

## RESOLUTION

WHEREAS, the United States Congress passed the Florida Keys National Marine Sanctuary and Protection Act (PL 101-605, "the Act") to protect the unique and invaluable natural and cultural resources of the Florida Keys; and

WHEREAS, the President of the United States signed this legislation into law on November 16, 1990; and

WHEREAS, the Florida Keys National Marine Sanctuary (FKNMS) boundary encompasses 2800 square nautical miles of the Atlantic Ocean, Gulf of Mexico, and Florida Bay, of which approximately 65% is Florida state territorial waters; and

WHEREAS, the Board of Trustees of the Internal Improvement Trust Fund ("the Board of Trustees") is vested with the authority and charged with the responsibility for the acquisition, administration, management, control, supervision, conservation, protection, and disposition of all state lands, including sovereignty submerged lands, as set forth in Chapter 253, Florida Statutes; and

WHEREAS, upon enactment of the Act, the Board of Trustees resolved on December 16, 1990, to include state waters within the sanctuary boundary under certain specified conditions; and

WHEREAS, the Florida Coastal Resources Interagency Management Committee resolved in February of 1991 to include appropriate state representation in the Florida Keys National Marine Sanctuary Management Plan development process; and

WHEREAS, an "Interim Memorandum of Agreement" was executed on September 15, 1992, between the National Oceanic and Atmospheric Administration (NOAA) and Board of Trustees specifying the conditions under which state sovereign submerged lands were to be included in the Sanctuary and managed during the management plan development process; and

WHEREAS, the management plan development period was extended to six years to provide the maximum opportunity for participation by all segments of government, industry, and the citizens of Florida and the United States; and

WHEREAS, Memoranda of Agreement to manage the marine ecosystem of the Florida Keys through a cooperative partnership have been developed and included in the management plan, including the:

- (1) Interagency Compact Agreement
- (2) Co-Trustees Agreement for Cooperative Management
- (3) Submerged Cultural Resources Agreement
- (4) Cooperative Enforcement Agreement
- (5) Agreement for Coordination of Civil Claims
- (6) Protocol for Cooperative Fisheries Management
- (7) Protocol for Emergency Response Notification
- (8) Certification/Authorization of Permits Agreement
- (9) Water Quality Program Steering Committee By-laws; and

WHEREAS, the citizens and government of the State of Florida have expressed continuing interest in issues not specifically addressed or resolved in the management plan or memoranda of agreement relating to the:

- (1) Imposition of fees for public use of the marine resources;

- (2) Disposition of funds recovered from natural resource damage claims;
- (3) Imposition of emergency regulations on state sovereign submerged lands;
- (4) Obligation of governmental entities, including the State of Florida, to implement the regulations of the management plan without having been allocated additional funding for that specific purpose;
- (5) Promulgation of federal fisheries regulations that are more restrictive than those established by the Florida Marine Fisheries Commission under Florida statutory authority;
- (6) Imposition of restrictions on the use of adjacent uplands exceeding those established by the State of Florida;
- (7) Purpose, goals and measures of success associated with the Western Sambos Ecological Reserve;
- (8) Parity of state and federal management authority for the implementation and ongoing operations of the FKNMS;
- (9) Prospects of designating additional ecological reserves in the future as proposed in the draft management plan;
- (10) Periodic evaluation of the effectiveness of the sanctuary management plan in the protection and preservation of the marine resources of the Florida Keys;
- (11) Resolution of differences between the respective government agencies with Sanctuary management authority for the State of Florida and the United States of America;
- (12) Right of the State to initiate changes to the plan;
- (13) Article V of the Designation Document; and
- (14) Right of the State to revisit the plan and regulations in their entirety.

NOW, THEREFORE, BE IT RESOLVED that the sovereign submerged lands of the State of Florida located within the boundaries of the Florida Keys National Marine Sanctuary, as specified by the United States Congress in PL101-605, are hereby included in the Sanctuary for management in partnership between the Board of Trustees and NOAA under the provisions of: the Florida Keys National Marine Sanctuary Management Plan; the Memoranda of Agreement included in the management plan; and, the following conditions to be applied to the portions of the Sanctuary within Florida territorial waters:

- (1) Federal sanctuary fees for allowed public uses of the marine resources shall not be imposed without having first been approved by the Board of Trustees;
- (2) The Memorandum of Agreement for the Coordination of Civil Claims shall be amended to provide that, with regard to proceedings to recover compensation for injury to state resources within the Sanctuary, Board of Trustees' approval on the use of funds recovered by NOAA under section 312 is required;
- (3) The imposition of federal sanctuary emergency regulations shall not be authorized without the Governor's approval;
- (4) No provision of the management plan will require governmental entities within the state, including but not limited to the State of Florida and Monroe County, to provide funding for the implementation of regulations or other actions;
- (5) The implementation of fisheries regulations is unacceptable unless established by the Florida Marine Fisheries Commission following promulgation under the provisions of section 370.025(2), F.S. (1995), which requires public input and final Board of Trustees' approval;

(6) The Certification/Authorization of Permits Agreement shall be amended to provide that NOAA will have only a review and comment role on state permits for activities beyond the boundary of the Sanctuary. To the maximum extent possible the state will consider NOAA's comments as specified in the agreement. However, NOAA shall not require an additional permit. In addition, 15 CFR section 922.163 (a) (4) (ii), concerning prohibited activities, shall be amended to read as follows: "Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except those listed in paragraph (a) (4) (i) (A) through (D) above and those authorized under Monroe County land use permits or under state permits.";

(7) The purpose of the Ecological Reserve in the Western Sambos is to maintain a natural assemblage of living marine resources by setting aside an area that assures minimal human disturbance and is not designed to perform any fishery enhancement or fishery management functions. Monitoring of ecological parameters will be performed to provide information on the status of fish, coral and other benthic components of the Reserve. At the end of five years the success of the Ecological Reserve in the Western Sambos will be assessed. If the state or NOAA finds the area is not fulfilling the purpose for which the reserve was established, the Board of Trustees may take action to initiate the removal of the site;

(8) The Secretary of the FDEP shall designate, with subsequent confirmation by the Board of Trustees, a DEP employee as its representative as an equal partner to work in consultation with the Sanctuary superintendent for the oversight of Sanctuary operations;

(9) The implementation of any additional ecological reserves, or any other type of zoning or regulation, which is applicable to state waters shall require advance Board of Trustees' approval;

(10) The FDEP, in cooperation with NOAA, shall submit to the Board of Trustees an annual status report of the Sanctuary, and a five-year evaluation of the overall effectiveness of the implementation of the Sanctuary management plan toward the goal of protecting the marine resources of the Florida Keys including recommendations for change;

(11) The FDEP and NOAA shall manage the FKNMS through a cooperative partnership and consult on all management activities throughout the Sanctuary. The intent of this partnership is that the final resolution of any management issues resulting in policy conflicts between the state and NOAA shall be decided by the managing partners consistent with state and federal laws. The Board of Trustees has not conveyed title to or relinquished authority over any state-owned lands or other state-owned resources by agreeing to include state-owned land and resources within the Sanctuary boundary. If necessary, NOAA shall initiate the federal rule promulgation process required to make Board of Trustees' requested revisions to the regulations of the FKNMS management plan;

(12) The state reserves the right to initiate proposed changes to the plan. The FDEP will monitor public opinion and provide a process for consideration of grievances and petitions for change;

(13) Article V of the Designation Document shall be amended to strike the first paragraph which states: "If any valid regulation issued by any Federal, State or local authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation the regulation deemed by the Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, or his or her designee to be more protective of Sanctuary resources and qualities shall govern." Further, it shall be amended to strike the last sentence of the second paragraph which states: "However, the Secretary of Commerce or designee may regulate the exercise (including, but not limited to, the

imposition of terms and conditions) of such authorization or right consistent with the purposes for which the Sanctuary is designated"; and

(14) The Co-Trustees Agreement for Cooperative Management shall be amended to add: Section 304(e) of the National Marine Sanctuary Act requires the Secretary of Commerce to review the management plan and regulations for the Sanctuary every five years, evaluate the substantive progress toward implementing the management plan and goals for the Sanctuary, especially the effectiveness of site-specific management techniques, and revise the management plan and regulations as necessary to fulfill the purposes and policies of the Act. When the management plan and regulations for the Florida Keys National Marine Sanctuary are re-evaluated, the Secretary will re-propose the management plan and regulations in their entirety. The State of Florida will have the opportunity to review the management plan and regulations, in their entirety, and indicate if any or all of its terms are unacceptable in which case the unacceptable terms shall not take effect in state waters.

IN TESTIMONY WHEREOF, the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida have hereunto subscribed their names and have caused the Official Seal of the State of Florida to be hereunto affixed in the City of Tallahassee on the 28th day of January, 1997.



*Lawton Chiles*  
LAWTON CHILES  
GOVERNOR

*Sandra B. Mortham*  
SANDRA B. MORTHAM  
SECRETARY OF STATE

*Bob Butterworth*  
BOB BUTTERWORTH  
ATTORNEY GENERAL

*Robert F. Milligan*  
ROBERT F. MILLIGAN  
COMPTROLLER

*Bill Nelson*  
BILL NELSON  
TREASURER

*Bob Crawford*  
BOB CRAWFORD  
COMMISSIONER OF AGRICULTURE

*Frank T. Brogan*  
FRANK T. BROGAN  
COMMISSIONER OF EDUCATION