

# **Memorandum of Understanding**

**between**

**The State of Florida, Fish and Wildlife Conservation Commission**

**and**

**The National Park Service, Dry Tortugas National Park**

WHEREAS, The State of Florida and the National Park Service (the Service) have entered into a Management Agreement with respect to the submerged lands within Dry Tortugas National Park (DTNP); and

WHEREAS, Consistent with the provisions of the Management Agreement, the Service has promulgated special regulations pertaining to DTNP and which have been concurred in by the Florida Fish and Wildlife Conservation Commission (the FWC) and the Board of Trustees of the Internal Improvement Trust Fund for the State of Florida; and

WHEREAS, In furtherance of the objectives of the Management Agreement, this Memorandum of Understanding is intended to facilitate the management, protection, and scientific study of fish and aquatic resources of DTNP by developing a cooperative research and monitoring plan between the FWC and the Service to evaluate the effect and efficacy of the 46-square-mile Research Natural Area (hereinafter referred to as the RNA) encompassing a portion of DTNP; and

WHEREAS, The FWC is an agency created by Article IV, Section 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 authority to regulate and manage wild animal life, freshwater aquatic life, and marine life within the State of Florida, including the areas encompassed by DTNP; and

WHEREAS, The Management Agreement specifically provides that nothing in its terms shall be construed to affect, expand, or diminish the authority of the FWC in the exercising of its jurisdiction under the Florida Constitution with respect to marine fish; and

WHEREAS, Congress in the Organic Act of 1916, 16 U.S.C. Section 1, created the Service 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”; and

WHEREAS, In 1992, Congress enacted Public Law 102-525 (16 U.S.C. Section 410xx et seq.) abolishing Fort Jefferson National Monument and establishing DTNP in its place. Congress established DTNP “to preserve and protect for the education, inspiration and enjoyment of present and future generations nationally significant natural, historic, scenic, marine, and scientific values in South Florida”; and

WHEREAS, the regulations provide for the RNA which encompasses a 46-square-mile area protecting a representative range of terrestrial and marine resources in DTNP. The RNA is closed to fishing and is otherwise designed to protect near-pristine habitats and ecological processes that will afford high quality research opportunities; and

WHEREAS, both FWC and the Service (the Parties or, as appropriate, a Party) have responsibilities under Federal and State laws and regulations that affect fish and other aquatic resources within the RNA; and

WHEREAS, the Service is to provide a report to the State at least every five years concerning the status, activities, and condition of the sovereignty submerged lands that are subject to the Management Agreement; and

WHEREAS, both parties wish this Memorandum of Understanding to reflect common goals and intended cooperation and coordination to achieve these goals; and

WHEREAS, both parties recognize there may be times when the missions of the FWC and the Service may differ, and that while every effort will be made to cooperate fully and jointly manage fish stocks within the RNA, there may be occasions 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 not jeopardize future working relationships; and

WHEREAS, nothing in this Memorandum of Understanding shall be construed as a contract or obligating any Party hereto to the expenditure of funds or the future payment of money; and

WHEREAS, nothing contained herein shall be construed as limiting in any way the responsibility and authority, as defined by law, of the Director, National Park Service, or the Executive Director and Commissioners, Florida Fish and Wildlife Conservation Commission, in connection with the administration and protection of lands and resources under their respective administrations.

## **ARTICLE II – AUTHORITY**

As a unit of the National Park System, DTNP is authorized to enter into agreements with governmental bodies and other appropriate organizations to further the objectives and purposes of DTNP and to promote research and protection of park resources.

The FWC is authorized under Chapter 370.103 Florida Statute, 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.

NOW, THEREFORE, both parties agree as follows:

## **ARTICLE III – STATEMENT OF WORK**

### **A. The parties generally agree as follows:**

1. To jointly develop a program for natural resources research, inventory and monitoring within the RNA with the goal of identifying and establishing performance measures that will be used to evaluate the effectiveness of the RNA in achieving its stated goals. The goals of the RNA are to protect near pristine shallow water marine habitat, ensure species diversity, enhance the productivity and sustainability of exploited fish populations throughout the region, and provide a unique unexploited area that will be used to help assess the effects of fishing on exploited areas. To evaluate these goals, the performance of the RNA will be evaluated by, but not limited to: 1) quantifying changes in abundance and size-structure of exploited species within the RNA relative to adjacent areas; 2) monitoring the immigration and emigration of targeted species in the RNA; 3) monitoring changes in species composition and catch rates of exploited species throughout the surrounding region; 4) monitoring species composition and abundance of the benthic community; and 5) assessing reproductive potential of exploited species by evaluating egg production and larval dispersal. This program will include: 1) a review and summary of past and existing work in DTNP (including the work by FWC, National Oceanic and Atmospheric Administration (NOAA), the Service, University of Miami, Florida International University and other cooperating agencies and universities) to coordinate activities among agencies and minimize duplication of effort; 2) draft proposals to develop new research or expand upon ongoing research as deemed necessary, including social science research; 3) identification of funding sources for expanded and additional research deemed necessary; and 4) a schedule of deliverables, including performance measures designed to evaluate the effectiveness of the RNA in achieving its stated goals.
2. Subject to adequate funding, proposed research and monitoring activities will include, but not necessarily be limited to:

- a) Expansion of ongoing research and monitoring program that assess important reef fish populations, including the Dry Tortugas region and DTNP RNA. Expansion of this program shall be designed to provide a more robust database for examination of the performance of the RNA regarding its stated goals. The expanded research and monitoring program could incorporate a broad, multi-gear sampling approach to monitor changes in abundance and size of targeted species inside and outside RNA boundaries. Increases in the abundance and size-structure of these species in the absence of fishing mortality serve as an indicator that the RNA is protecting spawning biomass, age-structure, and genetic diversity that potentially enhance the productivity and sustainability of these species in the region.
  - b) Implementation of a variety of tagging studies (*e.g.*, using acoustic tags as well as conventional dart-tags) to examine broad- and fine-scale movement patterns of targeted species in and out of the RNA. This would be accomplished by expanding ongoing collaborative acoustic tracking research projects as well as by conducting new studies. Such studies will help evaluate if adjacent fishing areas are enhanced through emigration of target species from the RNA.
  - c) Development of a fisheries-dependent monitoring program to evaluate potential changes in catch rates, species composition, and size composition of commercial and recreational fisheries in areas surrounding the RNA. This program could use a variety of data collection methods including on-board observers, logbooks, aerial surveys, and recreational fisheries interviews.
  - d) Increasing the number of benthic monitoring stations to include specific sites to evaluate the impacts of RNA mooring buoy visitor activities and fishing and boating effects in the Dry Tortugas. Measures of benthic community change and condition will be used to assess the impacts of diving and snorkeling activities in the RNA.
  - e) Expansion of ongoing efforts to track and model larval movement patterns within the Tortugas and Florida Keys region from important reef fish and other aquatic species to evaluate larval recruitment of several finfish species in the south Florida region.
  - f) Incorporate the social sciences into the research and monitoring program for evaluating the RNA performance measures. The social science component shall include collection of compliance rates and enforcement activity in the RNA and surveys of visitor experiences related to the RNA.
3. To seek concurrence in meeting the management goals of both agencies and strive to identify means, measures, and other interagency actions for the mutual benefit of the natural resources within the RNA, including the above referenced activities of research, inventory and monitoring within the RNA, and any future agreements for shared law enforcement or other responsibilities. This will include an interagency

workshop no later than 90 days following the execution of this MOU to define performance measures that will be used to assess effectiveness of the RNA regarding its stated goals and to reach agreement on the methods for data collection, and integration for the above referenced activities.

4. Based on the outcomes of the workshop referenced above and the level of available funding, develop a joint FWC/DTNP research and monitoring plan no later than 90 days following the workshop. This plan will include specific sampling methodologies and methods of data analysis and modeling to examine the defined performance measures that will be used to assess the effectiveness of RNA performance regarding its stated goals.
5. To manage fisheries within the RNA in accordance with applicable laws, and in a manner that promotes healthy, self-sustaining fish populations and recognizes the biological characteristics and reproductive potential of individual species.
6. To share scientific information, field data, and observations pertaining to the aquatic resources of DTNP and activities affecting those resources, consistent with the requirements of applicable laws for non-disclosure of certain specific information, such as law enforcement matters and confidential landings statistics. The parties will also investigate approaches for the development of a data integration system (similar to what is in place for the Florida Keys National Marine Sanctuary [FKNMS]), and will provide each other with copies of reports that include results of work conducted within the RNA and surrounding areas.
7. To meet at least once annually and additionally as needed to coordinate research activities and exchange information on fish and aquatic resources within the RNA, and to develop a three-year and five-year review schedule for examining relevant research information and assessing the effectiveness of the RNA in terms of the agreed upon performance measures. This examination and assessment shall include jointly prepared interim (3-year) and comprehensive (5-year) reports. These reports shall provide conclusions and recommendations addressing whether the RNA is achieving stated goals, through the application of the agreed upon performance measures. The parties agree to make every effort to integrate the five-year RNA review with the planned external peer review process that is in development for the science program in the FKNMS.
8. Nothing in this Memorandum of Understanding shall be construed as obligating either Party to expend funds in any one fiscal year in excess of the monies appropriated by Congress and allocated by DTNP for the performance of this agreement.

Specifically, with respect to developing a research and monitoring program and performance measures to assess the effectiveness of the RNA in achieving its stated goals, the two agencies agree as follows:

**B. The FWC agrees to:**

1. Assign staff, as deemed appropriate, to collaborate with the DTNP and its cooperators in preparing a research and monitoring program and performance measures from which to examine the effectiveness of the RNA during the first three-year and five-year implementation periods, and to coordinate this work with similar efforts by the FKNMS. This program will expand ongoing collaborative research efforts in DTNP among the FWC and the Service, U.S. Geological Survey, NOAA, University of Miami, and Florida International University.
2. Provide continuing project funding through appropriate financial assistance agreements to support for the ongoing Service-sponsored RNA monitoring and research which is in furtherance of the purposes of this Memorandum of Understanding.
3. Provide three- and five-year reports to FWC Commissioners and Service managers that summarize RNA-related research and evaluate the performance of the RNA regarding its stated goals, and otherwise provide briefings to Commissioners and Service managers as appropriate.
4. Provide access to and support for requests by the Service to existing data and information as may be applicable to DTNP fisheries and aquatic resources.

**C. Dry Tortugas National Park agrees to:**

1. Assign staff, as deemed appropriate, to collaborate with the FWC and its cooperators in preparing a research and monitoring program and performance measures from which to examine the effectiveness of the RNA during the first three-year and five-year implementation periods, and to coordinate this work with similar efforts by the FKNMS. This program will expand ongoing collaborative research efforts in DTNP among the Service and the FWC, U.S. Geological Survey, NOAA, University of Miami, and Florida International University.
2. Provide continuing project funding through appropriate financial assistance agreements to support ongoing Service-sponsored RNA monitoring and research which is in furtherance of the purposes of this Memorandum of Understanding.
3. Provide three- and five-year reports to FWC Commissioners and Service managers that summarize RNA-related research and evaluate the performance of the RNA regarding its stated goals, and otherwise provide briefings to Commissioners and Service managers as appropriate.
4. Provide access to and support for requests by the FWC to existing data and information as may be applicable to DTNP fisheries and aquatic resources.

5. Secure contractors and cooperators with appropriate subject matter expertise in order to develop research and monitoring projects designed to evaluate the performance of the RNA during the first three-year and five-year post-implementation periods. Such cooperators may include, but are not limited to research fishery biologists, aquatic ecologists, and fisheries program managers from the FWC, and the Service, U.S. Geological Survey, NOAA, University of Miami, and Florida International University.
6. Participate as appropriate in briefings, presentations, or other forums for which the FWC may request assistance in conducting, or otherwise attending, concerning fisheries/wildlife management within the RNA.
7. Facilitate and encourage the joint publication of press releases and the interchange between the 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 DTNP.
8. Facilitate research permitting to state entities for activities needed to accomplish goals identified in the research and monitoring plan.
9. Provide logistical support to the maximum extent practicable in the form of living space at DTNP and vessel support for visiting researchers conducting research consistent with this Memorandum of Understanding.

#### **ARTICLE IV – TERM OF AGREEMENT**

This Memorandum of Understanding is effective as of the date the last Party signs this agreement, and it shall remain in effect for a term of five (5) years. It may be extended for such additional terms as the parties determine to be appropriate.

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

This Memorandum of Understanding 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 under separate written agreements in accordance with applicable laws, regulations, and procedures.

## **ARTICLE V – KEY OFFICIALS**

### **A. For Dry Tortugas National Park:**

Superintendent  
Dry Tortugas National Park  
40001 SR 9336  
Homestead, FL 33034

### **B. For the Florida Fish and Wildlife Conservation Commission:**

Executive Director  
Florida Fish and Wildlife Conservation Commission  
620 South Meridian Street  
Tallahassee, FL 323399

## **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 incidents involving both parties.

## **ARTICLE VII – 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 agreement shall be used and disposed of as set forth in the federal property management regulations.

## **ARTICLE VIII – MODIFICATION AND TERMINATION**

Either Party may terminate this Memorandum of Understanding by providing 60 days advance written notice to the other Party. If one Party provides the other with written notice of its intentions to terminate this Memorandum of Understanding, the Parties will first meet and attempt to address and resolve their differences.

This Memorandum of Understanding may be modified at any time upon written agreement of the FWC and the Service.

**ARTICLE IX – STANDARD CLAUSES**

**A. Civil Rights**

During the performance of this Memorandum of Understanding, the participants 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.

**B. Public Information Release**

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

**C. Liability Provision**

To the extent allowed by applicable state and federal law, each Party will be responsible for the actions of its employees, representatives and agents in carrying out this Memorandum of Understanding.

**ARTICLE X – SIGNATURES**

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

**FOR DRY TORTUGAS NATIONAL PARK:**

Signature: \_\_\_\_\_

Dan B. Kimball  
Superintendent  
Dry Tortugas National Park

Date: \_\_\_\_\_

**FOR THE FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION:**

Signature: \_\_\_\_\_

Kenneth D. Haddad  
Executive Director  
Florida Fish and Wildlife Conservation Commission

Date: \_\_\_\_\_

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