



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 240618-0166]

RIN 0648-BN10

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: Interim final rule; temporary emergency rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is issuing an interim final rule, temporary emergency rule in the Florida Keys National Marine Sanctuary (FKNMS) establishing three special use areas that will prohibit all entry except for restoration activities under a valid Office of National Marine Sanctuaries (ONMS) permit. These special use areas are needed for the relocation of coral nursery stock to cooler waters in response to an anticipated marine heatwave this summer with a high likelihood of coral bleaching. NOAA is establishing three special use areas, each of which are individually approximately 0.07 square miles and are within Federal waters of FKNMS. This temporary rule is necessary to prevent or minimize destruction of, loss of, or injury to sanctuary resources by facilitating 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. These special use areas would expire within 60 days unless they are extended an additional 60 days. NOAA also requests comments on this action.

DATES: This interim final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], through [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]. NOAA will consider all comments received by [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: You may navigate to the plain language summary of this rule by visiting <https://www.regulations.gov/docket/NOAA-NOS-2024-0064>. You may submit comments on this document, identified by NOAA-NOS-2024-0064, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Visit <https://www.regulations.gov> and type NOAA-NOS-2024-0064 in the Search box (note: copying and pasting the FDMS Docket Number directly from this document may not yield search results). Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NOAA. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NOAA will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

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 issuing an interim final rule to create three special use areas in the Federal waters of the Florida Keys National Marine Sanctuaries in order to protect nursery corals being relocated to cooler, deeper waters, in response to a marine heat wave. All entry will be prohibited in these three areas except for conducting restoration activities under a valid ONMS permit, continuous transit without interruption, and law enforcement purposes. These special use areas will be effective for 60 days after publication of this final rule, and could be extended an additional 60 days. If the special use areas are extended another 60 days, NOAA would publish another document in the **Federal Register**.

NOAA took similar action last summer, and established a 0.07 square mile temporary special use area approximately five miles southeast of the community of Tavernier Key on the island of Key Largo from September 6, 2023 through January 5, 2024 (88 FR 60887, September 6, 2023). During this time period, nursery coral relocated to this deeper water site experienced double the rate of survivorship as compared to nursery coral that remained at inshore, shallow sites. NOAA also anticipates the potential for a reoccurring marine heat waves in the future summers that will require temporary relocation of coral nurseries. NOAA seeks public comment on a long-term solution to avoid issuing emergency temporary rules in the future to protect temporarily relocated coral nurseries.

The FKNMS regulations at 15 CFR 922.164(e) 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)(ii)). 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 designated to carry out a restoration objective except to conduct such 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 action is also 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.

NOAA is establishing three temporary special use areas for the purpose of coral restoration. The sites are as follows: (1) Tavernier Special Use Area is approximately five miles southeast of the community of Tavernier, on the island of Key Largo, within Federal waters of FKNMS; (2) Marathon Special Use Area is approximately 4 miles offshore from the City of Key Colony Beach/Marathon, within Federal waters of FKNMS; and (3) Looe Key Special Use Area is approximately 6.5 miles offshore from Summerland Key, within Federal waters of FKNMS (GPS coordinates for each special use areas are included below).

These special use areas will serve as sites for the temporary relocation of nursery corals to deeper waters to protect the nursery corals from heat stress caused by the anticipated marine heat wave this summer.

Creation of these temporary special use areas 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 for each site is no larger than the size reasonably necessary to protect the coral nursery stock from physical damage. The

specific zone areas are 0.068 square miles for Tavernier, 0.066 square miles for Marathon, and 0.069 square miles for Looe Key.

Individual coral practitioners would need to apply for a sanctuary permit to relocate nursery stock to any of the areas. Coral practitioners must also obtain any other necessary Federal permits.

NOAA will provide notice of the location of this area through sanctuary radio announcements and press releases. NOAA has also 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 the Temporary Emergency Action

This interim final rule is necessitated by the anticipated marine heat wave this summer that will likely impact and kill coral reefs in the Florida Keys at an unprecedented rate and scale. This action is informed by lessons learned from an emergency rule NOAA promulgated in response to the marine heat wave in the summer of 2023. In 2023, NOAA implemented an emergency regulation to establish a 0.07 square mile temporary special use area approximately five miles southeast of the community of Tavernier Key on the island of Key Largo (88 FR 60887). At the time, the south Florida sea temperatures as reported by NOAA were 35°C, which were the warmest on record. These conditions became unsustainable for coral reef ecosystems in July of 2023 and the extreme ocean temperatures persisted until at least October 2023. The 2023 special use area was in place for an initial 60 days (from September 6, 2023, through November 6, 2023) and was extended by an additional 60 days (from November 6, 2023, to January 5, 2024, 88 FR 75229, November 2, 2023), after which the special use area expired. During this time period, nursery coral relocated to this deeper water site experienced double the rate of survivorship as compared to nursery coral that remained at inshore, shallow sites.

Data shows forecasts for similarly warm waters for 2024, and NOAA anticipates the need for three special use areas to move and protect coral species in this summer of 2024. As in the summer of 2023, NOAA anticipates that a summer heat wave will put at risk 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.

While some of the coral nursery stock from these sites may be 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, would be relocated to deeper water sites within Federal waters of FKNMS. Temperature meters at these deep sites have consistently shown readings below the bleaching threshold of 30.5°C.

This emergency action establishes three temporary special use areas 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 these special use areas need to be in place to avoid further damage to these sensitive nursery corals that have already experienced impact from heat stress. As such, establishment of these special use areas is necessary to prevent or minimize the destruction of, loss of, or injury to sanctuary resources.

Emergency Measures

This interim final rule establishes three special use areas, each 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. These special use areas will be effective for 60 days after publication of this final rule, and could be extended an additional 60 days. If the special use areas are extended another 60 days, NOAA would publish another document in the **Federal Register**.

Locations and Boundaries

Through this interim final rule, NOAA establishes three special use areas subject to temporary access and use restrictions for a period no longer than 60 days, with up to one 60 day extension. In these special use areas for restoration, all entry will be prohibited except for conducting restoration activities under a valid ONMS permit, continuous transit without interruption, and law enforcement purposes, in accordance with § 922.164(e)(3). The coordinates for each temporary special use area are provided in appendix VI to subpart P of part 922 (below).

1. Tavernier Special Use Area (Temporary)

The first of these special use areas was created in 2023 with a final temporary rule (88 FR 60887, September 6, 2023), and proved to be a very good temporary location for moving the coral nursery stock given that there was double the survivorship of nursery coral relocated to this deeper water site as compared to nursery coral that remained at inshore,

shallow sites. It is approximately five miles southeast of the community of Tavernier, on the island of Key Largo.

2. Marathon Special Use Area (Temporary)

The second area is located within Federal open waters of the Atlantic Ocean, approximately four miles offshore from the City of Key Colony Beach/Marathon.

3. Looe Key Special Use Area (Temporary)

The third area is located within Federal open waters of the Atlantic Ocean, approximately 6.5 miles offshore from Summerland Key. Looe Key Special Use Area includes within its boundary one mooring buoy that is used by private individuals or diving and fishing charter operators, which will become unavailable for these uses while the temporary special use area restrictions are in place. This is one of 47 total mooring buoys in the vicinity of Looe Key, representing 2% of the total mooring buoy availability in this area (or 0.22% of all mooring buoys available throughout the sanctuary). Currently within this area anchoring is prohibited on living coral other than hardbottom in water depths less than 40 feet when visibility is such that the seabed can be seen (15 CFR 922.163(a)(5)(ii)), and in Looe Key Sanctuary Preservation Area, anchoring is prohibited if a mooring buoy is available or if conducted anywhere other than a designated anchoring area when such areas have been designated and are available (15 CFR 922.164(d)(1)(vi)).

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 \$216,972 per violation per day. *See* 15 CFR 6.3(f)(13). Furthermore,

NMSA also authorizes an action in rem against any vessel used in violation of this regulation. *See* 16 U.S.C. 1437(d)(3).

Request for Comments

While NOAA requests comments on all aspects of this rule, NOAA is particularly interested in receiving comments on establishing permanent special use areas where use and access restrictions would be applied on an as-needed, temporary basis for the relocation of coral nursery stock to cooler waters in summer seasons when extremely warm water and high likelihood of bleaching events are anticipated. NOAA would notify the public whenever the restrictions are in place in a Federal Register notice and by other means, such as sanctuary radio announcements, press releases, and a Notice to Mariners.

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 922.165.

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 interim final 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 this 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 Procedures Act

Pursuant to 5 U.S.C. 553(b)(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. Impacts from an anticipated marine heat wave are expected to result in immediate and large-scale impact to the coral reef ecosystems in the Florida Keys as early as July 2024, 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 these three special use areas 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 these three special use areas 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).

However, NOAA will collect public comments for thirty days after publication of this interim final rule.

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

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 entries for “Tavernier Special Use Area (Temporary)”, “Marathon Special Use Area (Temporary)”, and “Looe Key Special Use Area (Temporary)” at the end of the appendix 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 SPECIAL USE AREA (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	24.96925	-80.44376
2	24.97079	-80.43950
3	24.96763	-80.43768
4	24.96616	-80.44180
5	24.96925	-80.44376

MARATHON SPECIAL USE AREA (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	24.65411	-81.01286
2	24.65412	-81.00869
3	24.65044	-81.00870
4	24.65044	-81.01289
5	24.65411	-81.01286

LOOE KEY SPECIAL USE AREA (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	24.54255	-81.41811
2	24.54256	-81.41357
3	24.53903	-81.41356
4	24.53901	-81.41812
5	24.54255	-81.41811

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