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Testimony on “Access Denied: Turning Away Visitors to National Parks”
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The Florida Fish and Wildlife Conservation Commission (FWC) is the agency responsible for managing fish and wildlife resources for the State of Florida. Ken Wright, Vice-Chair of FWC will address the agency’s concerns regarding the development of a new General Management Plan for Biscayne National Park (Park), Florida.

Background

Located only 30 miles from downtown Miami, the Park is truly a national and state treasure boasting beautiful clear blue waters, extensive coral reefs, amazing marine life, a variety of sea birds, and rare hardwood hammock islands. People flock to the Park to enjoy a wide array of outdoor recreational experiences. Fishing, boating, diving, wildlife viewing, or just basking in the Florida sunshine are long standing traditions for citizens of south Florida and countless visitors from around the world. Recreational activities in the Park are a substantial economic driver for south Florida, creating a ripple effect of economic stimulus across the entire state.

The Park is currently operating under a General Management Plan (GMP) that was completed in 1983. The National Park Service (NPS) is revising and updating the GMP to better address current and future conditions and various management challenges. The new GMP proposes alternatives for management of the Park for the next 20 or more years. The FWC has significant concerns with the management actions that are proposed in the GMP by the NPS, but are hopeful and guardedly optimistic that these concerns can be resolved through further coordination with the NPS.

Overview

The FWC takes stewardship of the natural resources and public interest in this Park very seriously. The FWC recognizes that the State of Florida is an essential partner with the Federal Government in making sure the Park will be appreciated and enjoyed by generations to come. Floridians and particularly the citizens of south Florida have the keenest interest and the most at stake when it comes to the future of this wonderful Park.

To achieve these goals, public access and recreation must be sustained and must be sustainable. The Park must be managed carefully to maintain the integrity and diversity of the natural

features that are so attractive. The good news is through many years of experience and scientific study, it has been proven that public enjoyment of natural resources can be readily balanced with resource protection by using a measured approach and proper management tools. A measured approach must recognize and respect traditional activities like boating and fishing as critical to the very fabric of resource conservation and restoration in the Park, and should not be taken away from the public when less restrictive and less intrusive options are readily available.

The following are five key points that summarize the FWC's concerns. It should be noted that a "no-take zone" is a term that is used interchangeably in this document with a "Marine Reserve Zone". A "Marine Reserve Zone" is the term used by the Park to implement a no-take area, wherein all fishing activities are prohibited.

Point one: The GMP states that no-take zones (i.e., Marine Reserve Zones) are more effective for managing coral reef fisheries populations than other less restrictive options, and further states that less restrictive options would be difficult to enforce. It is highly troubling that such statements are clearly all about fisheries management and are made without recognition of a provision in the Memorandum of Understanding (MOU) between the NPS and the FWC that only agrees to no-take areas under the GMP process for purposes "other than sound fisheries management", and without recognition of the fact that the FWC is the primary provider of resource and boating law enforcement support in the Park.

Point two: The Marine Reserve Zone included in the preferred alternative for the new GMP, will unnecessarily prohibit all recreational and commercial fishing in a 10,522 acre area. The GMP notes that the Marine Reserve Zone would represent only 7% of the entire water area of the Park, but fails to include that the Zone would encompass some of the most popular and productive fishing grounds in the Park. Furthermore, the Marine Reserve Zone will have significant negative impacts on public use and the local economy and was proposed without serious consideration of less restrictive management strategies.

Point three: There is insufficient scientific basis to support fisheries closures included in the preferred alternative. The GMP cites scientific studies relative to restoration of coral reef systems, but these studies were done in much different ecological situations, on a much different scale, and do not have the same environmental conditions or stress factors. It is troubling that the GMP includes broad assumptions regarding the effectiveness of no fishing zones but includes no analyses, metrics, or any other quantifiable measures to support these statements. Moreover, there is no consideration given to the fact that management of wide ranging fisheries stocks must be addressed on a much broader scale than the Park to be successful using more a comprehensive system of monitoring and regulation. Such a system is already in place for the coastal waters of the Atlantic.

Point four: The input and interests of boaters and anglers provided in good faith during the GMP planning process and prior to selection of the preferred alternative were not adequately considered by NPS. In addition, the NPS did not adequately engage the State of Florida and the FWC in the process of selecting the preferred alternative, particularly regarding the matter of fisheries management and associated restrictions. This concern is amplified by the fact that since 1970, the State of Florida has conveyed a significant amount of acreage to the NPS to be incorporated into the Park, and further amplified by the fact that the NPS agreed through the MOU to share responsibilities and authorities regarding fisheries management with the FWC formalized in a Fishery Management Plan.

Point five: Implementing the preferred alternative would be inconsistent with Florida's federally approved Coastal Management Program, and therefore inconsistent pursuant to the Coastal Zone Management Act passed by the United State Congress. The Park has not acknowledged the right of the State of Florida to manage its fish and wildlife resources in a consistent manner as provided for by the Coastal Zone Management Act. Additionally, the Park has also not adhered to the cooperative nature of the MOU that, if followed, would likely have avoided inconsistencies with the Florida Coastal Management Program.

It is important to note that the FWC has been engaging in constructive dialogue with the NPS regarding fisheries management issues contained in the GMP, but only since the release of the GMP to the public. The FWC has offered a very workable solution that honors the cooperative commitments and recognizes the shared goals and responsibilities of the two levels of government. The FWC proposes that the elements of the GMP regarding no-take zones and other fisheries management issues be withdrawn from the GMP, and alternatively evaluated as part of the Fishery Management Plan development process. This would allow the agencies to address these issues in a collaborative and transparent manner in coordination with interested stakeholders, and would allow the GMP to move forward without delay.

Supporting Information

A. Memorandum of Understanding: Fishery Management Plan and fisheries management coordination

In 2002 and subsequently in 2007, the FWC entered into a Memorandum of Understanding (MOU) with the Park to "facilitate the management, protection, and scientific study of fish and aquatic resources" within the Park "by improving communication, cooperation and coordination" between the FWC and the Park (Appendix A). The MOU provides relevant background information, lists objectives to be achieved, outlines regulatory authorities, and details expectations of work on behalf of both the FWC and the Park for the mutual benefit of the aquatic resources within the Park. One of the tasks identified in the MOU is the joint

development of a comprehensive fisheries management plan. The purpose of the Fishery Management Plan is to provide for the long-term management of fish and aquatic resources within the Park, separately yet complementary to a GMP.

The development of the Fishery Management Plan is ongoing, and the GMP specifically states: “Due to this ongoing planning process, the GMP will not address fisheries management in its alternatives” (page 16 of the GMP). In fact, however, Alternatives 2 through 5 of the GMP do address fisheries management, either directly or indirectly, by proposing to establish zones where fishing activities would be prohibited, access would be limited, additional permits would be required, and limitations or prohibitions would be placed on the use of harvesting gear, internal combustion motors, and vessel type, size and speed. All ten of the proposed zones in the GMP manage fishing activities in some manner, and the GMP specifically identifies “managing recreational [and commercial] fishing in the interest of sound conservation” as a management action in the majority of the zones’ descriptions (pages 48-58 of the GMP).

In addition to addressing fishery management issues in the GMP, the proposed management actions within the GMP have not been jointly evaluated with the FWC, nor was the agency consulted in advance of these actions being proposed and released to the public for comment. This is also in direct conflict with the MOU, which states:

Article III – Statement of Work:

A. FWC and the Park agree to:

...2. Acknowledge that the FWC will play a crucial role in implementing and promulgating new regulations as may be deemed appropriate, as well as take other management actions to achieve the mutual objectives for the management of fisheries within the boundaries of the Park for the term of this MOU. However, the agencies agree to consult with each other on any actions that they may propose to be taken to conserve or protect fish populations and other aquatic resources within Park boundaries or to further regulate the fisheries.

...5. Consult with each other and jointly evaluate the commercial and recreational harvest of fishery resources within the Park. Such consultation and evaluation, as set forth in the enabling legislation establishing the Park, should include a full review of all commercial and recreational fishery practices, harvest data, permitting requirements, techniques and other pertinent information for the purposes of determining to what extent mutually agreed upon fishery management goals are being met within the Park and to determine what additional management actions, if any, are necessary to achieve stated management goals.

The enabling legislation establishing the Park and the MOU executed in good faith clearly call for consultation and coordination with the State of Florida/FWC regarding fisheries

management. The Fishery Management Plan is the most appropriate tool to support this consultation and coordination. The proposed regulatory actions in the GMP that affect fishing activities combined with the lack of advanced agency coordination make it abundantly evident that the Park's regulatory strategy is to address fisheries management issues within the context of the GMP, and outside of the framework of the MOU and the Fishery Management Plan.

Accordingly, the FWC has respectfully called for the NPS to honor these requirements and commitments by withdrawing fishery- and fishing-related provisions from the GMP, and working closely with the FWC and stakeholders to develop proposals that reflect a better balance between conservation and recreation in the Fishery Management Plan.

B. Memorandum of Understanding: Use of unnecessarily restrictive management actions

The FWC and the Park have differing viewpoints regarding the use of marine reserves or no-take areas as a management strategy. This was specifically addressed in the MOU as follows:

WHEREAS, FWC and the Park agree to seek the least restrictive management actions necessary to fully achieve mutual management goals for the fishery resources of the Park and adjoining areas. Furthermore, both parties recognize the FWC's belief that marine reserves (no-take areas) are overly restrictive and that less-restrictive management measures should be implemented during the duration of this MOU. Consequently, the FWC does not intend to implement a marine reserve (no-take area) in the waters of the Park during the duration of this MOU, unless both parties agree it is absolutely necessary. Furthermore, the FWC and the Park recognize that the Park intends to consider the establishment of one or more marine reserves (no-take areas) under its General Management Planning process for purposes other than sound fisheries management in accordance with Federal authorities, management policies, directives and executive orders...

The Park did not seek the least restrictive management actions to accomplish management goals, and did not propose a Marine Reserve Zone in the GMP "for purposes other than sound fisheries management." The GMP states that the proposed Marine Reserve Zone "would be about 7% of the waters of the Park, and less than 13% of the offshore areas of the park" (page 82 of the GMP). Whether intentional or not, this reference to "waters" and "offshore areas" instead of actual "fishing areas" creates the illusion that the proposed Marine Reserve Zone is a very small area in comparison to the rest of the Park, "...while not being so large as to completely eliminate the opportunities for fishing any of the park's reef areas" (page 327 of the GMP). The reality is that the proposed Marine Reserve Zone includes some of the most popular reef fishing areas within the Park. Combined with nine other proposed Zones that will restrict or eliminate fishing opportunities either directly or indirectly, these actions will have a serious negative impact on

fishing within the Park. The management actions proposed in the GMP represent the most extreme tools available for resource management in these selected areas within the Park, ignoring alternative ways to achieve desired resource improvements without sacrificing the public's ability to access portions of the Park for fishing.

C. Lack of information to support proposed management actions

The FWC recognizes that the NPS has different but complementary goals for managing Florida's fish and wildlife resources located within the Park's boundaries. The FWC also recognizes the significant value of the habitat resources within the Park to recreational and commercial fisheries, and the need to protect them. While the FWC supports sound resource management within the Park, the FWC cannot support how certain management actions in the GMP have been developed and proposed because of the lack of scientific evidence and lack of consideration of public access and use.

1. The Science

The Park has failed to provide the scientific evidence necessary to support the need for a complete fishery closure in the Marine Reserve Zone. For example, data or analyses demonstrating the conservation benefits achieved by a complete fishery closure as compared to other, less restrictive management measures (e.g., catch-and-release fishing, size or slot limits, and closed seasons) were never presented in the GMP or specifically discussed with the FWC before releasing the GMP. Instead, the GMP states:

Scientific data indicates that no-take zones are more effective at reducing mortality, especially for reef species, than other methodologies, including catch and release, slot limits, etc. Additionally, a catch and release zone would be difficult to enforce. Therefore, within this zone, recreational and commercial fishing would be prohibited to encourage long-term protection of the reef ecosystem (page 82 of the GMP).

Since no data, analyses, or any other quantifiable measure is provided to support these statements, it is impossible for the FWC to evaluate their scientific credibility. Furthermore, the FWC provides the boating and resources enforcement in the Park. Enforcement of less restrictive management measures are no more difficult for the agency to enforce than no-take zones – both require officers to patrol and check boaters/anglers to ensure compliance with whatever the regulation may be.

The FWC is also seriously concerned that, although the proposed Marine Reserve Zone is supposed to provide "...beneficial impacts on fisheries, and submerged aquatic communities..." (page iv of the GMP), no data or other scientific evidence is provided to evaluate whether this

Zone was designed to provide protection from the full suite of known threats (e.g., water quality and other non-fishing, human-caused stressors) that can affect the biodiversity and long-term viability of coral reef ecosystems. It is well documented in scientific literature that non-fishing activities such as diving and snorkeling can have a significant impact on reef communities, yet the Park is not proposing to manage these activities and is only focusing on fishing activities. Had the options for managing each threat been the subject of appropriate assessments, it would likely have been apparent that area closures, such as the proposed Marine Reserve Zone, represents an inappropriate or at least an inefficient mechanism for the management, precautionary or otherwise, of many recognized threats, including those from fishing and diving.

Common “unintended consequences” (e.g., potential impacts caused by displacement of fishing effort to areas outside the no-take zone) of implementing marine no-take zones that are well documented in the scientific literature, also seem to have not been evaluated by the Park. For example, the Park’s Preferred Alternative, which includes the proposed Marine Reserve Zone, lacks any evaluation of the potential negative impacts caused by increased fishing effort outside the Zone by fishers displaced to nearby areas where fishing would continue to be allowed. The GMP states:

Even though fishing pressure may increase outside this zone [emphasis added], the expected increase in size and abundance of fish within the Marine Reserve Zone is expected to have a "spillover" effect outside the zone, as documented in other Marine Reserve Zones worldwide (page 230 of the GMP).

Again, no analyses, metrics, or any other quantifiable measure is provided to support this statement, much less how it relates to the specific no-take zone being proposed in the Park. What the Park is presenting as the science supporting their proposed management actions is that studies of no-take zones in the Florida Keys have shown conservation benefits to coral reef ecosystems, including the reef fish communities therein, to a “more natural state.” In other words, if no-take zones are good for the Florida Keys, they must be good for Biscayne Bay. This kind of extrapolation should not be made without working through a comprehensive and collaborative analysis of all factors influencing the health and recovery of coral reef ecosystems in the Park to provide a valid scientific basis for evaluation of a number of management options that ultimately demonstrate: (1) the conservation benefits likely to be achieved by management actions; and (2) whether the same conservation benefits could be achieved by applying less restrictive management actions .

In summary, the Park has failed to provide the scientific evidence necessary to support the proposed Marine Reserve Zone. Furthermore, the proposed Marine Reserve Zone affects fishing practices that are already well-managed by state and federal agencies, according to well-established and scientifically credible conservation standards. The FWC is concerned the focus

on restricting fishing and boating is diverting attention from the suite of real threats potentially affecting both protected and unprotected areas in the Park including water quality issues.

2. *Public Access and Use*

The GMP proposes to implement zones that have the potential to significantly limit access by fishers through vessel operation (e.g., vessel speed, vessel size and motor type). Strategies such as slow-speed or non-combustion engines zones used to protect resources can be important management tools. On the other hand, these strategies also have the potential to impact resources if not designed to avoid or minimize access limitation. It is a commonly held misconception that fishers continue to have access to areas for fishing after slow-speed or non-combustion engine management strategies are implemented, because in theory fishers can still pole, troll, or operate a vessel at limited speed in order to fish. In reality, many fishers do not utilize these areas because of factors that significantly contribute to accessibility. These factors include public and private boat launch locations, currents, tides, prevailing winds, and how to get in and out of a zone quickly in the event of bad weather or with enough time to fish a tide. As mentioned above, access limitation may result in concentrating resource impacts in adjacent areas that are not managed under these strategies, or concentrating resource impacts in smaller, accessible portions of the areas managed under these strategies because factors that contribute to accessibility were not considered during the planning process.

D. “Who has management authority in Biscayne National Park?”

The issue of management authority of fish and wildlife in the Park has been discussed by the FWC and the NPS for many years. When only considering the state and federal laws that apply to the establishment of the Park, it is a situation the two agencies have simply had to agree to disagree.

The current authority issue has arisen in response to the State of Florida’s review of the draft version of the Park’s GMP under the federal Coastal Zone Management Act. The Coastal Zone Management Act, passed by Congress and implemented by NOAA, requires that activities conducted by federal agencies (or on behalf of federal agencies) affecting the land or water uses or natural resources of a state’s coastal zone be fully consistent with each state’s coastal management program. Each state’s coastal management program must be approved by NOAA. Florida’s approved Coastal Management Program allows the State to review federal activities affecting the land or water uses or natural resources of Florida for consistency with Florida’s Coastal Management Program.

The management actions proposed by the Park in the GMP are not fully consistent with the Florida Coastal Management Program. Specifically, the Park has not fully taken into account the

right of the State of Florida to manage its fish and wildlife resources in a consistent manner as provided for by the Coastal Zone Management Act. If the Park had adhered to the cooperative nature of the MOU, it would have likely avoided inconsistencies with the Florida Coastal Management Program.

The Solution

The FWC is disappointed that the Park chose to propose the most restrictive management actions without adequately considering less restrictive management options that would likely accomplish the same goals. The solution moving forward is for the NP to follow the “Purpose of the Plan” as stated in the GMP: “Ensure that this foundation for decision making has been developed in consultation with interested stakeholders and adopted by the National Park Service leadership after an adequate analysis of the benefits, impacts, and economic costs of alternative courses of action” (page 6 of the GMP). This can be accomplished by removing fisheries management issues from the GMP, and instead provide for an evaluation of alternative fisheries management strategies in the Fishery Management Plan developed in consultation with the FWC and interested stakeholders. This will not delay finalizing the GMP, and it will allow for a more balanced approach to management.

Appendix A

* This file has been converted from the official signed PDF to Word, and the formatting may be different.

Memorandum of Understanding

between

the State of Florida, Fish and Wildlife Conservation Commission

and

the National Park Service, Biscayne National Park

NPS Agreement Number G5250H0083

ARTICLE I - BACKGROUND AND OBJECTIVES

WHEREAS, The purpose of this Memorandum of Agreement (MOU) is to facilitate the management, protection and scientific study of fish and aquatic resources within the National Park Service, Biscayne National Park (hereinafter referred to as the Park) by improving communication, cooperation and coordination between the Florida Fish and Wildlife Conservation Commission, (hereinafter referred to as the FWC) and the Park; and

WHEREAS, Biscayne National Monument was established by Congress in 1968 "in order to preserve and protect for the education, inspiration, recreation, and enjoyment of present and future generations a rare combination of terrestrial, marine, and amphibious life in a tropical setting of great natural beauty" (PL 90-606). The Monument was later expanded in 1974 (PL 93-477), and again in 1980 (PL 96-287), to its current size of 173,000 acres (270 square miles), when it was also redesignated as the Park, where excellent opportunities are provided for fishing, snorkeling, scuba diving, boating, canoeing, kayaking, windsurfing and swimming; and

WHEREAS, the State of Florida conveyed sovereign submerged lands to the United States in 1970 to become part of Biscayne National Monument; and

WHEREAS, the Park is made up predominantly of submerged lands (95 percent), and may be divided generally into three major environments: coral reef, estuarine and terrestrial. The boundaries of the Park begin at the west mangrove shoreline, extend east to Biscayne Bay (including seagrass communities and shoals), the keys (including hardwood hammocks, mangrove wetlands, sandy beaches and rocky inter-tidal areas), the reef, and continue to their easternmost extent at a contiguous 60-foot depth contour. The northern boundary of the Park is near the southern extent of Key Biscayne, while the southern boundary is near the northern extent of Key Largo, adjacent to the Barnes Sound and Card Sound areas; and

WHEREAS, Biscayne Bay has also been designated by the State of Florida as an Aquatic Preserve, Outstanding Florida Water, Outstanding National Resource Water (pending ratification of State water quality standards) and lobster sanctuary under Florida Law, and by Dade County as an aquatic park and conservation area; and

WHEREAS, both FWC and the Park have responsibilities under Federal and State laws and regulations that affect fish and other aquatic resources within the Park; and

WHEREAS, FWC and the Park agree that "when possible and practicable, stocks of fish shall be managed as a biological unit" (Chapter 370.025(d) Florida Statutes). This statement is intended to recognize that measures to end overfishing and rebuild stocks are most effective when implemented over the range of the biological stock; however, it is not intended to preclude implementation of additional or more restrictive management measures within the Park than in adjacent State waters as a means of achieving mutual objectives; and

WHEREAS, FWC and the Park agree that properly regulated commercial and recreational fishing will be continued within the boundaries of the Park. FWC and the Park recognize and acknowledge that commercial and recreational fishing constitutes activities of statewide importance that benefit the health and welfare of the people of the State of Florida. The parties also recognize and acknowledge that preserving the nationally significant resources of the Park to a high conservation and protection standard to be agreed upon by both parties in the fishery management plan for all citizens to enjoy is of statewide as well as national importance, and as such, will also benefit the health and welfare of the people of the State of Florida; and

WHEREAS, FWC and the Park agree to seek the least restrictive management actions necessary to fully achieve mutual management goals for the fishery resources of the Park and adjoining areas. Furthermore, both parties recognize the FWC's belief that marine reserves (no-take areas) are overly restrictive and that less-restrictive management measures should be implemented during the duration of this MOD. Consequently, the FWC does not intend to implement a marine reserve (no-take area) in the waters of the Park during the duration of this MOD, unless both parties agree it is absolutely necessary. Furthermore, the FWC and the Park recognize that the Park intends to consider the establishment of one or more marine reserves (no-take areas) under its General Management Planning process for purposes other than sound fisheries management in accordance with Federal authorities, management policies, directives and executive orders; and

WHEREAS, both parties wish this MOU to reflect their common goals and intended cooperation and coordination to achieve those goals.

ARTICLE II - AUTHORITY

In the Organic Act of 1916, U.S.C. § 1, Congress created the National Park Service (NPS) to promote and regulate the National Park System for "the purpose of conserving the scenery and the natural and historic objects and wildlife therein and to provide for the enjoyment of the same in such manner and by such means as would leave them unimpaired for the enjoyment of future generations." Congress further determined, in 16 U.S.C. § 1a-I, that the authorization of activities within units of the National Park System be construed, and the protection, management and administration of national parks be conducted, in the light of high public value and integrity of the National Park System.

The legislation establishing the Park states that the "Secretary shall preserve and administer the park in accordance with the provisions of sections 1 and 2 to 4 of this title, as amended and supplemented. The waters within the park shall continue to be open to fishing in conformity with the laws of the State of Florida except as the Secretary, after consultation with appropriate officials of said State, designates species for which, areas and times within which, and methods by which fishing is prohibited, limited, or otherwise regulated in the interest of sound conservation to achieve the purposes for which the park is established: Provided, that with respect to lands donated by the State after the effective date of this Act, fishing shall be in conformance with State law." PL 96-287, § 103(a), codified at 16 U.S.C. § 410gg-2(a).

As a unit of the National Park System, the Park is authorized under 16 U.S.C. §§ 1-6 to participate in memoranda of understanding that document mutually agreed upon policies, procedures and relationships that do not involve funding.

The FWC was created by Article IV, § 9 of the Florida Constitution and is vested with the state's executive and regulatory authority with respect to freshwater aquatic life, wild animal life and marine life. This authority, directly derived from the Constitution, provides the FWC with autonomy to regulate and manage wild animal life, freshwater aquatic life and marine life within the State of Florida, which includes the areas encompassed by the Park.

The FWC is authorized under Chapter 370.103, Florida Statutes, to enter into cooperative agreements with the Federal Government or agencies thereof for the purpose of preserving saltwater fisheries within and without state waters and for the purpose of protecting against overfishing, waste, depletion, or any abuse whatsoever. Such authority includes authority to enter into cooperative agreements whereby officers of the FWC are empowered to enforce federal statutes and rules pertaining to fisheries management.

The regulatory responsibility of the State of Florida with respect to fishing on the original Park lands is set forth in section 1 03(a) of PL 96-287 (see above). The regulatory responsibility of the State of Florida with respect to fishing on additional lands conveyed to the Park after the effective date of PL 96-287 is set forth in a Board of

Trustees of the Internal Improvement Trust Fund Dedication dated December 13, 1985, which contains the following special reservation: "All rights to fish on the waters shall be retained and not transferred to the United States and fishing on the waters shall be subject to the laws of the State of Florida."

NOW, THEREFORE, both parties agree as follows:

ARTICLE III - STATEMENT OF WORK

A. FWC and the Park agree to:

Seek concurrence in meeting their management goals and strive to identify means, measures and other interagency actions for the mutual benefit of the aquatic resources within Biscayne Bay and the Park.

Acknowledge that the FWC will play a crucial role in implementing and promulgating new regulations as may be deemed appropriate, as well as take other management actions to achieve the mutual objectives for the management of fisheries within the boundaries of the Park for the term of this MOD. However, the agencies agree to consult with each other on any actions that they may propose to be taken to conserve or protect fish populations and other aquatic resources within Park boundaries or to further regulate the fisheries.

Provide for recreational and commercial fishing and opportunities for the angling public and other Park visitors to enjoy the natural aquatic environment.

Manage fisheries within the Park and Biscayne Bay according to applicable Federal and State laws, and in a manner that promotes healthy, self-sustaining fish populations and recognizes the biological characteristics and reproductive potential of individual species. Desired future conditions for fisheries and visitor experiences within the Park will be established cooperatively to further guide fisheries management.

Consult with each other and jointly evaluate the commercial and recreational harvest of fishery resources within the Park. Such consultation and evaluation, as set forth in the enabling legislation establishing the Park, should include a full review of all commercial and recreational fishery practices, harvest data, permitting requirements, techniques and other pertinent information for the purposes of determining to what extent mutually agreed upon fishery management goals are being met within the Park and to determine what additional management actions, if any, are necessary to achieve stated management goals.

Collaborate on the review and approval of proposals for fisheries stock assessment, site characterization, maintenance or restoration, including scientifically based harvest management, species reestablishment, stocking, habitat protection, and habitat restoration or rehabilitation.

Notify each other, as early as possible, of the release of information pertaining to the

development of agency policies, management plans, statutes, rules and regulations that may affect fisheries and aquatic resource management within the Park boundary.

Share scientific information, field data and observations on Park fishery resources and activities affecting those resources, except in situations where the exchange of such data would violate State or Federal laws or regulations (e.g. law enforcement investigations and confidential landings statistics). The parties will provide each other with copies of reports that include results of work conducted within the Park or Biscayne Bay.

Jointly consider proposals for the management and control of exotic (non-indigenous) species, if found to occur within the Park or in adjacent areas, that may pose a threat to the integrity of Park resources. Exotic species are those that occur in a given place as a result of direct or indirect, deliberate or accidental actions by humans.

Review and coordinate, on an annual basis, proposals for fisheries and aquatic resources management, research, inventory and monitoring within the Park and Biscayne Bay. Each party will provide prospective researchers with legal notice of agency-specific permitting requirements. Additionally, as a courtesy, and to encourage information sharing, the FWC and the Park will provide each other with annual summaries of marine and terrestrial research, inventory and monitoring activities conducted within and in close proximity to the Park.

Meet at least once annually and otherwise as needed to coordinate management and research activities and exchange information on fish and aquatic resources within the Park and Biscayne Bay.

Recognize that there may be times when the missions of the FWC and the Park may differ, and that while efforts will be made to the maximum extent possible to cooperate fully and jointly manage fishing within the Park as intended by Congress when the Park was established, there may be occasion when the two agencies choose to disagree. Such occasions will not be construed, as impasses and every attempt will be made to avoid communication barriers and to not jeopardize future working relationships.

Develop a comprehensive fisheries management plan (hereinafter referred to as the Plan) for the long-term management of fish and aquatic resources within the Park. The Plan will summarize existing information and ongoing activities, clarify agency jurisdiction, roles and responsibilities, identify additional opportunities for cooperative management, list key issues, establish management goals and objectives, describe desired future conditions, indicators, performance measures and management triggers, and develop a list of prioritized project statements. Specifically, with respect to developing the Plan, the two agencies agree as follows:

B. The FWC agrees to:

1. Assist the Park, and play a collaborative role in coordinating with the Park and its cooperators, in the development and ongoing review of the Plan.
2. Provide representation to a technical committee formed to guide interagency fisheries management within Biscayne Bay, including the Park, and participate in monthly teleconference calls and meetings as may be scheduled for purposes of steering fisheries management planning project.
3. Assign staff, including those from the Florida Marine Research Institute, as deemed appropriate to assist the Park and its cooperators in developing credible project statements or preliminary research proposals. The emphasis of such proposals will be to design and prioritize projects intended to meet known fisheries data gaps or resource knowledge deficiencies to facilitate scientifically based and informed fisheries management decision-and rule-making.
4. Provide representation to and support for forming the Scientific Advisory Panel for the purposes described in CA below.
5. Provide access to and support for requests by the Park to existing data and information as may be applicable to Biscayne Bay fisheries and aquatic resources, jurisdictions and other pertinent aspects to developing the Plan.
6. Review and comment upon drafts of the Plan and participate in joint meetings that will be arranged to solicit public opinion and comment concerning proposed

fisheries management actions and/or alternatives as may be described within the draft Plan; and to review and comment upon any fisheries and aquatic resources issues and alternatives as may be identified within the Park's General Management Plan, also being developed in 2001-2002.

7. Facilitate information exchange and otherwise provide briefings to FWC Commissioners as necessary and deemed appropriate by the FWC.
8. Facilitate information exchange and otherwise provide briefings as may be deemed appropriate to the South Atlantic Fishery Management Council, of which FWC's Director of the Division of Marine Fisheries is a member.
9. Work with the Park to promulgate or revise existing State and Federal rules/regulations as may be jointly identified and recommended within the Plan.
10. As may be provided under State law and FWC policies, and upon full review, comment, revision and concurrence by the FWC, co-sign and endorse the Plan.

C. The Park agrees to:

Subject to the availability of funds, provide project funding support to cooperators, under contractual requirements separate from this MOU and described within an approved study plan prepared by NPS, to complete the Plan.

Secure contractors and cooperation from other fisheries experts to develop and/or assist the Park in developing the Plan. These cooperators may include, but are not limited to, research fishery biologists, aquatic ecologists and fisheries program managers from the FWC, Tennessee Valley Authority, Everglades National Park, National Marine Fisheries Service, Southeast Fisheries Science Center, and the University of Miami--Rosenstiel School of Marine and Atmospheric Science.

Form a technical steering committee comprised of Park personnel as well as those cited in C.2 above, and arrange and coordinate monthly teleconference calls and periodic other meetings of this committee as necessary to develop the Plan.

Arrange and coordinate a Scientific Advisory Panel to review the findings and recommendations contained in the 2001 report entitled "Site Characterization for Biscayne National Park: Assessment of Fisheries Resources and Habitats," prepared under contract for the Park by Dr. Jerald S. Ault, et al.

Work with the FWC to promulgate or revise existing State and Federal rules/regulations as may be jointly identified and recommended within the Plan.

Pursuant to the National Environmental Policy Act, arrange and coordinate public meetings, Federal Register Notices, and other requirements associated with preparing an Environmental Impact Statement in conjunction with the Plan.

Under contractual arrangements separate from this MOU, finance, print, and distribute a reasonable and sufficient number of draft and final copies of the Plan to all cooperators and other entities with an expressed or vested interest.

As requested by the FWC, help conduct or simply attend briefings, presentations or other forums concerning fisheries/wildlife management within Biscayne Bay, including the Park.

Facilitate and encourage the joint publication of press releases and the interchange between parties of all pertinent agency policies and objectives, statutes, rules and regulations, and other information required for the wise use and perpetuation of the fisheries resources of the Park.

Facilitate research permitting to state entities for activities needed to accomplish goals identified in the Plan.

ARTICLE IV – TERMS OF AGREEMENT

This MOU shall become effective upon signature by all parties hereto, and is executed as of the date of the last of those signatures and shall remain in effect for a term of five (5) years unless rescinded as provided in Article IX. It may be reaffirmed and extended for an additional five years.

This MOU in no way restricts the FWC or the Park from participating in similar activities with other public or private agencies, organizations, and individuals.

This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the Park and the FWC will be handled in accordance with applicable laws, regulations, and procedures. Such endeavors will be set forth in separate written agreements executed by the parties and shall be independently authorized by appropriate statutory authority.

ARTICLE V - KEY OFFICIALS

A. For Biscayne National Park:

Superintendent
Biscayne National Park
9700 SW 328th Street
Homestead, FL 33033 B.

B. For the Florida Fish and Wildlife Conservation Commission:

Executive Director
Florida Fish and Wildlife Conservation Commission
620 South Meridian Street
Tallahassee, FL 32399-1600

ARTICLE VI - PRIOR APPROVAL

Not applicable

ARTICLE VII - REPORTS AND/OR OTHER DELIVERABLES

Upon request and to the full extent permitted by applicable law, the parties shall share with each other final reports of actions involving both parties.

ARTICLE VIII - PROPERTY UTILIZATION

Unless otherwise agreed to in writing by the parties, any property furnished by one party to the other shall remain the property of the furnishing party. Any property furnished by the Park to the FWC during the performance of this MOU shall be used and disposed of as set forth in Federal property management regulations found at 41 C.F.R. Part 102.

ARTICLE IX - MODIFICATION AND TERMINATION

Either party may terminate this MOU by providing 60 days advance written notice to the other party. However, following such notice and before termination becomes effective, the parties will attempt to address and resolve the issues that led to the issuance of the notice.

Any disputes that may arise as a result of this MOU shall be subject to negotiation upon written request of either party, and each of the parties agrees to negotiate in good faith. The parties shall use their best efforts to conduct such negotiations at the lowest organizational level before seeking to elevate a dispute. If the parties cannot resolve the dispute through negotiation, they may agree to mediation using a neutral acceptable to both parties. Subject to the availability of funds, each party will pay an equal share of any costs for mediation services as such costs are incurred. If the dispute cannot be resolved through mediation, it will be elevated to a third party acceptable to both the Park and FWC for a final decision.

This MOU may be reviewed and/or modified at any time upon written agreement of the FWC and the Park.

ARTICLE X - STANDARD CLAUSES

A. Compliance With Laws

This MOU is subject to the laws of the United States and the State of Florida, and all lawful rules and regulations promulgated thereunder, and shall be interpreted accordingly.

B. Civil Rights

During the performance of this MOU, the parties agree to abide by the terms of the U.S. Department of the Interior (hereinafter referred to as the Department)-Civil Rights Assurance Certification, non-discrimination and will not discriminate against any person because of race, color, religion, sex, or national origin. The participants will take affirmative action to ensure that applicants are employed without regard to their race, color, sexual orientation, national origin, disabilities, religion, age or sex.

C. Promotions

The FWC will not publicize or otherwise circulate promotional material (such as advertisements, sales brochures, press releases, speeches, still and motion pictures, articles, manuscripts, or other publications), which states or implies Governmental, Departmental, bureau or Government employee endorsement of a product, service or position, which the Department represents. No release of information relating to this MOU may state or imply that the Government approves of the FWC's work product, or considers the Department's work product to be superior to other products or services.

D. Public Information Release

The FWC will obtain prior approval from the Park for any public information releases, which refers, to the Department, any bureau, park unit, or employee (by name or title), or to this MOU. The specific text, layout, photographs, etc. of the proposed release must be submitted with the request for approval.

E. Liability Provision

Each party to this agreement will indemnify, save and hold harmless, and defend each other against all fines, claims, damages, losses, judgments, and expenses arising out of, or from, any omission or activity of such person organization, its representatives, or employees. During the term of the MOD, the Park will be liable for property damage, injury or death caused by the wrongful or negligent act or omission of an employee, agent, or assign of the Park acting within the scope of his or her employment under

circumstances in which the Park, if a private person, would be liable to a claimant in accordance with the law of the place where the act or omission occurred, only to the extent allowable under the Federal Tort Claims Act, 28 U.S.C. Sec. 2671 et seq.

ARTICLE XI - SIGNATURES

IN WITNESS HEREOF, the parties hereto have executed this agreement on the dates set forth below.

FOR BISCAYNE NATIONAL PARK:

Signature:

Mark Lewis
Superintendent
Biscayne National Park

Date:

FOR THE FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION:

Signature:

Ken Haddad
Executive Director
Florida Fish and Wildlife Conservation Commission

Date: