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NOMINATION OF A MARINE SANCTUARY
FOR CORAL REEF PRESERVATION AND RESEARCH
(WITH PROVISION FOR COMPATIBLE RECREATIONAL AND
COMMERCIAL USES) IN THE VICINITY OF KEY LARGO
AND ELLIOT KEY, FLORIDA

(Including the existing Key Largo Coral Reef Preserve,
the John Pennnekamp Coral Reef State Park, the Biscayne
National Monument, together with adjacent ocean areas and
associated estuarine areas required for protection.)

To:

Office of Coastal Environment
National Oceanic and Atmospheric Agency

May 23, 1974

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CONTENTS

Letter of Transmittal	ii
Summary of Recommendations	1
Introduction	2
A. Environmental Features	2
B. Uses of the Area and Adjacent Areas	3
C. Present Regulation	5
1. The Biscayne National Monument	5
2. The John Pennekamp Coral Reef State Park and the Key Largo Coral Reef Preserve	6
Recommendations	10
1. Ocean Area to Include the Biscayne National Monument, the Coral Reef Park/Preserve, and the Intervening Area	10
2. Seaward Limit to Extend to the 200 Foot Depth Contour	12
3. Inland Water Areas of lower Biscayne Bay (The Biscayne National Monument, bay portion) and Card Sound to be Included Within the Marine Sanctuary so that Activities in these Areas will be Compatible with Long-Term Preserva- tion of the Coral Reef Habitat	14
Conclusions	16
Map Showing Proposed Marine Sanctuary	18

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May 23, 1974

Mr. Robert Knecht, Director
Office of Coastal Environment
National Oceanic and Atmospheric
Administration
U.S. Department of Commerce
Rockville, Maryland 20852

Dear Mr. Knecht:

Enclosed is the nomination of a marine sanctuary, pursuant to Title III of the Marine Protection, Research and Sanctuaries Act of 1972, and the guidelines adopted thereunder, for a coral reef habitat preserve with authorization of compatible uses in the vicinity of Key Largo and Elliot Key, Florida. The proposed marine sanctuary includes the existing Key Largo and John Pennkamp Preserve, the Biscayne National Monument (marine portions) and associated marine areas necessary for their protection.



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SUMMARY OF RECOMMENDATIONS

Pursuant to the authority of Title III of the Marine Protection, Research and Sanctuaries Act of 1972 (Pub. L. 92-532; 86 Stat. 1061) and the rules promulgated thereunder, nomination is made for the designation of a marine sanctuary:

1. To include the ocean area from the Northern Boundary of the Biscayne National Monument to the Southern Boundary of the John Pennekamp Coral Reef State Park (in the Florida jurisdiction) and the Key Largo Coral Reef Preserve (in the federally regulated area). This encompasses an area between the National Monument and the Coral Reef Park/Preserve which is presently not protected as a habitat preserve;

2. To extend the seaward limit to the 200 foot depth contour line, instead of the 60 foot depth presently provided for the National Monument and the Coral Reef Park/Preserve; and

3. To include the bay portion of the Biscayne National Monument and Card Sound, so that activities in these associated inland water areas will be subject to regulations to ensure that they will be consistent with environmental maintenance of the marine sanctuary. This includes the area of Card Sound which is presently not protected as a habitat preserve. As a supplement to the regulations applicable to the National Park Service area in the Biscayne National Monument, it is anticipated that different regulations will be adopted for the ocean and inland water areas, directed towards protecting the coral reef system as a habitat preserve.

INTRODUCTION

The coral reef system which lies off Key Largo and Elliot Key, Florida is part of the only major reef complex on the East coast of the United States, and is the most well developed in the continental United States. It is the best remaining coral reef area off the Florida Keys. However, nearby reef areas, both to the north and south, have shown considerable damage.

A. Environmental Features

Numerous scientific studies have documented the environmental features of this reef system. Accompanying the original of this nomination is a copy of:

The Marine Ecology of the Biscayne National Monument,
G. L. Voss, F. M. Bayer, C. R. Robins, M. Gomon, and
E. T. LaRoe, September, 1969, Institute of Marine
Sciences, University of Miami.

This study by Dr. Voss and associates examines in detail the plant and animal life, and the physical characteristics of the reef system which is characteristic of the ocean area covered by this nomination for a marine sanctuary. This study also includes an extensive bibliography of 266 scientific papers dealing with environmental features of the system.

Also enclosed is a copy of:

Final Report of the Coral Reef Group of the Florida Keys
Project for Project Year, 1973,

A. Antonius, March 7, 1974, Harbor Branch Foundation,
Fort Pierce, Florida.

This report identifies dramatically inferior environmental conditions at the Hen and Chickens reef (an area lying off Plantation Key approximately 9 miles South of the Coral Reef Park/Preserve) as compared to certain reef areas in the Park/Preserve.

Because of the amount of information available on the environmental features of the area we will not attempt to restate or summarize scientific knowledge in the text of this nomination. The conclusions and recommendations of the Dr. Voss study are suggested to be generally desirable for the area; and for further information the reader is referred to the bibliography therein and more recent studies.

B. Uses of the Area and Adjacent Areas

Present and future uses of the area include recreational boating and fishing, snorkeling and scuba diving, and commercial fishing. The salient points regarding uses are:

- the area because of its environmental uniqueness serves not only the population of the upper Florida Keys and the Miami area, but also a large number of visitors from all

over the country and the world. The Coral Reef State Park is recording about 340,000 visitors annually. Moreover, the trend towards increase means that increased social benefits will require careful regulation of activities in the area if environmental damage is to be avoided;

- not all uses have to be restricted in order to protect the coral reef system. Many compatible uses, including many types of commercial fishing, navigation, many types of research, and so on, do not have to be specially regulated in order to protect the system;

- regular monitoring of uses, and research on the effects of particular uses on the environment, should be conducted so that regulations will be revised as needed to ensure an adequate level of protection of the coral reef system.

Uses of adjacent areas can have particularly detrimental impacts on the coral reef system; and such uses and their impacts have not been adequately studied. We recommend studies to determine the effects on the coral reef ecosystem of various types of activities outside the proposed marine sanctuary:

- development activities along the coast of Key Largo (Elliot Key as part of the Biscayne National Monument is not available for extensive development which may produce effects from dredging and filling and from waste disposal (septic tanks

and sewage treatment facilities);

- pollution from the Miami metropolitan area which some observers believe may be carried southward along the coast as the flow of the Gulf Stream produces eddy currents close to the shore; and

- various activities in the Card Sound and lower Biscayne Bay areas which can have impacts on the reef system as water is flushed into the offshore areas where the reefs are located.

C. Present Regulation

Aside from generally applicable federal and state water quality laws the area proposed in this nomination for a marine sanctuary is now subject to two different types of jurisdiction intended to protect its unique environment. See the attached chart for boundaries of these jurisdictions.

1. The Biscayne National Monument. The ocean and bay areas adjacent to Elliot Key are part of the Biscayne National Monument, which was authorized by Congress in 1968 and established in June, 1970. Under the jurisdiction of the National Park Service, these marine areas are subject to the general regulations prohibiting the collecting or taking from any National Park Service Area of live animals or plants,

including tropical fish, coral, and so on. Citations are regularly issued and prosecuted for such violations. Permits may be obtained for research collecting. Although the National Park Service has the authority to establish regulations specifically for the Biscayne National Monument, none have been adopted as of the present. The result is that this area is not afforded the level of protection prescribed in the Coral Reef Park/Preserve area to the South.

2. The John Pennekamp Coral Reef State Park and the Key Largo Coral Reef Preserve. Off Key Largo the Florida and United States governments established in 1960 a state park and a federal preserve, the respective jurisdictional zones corresponding to the estimated limits of state jurisdiction three miles from the coastline. Roughly half of this Coral Reef Park/Preserve lies within state jurisdiction and half within federal jurisdiction. Both areas are subject to parallel regulations which provide strict controls for the purpose of protection of the coral reef system, but at the same time allow compatible uses such as commercial fishing, research, and so on. At present, although there is no formal delegation of federal authority to the state, the state is administering the regulations both for the state and federal areas.

Accompanying this nomination is a copy of a study of the

legal authority and enforcement problems of the Coral Reef
Park/Preserve:

John Pennekamp Coral Reef State Park: Florida's First
Federal Marine Sanctuary?, by Dennis P. Koehler, Research
Assistant, Ocean and Coastal Law Program, Report No. 13,
Project R/L-5, Community Legal Problem Services, in the
University of Miami Sea Grant Institutional Program, May,
1975.

This report, based upon review of the laws and regulations and
also interviews to determine what current problems exist, notes
a number of problems and questions on regulatory authority and
enforcement, including:

- the need for more funds for enforcement;
- omission of many nearby live coral formations from
the boundaries of the Coral Reef Park/Preserve, thus rendering
enforcement difficult; and
- inadequate penalties (minor fines up to \$35 under
state law) for violations, as compared to a maximum civil pen-
alty of up to \$50,000 per violation under federal marine sanc-
tuary authority (as well as possible in rem proceedings against
vessels used, and possible federal district court restraining
orders to prohibit future violations, under marine sanctuary
authority).

Besides these problems, which reduce the effectiveness
of environmental protection of the coral reef system, there

are direct jurisdictional issues which are not adequately resolved at present:

- state officials are enforcing relative to activities beyond three miles from the coastline without express delegation of federal authority. Citations issued for activities conducted outside Florida territory may be subject to legal challenge. Furthermore, the possibility of enforcement against a foreign vessel by state officials on the high seas may raise international law questions;

- the 60 foot depth contour line, which is the outer limit of preservation jurisdiction at present, produces practical problems for enforcement. Often boats anchor seaward of the 60 foot depth and divers later surface with coral or other items prohibited from collection in the preserve. Extension of the seaward limit of preservation as proposed in this nomination for a marine sanctuary to a depth where diving with scuba gear is not possible (unless advanced mixed-gas systems are used) would have two distinct advantages: (1) corals occurring below the 60 foot depth would be protected; and (2) enforcement would be made more efficient.

Finally, on the question of the adequacy of enforcement funds it can be noted that the large number of park visitors annually will permit the allocation of considerable increases

in funds for the operating budget of the John Pennekamp Coral Reef State Park by making only very modest increases in the park use fees. Enforcement in the federal area can and should best be accomplished by federal officials, the Coast Guard in those areas beyond three miles from the coastline, and the National Park Service in those areas of the Biscayne National Monument within three miles of the coastline and in Biscayne Bay (for those areas of submerged lands which Florida has granted to the federal government).

RECOMMENDATIONS

We submit that the accompanying and referenced studies, and other available information, justify designation of a marine sanctuary including the marine areas of the Biscayne National Monument, the John Pennekamp Coral Reef State Park (state jurisdiction) and the Key Largo Coral Reef Preserve (federal jurisdiction), the adjacent intervening area, adjacent areas to the 200 foot depth contour, and Card Sound.

This area qualifies as a habitat preserve under the rules governing marine sanctuaries (15 C.F.R. §922.10) and may well also qualify under the other classifications: species preserve, research area, and recreational and esthetic area. As it takes thousands of years for major coral reefs to redevelop, and the major purpose of this nomination is to secure the preservation of the only major living coral reef system in the Eastern United States, it is proposed that the area be designated a coral reef habitat preserve, with express provision for continuation of all compatible recreation, commercial fishing, research, and other uses.

Recommendation 1. To include the ocean area from the Northern Boundary of the Biscayne National Monument to the Southern Boundary of the John Pennekamp Coral Reef State Park (in the Florida jurisdiction) and the Key Largo Coral Reef Preserve (in the federally regulated area). This encompasses

an area between the National Monument and the Coral Reef Park/Preserve which is presently not protected as a habitat preserve.

- This recommendation will bring under uniform and consistent regulation the coral reef system lying off Key Largo and Elliot Key, Florida;

- at present the area lying between the Biscayne National Monument and the state/federal Coral Reef Park/Preserve contains valuable living coral formations. This open area not only should be protected because it is environmentally valuable, but also because enforcement in the adjacent protected areas is made more difficult. Proof that a violation occurred in the preserve area literally requires underwater observation, and is wasteful in enforcement costs. Moreover, if this open area is subjected to any major pollution the currents will damage the nearby protected areas, which are not buffered in any way;

- the present inadequate penalties administered by Florida for both the state and federal areas of the Coral Reef Park/Preserve would be replaced by effective sanctions which, upon approval in Florida, can provide effective deterrence against violations;

- the ocean marine area of the Biscayne National Monument will be subject to federal regulations in its entirety, the portion to three miles from the coastline can be enforced

by the National Park Service and the portion seaward of three miles from the coastline enforced by the Coast Guard, or some other formula can be agreed for sharing the enforcement responsibility;

- enforcement in the portion of the marine sanctuary south of the Biscayne National Monument and seaward of three miles from the coastline (i.e., beyond Florida's territorial jurisdiction) should be by the Coast Guard.

Recommendation 2. To extend the seaward limit to the 200 foot depth contour line, instead of the 60 foot depth presently provided for the National Monument and the Coral Reef Park/Preserve.

- The present seaward limit of the 60 foot depth contour line for the federal preservation areas is inadequate in two respects: (1) corals in the reef system occur below the 60 foot depth, including some corals which occur mainly at greater depths, and these should be protected; and (2) enforcement of regulations is difficult both because surveillance would have to be intense to discriminate among lawful and unlawful activities where boats are anchored in the vicinity of the 60 foot depth, and because presentation of proof is most difficult in such cases. While most of the citations now issued by Florida are disposed of by paying a small fine, the establishment of really adequate penalties can be expected to result in more

cases where proof is required;

- the 200 foot depth contour line is recommended for two reasons: (1) protection of corals occurring at greater than the 60 foot depth; and (2) the 200 foot depth is beyond the capability of ordinary compressed air scuba equipment, therefore any boater in the vicinity who possesses coral or other items subject to protection cannot justify the possession unless it is a species occurring at greater than the 200 foot depth and he also possesses advanced mixed-gas diving equipment. It is expected that this will make enforcement more efficient than at present, and not substantially increase enforcement costs;

- extension of the seaward limit of jurisdiction from the 60 to the 200 foot contour line for the marine sanctuary does not amount to a major increase in the area covered. Along the Coral Reef Park/Preserve this amounts to the addition of an average of about one mile to the area presently included, compared to about six miles of seaward jurisdiction in the state and federal governments at present. This is an increase of roughly 15%. Less than one mile seaward extension would be required for the Biscayne National Monument and the intervening area.

Recommendation 3. To include the bay portion of the Biscayne National Monument and Card Sound, so that activities in these associated inland water areas will be subject to regulations to ensure that they will be consistent with environmental maintenance of the marine sanctuary. This includes the area of Card Sound which is presently not protected as a habitat preserve. As a supplement to the regulations applicable to the National Park Service area in the Biscayne National Monument, it is anticipated that different regulations will be adopted for the ocean and inland water areas, directed towards protecting the coral reef system as a habitat preserve.

- To protect the viability of the coral reef system it is anticipated that some regulation of activities in the associated inland water areas of lower Biscayne Bay and Card Sound will have to be undertaken, therefore it is recommended that these areas be included within the marine sanctuary but be subject to different, and more limited, regulations appropriate and necessary to maintain the long-term viability of the coral reef habitat preserve;

- within the bay area of the Biscayne National Monument the National Park Service would enforce the marine sanctuary regulations adopted for the inland water areas, and also would make additional consistent regulations deemed necessary for protection of the bay area under its jurisdiction;

- coordination of state activities with the operation of the marine sanctuary will require the adoption of

regulations for Card Sound which will protect the long term viability of the coral reef system as a habitat preserve;

- regular monitoring and research should be conducted to determine the activities which at present or in the future will have adverse environmental impacts on the coral reef system, and this information should be used to revise regulations as needed in order to achieve the major purpose of the marine sanctuary.

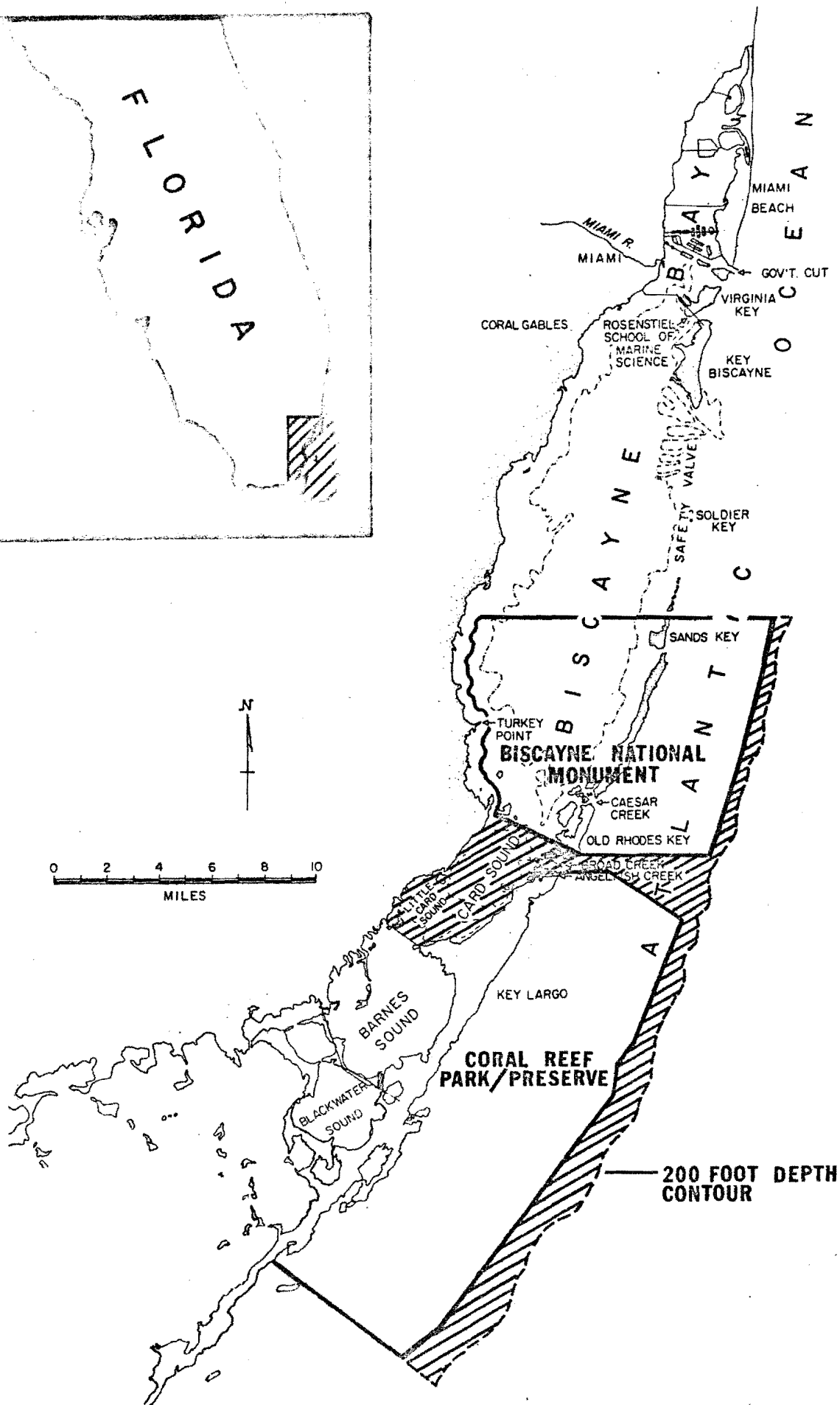
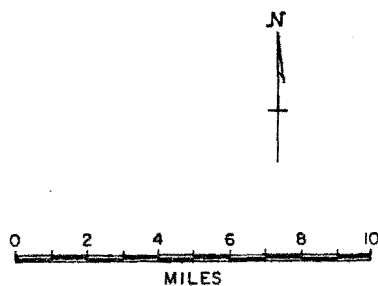
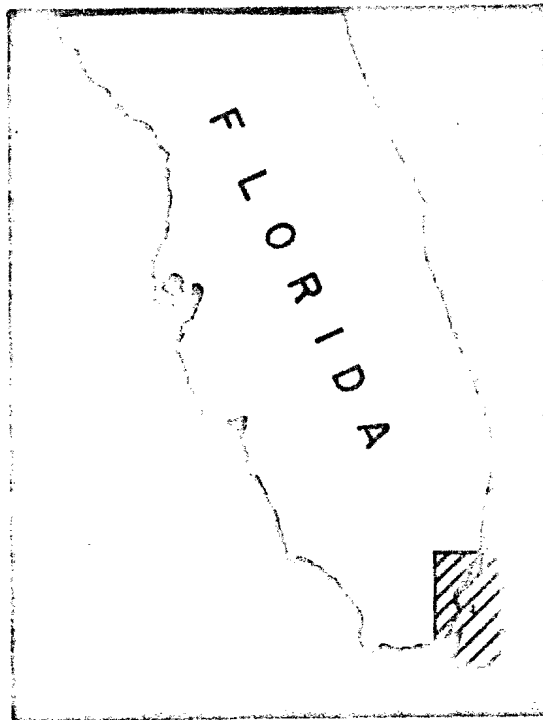
CONCLUSIONS

The expected benefits of the proposed marine sanctuary would include primarily the first really effective protection of the coral reef system off the upper Florida Keys. This protection is not intended to exclude compatible uses; indeed multiple uses, both recreational and commercial, are to be encouraged in the area of the sanctuary, consistent with the purpose of long-term preservation of the reef system. The recommendations presented in this nomination:

- include environmentally integral areas now not subject to preservation regulation;
- provide for uniform regulations for the ocean areas under state and federal jurisdiction;
- provide a basis for an adequate level of penalties for violations;
- eliminate jurisdictional questions presently resulting from state enforcement in, and beyond, the federal Key Largo Coral Reef Preserve, beyond state territory;
- make enforcement more efficient by extending the sanctuary to a depth beyond the capability of ordinary diving equipment;
- provide a basis for state and federal coordination

in regulating the activities which affect the quality of inland waters, which tides and currents will move over the reef areas, so that those activities will not lead to the destruction of the coral reef habitat preserve;

- provide a basis for integrated monitoring and research studies, coupled with an effective and coordinated regulatory system, which uses such information on a regular basis, to maintain the long-term viability of the marine sanctuary.



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Lab
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SUPPLEMENT TO NOMINATION OF THE
FLORIDA KEYS CORAL REEF MARINE SANCTUARY

Kiser-

(Including the existing Key Largo Coral Reef Preserve, the John Pennnekamp Coral Reef State Park, the Biscayne National Monument, together with adjacent ocean areas and associated estuarine areas required for protection.)

To:

Office of Coastal Zone Management
National Oceanic and Atmospheric
Administration

June 29, 1974

Professor Dennis M. O'Connor
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C O N T E N T S

Letter of Transmittal	ii
Summary of Recommendations	1
Introduction	2
A. Environmental Features	2
B. Uses of the Area and Adjacent Areas	7
C. Present Regulation	7
Recommendations	8
A. Purposes of the Florida Keys Coral Reef Marine Sanctuary	8
B. Relation to the Biscayne Bay Aquatic Preserve Established by the Florida Legislature	9
C. Management and Regulations	10
D. Enforcement and Surveillance	14
Conclusion	16
Appendix: The Biscayne Bay Aquatic Preserve, Ch. 74-171, Florida Statutes	17

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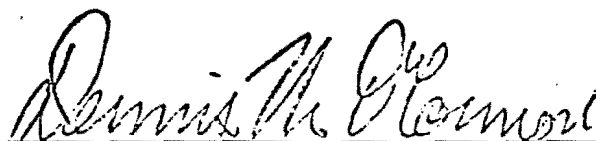
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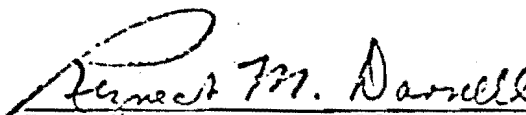
Mr. Robert Knecht, Director
Office of Coastal Zone Management
National Oceanic and Atmospheric
Administration
U.S. Department of Commerce
Rockville, Maryland 20852

Dear Mr. Knecht:

In support of the nomination of the Florida Keys Coral Reef Marine Sanctuary, which the undersigned submitted in May, we are transmitting this supplement to the nomination in order to provide further information and clarification, and to modify in minor ways the recommendations made earlier. The Florida Legislature, subsequent to the date of the nomination, declared Biscayne Bay an aquatic preserve, and this important step provides opportunities for coordination between federal and state agencies to further the protection of the proposed marine sanctuary.

We wish also to indicate that our work on the nomination and this supplement has been made possible by a number of organizations, to which appreciation is due for making our time available: the Sea Grant Program; the Ocean and Coastal Law Program and the School of Law at the University of Miami; the Conservation of Ecosystems Program of the United States International Biological Program (US/IBP); and the American Institute of Biological Sciences.


Dennis M. O'Connor


Reznéat M. Darnell

- ii -

SUMMARY OF RECOMMENDATIONS

Pursuant to the authority of Title III of the Marine Protection, Research and Sanctuaries Act of 1972 (Pub. L. 92-532; 86 Stat. 1061) and the rules promulgated thereunder, nomination is made for the designation of a marine sanctuary:

1. To include the ocean area from the Northern Boundary of the Biscayne National Monument to the Southern Boundary of the John Pennekamp Coral Reef State Park (in the Florida jurisdiction) and the Key Largo Coral Reef Preserve (in the federally regulated area). This encompasses an area between the National Monument and the Coral Reef Park/Preserve which is presently not protected as a habitat preserve; (Same recommendation as in original nomination.)

2. To extend the seaward limit to the 300 foot depth contour line, instead of the 60 foot depth presently provided for the Biscayne National Monument and for the federal and state Coral Reef Park/Preserve. (In response to comments on the original nomination the sanctuary area is proposed to reach to the 300 foot rather than 200 foot depth, in order to provide for more effective enforcement); and

3. To include the bay portion of the Biscayne National Monument, extending the northern bay boundary of the Monument in a straight line westward to the mean high water line on the west side of Biscayne Bay, thence southerly along this westerly mean high water line of Biscayne Bay to State Road 905 (the Card Sound Bridge), thence easterly along such right-of-way to the easterly mean high water line of Biscayne Bay (including an area commonly known as Card Sound), thence northerly along the easterly mean high water line of Biscayne Bay and including the channels, creeks and canals connecting to the Atlantic Ocean, to the northern bay boundary of the Biscayne National Monument. Regulations for the bay portion of the sanctuary will be developed in coordination with the Trustees of the Internal Improvement Trust Fund of Florida to ensure that the water quality and circulation will not damage the viability of the reef system. (This recommendation covers the area in lower Biscayne Bay and Card Sound between the northern boundary of the Monument and the Card Sound Bridge to the mean high water line, in order to provide identical coverage with the southern portion of the Biscayne Bay Aquatic Preserve established by the Florida Legislature in Ch. 74-171, Florida Statutes.)

INTRODUCTION

The living coral reef system which occupies the continental shelf of southeast Florida from Biscayne Bay to Key West is a unique and valuable feature of the State of Florida as well as of the nation. The essential integrity of this system must be maintained in order to preserve the esthetic, recreational, ecological and economic values which this system engenders. However, direct and indirect influences of human activities are already seriously eroding the values of the coral reefs, and the system cannot be expected to survive without deliberate, effective and immediate governmental intervention. Under the power of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, vested in the Office of Coastal Zone Management, the coral reef system can now receive federal protection through designation as a marine sanctuary. In support of a nomination to this effect previously submitted, the following information is offered.

A. Environmental Features

o General ecology - This coral reef system is the most massive, interesting and ecologically diverse reef within the continental U.S., surpassing those of the Florida West Coast, the Flower

Gardens reefs of Texas, and those of southern California. The full reef complex includes a large array of West Indian corals, algae, sponges, shrimp, crabs, lobsters, mollusks, and a host of brightly-colored tropical fish species.

• Scientific study - Because of its uniqueness, ecological diversity, vertical stratification (see illustration, p. 7) and proximity to major universities, the coral reef system represents an unsurpassed site for scientific study and training in tropical marine ecology, and it is the only really good site for such study in the continental United States. Furthermore, since most coral reef ecosystems are dependent upon food and organisms transported from other nearby ecosystems, the area provides an unexcelled opportunity for studying the import and establishment of West Indian species via the Gulf Stream and the importance of nearby marshes and mangrove swamps in the production of organic matter which ultimately supports a portion of the production of the coral reef system.

• Role in protection of the coastal environment - Warm tropical waters of the mighty Gulf Stream flow northward along the outer edge of the reefs. This major current system generates powerful countercurrent eddies which spin southward over the reefs and impinge upon the shoreline itself. The living reef system reduces the speed and erosional power of these eddies and performs

a major role in protection of the land. If the living coral were to die, the reef itself would undergo erosional deterioration. Then the water currents would impinge more directly upon the land, eroding shorefront property, greatly increasing the costs of shoreline stabilization, and reducing land values of the mainland and island property.

• Esthetics and recreation - In addition to the activities of local residents, many thousands of people from the rest of the United States annually visit southern Florida to view the under-sea coral gardens through glass-bottomed boats, to snorkel or scuba dive among the reefs, or to enjoy boating, fishing, and other recreational opportunities afforded by the reefs. All told, reef-related activities generate considerable commercial activity and add millions of dollars annually to the economy of southern Florida.

• Deterioration of values - Recent scientific and technical writings have emphasized the fact that the coastal ecosystems of the United States are rapidly being destroyed through the activities of man and that the valuable ecosystems can survive only through the deliberate protective intervention of man. This message was spelled out in great detail in the recent authoritative treatise, The Water's Edge: Critical Problems of the Coastal Zone, (Ketchum, 1972) prepared by specialists

of many disciplines from all sectors of the nation. Deterioration of the south Florida coral reef complex has also recently been documented by Voss (1973).

For these reasons the coral reef system must be declared a marine sanctuary and permanently protected in behalf of the citizens of the Nation. Furthermore, management recommendations must be worked out and implemented which are designed to preserve the biological integrity of this important system.

The development of the Florida Keys Coral Reef Marine Sanctuary would offer a remarkable opportunity to combine natural preservation, scientific study, and public uses in innovative ways. In particular, systematic physical and biological monitoring to evaluate the effects of natural fluctuations on the sanctuary ecosystem can provide baselines for both preservation and sustained exploitation elsewhere that would have major bearing on the use of tropical and sub-tropical marine environments worldwide. In this connection also, the significance of the technology and the procedures needed for monitoring and management of the sanctuary would also have direct importance as a training ground for marine scientists of many disciplines in both the United States and foreign countries. Hence the sanctuary should be viewed not merely as the reservation of certain areas, but as the basis of a new approach to the understanding and use

of marine resources of international significance.

• Additional study materials - In addition to the studies and references mentioned in the original nomination copies of the following papers have been sent to the Office of Coastal Zone Management:

Coral Reefs and Pollution, by R. E. Johannes, FAO Technical Conference on Marine Pollution and its Effects on Living Resources and Fishing, Rome, 9-18 Dec. 1970; FIR: MP/70/R-14, 19 Nov. 70;

Marine Pollution in Shallow Tropical Waters, by R. E. Johannes, FAO/SIDA Training Course on Marine Pollution in Relation to Protection of Living Resources, Goteborg, 2 May-3 June 1972;

Oil Damages Corals Exposed to Air, by R. E. Johannes, J. Morages, and S. L. Coles, Mar. Poll. Bull., Vol. II, No. 1 (1971);

How to Kill a Coral Reef, Parts I and II, by R. E. Johannes, Mar. Poll. Bull., Vol. I, No. 12 (1970), and Vol. II, No. 1 (1971);

Living Fossil Reef Types of South Florida, by J. E. Hoffmeister et al., A Guidebook for the Geological Society of America Convention, Nov. 1964, Field Trip No. 3 (1964);

Carbonate Sediments of the Gulf of Mexico, by R. Rezak and G. S. Edwards, Texas A&M University Oceanographic Studies, Vol. 3, p. 263 (1972).

This last study identifies for reefs in the Gulf of Mexico coral types occurring below as well as above the 60 foot depth, with some coral extending to about the 200 foot depth, and the structure building communities occurring well below the

200 foot depth. The accompanying illustration from the Rezak and Edwards study (p. 269) indicates the depth distribution of some major types of coral in such a reef system.

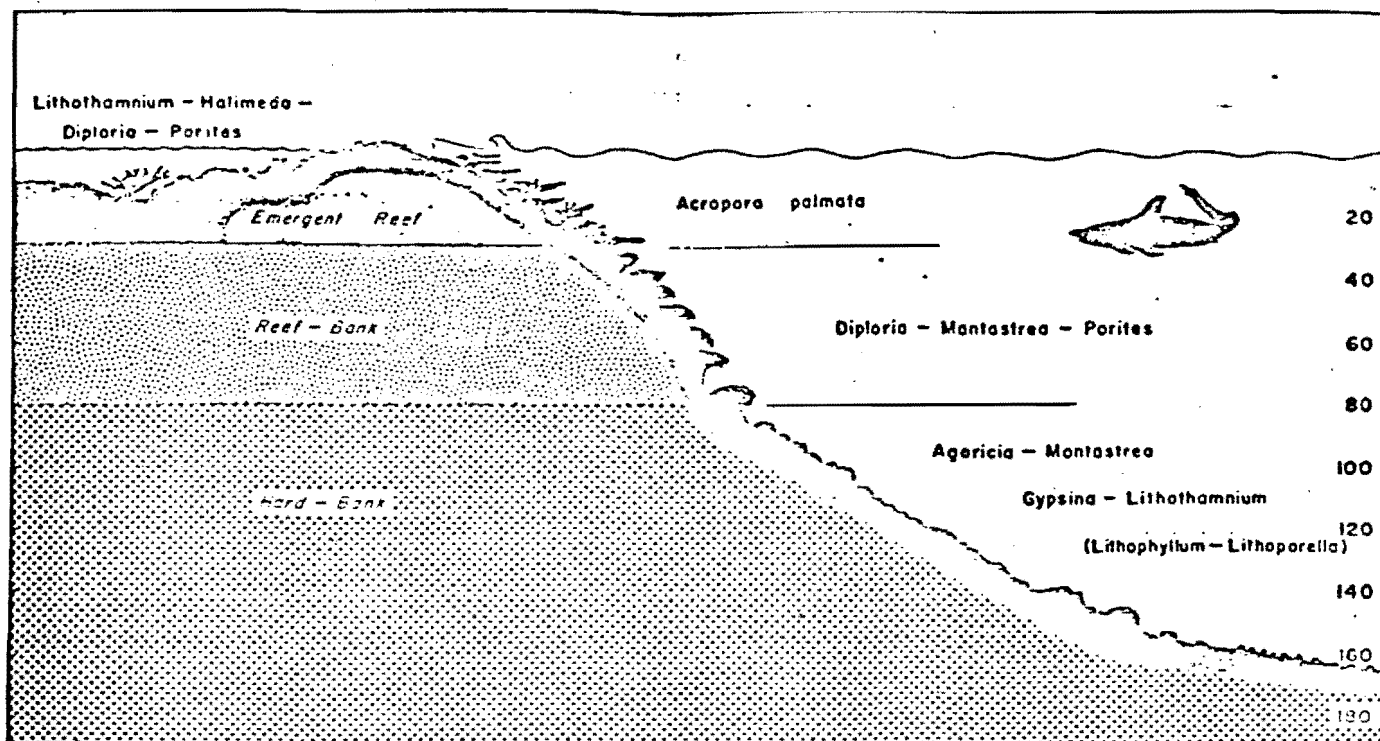


Figure 9-4. Organism communities of a typical emergent reef.

B. Uses of the Area and Adjacent Areas

No supplement to the information in the nomination.

C. Present Regulation

No supplement to the information in the nomination.

RECOMMENDATIONS

A. Purposes of the Florida Keys Coral Reef Marine Sanctuary

The purposes for which this sanctuary is proposed relate to the quality of life in Florida and the nation, as well as on the Florida Keys. Protection of the coral reef system not only maintains the environment, but also vitally and directly maintains the tourist economy of South Florida and the real estate values in the adjacent Keys. It is also linked to the development of science-related industry. Maintenance of the reef system, in other words, is an essential element in maintaining the integrity of the nearby land and growth of the Florida economy. In furtherance of the recommendation made in the original nomination, that the proposed sanctuary qualifies as a "habitat preserve" pursuant to the rules governing marine sanctuaries (15 C.F.R. §922.10), we wish to emphasize the interdependence of the environment and the economy here:

- the proposed sanctuary is a resource with considerable recreational, educational and esthetic value, on a local, state and even national scale; and

- the proposed sanctuary requires ecological protection and conservation if its viability is to be maintained.

B. Relation to the Biscayne Bay Aquatic Preserve
Established by the Florida Legislature

In what is probably the most significant environmental legislation adopted in Florida this year the state legislature designated the entirety of Biscayne Bay as an aquatic preserve. (Ch. 74-171, Florida Statutes, a copy of which is in Appendix I of this document.) This is the first marine preserve in Florida to be protected by legislation. Strict provisions (and penalties of \$5,000 per day for violations of the act or rules adopted pursuant to it) govern activities in the preserve, and provide controls substantially greater than in other areas of the state's navigable waters and submerged lands. The Biscayne Bay Aquatic Preserve includes the bay portion proposed for the marine sanctuary (except for the bay portion of the Biscayne National Monument, which Florida has deeded to the federal government). The amended recommendation contained in this supplement to the original nomination is intended to coincide in area with the southern portion of the Biscayne Bay Aquatic Preserve. It includes areas in the 800 foot wide strip to the west of the Biscayne National Monument, and to the south of the Monument to the Card Sound Bridge and to the mean high water line around the bay. The federal marine sanctuary is proposed also to include the water areas of the channels, creeks and canals connecting the bay and the ocean.

It is anticipated that the regulations for the bay area of the marine sanctuary will be less extensive than the state regulations for the aquatic preserve, as the purpose here is solely to maintain water quality and ecological processes (including flushing rates) so that circulating waters will not damage the viability of the coral reef system. We propose the following:

- consideration by the Trustees of the Internal Improvement Trust Fund of Florida of the requirements for maintaining the coral reef system off the Florida Keys in preparing rules and regulations under the Biscayne Bay Aquatic Preserve Act, specifically under Section 4 (1)(a) as "additional preserve management criteria . . . necessary to accommodate special circumstances;" and

- coordination between federal and state agencies in preparation of the marine sanctuary rules so as to harmonize federal and state rules and distribute enforcement responsibilities in as practical a manner as possible.

C. Management and Regulations

The primary responsibility for management decisions in the marine sanctuary in order to achieve its purposes will rest with the Office of Coastal Zone Management. It is anticipated,

however, that rules and regulations will be developed by coordinated action of the interested federal and state agencies.

Other interested federal agencies include the Departments of State, Transportation (Coast Guard), Justice, and Interior (the National Park Service). Interested state agencies include the Coastal Coordinating Council, the Trustees of the Internal Improvement Trust Fund, the Department of Natural Resources (Salt Water Fisheries), and the Department of Pollution Control.

NOAA can conclude an operating agreement with Florida for state supervision of concessions operating within the sanctuary (e.g., glass bottom boats, which presently are licensed by the state), and possibly for annual fees and stickers permitting boats to anchor in the sanctuary. The purpose of the fee structure would be to cover operating costs, and fees should be allocated to the sanctuary as a management unit. The present system of fees for those who enter through the land base in Key Largo, and no fees for the many Park/Preserve users who come by water, would thus be replaced by a practical and equitable schedule of user charges.

Regulations should include provision both for access and for preservation in the marine sanctuary. Access includes access for commercial purposes (fishing), for recreational and esthetic purposes, for scientific purposes (research and permits

for exceptional activities), and for educational purposes (education and training). Preservation regulations can be derived from the regulations presently in force at federal and state levels for the Coral Reef Park/Preserve, with further provision for really effective sanctions coupled with diligent enforcement. Improvement of the regulations is desirable. Provision for designated anchorage areas (which will be changed from time to time if local reef damage appears), and for continuous review of the effectiveness of regulations in the sanctuary management program, are necessary. The following are the types of regulations which should be considered:

- restriction of anchorage except in designated areas, and to be done only with a park permit (annual fee and sticker) except in cases of emergency. Perhaps floating moorings can be provided in the designated areas as part of the park operation;

- limitations on operation of watercraft in certain areas, and, when an area of the reef is damaged, the closure of an area to all activities except navigation for a period;

- prohibition of taking of coral reef biota (except for authorized commercial fishing);

- presumptions of violation for possession of coral reef biota in sanctuary limits (except when transit permit has been obtained in advance);

• prohibition of mixed gas scuba equipment in sanctuary limits (except with permit), so as to make effective the 300 foot depth outer limit. Possession and use of ordinary compressed air scuba from boats otherwise complying with regulations thus can be permitted, as it will not be possible to use such equipment (within its depth operating limits) for the lawful taking of coral reef biota (except for research permits);

• prohibition of breakage (standing, walking, anchoring, dredging (except for those with permits), etc.;

• water quality regulations specific for sanctuary purposes;

• provision for closure of endangered areas to all activities except navigation when the need for such closure is shown;

• reports of accidents, and possibly rewards for informing of violations;

• provision for research permits;

• provision for continuance of other compatible activities in the sanctuary area (such as commercial fishing);

• regulations for the bay area of the sanctuary to maintain the necessary water quality and maintain ecological processes (including flushing rates and circulation);

• provision for adequate penalties, including liens on offending watercraft.

D. Enforcement and Surveillance

Given the requirements of international law and the various powers and authority of federal and state agencies with responsibilities in the area of the proposed marine sanctuary, the following responsibilities are recommended for enforcement and surveillance:

- Florida enforcement officers should have the power to enforce the marine sanctuary regulations in the bay area (except for the bay portion of the Biscayne National Monument, which has been deeded to the federal government) and in the ocean area out to 3 miles from the coastline. Beyond the 3-mile territorial sea Florida officers could, of course, patrol and engage in surveillance, but they would not have the power to stop vessels, issue citations or make arrests;

- at the federal level the Coast Guard would have overall enforcement responsibilities throughout the sanctuary. Beyond the territorial sea the Coast Guard would have exclusive enforcement responsibilities. The National Park Service, and possibly state enforcement officers, could be put aboard Coast Guard vessels for issuance of citations and making arrests within their jurisdictions;

- federally issued citations would be handled by an administrative procedure, with an administrative judge designated,

followed by recourse to the U.S. District Court in Miami as provided by law;

• state officers in their area of jurisdiction would have the option of issuing citations under state law (in which case they would be brought to the state courts) or under the federal marine sanctuary regulations (in which case the hearing will be by the federal administrative procedure). In view of the more severe penalties available under federal law, presumably minor or casual offenders would be issued state citations, and serious or repeated offenders brought before the federal administrative judge, at the officer's discretion.

CONCLUSION

We recommend the designation of a marine sanctuary for the area around the Florida Keys described in the Summary of Recommendations above, with regulations to be developed in a management program for the sanctuary, for the purpose of preserving the long-term viability of the coral reef system, for scientifically understanding its characteristics and natural fluctuations, for compatible commercial uses, and for public enjoyment and recreation. Because of the unique importance of this area, and because its preservation, study and use will require the development of new techniques, the sanctuary would generate important benefits for Florida, the United States and the international community.

APPENDIX

(To come tomorrow)

after which improved transponder and associated pressure altitude reporting equipment will be required for flight within Terminal Control Areas (TCA's).

Notice No. 74-17 was published in the FEDERAL REGISTER on April 17, 1974 (39 FR 13785), stating that the Federal Aviation Administration was considering an amendment to Part 91 of the Federal Aviation Regulations to postpone the effective compliance dates for operation within Terminal Control Areas by six months.

Interested persons were afforded an opportunity to participate in the proposed rulemaking through the submission of comments. Approximately one hundred public comments were received, which were virtually unanimous in support of the proposed postponement.

One commentator agreed with the six-month extension in Group I TCA's to January 1, 1975, but believed that the requirement for Group II and Group III TCA's should also be effective on the same date as that for Group I TCA's rather than being extended to July 1, 1975. He expressed the opinion that there was no information available to indicate unforeseen difficulties in meeting the equipment requirement after January 1, 1975. The information currently available to the FAA, including the most recent comments to the subject notice (74-17), clearly indicates, however, that there is a serious equipment supply problem which would prevent meeting the present schedule.

Many of the commentators suggested that a one-year extension would be more appropriate than the six-month extension. At present, the FAA believes that a six-month extension will be adequate to permit introduction of reliable equipment into the fleet.

Since this amendment relieves a restriction it may be made effective less than 30 days after publication in the FEDERAL REGISTER.

(Secs. 307, 313(a), Federal Aviation Act of 1958, 49 U.S.C. 1348, 1354(a); sec. 6(c) of the Department of Transportation Act, 49 U.S.C. 1655(c))

In consideration of the foregoing, §§ 91.24(b) (1), (b) (2), and (b) (3) of Part 91 of the Federal Aviation Regulations is amended to read as follows, effective June 27, 1974:

§ 91.24 ATC transponder equipment.

(b) *Controlled airspace: all aircraft.*
* * * This requirement applies—

(2) After July 1, 1975, in Group II Terminal Control Areas governed by § 91.90(a);

(2) After July 1, 1975, in Group II Terminal Control Areas governed by § 91.90(b);

(3) After July 1, 1975, in Group III Terminal Control Areas governed by § 91.90(c), except as provided therein;

Issued in Washington, D.C., on June 24, 1974.

ALEXANDER P. BUTTERFIELD,
Administrator.

[FR Doc. 74-14782 Filed 6-26-74; 8:45 am]

Title 15—Commerce and Foreign Trade
CHAPTER IX—NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION, DE-
PARTMENT OF COMMERCE
PART 922—MARINE SANCTUARIES

The National Oceanic and Atmospheric Administration (NOAA) on March 19, 1974 (39 FR 10255), proposed guidelines pursuant to Title III of the Marine Protection Research and Sanctuaries Act of 1972 (P.L. 92-532, 86 Stat. 1061) and the delegation of authority by the Secretary of Commerce dated March 13, 1974, authorizing the Administrator of NOAA to exercise the authority granted under the Title, for the purpose of setting forth the procedure by which areas may be nominated as marine sanctuaries and the concepts, policies, and procedures for the processing of nominations and the selection, designation and operation of a marine sanctuary.

Written comments were to be submitted to the Office of Coastal Environment, National Oceanic and Atmospheric Administration before May 1, 1974, and consideration has been given these comments.

The Title recognizes that certain areas of the ocean waters, as far seaward as the outer edge of the Continental Shelf, or other coastal waters where the tide ebbs and flows, or of the Great Lakes and their connecting waters, need to be preserved or restored for their conservation, recreational ecological or esthetic values.

The Secretary of Commerce (Administrator NOAA) after consultation with the Secretaries of State, Defense, the Interior, Transportation, the Administrator of the Environmental Protection Agency, other interested Federal Agencies, the State(s) involved and with the approval of the President, may designate a marine sanctuary.

Prior to designating a marine sanctuary which includes waters lying within the territorial limits of any state, the Secretary (Administrator NOAA), shall consult with and give due consideration to the view of the responsible state officials involved. A designation under this section shall become effective sixty days after it is published, unless the governor of any state involved shall, before the expiration of the sixty-day period, certify to the Secretary that the designation, or a specified portion thereof, is unacceptable to his state, in which case the designated sanctuary shall not include the area certified as unacceptable until such time as the governor withdraws his certification of unacceptability.

In addition, recognizing the key role of state(s) in areas adjacent to but outside their jurisdiction, the Secretary

(Administrator NOAA) will consult with the state(s) and give due consideration to the views of the responsible state officials involved.

Where areas outside the territorial sea are involved, the State Department is to negotiate with other Governments to achieve protection of a sanctuary to the maximum extent possible.

The Title recognizes that a program will be undertaken by NOAA to identify areas for marine sanctuary status, and that nominations will be made by states, local governments, organizations, industry and individuals. Public participation will be encouraged during the study and analysis phases leading to designation. Prior to a designation of a marine sanctuary, public hearings must be held in the coastal areas most affected by the designation. Regulations are to be promulgated for each such designated sanctuary.

These guidelines set forth the concepts and procedures under which marine sanctuaries will be designated and managed.

The National Oceanic and Atmospheric Administration is publishing herewith the final guidelines describing procedures for nomination, processing of the nomination, designation, revisions, and certification of activities within marine sanctuaries. The final guidelines herewith were revised from the proposed guidelines based on comments received. A total of twenty-two (22) states, agencies, organizations and individuals submitted responses to the proposed Title III Guidelines published in the FEDERAL REGISTER on March 19, 1974. Of these responses received, four (4) were wholly favorable as to the nature and content of the guidelines as they appear in the FEDERAL REGISTER on March 19, 1974. Eighteen (18) commentators submitted suggestions concerning the proposed title guidelines.

The following analysis summarizes key comments received on various sections of the proposed rules and presents a rationale for the changes made:

1. *Introduction.* Concern was expressed that overly large areas of the coastal waters would be made marine sanctuaries. It is not expected, however, that large areas of the oceans and coastal waters will be designated as marine sanctuaries, and all activity prohibited or drastically reduced. It is expected that sanctuaries will be only large enough to permit accomplishment of the purposes specified in the Act.

In each area designated, some activities will be totally compatible, others will need to be modified, and others will not be permitted. The size of the area will depend upon the proposal, an analysis of the factual information, the outcome of the draft environmental impact statement process, and public hearings.

Another commentator indicated that the guidelines failed to properly implement the policy underlying the Title. With this single exception, the consensus

other areas and for reestablishment purposes in the future. The result will be a contribution to the goal stated by the Council on Environmental Quality, that is, "the widest possible diversity of and within species should be maintained for ecological stability of the biosphere and for use as natural resources." The orientation envisaged will be toward species preservation by protection of such areas as migratory pathways, spawning grounds, nursery grounds, and the constraints on these areas will be those necessary to achieve these purposes.

(c) *Research areas.* (1) Areas established under this concept will exist for scientific research and education in support of management programs carried out for the purpose of the title.

(2) The purpose of the research areas is to establish ecological baselines against which to compare and predict the effect on man's activities, and to develop an understanding of natural processes. Research areas will be chosen according to the biota they support, to include representative samples of the significant ecosystems in the nation, and to the history of prior research carried out in the area, and its proximity or availability to potential uses marine sanctuary designation will insure that the area will be relatively unaffected for a long period of time, thus adding a measure of stability to a research program and the value of the data in management decisions.

(d) *Recreational and esthetic areas.* Areas established under this concept will be based on esthetic or recreational value.

(e) *Unique areas.* Areas established under this concept will be to protect unique or nearly one of a kind geological, oceanographic, or living resource feature.

§ 922.11 Definitions.

As used in this part, the following terms shall have the meaning indicated below:

(a) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration.

(b) "Marine sanctuary" means those areas of the ocean waters, as far seaward as the outer edge of the Continental Shelf, as defined in the Convention of the Continental Shelf, 15 U.S.T. 74, TIAS 5578, of other coastal waters where the tide ebbs and flows, of the Great Lakes and their connecting waters, for the purpose of preserving, restoring or enhancing such areas for their conservation, recreational, ecological, research, or esthetic values.

(c) The term "multiple use" as used in this section shall mean the contemporaneous utilization of an area or resource for a variety of compatible purposes to the primary purpose so as to provide more than one benefit. The term implies the long-term, continued uses of such resources in such a fashion that one will not interfere with, diminish, or prevent other permitted uses.

(d) "Ocean waters" means those waters of the open seas lying seaward of the baseline from which the territorial sea is measured, as provided for in the Convention of the Territorial Sea and the Contiguous Zone, 15 U.S.T. 1606, TIAS 5639.

(e) "Person" means any private individual, partnership, corporation, or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal government, or any state or local unit of government.

(f) "Secretary" means the Secretary of Commerce.

§ 922.12 Effect of marine sanctuary designation for waters, outside the U.S. jurisdictional limits.

The designation of a marine sanctuary and the regulations pertaining to it will be binding on United States nationals. The United States has exclusive jurisdiction over all resources within the territorial sea in which it exercises sovereignty subject only to the right of innocent passage. Beyond that limit, the U.S. regulations would be binding on foreign citizens only to the extent consistent with international law.

§ 922.13 Effect on international principles involving freedom of the seas.

The designation of a marine sanctuary will not infringe upon the normal rights of innocent passage in territorial waters, the rights of navigation through international straits, or the freedoms of the high seas, including freedom of navigation.

Subpart C—Nomination of Candidates

§ 922.20 Nominations.

(a) The nomination of a given marine area for consideration as a designated marine sanctuary may result from studies carried out by Federal, State or local officials or from any other interested persons. Nominations should be addressed to:

Director, Office of Coastal Zone Management
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
Rockville, Maryland 20852

Information may be obtained on nominations by inquiring to the above office.

(b) The nomination for designation as a marine sanctuary must contain the following information:

(1) A general description of the area including the following information:

(i) Purpose for which the nomination is made;

(ii) Geographic coordinates of the site;

(iii) Plant and animal life in the area;

(iv) Geological characteristics of the area; and

(v) Present and prospective uses and impacts on the area and resources thereof.

(2) A nomination for research purpose should contain a specific scientific justification, a statement of how the research will aid in management decisions,

and a history of prior research carried out on the area.

(c) A Federal program will be stimulated and coordinated by NOAA to establish a coherent system of estuarine and marine ecosystems, recreational and esthetic areas, and research areas. It is anticipated that this system will emerge as part of the State coastal zone management plans, taking into account the national interest.

§ 922.21 Analysis of nomination.

(a) Upon receipt of a nomination or as the result of action by NOAA, the involved State(s), other Federal agencies, will be notified of the nomination and requested to participate in a preliminary review to determine feasibility.

(b) If a preliminary review demonstrates the feasibility of the nomination, a more in-depth study will be required. Factual information will be gathered to obtain an understanding of the:

(1) Animal and plant life;

(2) Geological features;

(3) Weather and oceanographic conditions and features;

(4) Present and potential recreational and economic uses;

(5) Present and potential adjacent land uses;

(6) Laws and programs of Federal, State and local government that apply to the area.

(c) An analysis will be made of how the sanctuary will impact on the present and potential uses, and how these uses will impact on the primary purpose for which the sanctuary is being considered.

(d) The factual information and the results of the analysis activity will be used in preparation of a draft environmental impact statement and proposed regulations. Subsequent to completion of the in-depth study by the Administrator, a draft Environmental Impact Statement will be prepared and circulated for review in compliance with the National Environmental Policy Act of 1969 and implementing the Council on Environmental Quality guidelines. The draft Environmental Impact Statement will discuss proposed regulations and operational procedures and programs.

§ 922.22 Public participation.

(a) The purpose of this section is to ensure that all interested parties have the opportunity to present their views.

(b) When a nomination has been determined feasible, a press release will be issued by NOAA announcing the nomination and that a Draft Environmental Impact Statement is in preparation.

(c) When notice of the Draft Environmental Impact Statement (DEIS) has been published by the Council on Environmental Quality, a press release will be issued by NOAA announcing the DEIS and soliciting comment.

(d) The Administrator will hold public hearings in the coastal areas which would be most directly affected by such designation, for the purpose of receiving and giving proper consideration to the

Florida Marine Sanctuary

Four areas previously established by state and federal actions would be integrated with an additional water area in order to constitute a marine sanctuary pursuant to Title III of the Marine Protection, Research and Sanctuary Act of 1972 (P.L. 92-532). (A legal description of the above area is included as attachment A.)

Designation will be made with the full participation and cooperation of the State of Florida and the Department of Interior for preservation and the public enjoyment of the coral reef and the environs affecting its well being. It is the policy of the National Oceanic and Atmospheric Administration in exercising this legislative authority to utilize existing State and Federal administrative, regulatory, research and judicial capabilities to the maximum extent possible.

Administration

It is anticipated that administration of the sanctuary will be by the Division of Recreation and Parks, State of Florida pursuant to an agreement between the Governor of the State of Florida and the Administrator of the National Oceanic and Atmospheric Administration.

An advisory board would be constituted to advise the sanctuary manager. Membership board would consist of representatives of the National Park Service, the U.S. Coast Guard, a local citizens group and local board of

trade. The local representatives shall be selected annually. Mr. John Pennekamp will be a life time honorary member of the advisory board.

Certification Procedure

- A. Once the Sanctuary is established, no permit, license or other authorization issued pursuant to any other authority is valid unless the Administrator of NOAA certifies that the permitted activity is consistent with the purposes of the sanctuary and can be carried out within the framework of the regulations promulgated to protect the sanctuary.
- B. NOAA's responsibilities under this legislation require that the OCZM review, comment and approve any activity that takes place pursuant to paragraph (A) above.
- C. The certification procedure itself may be worked out via memos of understanding with the various interested federal and state agencies that may be involved in the above process.

Permits

Permits may be issued by the sanctuary manager or his officially designated representative(s) to conduct educational endeavors, scientific and industrial research, transport of prohibited materials and transport of prohibited equipment and gear. No permits will be granted for specimens

or activities that would disturb the remaining natural features, nor the appearance or endanger the health and well being of the coral reef. All permits are subject to cancellation at the discretion of the issuing official when he deems grounds for his action exist. Permits shall be for a limited term, and a single activity. They may be renewed at the discretion of the issuing official.

Penalties

Any person subject to the jurisdiction of the United States who violates any Federal regulation promulgated herein would be liable to a civil penalty of not more than \$50,000 for each such violation to be assessed by the Administrator of the National Oceanic and Atmospheric Administration or his authorized representative. Each day of a continuing violation would constitute a separate violation.

A vessel used in the violation of a regulation promulgated herein would be liable in rem for any civil penalty assessed for such violation and could be proceeded against in the appropriate District Court of the United States having jurisdiction thereof.

Violation of state law would result in penalties according to established schedules.

Florida's jurisdictional authority to enforce the applicable laws and regulations pertaining to the sanctuary would correspond to the outer

imports on the coral reefs located in subarea B waters.

Subarea B waters will be controlled to the extent necessary to protect the coral reef system. The protection of the coral reef system as a species habitat is the primary purpose for the establishment of the marine sanctuary.

Management Vehicle

The states are encouraged to view the marine sanctuaries program as a viable marine management program to be administered by the states in cooperation with NOAA. The legislature provides a powerful mechanism through which the integrity of important marine areas may be maintained. The noticeable absence of such a mechanism was the prime reason that led the U. S. Congress to pass the Marine Protection Research and Sanctuaries Act of 1972 (P. L. 92-532).

The state is encouraged to give analysis to those use restrictions which may attach to the Marine Sanctuary. Some examples of those use restrictions are as follows.

Sept. 3 1994

James W. (Buck) Carr ^{Florida} Coastal Coord. Council 488-8066
Bill Monahan - NOAA 301 496 8066
NEY C. LANDRUM DNR/DRP 488-6131
Cliff Willis - D.M.R./D.N.R. 488-6555
James A. Cook DNR/DRP 488-8666
Jack D. Thompson DNR/DNR 488-5499
Bob KRIEGER TI/TF 488-2351
BOB McVETTY TI/TF 488-2351
Bruce Johnson CCC 488-8514
A. Lee Burkman NPS 202-523-5138
RONALD J. FALKNER MIAMI MARINE COUNCIL 305-377-8491
John W. Greenleaf Jr. Pres. Miami Marine Council 305-377-8491
Bob KIFER NOAA - 301-496-8491

Florida Marine Sanctuary

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Designation will be made with the full participation and cooperation of the State of Florida and the Department of Interior for preservation and the public enjoyment of the coral reef and the environs affecting its well being. It is the policy of the National Oceanic and Atmospheric Administration in exercising this legislative authority to utilize existing State and Federal administrative, regulatory, research and judicial capabilities to the maximum extent possible.

Administration

It is anticipated that administration of the sanctuary will be by the Division of Recreation and Parks, State of Florida pursuant to an agreement between the Governor of the State of Florida and the Administrator of the National Oceanic and Atmospheric Administration.

An advisory board would be constituted to advise the sanctuary manager. Membership board would consist of representatives of the National Park Service, the U.S. Coast Guard, a local citizens group and local board of

trade. The local representatives shall be selected annually. Mr. John Pennekamp will be a life time honorary member of the advisory board.

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7. industrial research, transport of prohibited materials and transport of prohibited equipment and gear. No permits will be granted for specimens

or activities that would disturb the remaining natural features, nor the appearance or endanger the health and well being of the coral reef. All permits are subject to cancellation at the discretion of the issuing official when he deems grounds for his action exist. Permits shall be for a limited term, and a single activity. They may be renewed at the discretion of the issuing official.

Penalties

Any person subject to the jurisdiction of the United States who violates any Federal regulation promulgated herein would be liable to a civil penalty of not more than \$50,000 for each such violation to be assessed by the Administrator of the National Oceanic and Atmospheric Administration or his authorized representative. Each day of a continuing violation would constitute a separate violation.

A vessel used in the violation of a regulation promulgated herein would be liable in rem for any civil penalty assessed for such violation and could be proceeded against in the appropriate District Court of the United States having jurisdiction thereof.

Violation of state law would result in penalties according to established schedules.

Florida's jurisdictional authority to enforce the applicable laws and regulations pertaining to the sanctuary would correspond to the outer

limit of the U. S. Territorial Sea. The jurisdictional authority of the U. S. Coast Guard would encompass the entire sanctuary. Thus, the State of Florida and the Coast Guard would have concurrent jurisdiction within the 3 mile limit of the U. S. Territorial Sea. The jurisdiction of the National Park Service would correspond to that area lying within the boundaries of the Biscayne National Monument established by the National Park Service. Where other Federal Acts remain in force agents of the responsible agency(s), have full power to exercise their duties. (NPS and BSNW)

All persons cited for a violation of the regulations promulgated herein would be served with a written notice of said violation and given an administrative hearing. Upon failure of the offending party to pay an assessed penalty the Attorney General shall be requested to commence action in the appropriate district court of the United States to collect the penalty and to seek such other relief as may be appropriate. Citations may be made for both state and federal laws.

Class A vs. Class B Waters

It is necessary to draw a distinction between Class A waters and Class B waters as indicated on the map.

It is anticipated that Subarea A waters will be protected in order to insure that the overall water quality of the region does not deteriorate. The level of water quality necessary will be assessed in terms of how it

imports on the coral reefs located in subarea B waters.

Subarea B waters will be controlled to the extent necessary to protect the coral reef system. The protection of the coral reef system as a species habitat is the primary purpose for the establishment of the marine sanctuary.

Management Vehicle

The states are encouraged to view the marine sanctuaries program as a viable marine management program to be administered by the states in cooperation with NOAA. The legislature provides a powerful mechanism through which the integrity of important marine areas may be maintained. The noticeable absence of such a mechanism was the prime reason that led the U. S. Congress to pass the Marine Protection Research and Sanctuaries Act of 1972 (P. L. 92-532).

The state is encouraged to give analysis to those use restrictions which may attach to the Marine Sanctuary. Some examples of those use restrictions are as follows.

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RONALD J. FALKER MIAMI HARBOR COUNCIL 305-377-8411
John W. Greenleaf Jr Pres. Miami Marine Council 305-377-8411
Bob KIFER NOAA - 301-496-8491

Review of the Nomination "Florida Keys Coral Reef Marine Sanctuary"

by Alan H. Robinson, SER Aquatic Research Biologist, National Park Service

Address: National Park Service Science Center, National Space Technology
Laboratories, Bay St. Louis, Mississippi 39520
601, 688-4131 (FTS)

I. Explanation of the proposal

((N.B. The documents available to me in preparing this review are as follows: Initial nomination dated May 23, 1974 (18 pp.); supplement to the nomination dated June 29, 1974 (17 pp.); an undated draft document labeled "Florida Marine Sanctuary" (5 pp.); and copies of the Marine Sanctuaries Act Title III, Pub. L. 92-532 with final published guidelines (Fed. Reg. 39(125): 23254-57 on 6/27/74). I understand no special regulations for Biscayne National Monument (BISC) have been established; existing general or special regulations for Pennekamp State Park, Key Largo Reef Reserve and the Biscayne Bay Aquatic Reserve were not available, nor was a referenced map designating class "A" and "B" sanctuary waters.))

The boundaries of the proposed sanctuary are verbally defined in the Summary of Recommendations (Page 1) in the supplement. Since no map was provided to me in the supplement, I have prepared a base map (from the original nomination) which incorporates my understanding of the newly proposed boundaries and also indicates the location of adjacent protected marine areas (i.e., EVNP to the south, and the recently designated state Biscayne Bay Aquatic Preserve to the north).

The sanctuary would technically encompass all of BISC and all of Pennekamp/Key Largo plus extending inshore boundaries to Card Sound, to lower western Biscayne Bay and offshore boundaries to the 300 foot contour. With some exceptions listed later, the proposal (as of the supplement) would not eliminate National Park Service control or jurisdiction over BISC. Rather, it seeks to integrate and provide consistency of regulations and preservation goals between the agencies concerned.

II. General Comments

The form and spirit of this nomination appear to me to be a valid effort to ensure conservation and protection of critical marine areas in the northern Florida keys, as provided for in the Marine Sanctuaries Act. This Act can be a powerful force for conservation and wisely-planned utilization of U. S. coastal waters. A special significance to National Park Service may be in the potential for designating critical marine areas surrounding existing marine National Park Service units or adjacent to coastal parks to provide meaningful buffer zones not authorized in original enabling acts. It was the intent of Congress, I am sure, that full cooperation exist between concerned state and federal agencies in actual designation and administration of marine sanctuaries. I believe that National Park Service should, therefore, extend the fullest cooperation consistent with pre-existing mandates (i.e., the enabling legislation for BISC) in establishment and subsequent management of the Sanctuary.

However, the technical inclusion of BISC within the boundaries of the Sanctuary presents a variety of administrative and management complexities which would require a high degree of coordination with the state and other federal agencies. Perhaps most significant would be the precedent of partially submitting a federally mandated unit of National Park Service (BISC) to the administration of other agencies. This is, of course, a common submission in the case of state fish and game laws, but since the sanctuaries program is new, it obviously bears close scrutiny. It also is possible that if significant compromise is required by BISC to participate in Sanctuary management guidelines, changes in BISC enabling legislation would have to be sought.

Integration of BISC into the proposed Sanctuary could have substantial benefits for natural science research by stimulating multidisciplinary and systems approaches to local reef ecology. Research funds attracted from federal and private sources for such studies would very likely be more substantial than those available through National Park Service channels.

III. Specific Comments

The following comments should be considered preliminary. In my opinion a final decision as to the extent that NPS should participate in the Sanctuary will require input from a wide range of NPS staff, including Associate WASO Chief Scientist, Lee Purkerson, Superintendent Todd of BISC, Superintendent Stark of EVNP, Research Biologist Gary Davis of EVNP, and Region or WASO personnel concerned with interagency cooperation. I would suggest that the

persons named on the preceding page, plus the SER Aquatic Biologist, might form the nucleus of a later task force to assist in developing Sanctuary-wide management guidelines.

A. Concept: I believe that the goal of integrated and consistent management guidelines for the bay and ocean areas of the upper Florida keys is desirable and feasible. There are perhaps other schemes which might bring this about (see alternatives, below); but the proposed Sanctuary appears to me to offer a workable system which has the advantage of potentially making available additional federal funds to assist in the State of Florida in operating portions of the Sanctuary within their jurisdiction.

A specific point to note is that as yet (to my knowledge) no special regulations have been proposed by NPS for BISC, and it would therefore be relatively simple to make such special regulations conform in detail to Sanctuary regulations.

B. Cautions: 1) The current proposal (supplement) is careful to suggest that NPS jurisdiction would continue in those portions of the Sanctuary which include BISC. Subsequent modifications to the Sanctuary proposal may conceivably suggest lessened responsibilities for NPS, or shared jurisdictions, which could result in less stringent controls or decreased authority for NPS staff. This would probably be inconsistent with the BISC mandate and be an abrogation of responsibility.

2) The collection of user fees, as proposed, would have to be examined as to whether it was consistent with BISC authority. The disbursement of such funds would be complicated if BISC did participate but was legislatively barred from sharing in the revenue.

3) The proposed granting of concession permits within the Sanctuary may

conflict with BISC authority and/or contracts already awarded by National Park Service. I would imagine very careful guidelines would have to be prepared on Sanctuary concessions to avoid the difficult situation of the state being administratively responsible for awarding exclusive concessions within a federal area.

4) Any determination of "compatible uses" would clearly have to conform to (at least within and hopefully adjacent to) BISC management goals. A critical area would be the inshore (westerly) strip between BISC and the mainland coast, where commercial or recreational development could have (e.g., Turkey Point) substantial effect on Monument waters.

C. Additional areas to be included: It is not clear why Barnes Sound is not included within proposed Sanctuary boundaries. Its exclusion is the only gap in a succession of protected inshore waters stretching from Miami Beach to upper Florida Bay. I would find it surprising if a valid argument could be made that degraded water quality in Barnes Sound would not affect Card Sound and ultimately the outer reefs through Broad Creek. In addition, there are small but permanent connections between Barnes Sound and Blackwater Sound (to the south) in EVNP, which provides further justification for the inclusion of the Sound as a buffer zone to Florida Bay preservation.

D. Alternatives

I am sure that the proposal authors, and others already involved at NOAA and NPS, have considered various alternative boundaries. If NPS did not wish to place BISC within the Sanctuary, but did in fact wish to achieve

cooperative consistent regulation of the whole area, the following proposal might be considered (see Map 2 - Alt. 1).

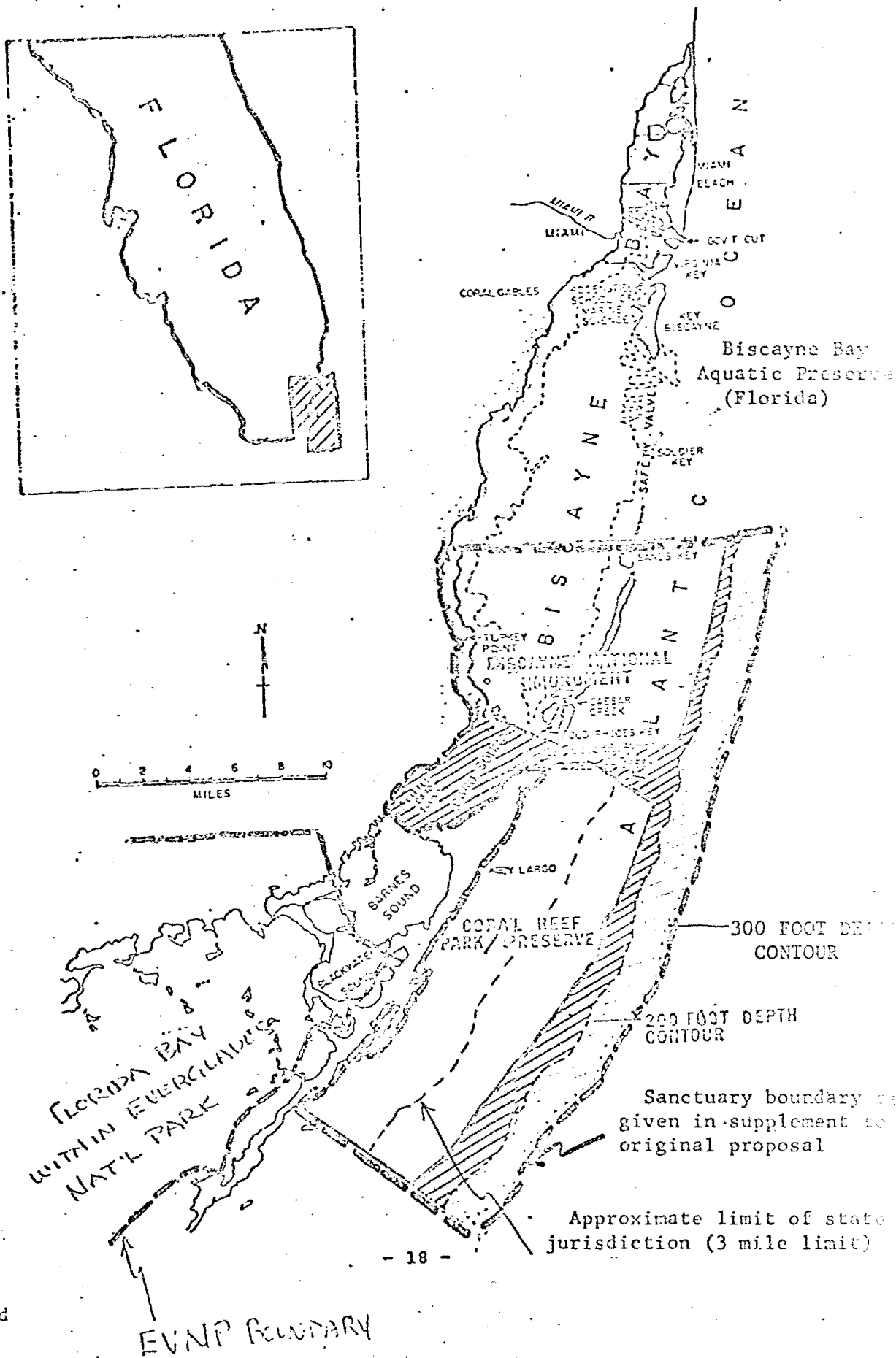
Alt. 1: BISC boundaries would be extended westward to westerly mean high water of Biscayne Bay, and extended eastward on the ocean side to the 300' depth contour. NPS would (along with Coast Guard) exercise jurisdiction throughout. The proposed marine sanctuary boundaries would then include only Card Sound, Barnes Sound (if acceptable), all of Pennekamp/Key Largo Reef Reserve plus the additional seaward area to the 300' contour. By further agreement with NOAA, the state would have jurisdiction throughout the Sanctuary, including that portion currently outside the three mile limit. Coast Guard would, of course, share jurisdiction. BISC would adopt, as its special regulations, regulations equal to or more restrictive than those developed for the Sanctuary; the whole area, therefore, (BISC + Sanctuary) would be covered under federal regulations (in addition to Florida state regulations within the three mile limit in the Sanctuary).

A modification to Alternative 1 would be including the westerly 800' wide strip in Biscayne Bay in the Sanctuary, thus avoiding the political complication of Florida ceding additional land to the Federal Government and ensuring consistent state control of the critical shoreline from Miami through Card Sound. I am sure there were strong reasons for not including this strip in BISC originally, and these factors may not have changed.

A complication of the expansion of BISC is that it would require Congressional approval (whereas the Sanctuary designation would not).

IV. Summary statement/recommendation

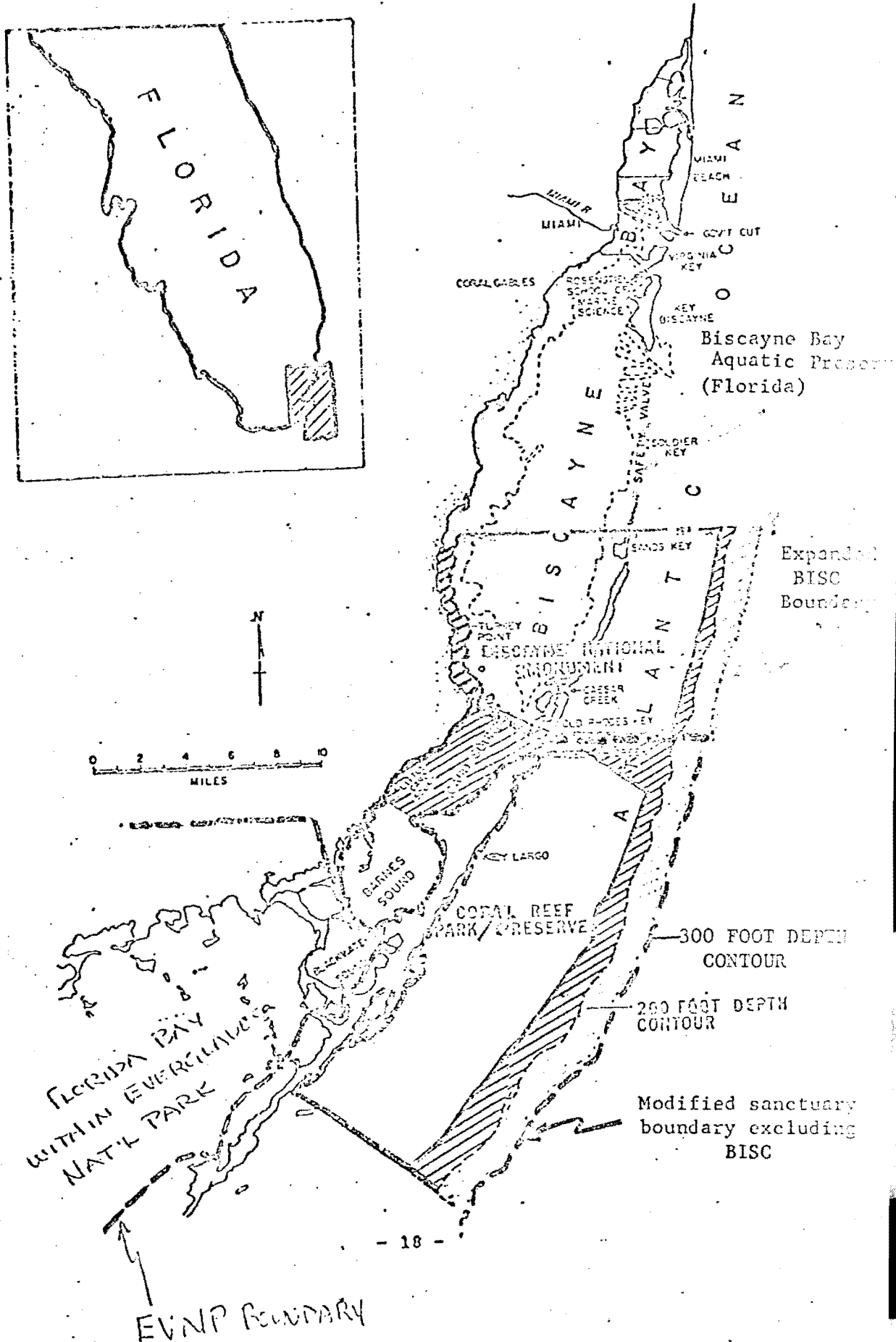
I believe that the Southeast Region, NPS should endorse and actively support the proposed Florida Keys Coral Reef Marine Sanctuary in its current form (6/29/74). Complete inclusion of BISC within the Sanctuary without loss of identity and NPS authority seems feasible and beneficial, but will entail extensive immediate and long-range interagency cooperation. Continued liaison between NPS, NOAA and the State of Florida is essential and would logically be through Associate Chief Scientist Purkerson, with SERO and BISC participation at later guideline development stages.



MAP 1

Sanctuary as proposed

6/29/74



alternative 1.

Map 2)

DUPLICATE:
Original in
Museum Archives
615C-118