

February 17, 2010

Filed Electronically

Sean Morton
Acting Superintendent
Florida Keys National Marine Sanctuary
33 East Quay Road
Key West, Florida 33040

**Re: Marine Sanitation Device Discharge Regulations for the Florida Keys
National Marine Sanctuary– Docket No. 090122044-91248-01**

Dear Mr. Morton:

I am writing on behalf of the National Marine Manufacturers Association (NMMA) regarding the Office of National Marine Sanctuaries, National Oceanic and Atmospheric Administration's (NOAA) proposal to prohibit the discharges of biodegradable effluent incidental to vessel use and generated by marine sanitation devices in the Florida Keys National Marine Sanctuary. 74 Fed. Reg. 58,923 (Nov. 16, 2009). Under this proposal, boaters would be required to have marine sanitation devices locked to prevent discharges. This action, according to NOAA, is to build upon the Environmental Protection Agency's creation of a no discharge zone for the state waters included in and adjacent to the Florida Keys National Marine Sanctuary.

The National Marine Manufacturers Association (NMMA) is the leading national recreational marine trade association, with nearly 1,500 members involved in every aspect of the boating industry. NMMA members manufacture over 80 percent of recreational boats, engines, trailers, accessories and gear used by boaters and anglers in the United States. NMMA's comments are therefore focused on the impact of NOAA's proposal on recreational boaters.

NOAA's policy and procedures for designating no discharge zones in marine sanctuaries should be consistent system-wide and not determined solely on the specific needs of one sanctuary. NOAA should adopt the procedure already established by the Clean Water Act by which states obtain permission from the Environmental Protection Agency (EPA) to designate state waters as no discharge zones. Under Section 312 (f)(3) of the Clean Water Act, a state may prohibit sewage discharge from vessels, treated or not, into state waters only after it petitions EPA and EPA finds that there are adequate pump-out facilities.¹ EPA requires states to demonstrate that

¹ 33 U.S.C. § 1322 (f)(3).

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adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for boaters in the affected waters. EPA reviews the information presented and if sufficient, makes a finding that adequate facilities are available.

NOAA, under a Clean Water Act process, would identify the available locations for boaters to discharge or use pump-outs facilities and if deficiencies are found work with state and local agencies, EPA and Fish and Wildlife Service (FWS) to develop the necessary infrastructure. It is important that NOAA in its system-wide policy require each sanctuary to work closely with EPA and the Fish and Wildlife Service to ensure that these agencies are aware of any no discharge zones under consideration early enough in the process so that funding for pump-out facilities provided under the Clean Vessel Act can be directed to areas with the most need. This approach will ensure that “no discharge zones” do not become boating bans due to the lack of adequate pump-out facilities. It also encourages compliance, by ensuring boaters have the ability to do the right thing and use pump-out facilities. NOAA should demonstrate in its proposal that it has followed this process.

Unfortunately, in this proposed rule, NOAA has not demonstrated whether it considered if adequate pump-out facilities are available to boaters.² In contrast, NOAA merely mentions in its proposal that there are 38 pump out stations in the Florida Keys and “access to pump out facilities is expected to increase due to additional funding under the Clean Water Act.” 74 Fed. Reg. at 58,924. However, NOAA does not demonstrate where this funding will come from or how NOAA will ensure that it is directed to locations that will serve these waters.

Therefore, NOAA should reconsider its proposal, use the framework of the Clean Water Act and resubmit its findings for public comment prior to moving forward. In the future, NOAA should develop and use a system-wide process to ensure a uniform, Clean Water Act consistent policy for designating no discharge zones throughout the marine sanctuary system.

NMMA appreciates the opportunity to provide comment to the NOAA on its proposed rule regarding Marine Sanitation Device Discharge Regulations for the Florida Keys National Marine Sanctuary. Please contact me at 202-737-9766; csquires@nmma.org for any additional information or if you have any questions.

Sincerely,



Cindy L. Squires, Esq.

Chief Counsel for Public Affairs and Director of Regulatory Affairs

² NOAA cannot rely on the demonstration made by the State to EPA unless the state had also considered the impact of a no discharge zone in the federal waters of the Sanctuary.