricted species regulations;
 - b. new gear types and modifications to allowable gear types that impact the seafloor;
 - c. marine life rule changes;
 - d. area-based management measures that affect fishing by prohibiting or restricting entry into an area, prohibiting fishing of all or certain species, or restricting the use of certain gear in an area; and,
 - e. actions intended to directly address a fishery management issue within FKNMS.
 2. Fishery management regulatory actions that are not considered *pertinent fishing regulations* will not be considered under this agreement, including: routine changes to bag limits, size limits, vessel limits, trip limits, possession limits, retention limits, quotas, harvest, catch limits or catch targets, routine season modifications, new gear types and fishing gear modifications for regulated species that do not impact the seafloor (e.g., circle hooks), and regulatory changes to species that are currently classified as 'unregulated' by FWC.
- D. *Florida Keys National Marine Sanctuary (or FKNMS)* means the sanctuary, which encompasses an area of 4,539 square miles of coastal, ocean, and Gulf of Mexico and South Atlantic waters and the submerged lands thereunder from the boundary to the shoreline as defined by the mean high water tidal datum surrounding the Florida Keys in southern Florida.
- E. *Traditional Fishing* means those recreational or commercial fishing activities customarily conducted within the sanctuary as of the effective date of the final 2025 sanctuary regulations.

V. TERMS AND CONDITIONS

- A. The Parties will coordinate and collaborate on the rulemaking process for pertinent fishing regulations within FKNMS. To support this aim, the Parties agree to the following protocols and procedures:

1. **Protocol**

- a. **Statement of Use:** If the NMFS, SAFMC, GMFMC, or FWC are proposing regulations, within their areas of authority that include routine modifications to bag limits, size limits, vessel limits, trip limits, possession limits, retention limits, quotas, harvest, catch limits or catch targets, routine season modifications, new gear types and fishing gear modifications for regulated species that do not impact the seafloor (e.g., circle hooks), and regulatory changes to species that are currently classified as ‘unregulated’ by FWC, this Agreement will not be utilized.
- b. **Ongoing Communication:** Each Party will identify a point of contact responsible for communicating in an ongoing fashion about pertinent fishing regulations that are subject to this Agreement. Informal communication should occur as needed and include, at a minimum, one annual coordination meeting to include all relevant parties and staff. Communication and coordination within the scope of this agreement (as defined in V. A. 2. b. i-iv.) are described in the Procedure below.

2. **Procedure**

- a. **Notification:** If pertinent fishing regulations within FKNMS (as defined in IV. C. 1. a-e.) are being considered by ONMS, FWC, NMFS, GMFMC, or SAFMC, the respective initiating Party will notify the points of contact from the other parties at the earliest practicable time prior to the initiation of a rulemaking process. If the initiating Party does not receive a response in writing (includes email) from the other parties after 60 days regarding whether they wish to coordinate further, the initiating Party may proceed with their rulemaking process without further coordination. Upon receipt of such a notice, any of the other parties may request, in writing, further coordination, thereby initiating the Initial Coordination procedure below (in V. A. 2. b. i-iv.).
- b. **Initial Coordination:** The Parties shall engage in initial coordination to mutually agree on the parameters of coordination during rulemaking as described under subparagraph V. A. 2. c. of this Agreement.
 - i. The Parties of this agreement shall
 - (a) Identify which federal or state rulemaking process(es) will be followed according to the Protocol established herein, including which Party should serve as the lead Party in drafting pertinent fishing regulation(s).
 - (b) Identify assistance needed to develop the administrative record or record of supporting information and analysis.

- (c) Coordinate legal and technical reviews, effective dates and implementation.
 - (d) Consider how to appropriately address anticipated stakeholder concerns.
 - ii. Any tentative consensus reached by the parties at this stage of informal consultation shall not bind the parties for purposes of subsequent review and approval under this Procedure.
 - iii. A Party may request further coordination at any time during the rulemaking process, but any request after initiation of rulemaking may limit successful coordination.
 - iv. Initial coordination shall not satisfy ONMS's legal requirement under NMSA 304(a)(5) to provide the Council the opportunity to prepare fishing regulations in the Federal waters of the sanctuary.
- c. **Coordination During Rulemaking Process:** If further coordination is requested by any Party during the initial coordination phase, the respective initiating Party will consider the requested coordination requests in good faith. If the Parties decide to engage in further coordination during the rulemaking process, the following Procedures will be followed:
 - i. **State Rulemaking**
 - a) FWC serves as the lead for any pertinent fishing regulations that apply in state waters of the FKNMS and for fisheries that FWC has authority to extend regulations into federal waters.
 - b) For pertinent fishing regulations in state waters of the FKNMS and for species that FWC has authority to extend regulations into Federal waters, the State rulemaking process will be followed with FWC as the lead Party. The FWC shall provide a proposed draft rule to ONMS, and as appropriate, to the Councils and NMFS, at the earliest practicable time in the rulemaking process or at the time agreed to by the Parties in Initial Coordination.
 - c) At the earliest practicable time or the time agreed to by the Parties in Initial Coordination prior to the adoption of a proposed rule, the FWC shall also develop and transmit to ONMS (and NMFS and the Councils if requested) a record of supporting information and analysis for its proposed fishing regulations; with assistance, as needed, from the Councils, NMFS and ONMS. Such record, at a minimum, shall include: a background statement regarding the objectives of the proposed rule and how the proposed rule will

accomplish the stated objectives; how the rule will benefit Sanctuary resources; summaries of public comments; biological, and any economic and social analyses of the impacts of the proposed rule; and such other information that is relevant for review purposes.

- d) At the earliest practicable time and before a proposed final rule is adopted under the State rulemaking process, the FWC shall transmit the record of supporting information and analyses developed pursuant to paragraph c above to ONMS, and if appropriate, to the Councils and NMFS. As necessary and appropriate to expedite coordination between the parties, an incomplete record may be transmitted for consultation and preliminary review, to be supplemented as additional information becomes available.
- e) At the earliest practicable time or the time agreed to by the parties in Initial Coordination, ONMS, the Councils, and NMFS may submit comments to FWC on the draft regulation(s) or supporting information. At the request of any Party, the lead Party will convene a meeting to discuss or seek to resolve any comments.

ii. Federal Rulemaking - ONMS

- a) For pertinent fishing regulations that are promulgated through a Federal rulemaking process by ONMS, ONMS will provide a proposed draft rule to the FWC and the Councils at the earliest practicable time in the rulemaking process or the time agreed to by the parties in Initial Coordination.
- b) At the earliest practicable time or the time agreed to by the parties in Initial Coordination prior to the adoption of a proposed rule, ONMS shall also develop and transmit to FWC a record of supporting information and analysis for proposed Sanctuary regulations; with assistance, as needed, from the FWC. Such record, at a minimum, shall include: a background statement regarding the objectives of the proposed rule and how the proposed rule will accomplish the stated objectives; how the rule will benefit Sanctuary resources; summaries of public comments; biological, and any economic and social analyses of the impacts of the proposed rule; and such other information that is relevant for review purposes.

- c) At the earliest practicable time and before a final rule is published in the *Federal Register*, ONMS shall transmit the record of supporting information and analyses developed pursuant to paragraph b above to the FWC and the Councils. As necessary and appropriate to expedite coordination between the parties, an incomplete record may be transmitted for consultation and preliminary review, to be supplemented as additional information becomes available.
- d) At the earliest practicable time or the time agreed to by the parties in Initial Coordination, FWC and the Councils may submit comments to ONMS on the draft Federal regulation or supporting information. At the request of any Party, the lead Party will convene a meeting to discuss or seek to resolve any comments.
- e) In addition, if ONMS is proposing pertinent fishing regulations in the federal waters of the Sanctuary, ONMS will follow the requirements in NMSA 304(a)(5) for coordination with the Councils.

iii. Federal Rulemaking - Council and NMFS

For pertinent fishing regulations drafted by the Council and promulgated by NMFS, the Council and NMFS will follow applicable NOAA guidance for coordination with ONMS.

iv. Combined State and ONMS Rulemaking

- a) For pertinent fishing regulations that the parties mutually determine should be promulgated through a combined State-Federal rulemaking process, FWC will take the lead for drafting any pertinent fishing regulations in state waters of the FKNMS and for fisheries for which FWC has authority to extend regulations into federal waters. FWC agrees to follow the procedures in paragraph (c)(i) to coordinate with ONMS during the State rulemaking process.
- b) ONMS agrees to follow the procedures in paragraph (c)(ii) to coordinate with FWC during the Federal rulemaking process.
- c) FWC will promulgate through the State rulemaking process pertinent fishing regulations in state waters of the FKNMS and for fisheries for which FWC has authority to extend regulations into federal waters. If ONMS proposes fishing regulations that FWC cannot adopt in FKNMS state waters or for species managed by

DRAFT FOR INTERAGENCY DISCUSSIONDRAFT

FWC in FKNMS Federal waters, those regulations would be subject to review by the Councils per NMSA 304(a)(5) (for Federal waters) and for review by FWC go through the process outlined herein in V. A. 2. c. ii. In addition, any fishing regulations proposed by ONMS for FKNMS state waters would be subject to review by FWC and, per NMSA 304(b)(1), would not take effect in state waters if the Governor of the State of Florida objects in writing to the Secretary of Commerce not later than 45 days after a Final Rule is issued.

- d) If substantially differing comments result from the Federal and State public review processes requiring changes that would produce material differences between the Federal or State proposed regulations, any one of the previously named parties may request an opportunity to review the proposed changes and determine whether it will be necessary to alter or amend its previous determination(s), and/or whether it will be necessary to repeat any of the preceding procedural steps (thereby initiating a "feedback loop"). Any such request and determination shall be made within a reasonable time, not exceeding two meetings for FWC and each Council, following completion of the Federal and State public review processes.

B. Coordination on Traditional Fishing

1. If, any of the Parties believe that additions, deletions, or modifications should be made to what constitutes "traditional fishing," then the Party(ies) may request that ONMS undertake a separate rulemaking to change the definition and accompanying description of allowable traditional fishing activities, which would follow the protocol and procedure described in section V. A. of this Agreement.

VI. DURATION OF AGREEMENT, AMENDMENTS, OR TERMINATION

- A. **Effective Date.** This Agreement will become effective upon signature by all Parties.
- B. **Amendments.** The Agreement may be amended within its scope through the written mutual consent of the Parties.
- C. **Termination.** The Agreement may be terminated by (1) written mutual consent; or (2) 90 days advance written notice by either Party.
- D. **Counterparts:** This Agreement may be signed in one or more counterparts, each of

DRAFT FOR INTERAGENCY DISCUSSIONDRAFT

which will be deemed an original and all of which, together shall constitute one document. Original signatures delivered by means of facsimile or other electronic communication shall be considered to be original signatures.

VII. OTHER PROVISIONS

- A. Nothing in this Agreement limits the Parties’ duties and discretion afforded to regulate fishing under all applicable laws. This Agreement merely provides a framework for the Parties to share information and collaborate on pertinent fishing regulations within the FKNMS in a timely manner.
- B. Nothing in this Agreement is intended to conflict with applicable laws or current DOC, NOAA, NOS, FWC, GMFMC, or SAFMC policies. Any such conflicting term shall be invalid, but the remainder of the Agreement shall remain in effect. If a term is deemed invalid, the Parties shall immediately review the Agreement and decide to amend or terminate the Agreement.
- C. If the Parties disagree over how to interpret this Agreement, or in the event of any dispute that arises regarding a Party’s compliance with this Agreement, they shall present their position to each other in writing, and the Parties shall agree to negotiate in good faith. The Parties shall use their best efforts to conduct such negotiations at the lowest organizational level before seeking to elevate a dispute. If the Parties fail to resolve their differences through negotiation, they may agree to mediation using a neutral mediator acceptable to both parties. If the dispute cannot be resolved through mediation, it will be elevated to a third Party acceptable to all Parties for a final decision.

VIII. APPROVALS

ACCEPTED AND APPROVED FOR THE
U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
NATIONAL OCEAN SERVICE

ACCEPTED AND APPROVED FOR THE
FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION

BY: _____
Name
Director
Office of National Marine Sanctuaries

BY: _____
Signatory Name
Executive Director
Florida Fish and Wildlife Conservation
Commission

DRAFT FOR INTERAGENCY DISCUSSIONDRAFT

DATE: _____

DATE: _____

ACCEPTED AND APPROVED FOR THE
U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE

ACCEPTED AND APPROVED FOR THE
GULF OF MEXICO FISHERY
MANAGEMENT COUNCIL

BY: _____
Name
Regional Administrator
Office of National Marine Fisheries Service
Southeast Regional Office

BY: _____
Signatory Name
Executive Director
Gulf of Mexico Fishery Management Council

DATE: _____

DATE: _____

ACCEPTED AND APPROVED FOR THE
SOUTH ATLANTIC FISHERY
MANAGEMENT COUNCIL

BY: _____
Name
Executive Director
South Atlantic Fishery Management Council

DATE: _____