NATIONAL MARINE FISHERIES SERVICE INSTRUCTION 30-121-01
JANUARY 1992

Administration and Operations
Agreements with the National Ocean Service

MOU B/W AA FOR FISHERIES AND AA FOR OCEAN SERVICES AND COASTAL ZONE MANAGEMENT CONCERNING THE NATIONAL MARINE SANCTUARY PROGRAM

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OPR: F/ (W. Fox) **Certified by:** F/ (W. Fox)
Type of Issuance: Initial

SUMMARY OF REVISIONS:

Signed _____
[Approving Authority name] Date
[Approving Authority title]

ATTACHMENT TWO

Memorandum of Understanding

between

Assistant Administrator for Fisheries

and

Assistant Administrator for Ocean Services and Coastal Zone Management

Concerning the National Marine Sanctuary Program

January 1992

William W. Fox, Jr.
Assistant Administrator for Fisheries

John J. Carey 1/22/92

John J. Carey
Assistant Administrator for Ocean Services and Coastal Zone Management

AN AGREEMENT

INTRODUCTION

The National Marine Fisheries Service (NMFS) and the National Ocean Service (NOS) play important roles in the conservation of the Nation's living marine resources. The National Marine Sanctuary Program (NMSP), administered by the Sanctuaries and Reserves Division (SRD) of NOS, seeks to identify and conserve areas of the marine environment of special national significance due to their resource or human-use values through coordinated management, research, and monitoring of these areas. NMFS conducts research on living marine resources and their habitats, seeks to protect marine habitats, and manages fisheries in federal waters in collaboration with eight Regional Fishery Management Councils ("Councils").

NMFS and NOS hereby agree to a process by which they can collaborate in achieving the goals and objectives of Title III of the Marine Protection, Research and Sanctuaries Act (MPRSA), the Magnuson Fishery Conservation and Management Act (MFCMA), the Marine Mammal Protection Act (MMPA), the Endangered Species Act (ESA), and the Fish and Wildlife Coordination Act (FWCA).

A. NOS ROLE

In order to facilitate NMFS assistance, NOS agrees to do the following in administering the National Marine Sanctuary Program:

1) Notify and provide NMFS with the opportunity to comment and/or concur at the following stages of the sanctuary designation process:

   a) review of the Site Evaluation List (SEL);
   b) selection of sites for elevation to Active Candidate status;
   c) development of draft and final environmental impact statements and management plans, particularly with respect to the following elements of these documents:

      ~~i)~~ consideration of present and potential activities affecting sanctuary resources;
      ii) evaluation of the adequacy of existing

management authorities;

iii) evaluation of the manageability of the area and enforceability of managment measures;

iv) assessment of the negative impact of management restrictions;

v) preparation of the resource assessment report;

vi) estimation of enforcement costs.

2) Cooperate with NMFS in the consideration of fishing regulations in proposed national marine sanctuaries by doing the following:

a) Before elevation of a site to Active Candidate status, consult with NMFS regarding the living marine resources, management measures, and living marine resource issues in the sanctuary study area;

b) Upon elevation of a site to Active Candidate status, request NMFS assistance in briefing the relevant Fishery Management Council(s) regarding the site and the need for fishing regulations at the earliest opportunity and on a continuing basis as required;

c) Request NMFS participation in discussions regarding living marine resource and habitat issues with the site and request that NMFS secure the participation of appropriate representation by the relevant Fishery Management Council(s);

d) Provide a reasonable opportunity for comment and seek NMFS concurrence in recommendations to the Secretary regarding findings, determinations, and preparation of regulations as described in 16 U.S.C. 1434(a) (5).

3) Cooperate with NMFS in the consideration of management measures for species protected by the MMPA and/or the ESA ("protected species") in proposed national marine sanctuaries by doing the following:

a) Before elevation of a site to Active Candidate status, consult with NMFS regarding protected species, existing management measures, and protected species issues in the sanctuary study area;

b) Upon elevation of a site to Active Candidate status, seek NMFS concurrence in proposing sanctuary management measures for protected species;

c) Request NMFS participation in discussions on protected species and habitat issues in the site;

d) Provide a reasonable opportunity for comment and seek concurrence from NMFS on Secretarial decisions to list activities as subject to sanctuary regulation that may also be subject to regulation under the MMPA and/or ESA. NOS will cooperate and seek concurrence from NMFS in the preparation of any regulations pertaining to

such activities.

4) In implementing sanctuary management plans, NOS will do the following:

a) Cooperate with NMFS in the preparation of emergency response and contingency plans for national marine sanctuaries as these plans affect living marine resources and habitats of particular concern to species managed under the MFCMA, MMPA and ESA;
b) Cooperate with NMFS in the evaluation of management measures in existing national marine sanctuaries in relation to the management of living marine resources under the MFCMA, MMPA and ESA;
c) Cooperate with NMFS regarding amendments to the lists of species under the ESA;
d) Review applications for permits issued under the MMPA or ESA for activities that may also be subject to prohibitions in national marine sanctuaries;
e) Grant, condition, or deny permission for proposed activities in national marine sanctuaries under the MPRSA in coordination with NMFS denial, conditioning, or granting of requested permits under the authority of the MMPA or ESA.

5) NMFS concurrence or disagreement with NOS recommendations to the Under Secretary for Oceans and Atmosphere described in A(2)(d) and A(3)(d) shall be noted in corresponding memoranda by the Assistant Administrator for Fisheries.

6) The NOS transmittal memorandum shall attach any NMFS concurrence or disagreement provided in accordance with section 5 above. NOS shall indicate on the transmittal memorandum a) the amount of time afforded to NMFS for review and response, and b) where disagreement is indicated, reference to an attached statement of the reasons therefor as provided by NMFS.

7) NOS will cooperate with NMFS in insuring that recovery plans for species listed under the Endangered Species Act, conservation plans under the Marine Mammal Protection Act, fishery management plans, and sanctuary management plans are mutually supportive to the greatest extent possible.

B. NMFS ROLE

In carrying out its role, NMFS agrees to do the following:

1) Cooperate with and provide information and recommendations to NOS at the stages of the sanctuary designation process identified in item A(1).

2) Cooperate with NOS in the consideration of fishing regulations in proposed national marine sanctuaries by doing the following:

   a) Before elevation of a site to Active Candidate status, provide NOS with information regarding the living marine resources, managment measures, and living marine resource issues in the sanctuary study area;
   b) Upon elevation of a site to Active Candidate status, assist NOS in briefing the relevant Fishery Management Council(s) regarding the site and the need for fishing regulations at the earliest opportunity and on a continuing basis as required;
   c) Participate in discussions regarding living marine resource and habitat issues with the site;
   d) Consult with NOS on its recommendations to the Secretary regarding findings, determinations, and preparation of regulations as described in 16 U.S.C. 1434(a)(5).

3) Cooperate with NOS in the consideration of management measures for species protected by the ESA and/or MMPA ("protected species") occurring in proposed sanctuary sites by doing the following:

   a) Before elevation of a site to Active Candidate status, provide NOS with information regarding the protected species, existing management measures, and protected species issues in the sanctuary study area;
   b) Participate in discussions with NOS regarding protected species and habitat issues with the site;
   c) If the Secretary decides to list as subject to sanctuary regulation activities that may be subject to regulation under the MMPA and/or ESA, cooperate with NOS in the preparation of any regulations pertaining to such activities.

4) In assisting NOS in the implementation of sanctuary management plans, NMFS shall do the following:

   a) Cooperate with NOS in the preparation of emergency response and contingency plans for national marine

sanctuaries as these plans affect living marine resources and habitats of particular concern to species managed under the MFCMA, MMPA and ESA;

b) Cooperate with NOS in the evaluation of management measures in existing national marine sanctuaries in relation to the management of living marine resources under the MFCMA, MMPA and ESA;

c) Consult with NOS regarding amendments to the lists of species under the ESA;

d) Provide NOS with copies of applications for permits issued under the ESA and MMPA for activities that may occur in national marine sanctuaries;

e) Issue, condition, or deny requested permits under the authority of the ESA or MMPA in coordination with NOS denial, conditioning or granting permission for proposed activities in national marine sanctuaries under the MPRSA.

5) In cooperation with NOS, periodically brief the relevant Fishery Management Councils regarding the national marine sanctuary program.