



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 230829-0205]

RIN: 0648-BM58

Florida Keys National Marine Sanctuary: Establishment of Temporary Special Use Area for Coral Nursery

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final temporary rule; emergency action

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is issuing a final temporary rule establishing a special use area which will prohibit all entry except for restoration activities under a valid Office of National Marine Sanctuaries (ONMS) permit, continuous transit without interruption, and for law enforcement purposes into a 0.07 square mile area approximately five miles southeast of the community of Tavernier, on the island of Key Largo, within Federal waters of the Florida Keys National Marine Sanctuary (FKNMS) from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] to [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This temporary rule is necessary to prevent or minimize destruction of, loss of, or injury to sanctuary resources, specifically to facilitate restoration activities to improve or repair living habitats through protecting coral nursery stock at this site from potential impacts caused by anchor damage and/or fishing gear. This temporary special use area will expire within 60 days unless it is extended an additional 60 days.

DATES: This final temporary rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Sarah Fangman, Superintendent, Florida Keys National Marine Sanctuary, 33 East Quay Road, Key West, FL, 33040, 305-360-2713 phone, or by e-mail at sarah.fangman@noaa.gov.

Additional background materials can be found on the FKNMS website at <https://floridakeys.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Sarah Fangman, Superintendent, Florida Keys National Marine Sanctuary, 33 East Quay Road, Key West, FL, 33040, 305-360-2713 phone, or by e-mail at sarah.fangman@noaa.gov.

SUPPLEMENTARY INFORMATION: NOAA is by this final rule creating a temporary special use area for the purpose of coral restoration located approximately five miles southeast of the community of Tavernier, on the island of Key Largo, within Federal waters of FKNMS. Section 15 CFR 922.164(e) of the FKNMS regulations allows the ONMS Director to set aside discrete areas of the Sanctuary as special use areas in order to provide for, among other uses, the restoration of degraded or otherwise injured sanctuary resources (15 CFR 922.164(e)(1)(i)). A special use area shall be no larger than the size the ONMS Director deems reasonably necessary to accomplish the applicable objective. No person may enter a special use area except to conduct restoration activities under a valid ONMS permit, for continuous transit without interruption, or for law enforcement purposes. Activities that are currently allowed in the area, including fishing, will be prohibited.

This temporary special use area is established to limit the potential for physical impact to a coral nursery that are being temporarily relocated to deeper waters to protect the nursery corals from heat stress caused by the current on-going marine heat wave.

Creation of this temporary special use area will limit the potential for physical impact to this sensitive coral nursery stock from anchoring, unintentional fouling of fishing gear, and bottom tending fishing gear including traps. The ONMS Director has determined that the size of 0.07 square miles is no larger than the size reasonably necessary to protect the coral nursery stock from physical damage. NOAA will provide notice of the location of this area through sanctuary radio announcements, press releases, and with assistance from the U.S. Coast Guard and FKNMS staff. NOAA has requested that the U.S. Coast Guard give notification to vessels, via notice to mariners, to remain in continuous transit through this temporary area.

Justification for Emergency Action

This action is taken in accordance with 15 CFR 922.165 of the FKNMS regulations (62 FR 32154, June 12, 1997). Section 922.165 provides that, where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource, any and all activities are subject to immediate temporary regulation, including prohibition, for up to 60 days, with one 60-day extension. This final temporary rule is necessitated by the current ongoing marine heat wave that is impacting and likely killing coral reefs in the Florida Keys at an unprecedented rate and scale. South Florida sea temperatures as reported by NOAA are 35°C, which is the warmest on record. These conditions became unsustainable for coral reef ecosystems in July and expert forecasts suggest that extreme ocean temperatures will likely persist until at least October 2023. At most risk are the coral nursery stock because these are located in shallow, nearshore protected environments that heat up much more than offshore locations. There are currently 14 active coral nursery sites throughout the Florida Keys. These nursery sites are strategically located in close proximity to the sites where the nursery coral will be outplanted to promote coral restoration. Active coral restoration in the Florida Keys is

necessary to facilitate coral restoration, as in the last 40 years, healthy coral cover in the Florida Keys reefs has declined by more than 90 percent.

In the face of the current marine heat wave, four of these nursery sites have already sustained mortality of 80-90% and the others are now showing increased signs of stress and bleaching. While some of the coral nursery stock from these sites is being relocated to land facilities, the capacity of these land-based systems is not adequate to hold the bulk of the biomass. NOAA and restoration partners have identified deep water locations that currently have temperatures below the bleaching threshold, are not exposed to deleterious levels of Ultraviolet (UV) radiation and experience substantial water movement, all conditions more conducive to coral survival. A portion of the most valuable corals, including representative colonies of each species of boulder and branching corals, samples of elkhorn coral, staghorn coral, star corals (*Orbicella spp.*), pillar corals and cactus coral listed under the Endangered Species Act, as well as multiple representative genotypes of these corals to ensure we protect the genetic diversity of these species, are being relocated to deeper water sites within FKNMS Federal waters. Temperature meters at these deep sites have consistently shown readings below the bleaching threshold of 30.5°C.

This emergency action establishes a new temporary special use area to limit the potential for physical impact to this sensitive coral nursery stock that is being grown to support critical sanctuary restoration efforts. Physical impact could result from anchoring, unintentional fouling of fishing gear, and bottom tending fishing gear including traps. The protections afforded by establishing this special use area need to be in place to avoid further damage to these sensitive nursery corals that have already experienced impact from heat stress. As such, immediate establishment of this special use area is necessary to prevent or minimize the destruction of, loss of, or injury to Sanctuary resources.

Emergency Measures

This final temporary rule establishes one special use area, approximately 0.07 square miles in size, into which all entry will be prohibited except for conducting restoration activities under a valid ONMS permit, continuous transit without interruption, and law enforcement purposes. This special use area will be effective for 60 days after publication of this final rule, and could be extended an additional 60 days. If the special use area is extended another 60 days, NOAA would publish another document in the **Federal Register**.

The coordinates for this temporary special use area are included below.

Location and Boundary

Effective immediately, all entry except for conducting restoration activities under a valid ONMS permit, continuous transit without interruption, and law enforcement purposes is prohibited within this temporary special use area which is approximately five miles southeast of the community of Tavernier, on the island of Key Largo. The boundary for the special use area begins at Point 1 in the amended appendix and continues to each subsequent point in numerical order ending at Point 5. (Coordinates are unprojected (Geographic) and based on the North American Datum of 1983).

Penalties

Pursuant to 16 U.S.C. 1437(d)(1) and 15 CFR 922.8(a), any person who violates this rule is subject to a civil penalty. The maximum civil monetary penalty authorized under the National Marine Sanctuaries Act (NMSA) has been adjusted for inflation over time and is currently \$210,161 per violation per day. *See* 15 CFR 6.3(f)(13). Furthermore, NMSA also authorizes a proceeding in rem against any vessel used in violation of this regulation. *See* 16 U.S.C. 1437(d)(3).

Classification

A. National Marine Sanctuaries Act

This action is issued pursuant to the National Marine Sanctuaries Act, 16 USC 1431 et seq. and implementing regulations at 15 CFR part 922. This action is being taken pursuant to the emergency provision of the Florida Keys National Marine Sanctuary regulations at 15 CFR 922.164(e) and 922.165.

B. National Environmental Policy Act

NOAA's Policy and Procedures for Compliance with the National Environmental Policy Act (NEPA) and Related Authorities (NOAA Administrative Order (NAO) 216-6A and Companion Manual for NAO 216-6A) provide that all NOAA major Federal actions be reviewed with respect to environmental consequences on the human environment. Based on the NAO and Companion Manual, NOAA examined the final temporary rule for its potential to impact the quality of the human environment and concluded that it is categorically excluded from the requirement to prepare an Environmental Assessment or Environmental Impact Statement in accordance with the NOAA Categorical Exclusion C1, as a habitat restoration action (see Appendix E of the NOAA NEPA Companion Manual). It qualifies for this categorical exclusion provided that such action: 1) transplants only organisms currently or formerly present at the site or in its immediate vicinity (if transplant is a component of the action); 2) does not require substantial placement of fill or dredging; 3) does not involve any removal of debris, excavation, or conditioning of soils unless such removal of debris, excavation, or conditioning of soils is geographically limited to the impact area such that site conditions will not impede or negatively alter natural processes, is in compliance with all permit and disposal requirements, and will not impact critical aquifers or recharge areas; and 4) does not involve an added risk of human or environmental exposure to toxic or hazardous substances, pathogens, or radioactive materials. In considering the list of extraordinary

circumstances, NOAA determined that none would be triggered by the temporary emergency action. Therefore, NOAA concludes that this action will not result in significant effects to the human environment and is categorically excluded from the need for further NEPA review.

C. Executive Order 12866: Regulatory Impact.

The Office of Management and Budget (OMB) has determined that this emergency rule is not significant within the meaning of section 3(f) of Executive Order 12866.

D. Regulatory Flexibility Act.

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule will not include prior notice or an opportunity for public comment pursuant to 5 U.S.C. 553 or other law. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

E. Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(3)(B), the Assistant Administrator of the National Ocean Service, NOAA, finds good cause to waive notice and public comment, as it would be impracticable and contrary to the public interest. Ongoing impacts from the current marine heat wave are resulting in immediate and large-scale impacts to the coral reef ecosystems in the Florida Keys with greatest risk to the most sensitive coral nursery stock located at several permitted sites throughout the Florida Keys. Coral nursery sites are established throughout the Florida Keys and are essential in supporting coral restoration efforts due to the loss of healthy coral cover in the Florida Keys reefs that has declined by more than 90 percent in the last 40 years. While some of the coral nursery stock is being relocated to land-based sites some coral nursery sites are being moved to offshore and deeper areas with cooler waters. It is possible that humans entering the waters of the offshore areas where these coral nursery stock are being relocated could

inadvertently cause irreparable damage from anchoring and/or dropping or entangling fishing gear in the coral nursery structures. Establishment of a special use area will prohibit all entry except to conduct restoration activities under a valid ONMS permit, for continuous transit without interruption, and for law enforcement purposes. The protections afforded by establishing this special use area need to be in place to avoid further damage to these sensitive nursery corals that have already experienced impact from heat stress. As such, further damage to these sensitive nursery corals would occur if the prohibition implemented by this rule is delayed to provide prior notice and opportunity for public comment.

For the reasons outlined above, NOAA finds it impracticable and contrary to the public interest to provide prior notice and public comment on these emergency measures. For the same reasons, NOAA finds good cause to waive the delay in the effective date of this rule pursuant to 5 U.S.C. 553(d)(3).

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Natural resources, Historic preservation, Marine protected areas, Marine resources, National marine sanctuaries, Recreation and recreation areas, Corals.

Nicole R. LeBoeuf,

Assistant Administrator for Ocean Services and Coastal Zone Management,

National Ocean Service,

National Oceanic and Atmospheric Administration.

For the reasons set forth above, NOAA amends part 922, title 15 of the Code of Federal Regulations as follows:

PART 922 – NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 et seq.

2. In appendix VI to subpart P, add a temporary entry for “Tavernier” at the end to read as follows:

Appendix VI to Subpart P of Part 922—Special-Use Areas Boundary Coordinates and Use Designations

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TAVERNIER (TEMPORARY)

(Restoration Only) —[The coordinates are unprojected (Geographic) and based on the North American Datum of 1983. The boundary for the special use area begins at Point 1 and continues to each successive point in numerical order until ending at Point 5 as listed in the coordinate in the following table.]

Point No	Latitude	Longitude
1	24.96934	-80.44378
2	24.97076	-80.43955
3	24.96765	-80.43759
4	24.96612	-80.44186
5	24.96934	-80.44378

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