

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Madeleine Clayton 04/17/2002
Departmental Forms Clearance Officer
Office of the Chief Information Officer
14th and Constitution Ave. NW.
Room 6086
Washington, DC 20230

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for the extension of approval of an information collection received on 01/31/2002.

TITLE: National Marine Sanctuary Permits

AGENCY FORM NUMBER(S): None

ACTION : APPROVED WITHOUT CHANGE

OMB NO.: 0648-0141

EXPIRATION DATE: 04/30/2005

| BURDEN | RESPONSES | BURDEN HOURS | BURDEN COSTS |
|----------------|-----------|--------------|--------------|
| Previous | 1,113 | 877 | 0 |
| New | 801 | 1,018 | 1 |
| Difference | -312 | 141 | 1 |
| Program Change | | 0 | 0 |
| Adjustment | | 141 | 1 |

TERMS OF CLEARANCE: None

OMB Authorizing Official Title

Donald R. Arbuckle Deputy Administrator, Office of
Information and Regulatory Affairs

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

| | |
|--|---|
| 1. Agency/Subagency originating request | 2. OMB control number b. <input type="checkbox"/> None a. _____ - _____ |
| 3. Type of information collection (<i>check one</i>) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions | 4. Type of review requested (<i>check one</i>) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated |
| 7. Title | 5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 8. Agency form number(s) (<i>if applicable</i>) | 6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____ |
| 9. Keywords | 10. Abstract |
| 11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>) a. ___ Individuals or households d. ___ Farms b. ___ Business or other for-profit e. ___ Federal Government c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government | 12. Obligation to respond (<i>check one</i>) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory |
| 13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____ | 14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____ |
| 15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>) a. ___ Application for benefits e. ___ Program planning or management b. ___ Program evaluation f. ___ Research c. ___ General purpose statistics g. ___ Regulatory or compliance d. ___ Audit | 16. Frequency of recordkeeping or reporting (<i>check all that apply</i>) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____ |
| 17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No | 18. Agency Contact (person who can best answer questions regarding the content of this submission) Name: _____ Phone: _____ |

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator or head of MB staff for L.O.s, or of the Director of a Program or Staff Office)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT
NATIONAL MARINE SANCTUARY PERMITS
OMB CONTROL NO. 0648-0141**

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

The National Marine Sanctuaries Act (NMSA or Act), 16 U.S.C. 1431 *et seq.*, provides for the establishment of National Marine Sanctuaries for the purpose of protecting and managing the conservation, ecological, recreational, research, educational, historical, cultural or aesthetic qualities of those particular areas. The regulations issued to implement this Act (15 CFR 922) prohibit certain activities in National Marine Sanctuaries unless permits are issued. Permit criteria are site specific, but in general permits are given if the activity will: (1) further research related to Sanctuary resources; (2) further the educational, natural or historical resource values of the Sanctuary; (3) further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; (4) assist in managing the Sanctuary; or (5) further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary area; and have only negligible, short-term adverse effects on Sanctuary resources and qualities.

The current National Marine Sanctuaries, most of which have permit requirements (15 CFR Part 922), are the Monitor (subpart F); Channel Islands (subpart G); Gulf of the Farallones (subpart H); Gray's Reef (subpart I); Fagatele Bay (subpart J); Cordell Bank (subpart K); Flower Garden Banks (subpart L); Monterey Bay (subpart M); Stellwagen Bank (subpart N); Olympic Coast (subpart O); Florida Keys (subpart P); and Thunder Bay National Marine Sanctuary and Underwater Preserve (subpart R). Regulations for the Hawaiian Islands Humpback Whale National Marine Sanctuary (subpart Q) include no permitting requirements; existing State and other Federal permit requirements are relied upon for protection of Sanctuary resources.

Anytime there is a proposal to conduct a prohibited activity a National Marine Sanctuary permit must be requested. There are several types of permits. The most common are research, education and management (collectively, General Permits). Historical Resource Permits activities relate to submerged cultural resources. Special Use Permits cover commercial activities. Permits are sometimes amended during the course of the permit to reflect changes in the activities (e.g., new dates of activities, changes in personnel). Baitfish permits are issued within the Florida Keys NMS for catching baitfish in areas that are otherwise closed to fishing. In addition, for 90 days following Sanctuary designations, Sanctuary regulations require the certification of pre-existing (i.e., pre-Sanctuary designation date) leases, licenses, permits, approvals, or other authorizations or rights to conduct a prohibited activity. A notification and review (sometimes called authorization) also is required of applicants for leases, licenses, permits, etc., from other entities allowing the conduct of prohibited activities after the Sanctuary designation date. Additional terms or conditions may be imposed on the conduct of those existing (and valid) or proposed leases, licenses, permits, etc., as part of the Sanctuary certification/authorization process. If a permit application is denied, the applicant has the right to appeal that denial.

The cost and burden estimates of these requirements are discussed in #12 and #14. Applicants for permits to conduct prohibited activities must submit a permit application. Permit holders are also required to submit copies of results or other reports on their activities. Since most permits are for research, and such reports are prepared for the funding institution, this requirement imposes little additional burden.

2. Explain how, by whom, how frequently, and for what purpose the information will be used.

The information submitted by applicants for Sanctuary permits will be used by the Sanctuary Manager and by NOAA's Marine Sanctuaries Division (MSD) staff to decide whether to grant a permit. In deciding whether to issue a permit, the Manager and MSD staff may consider such factors as: (1) the professional qualifications and financial ability of the applicant as related to the proposed activity; (2) the duration of the activity and its effects; (3) the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; (4) the extent to which the conduct of the activity may diminish or enhance the qualities for which the Sanctuary was designated; (5) the end value of the applicant's activity; and (6) other such matters as the Manager and MSD staff deem appropriate.

Without the above information, the Manager and MSD staff would not be able to assess the potential resource impacts from the proposed activity, or determine whether proposed activities are in compliance with Sanctuary management goals, and the activities could not be allowed. Reports on activities (cruise/flight logs and final reports) are required so that the Manager and MSD staff may ensure that all permit conditions are being met, and assist in evaluating the appropriateness of such conditions.

The Sanctuary Program has developed a permit database which tracks information collection, permit issuance, permit violations, and reporting products. The permit applications are the primary source of information entered into the database. This data will be used to evaluate the permit system through its ability to track the permit process, compliance of the permittee, and past performance of the permittee. This data and tracking ability are necessary for MSD to evaluate the effectiveness of Sanctuary protection and the role of permitted projects in that protection. In addition, this comprehensive database assists in the evaluation of the cumulative impacts of permitted activities on Sanctuary resources, an important aspect of the effective management of National Marine Sanctuaries.

The specific information required for each type of submission and the need for that information are described below:

General Permits:

Application: The guidelines for permit applications are based on the information needed to decide whether a permit should be issued, as described in the National Marine Sanctuary Program (NMSP) regulations (15 CFR 922) and listed above. The guidelines require submission of the following:

(1) Cover sheet contains basic information about the applicant, which is needed to contact the applicant and evaluate their professional ability to conduct the activity.

(2) Abstract is a brief summary of the proposed activities. It is used in all summary information developed by the program, including the permit-tracking database.

(3) Technical Information, Environmental Consequences, and Treatment of Results includes all objectives, hypotheses, methods, anticipated results, and impacts on the environment. This information is necessary to evaluate the potential benefits of the activity, to determine whether the proposed methods will achieve the proposed results, and evaluate any possible detrimental environmental impacts. Because the primary objective of the NMSP is resource protection, the program needs to be able to evaluate the potential harm to resources versus the benefit (usually through increased information about the resources) to managing those resources. For scientific or educational overflights, NOAA often requires the submittal of specific information about the aircraft and flight operations plan.

(4) Supporting Information is requested to ensure that the applicant has sufficient financial resources and all other necessary permits and authorizations to complete the project.

Cruise/Flight Log: The cruise/flight log is a simple listing of activities conducted in the field, with dates and any environmental observations. The program uses cruise/flight logs to evaluate compliance with the permit conditions and to correlate individual permit activities with potential environmental consequences.

Report: The report summarizes the results of the activity. This is necessary to determine whether the goals and purposes of the permitted activity have been achieved. The information in the report should provide the results and knowledge that are necessary for better management of the Sanctuary resources. It is this information which is the reason for allowing the otherwise prohibited activity.

Historical Resource Permits:

Application: Sites other than FKNMS: The information requested is the same as for general permits (for the same purposes) with some additional information. The additional information required concerns the archaeological practices that will be used in the permitted activity. These include mapping, artifact handling, curation and display, and site restoration. This information is necessary to ensure that the NMSP is fulfilling its mandates under the Archaeological and Historical Preservation Act and the Archaeological Resources Protection Act. NOAA has prepared guidelines entitled “National Marine Sanctuary Archaeological Research Permit Application Guidelines” to aid applicants in providing the requisite information for these types of permits.

Within the FKNMS: The FKNMS has a phased permitting process for submerged cultural resource (SCR) permits. The first phase, Survey/Inventory (S/I) permits are optional permits issued to individuals who wish to survey a specific area of the Sanctuary for possible submerged cultural resources (SCR). An individual may survey the Sanctuary using non-destructive methods (e.g., sonar, magnetometer) but an S/I permit allows minimal disturbance. The second phase is a Research/Recovery (R/R) permit, which is issued for invasive research on and possible recovery of SCR. The third phase is a special use permit for Deaccession/Transfer (D/T) of

recovered artifacts, which may be issued to allow the transfer of ownership of certain SCR to the private sector.

NOAA/FKNMS has prepared guidance entitled “Guidelines for Submitting Applications for Research and Recovery of Submerged Cultural Resources Permits in The Florida Keys National Marine Sanctuary” for individuals submitting R/R permit applications. Like the application guidelines for other sites, the information requested for all three types of permits (D/T guidelines are in draft as no D/T permits have been issued to date and no requests to apply have been received) is necessary for the FKNMS staff to evaluate whether the activity will be conducted in a scientifically sound manner and whether it is in compliance with the Federal Archaeology Program laws. As S/I permits are optional no formal guidance has been produced (specific to FKNMS), however, individuals are encouraged to ensure that their surveys adhere to the national program guidance for submitting survey and inventory reports because this information is usually required as part of the R/R permit application.

Cruise Log: The cruise log has the same content and purpose as the cruise log for general permits.

Report: Sites other than FKNMS: The report has the same content and purpose as the report for general permits. The report is necessary to provide National Marine Sanctuary managers and superintendents with information about SCR within their respective Sanctuaries, for which NOAA is the trustee. The information allows the Sanctuary to better manage and protect those resources.

Within FKNMS: In addition to the reasons listed above, for each permit phase the report information is necessary to successfully complete an application for the next phase.

For all Sanctuaries NOAA has prepared guidelines entitled “National Marine Sanctuary Archaeological Survey and Inventory Permit Reporting Guidelines” to assist individuals in preparing reports.

Special Use Permits:

Application: An application for a special use permit requires all information needed for a general permit, for the same reasons. The purposes of the activity may be different however, as special use permits are generally used for commercial activities. Those activities must: (1) establish conditions of access to and use of any sanctuary resource; or (2) promote public use and understanding of a sanctuary resource. The application must state how these purposes will be met. In addition, the applicant must show that they have comprehensive liability insurance, or that they have posted an equivalent bond, against claims arising out of activities conducted under the special use permit and to agree to hold the United States harmless against such claims. They must also show that the activity will be conducted in a way that does not destroy, cause the loss of, or injure Sanctuary resources. These are requirements of National Marine Sanctuaries Act (NMSA), Section 310, which gives the NMSP the authority to issue special use permits.

Pursuant to section 310(b) of the NMSA, NOAA cannot issue a special use permit for any type of activity unless NOAA has notified the public that that type of activity is subject to the requirements of special use permits. Currently NOAA is in the process of publishing a Federal

Register notice to provide such notice. Applicants for special use permits will be required to show that the type of activity they are proposing meets the description of one of the types of activities for which NOAA has provided public notice.

Special use permits have been used in conjunction with other NMSP authorities to permit activities for which additional documentation is required pursuant to the National Environmental Policy Act. Often times, when additional NEPA documentation is deemed necessary by NMSP, the applicant offers to complete the NEPA document. Completion of NEPA documentation can be time consuming and has been estimated to take up to 24 hours per application to complete. NMSP uses the NEPA documentation to satisfy its statutory obligations under NEPA and to further assess the potential impacts of the activity permitted under the special use permit.

NOAA has created special guidelines to assist applicants for special use permits to provide the correct information. In cases when the proposed activity involves the operation of an aircraft in a restricted overflight zone of a National Marine Sanctuary, applicants should also refer to the guidelines for overflight applications. These guidelines request the applicant provide information about the aircraft and the flight plan in addition to the standard application materials.

Report: The report describes that activities conducted over the past year under the special use permit. This information is necessary for the NMSP to evaluate whether the activity has met the purposes of the permit, and to ensure that sanctuary resources were not adversely impacted.

Financial Report: Section 310 of the NMSA requires special use permittees to submit an annual report that details the activities conducted under that permit and any revenues derived from permitted activities during the calendar year. The report must describe revenues received from the activity. This information is necessary as the fee structure under a special use permit is often a percentage of the revenue generated. The report is due by December 31 of each year.

Permit Amendments:

An application for an amendment to a permit need only be a letter stating the amendment requested and the reason for that amendment. The information is required for the program to be able to evaluate whether the amendment is appropriate and the activity will still meet the purposes of the NMSP.

Baitfish Permits (FKNMS only):

Application: Baitfish permits are issued to anyone who requests one. They need only supply a name and address and a permit will be sent to them.

Log: The log of fish caught is needed to evaluate the policy of issuing baitfish permits. By knowing the number of fish caught in the otherwise restricted areas, and monitoring those areas, the Florida Keys NMS can evaluate whether the policy of issuing an unlimited number of baitfish permits is appropriate.

Voluntary Registry:

The registry of activities not prohibited by Sanctuary regulations is completely voluntary. The only information that is requested is a name, affiliation and contact information for the registrant and an abstract of the work to be performed. This information (like the abstract for general permits) is used by the NMSP for all summaries of activities taking place within Sanctuaries, including for the tracking database.

Certification:

To apply for a certification of a pre-existing lease, license or permit, the applicant must simply submit a copy of the pre-existing authorization and a letter requesting that it be certified by the Sanctuary. This submittal is necessary for the NMSP to evaluate whether additional conditions are needed to protect Sanctuary resources. This procedure is set forth in the individual Sanctuary regulations.

Notification and Review (Authorization):

Application: An application for an authorization of another agency permit (under 15 CFR § 922.49, notification and review section of Sanctuary regulations) the applicant must notify the Sanctuary of their application for the other agency permit and request authorization. Upon this request, the applicant is requested to submit information regarding the potential effects of the activity. With the exception of providing documentation from the other involved government agency, this information is the same as that requested for a general permit. This information is needed to evaluate whether the activity will negatively impact Sanctuary resources and to determine the appropriate conditions to impose upon the other agency permit. This procedure is set forth in the Sanctuary regulations.

Certain types of activities for which authorizations are routinely processed require information specific to that activity. NOAA often processes authorization applications from individuals proposing to conduct pyrotechnic (fireworks) displays over Monterey Bay National Marine Sanctuary. To facilitate the application process for a fireworks authorization, NOAA has created guidelines for this activity. The guidelines for fireworks displays ask applicants to provide the same type of information that is required for standard applications but also request:

- The name, address, and state license number of the company or party that will actually handle and ignite pyrotechnic devices
- A common-name description of each type of pyrotechnic device to be ignited or launched
- A description of the contents, dimensions, and weight of each type of pyrotechnic device to be ignited or launched
- A description of the chemical elements (and respective volumes) present in each type of pyrotechnic device to be ignited or launched
- The number of aerial shells that will be launched
- A description of the range and detonation altitude of each shell type
- The exact location at which pyrotechnic devices will be ignited or launched
- A description of the impact area (a map of the impact area is acceptable)

The guidelines also ask that applicants provide copies of their local fire marshal permit, the applicable City and County use permits, a certificate of comprehensive general liability insurance covering the display sponsor against damages caused by the fireworks display, and the U.S. Coast Guard Marine Events permit if the fireworks display will occur over the water or will in any way affect navigation. All of this information is necessary for MBNMS staff to ensure that the fireworks display will not adversely affect resources of the Sanctuary.

In addition to special instructions for fireworks authorizations, NOAA has created similar special instructions for construction projects in MBNMS and for the operation of an aircraft in restricted zones of some Sanctuaries. Both activities are usually processed as applications for authorizations except in situations where the overflight is for scientific or educational purposes, in which case it is processed as a general permit application, or when the overflight is for commercial purposes in which case it is processed as a special use permit application. Both ask for information similar to standard authorizations except construction guidelines ask the applicant to provide details about the methods proposed to be used in the construction project and the overflight guidelines ask for specific information about the aircraft and flight plan. The information is for the same purposes and same frequency as is that general permits.

Report: One of the conditions usually imposed upon other agency permits is a reporting requirement. The manner, frequency, and purpose of these reports are the same as that for general permits.

Cruise/Flight Log: The cruise/flight log is a simple listing of activities conducted in the field, with dates and any environmental observations. The program uses cruise/flight logs to evaluate compliance with the permit conditions and to correlate individual permit activities with potential environmental consequences.

Appeal:

Application: An appeal application consists of a letter explaining the basis for the appeal and any supporting information that the applicant/permittee wishes to submit. This information is necessary for the Assistant Administrator and General Counsel to evaluate the appeal request.

Response to request for additional information: Should the applicant/permittee not supply sufficient information for the appeal to be decided, additional information may be requested. No more information than is strictly necessary to decide the appeal action will be requested.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

NOAA/MSD is currently developing an Internet-based permit tracking system. This system is expected to be online by Spring 2002 and will ultimately allow permit applicants to submit their permit applications, logs, and final reports via the Internet. In addition, MSD already accepts electronic permit applications, logs, and reports via email.

4. Describe efforts to identify duplication.

In the development of each individual sanctuary, NOAA has consulted with the relevant State regarding their permitting processes. Where appropriate, agreements have been made to use a coordinated permit process. The Notification and Review (authorization) process also helps to ensure that duplicate permit applications are not requested. In all cases, the Sanctuary program will accept information submitted to other agencies (e.g., funding applications and reports) as supporting information for permit applications or as reports for issued permits. This may alleviate the need to write a new summary of the activity.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

The collection of information required by any National Marine Sanctuary permit applications will have minimal impact on small entities such as small businesses, organizations, or government bodies, as the majority of permit proposals will be for activities conducted by either large institutions (academic institutions, salvage companies, management agencies, etc.) or individuals. There may be some small impact on small businesses that wish to conduct commercial activities within a National Marine Sanctuary, however this impact is not likely to include a significant financial burden.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

If the information collection is not conducted, or is conducted less frequently, then it is likely that the management objectives of the Sanctuary could not be met. Sanctuaries must be able to allow otherwise prohibited activities to facilitate important research, education and management activities. Permits also facilitate fulfillment of the Sanctuary Program mandate of allowing multiple, compatible uses (consistent with resource protection). The permit process allows these activities to take place under controlled conditions to ensure that the primary mandate of resource protection is fulfilled.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

No special circumstances exist, are foreseen or anticipated requiring the collection of information to be conducted in a manner inconsistent with the OMB guidelines.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

A Federal Register Notice (copy attached) solicited public comment on this renewal. No comments were received.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

No payment of gift will be provided to any respondents.

10. Describe any assurance or confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

Applicants are requested to indicate any information that is considered proprietary business information. Such information is generally found in special use permit applications and is typically exempt from disclosure to anyone requesting information pursuant to the Freedom of Information Act (FOIA). NOAA will make all possible attempt to protect such proprietary information, consistent with all applicable FOIA exemptions in 5 U.S.C. 552(b). Typically exempt information includes trade secrets, commercial and financial information (5 U.S.C. 552(b)(4)). For all permit types, personal information affecting an individual's privacy will be kept confidential consistent with 5 U.S.C. 552(b)(6).

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

No sensitive questions are asked.

12. Provide an estimate in hours of the burden of the collection of information.

The cost to the Federal government and respondents of information collection is derived from the following projections:

Approximately 336 permit applications of various types are received each year.

General Permits:

All research, education, and management permits fall into this category. Each respondent will submit an application for a permit, a cruise or flight log and a report after the activity is complete. For general permits an average response time of 1.0 hours is estimated for each of these activities.

Historical Resource Permits:

For historical resource permits an average response time of 13.0 hours is estimated for each of the three activities (the application and cruise log will take about 9 and 1 hours per response respectively, whereas the report is likely to take an average of 28 hours to complete). These response times should be the same for all types of historical resource permits.

Special Use Permits:

For special use permits an application, a final report, and a financial report is required for each permit. An average response time of 24 hours is estimated for each of these activities. Financial reports (annual report required by section 310 of the NMSA; due on December 31 of each year)

may take less time but the application will take more time particularly if additional NEPA documentation is required and prepared by the respondent.

Permit Amendments:

If an applicant wishes to make an amendment to an existing permit they need only submit a letter describing the changes they are requesting, and the need for those changes. This is usually a very short request and has an estimated response time of 15 minutes.

Baitfish Permits:

Permits are issued to collect baitfish within FKNMS areas otherwise closed to fishing. An applicant must simply call with their name and address to apply. A log of number of fish caught is required at the end of the year-long permit duration. The average response time is expected to be 15 minutes (log of fish caught may take longer, but application will take less time).

Voluntary Registry:

This category is for researchers who are conducting activities that are not otherwise prohibited. The registry allows them to register their activity, which adds to the database of research activities within the Sanctuary. For the voluntary research registry an average response time of 15 minutes is estimated for submission of registry information.

Certification:

Currently there are no National Marine Sanctuaries that can issue certifications of pre-existing licenses, lease, permits, etc. For any Sanctuary designated before the next PRA supporting statement is submitted, an average response time of 0.5 hours each is estimated for providing an application.

Notification and Review (Authorization)

For notifications and review of activities covered under other valid licenses or leases an average response time of 1.0 hours each is estimated for providing an application, log, and submitting a report.

Appeal:

Applicants or permittees have the right to appeal a permit action (e.g., denied application, unacceptable conditions, revoked permit). The applicant/permittee must submit their reason for appealing the permit action. MSD may request additional information upon receipt of the appeal. These two submissions (original appeal and reply for request for additional information) have an average burden estimate of 1.5 hours.

The calculation of the annual burden is found in the attached table.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection.

The estimated annual costs for copying and mailing are \$800.

14. Provide estimates of annualized cost to the Federal government.

The cost to the Federal government for each of the permit types is listed in the attached table. All costs are for time to process applications and reports.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

Burden estimates have been adjusted for the actual number of respondents and the response times for special-use permits. Costs have been adjusted to take into account previous oversights.

16. For collections whose results will be published, outline the plans for tabulation and publication.

The information collected will not be published.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

N/A.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.

There are no exceptions.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.

BURDEN ESTIMATE
0648-0141

| Permit type | ~permits/yr | resp./per | total resp. | hr./response | total hours | cost/resp (\$) | total cost (\$K) |
|-----------------|-------------|-----------|-------------|--------------|----------------|----------------|------------------|
| General | 112 | 3 | 336 | 1 | 336 | 1.00 | 0.34 |
| Baitfish | 174 | 2 | 348 | 0.25 | 87 | 1.00 | 0.35 |
| Historical Res. | 4 | 3 | 12 | 13 | 156 | 1.00 | 0.01 |
| Special Use | 5 | 3 | 15 | 24 | 360 | 1.00 | 0.02 |
| Notification | 24 | 3 | 72 | 1 | 72 | 1.00 | 0.07 |
| Amendment | 14 | 1 | 14 | 0.25 | 3.5 | 1.00 | 0.01 |
| Certification | 1 | 1 | 1 | 0.5 | 0.5 | 1.00 | 0.00 |
| Voluntary Reg. | 1 | 1 | 1 | 0.25 | 0.25 | 1.00 | 0.00 |
| Appeal | 1 | 2 | 2 | 1.5 | 3 | 1.00 | 0.00 |
| TOTAL | 336 | | 801 | | 1018.25 | | 0.80 |

Federal Government costs

| Permit type | hr/permit | total hours | \$/hour | total cost |
|-----------------|-----------|-------------|---------|---------------|
| General | 1 | 112 | 13 | 1456 |
| Baitfish | 0.5 | 87 | 13 | 1131 |
| Historical Res. | 3 | 12 | 13 | 156 |
| Special Use | 6 | 30 | 13 | 390 |
| Notification | 1 | 24 | 13 | 312 |
| Amendment | 0.5 | 7 | 13 | 91 |
| Certification | 1 | 1 | 13 | 13 |
| Voluntary Reg. | 0.5 | 0.5 | 13 | 6.5 |
| Appeal | 3 | 3 | 13 | 39 |
| TOTAL | | | | 3594.5 |

GUIDELINES FOR SUBMITTING APPLICATIONS FOR NATIONAL MARINE SANCTUARY RESEARCH AND EDUCATION PERMITS

A. INTRODUCTION

National Marine Sanctuaries are recognized as resource areas of national significance. Their distinctive characteristics have established them as environmental and historic resources for scientific research and public education. With yearly increases in the number of requests to conduct research and education in National Marine Sanctuaries, guidelines for managing and monitoring such projects are necessary to ensure compatibility with sanctuary goals and objectives and all other sanctuary activities.

The guidelines presented below describe the sanctuary permitting process. Applicants seeking financial support for research should consult the sanctuary contacts listed in this document.

Permits may be issued by the National Marine Sanctuary managers under special circumstances for activities otherwise prohibited by sanctuary regulations when related to: research to enhance scientific understanding of the sanctuary environment or to improve management decision-making; or education to further public awareness, understanding, and to establish access, use, and/or understanding of sanctuary resources and wise use of the sanctuary environment.

Anyone conducting prohibited activities without a valid National Marine Sanctuary permit may be subject to the penalties as provided under Section 307 of the Marine Protection, Research, and Sanctuaries Act of 1972 (as amended). A civil penalty of up to \$100,000 for each violation of any regulation may be levied.

B. APPLICATION CONTENTS

1. *Cover Sheet or Letter:*

The cover sheet or letter shall identify the following, if applicable: 1) name of the national marine sanctuary in which the proposed activity will take place; 2) title of the project; 3) name, address, telephone number, and affiliation of the applicant; 4) name, address, telephone number, and affiliation of and relationship of any colleagues covered by the permit; 5) project duration; 6) funding source; and 7) signature of the applicant.

2. *Project Summary or Abstract:*

A 250-word (maximum) summary shall include a brief statement of objectives, methods to be used, and why it is preferable that the activity occur within the boundaries of the sanctuary. For research permits, this summary shall specify research objectives, scientific methods to be used, and significance of the proposed work to a particular sanctuary or to the national marine sanctuary system. The summary shall be suitable for use in the public press. For education permits, the summary must detail the objectives of the project and the methods to be used.

NOTE: If the work to be conducted is part of a research grant submission of the grant itself will be sufficient provided it addresses all the points of this section.

3. *Technical Information:*

This includes clear, concise, and complete statements in the following categories:

a. Objectives.

State the objectives of the project.

b. Hypothesis to be Tested.

If applicable, state the hypothesis to be tested.

c. Project Significance.

Discuss significant previous work in the area of interest, if any, and how the proposed effort would enhance or contribute to improving the state of knowledge, use of the sanctuary or overall objectives of the Sanctuary

Management Plan. Explain why the project should be performed in the sanctuary and the potential benefits to the sanctuary. For education permits, explain the educational value of the project.

d. Methods.

Describe the tasks required to accomplish the project's objectives. For research permits, provide an adequate description of field and laboratory methods and procedures. Describe the rationale for selecting the proposed methods over any alternative methods. If collecting is required, indicate the type, quantity and frequency and how the specimens will be handled. If reference collections are made, indicate where specimens will be deposited upon completion of the project. Indicate what organisms might be collected incidental to those specifically sought and, if known, identify specialists who might be interested in incidental groups. Indicate where the laboratory analyses will be conducted, if applicable. Also state the statistical methods to be employed and the level of significance to be tested. For education permits, specify the methods to be used in the project. For all permits, specify the exact location of work within the Sanctuary and provide a map showing the proposed study or project location(s) and a description of the habitat area of particular concern.

e. Personnel.

Identify the individuals who would be supervising project activities. Provide qualifications and evidence of ability to perform and supervise tasks. The permittee is ultimately responsible for all activities carried out under this permit.

f. References.

Cite only those used in the text of the proposal.

4. *Environmental Consequences*

Discuss the environmental consequences of conducting an otherwise prohibited activity and indicate whether the activity could be conducted outside the Sanctuary and still accomplish the project's objectives. Specify the consequences and explain how the benefits of the research will outweigh the disadvantages or environmental consequences (short and long term).

5. *Treatment of Results*

For research permits, describe the nature and extent of anticipated results. Indicate how the results will be treated (e.g.; published in a reference journal, incorporated into academic curriculum, used in management decision-making, published in the public press). For education permits, explain the educational value of the project and how and what products will be used or made available in the future. All information resulting from activities conducted under a National Marine Sanctuary permit must be made available to the public.

6. *Supporting Information*

a. Financial Support.

Provide contract number, performance period, and name of sponsoring agency, if applicable. At a minimum, indicate source of financial support.

b. Coordination with Research in Progress or Proposed.

OCRM encourages research coordination and cost-sharing with other investigators to enhance scientific capabilities and avoid unnecessary duplication of effort. Applicants should include a description of these efforts, where applicable. Cite similar or supporting past or present research results.

c. Copies of Other Permits.

Applicant must include, if applicable, copies of other Federal, state and/or local permits issued with regards to this permit request. For example, EPA, U.S. Army Corps of Engineers, etc.

d. Other Sanctuary Permits.

Applicants should include a listing of all their previous Sanctuary permits.

C. SUBMISSION OF PERMIT REQUESTS

Three (3) copies of requests for permits should be sent to the appropriate sanctuary contact listed in section J below. Permit applications must be submitted at least thirty (30) days in advance of the requested effective date to allow sufficient time for evaluation and processing. Sensitive or complicated requests, or requests for sanctuary support should be submitted 90 days in advance. If additional time is required for review, the applicant will be notified within 20 days of the receipt of the request. Requests for permits must be addressed to the manager of the sanctuary in which the activities are to be conducted. A listing of their addresses and phone numbers can be found in Section J.

D. REQUESTS FOR SANCTUARY SUPPORT SERVICES

NMSP has limited on-site sanctuary personnel, facilities and equipment that may be used to support research under special circumstances. Requests for support should accompany the permit application and include the following information: 1) type of support requested; 2) justification; 3) dates and length of use; and 4) alternative plans if support is not available.

E. EVALUATION OF PERMIT REQUESTS

Permit applications are reviewed for completeness and adherence to these guidelines. Applicants will be contacted for clarification or if applications are incomplete. Complete applications are reviewed by NMSP program officials, on-site sanctuary personnel, and, where necessary, peer-reviewed by outside experts. Applications are judged on the basis of:

1) relevance or importance to the sanctuary; 2) scientific and educational merits; 3) appropriateness and environmental consequences of the technical approach; and 4) whether the proposed effort is more appropriately conducted outside the sanctuary.

F. CONDITIONS OF PERMITS

Based on the reviews of the permit application, NMSP will approve or deny the permit. If denied, applicants are notified of the reason(s) for denial and informed of the appeal process. If approved, the Sanctuary Manager will issue the permit.

Permit holders must counter-sign the permit and return copies to NMSP and on-site sanctuary personnel prior to conducting the permitted activities. Copies must be signed and returned within 10 days of receipt by the permit holder. If not returned within 30 days, the permit will automatically be canceled. A NOAA/Sanctuary research flag may be issued by sanctuary managers to research permit holders for use while conducting the permitted activity. This requirement not only assures that sanctuary enforcement personnel are aware of permitted activities, but also alerts other sanctuary users that such activities are in progress. The research flag must be returned to the sanctuary office upon completion of the research and no later than 30 days after the permit expiration date.

Permits must be carried aboard research vessels and made available on request for inspection by sanctuary personnel. For underwater diving activities, it is recommended that a copy of the permit be laminated and available for display.

Permit holders must be present during all permit activity operations. Permits and research flags are non-transferable. Permit holders must abide by all provisions set forth in the permit as well as applicable sanctuary regulations. Project summaries and technical information are incorporated into the conditions of the permit. Permitted activities must be conducted with adequate safeguards for the environment. To the extent possible, the environment shall be returned to the conditions which existed prior to the permitted activity.

Two important conditions of any permit are that the permit holder submit a project report and cruise log to the appropriate sanctuary office within 30 days of the permit's expiration date. The project report is a brief (1-2) page statement summarizing the results of permitted activities. A cruise log should list the days spent in the sanctuary as well as activities pursued, approximate positions, and general observations. Project reports are used in the sanctuary interpretive programs and cruise reports are used in the assessment of sanctuary activities.

The sanctuary manager may immediately amend, suspend, or revoke a permit granted pursuant to these guidelines and sanctuary regulations, in whole or in part, temporarily or indefinitely, if in his/her view the permit holder(s) acted in violation of the terms of the permit or of applicable sanctuary regulations, or for any good cause shown. Formal notice of such action shall be subsequently communicated in writing to the permit holder and shall set forth the reason for the action taken. The permit holder in relation to whom the action is taken may appeal the action as provided for in the sanctuary regulations.

G. AMENDMENTS TO ACTIVE PERMITS

Requests for amendments to active permits (e.g. change in study design or other form of amendment) must conform to these guidelines. Persons desiring to continue permitted activities in the sanctuary must reapply for an extension of his/her current permit before it expires. Reference to the original application may be given in lieu of a new application, provided the scope of work does not change significantly and all cruise logs and project summaries pertinent to the original permit have been submitted to and approved by on-site sanctuary personnel.

H. MONITORING PERFORMANCE

Permitted activities will be monitored to ensure compliance with the conditions of the permit. NMSP and on-site sanctuary personnel may periodically assess work in progress by visiting the study location and observing any permitted activity or by reviewing any required reports. The discovery of any irregularities in conformance to the permit shall be promptly reported and appropriate action shall be taken. Permitted activities will be evaluated and the findings used to evaluate future applications.

I. REPORTING BURDEN

The information requested in these guidelines are necessary to evaluate whether issuance of a permit is appropriate. The information is used to evaluate the potential benefits of the activity, to determine whether the proposed methods will achieve the proposed results, and to evaluate any possible detrimental environmental impacts. It is through this evaluation and the tracking of all otherwise prohibited activities that the NMSP is able to use permitting as one of the management tools to protect Sanctuary resources and qualities. Submittal of the information requested in these guidelines is required to obtain a permit pursuant to National Marine Sanctuary Regulations (15 CFR part 922). Applicants are requested to indicate any information that is considered proprietary business information. Such information is typically exempt from disclosure to anyone requesting information pursuant to the Freedom of Information Act (FOIA). NOAA will make all possible attempts to protect such proprietary information, consistent with all applicable FOIA exemptions in 5 U.S.C. 552(b). Typically exempt information includes trade secrets, commercial and financial information (5 U.S.C. 552(b)(4)). Personal information affecting an individual's privacy will also be kept confidential consistent with 5 U.S.C. 552(b)(6).

Public reporting burden for this collection of information is estimated to average one (1) hour per response (application, cruise log, and final report), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to John Armor, Permit Coordinator, NOAA National Marine Sanctuary Program, 1305 East-West Highway (N/ORM6), 11th Floor, Silver Spring, MD 20910.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

J. FURTHER INFORMATION

For further information on the National Marine Sanctuary Program, write or call the National Marine Sanctuary Program office or the on-site sanctuary contacts listed below:

NATIONAL MARINE SANCTUARY PROGRAM

John Armor, Permit Coordinator
National Marine Sanctuary Program, NOAA
1305 East-West Highway (N/ORM6)
Silver Spring, MD 20910-3282
301-713-3125, x117
Fax: 301-713-0404
John.armor@noaa.gov

CHANNEL ISLANDS NATIONAL MARINE SANCTUARY

LCDR Matt Pickett, Manager
Channel Islands National Marine Sanctuary
113 Harbor Way
Santa Barbara, California 93109
805-966-7107
Fax: 805-568-1582
channelislands@noaa.gov

CORDELL BANK NATIONAL MARINE SANCTUARY

Mr. Ed Ueber, Manager
Cordell Bank National Marine Sanctuary
Fort Mason, Building #201
San Francisco, California 94123
415-556-3509
Fax: 415-556-1660
codellbank@noaa.gov

FAGATELE BAY NATIONAL MARINE SANCTUARY

Ms. Nancy Daschbach, Manager
Fagatele Bay National Marine Sanctuary
P.O. Box 4318
Pago Pago, American Samoa 96799
011-684-633-7354
Fax: 011-684-633-7355
fagatelebay@noaa.gov

FLORIDA KEYS NATIONAL MARINE SANCTUARY

Mr. Billy Causey, Superintendent
Florida Keys National Marine Sanctuary
P.O. Box 500368
Marathon, FL 33050
305-743-2437
Fax: 305-743-2357
floridakeys@noaa.gov

FLOWER GARDEN BANKS NATIONAL MARINE SANCTUARY

Mr. G.P. Schmahl, Manager
Flower Garden Banks National Marine Sanctuary
216 W. 26th Street, Suite 104
Bryant, TX 77802
979-779-2705
Fax: 979-779-2334
flowergarden@noaa.gov

GRAY'S REEF NATIONAL MARINE SANCTUARY

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Gray's Reef National Marine Sanctuary
10 Ocean Science Circle
Savannah, Georgia 31411
912-598-2345
Fax: 912-598-2367
graysreef@noaa.gov

GULF OF THE FARALLONES NATIONAL MARINE SANCTUARY

Mr. Ed Ueber, Manager
Gulf of the Farallones National Marine Sanctuary
Fort Mason, Building #201
San Francisco, California 94123
415-556-3509
Fax: 415-556-1660
farallones@noaa.gov

MONITOR NATIONAL MARINE SANCTUARY

Mr. John Broadwater, Manager
MONITOR National Marine Sanctuary
c/o The Mariner's Museum
100 Museum Drive
Newport News, VA 23606
757-591-7350
Fax: 757-591-7353
monitor@noaa.gov

MONTEREY BAY NATIONAL MARINE SANCTUARY

Mr. William Douros, Superintendent
Monterey Bay National Marine Sanctuary
ATTN. Scott Kathey, Permit Coordinator
299 Foam Street, Suite D
Monterey, CA 93940
831-647-4201
Fax: 831-647-4250
montereybay@noaa.gov

OLYMPIC COAST NATIONAL MARINE SANCTUARY

Ms Carol Bernthal, Superintendent

Olympic Coast National Marine Sanctuary
138 West First Street
Port Angeles, WA 98362
360-457-6622
Fax: 360-457-8496
olympiccoast@noaa.gov

STELLWAGEN BANK NATIONAL MARINE SANCTUARY

Dr. Craig MacDonald, Superintendent
Stellwagen Bank National Marine Sanctuary
175 Edward Foster Road
Scituate, MA 02066
(781) 545-8026
Fax: (781) 545-8036
stellwagen@noaa.gov

THUNDER BAY NATIONAL MARINE SANCTUARY AND UNDERWATER PRESERVE

Ms. Ellen Brody, Acting Manager
Thunder Bay National Marine Sanctuary and Underwater Preserve
2205 Commonwealth Blvd.
Ann Arbor, MI 48105
734-741-2270
Fax: 734-741-2176
thunderbay@noaa.gov

GUIDELINES FOR SUBMITTING APPLICATIONS FOR NATIONAL MARINE SANCTUARY SPECIAL USE PERMITS

A. INTRODUCTION

National Marine Sanctuaries are recognized as resource areas of national significance. Their distinctive characteristics have established them as environmental and historic resources for scientific research and public education. Each Sanctuary has specific regulations in place to safeguard marine resources within its boundaries. The National Marine Sanctuary Program (NMSP) has developed a system of permits and authorizations to review requests to conduct otherwise prohibited activities.

Section 310 of the National Marine Sanctuaries Act (16 U.S.C. 1431 *et seq.*; NMSA) gives the NMSP the authority to issue special use permits. Special use permits are generally used for commercial activities. Pursuant to the NMSA, activities conducted under a special use permit must: (1) establish conditions of access to and use of any sanctuary resource; or (2) promote public use and understanding of a sanctuary resource. Those applying for special use permits must state how these purposes will be met.

Pursuant to section 310(b) of the NMSA, NOAA cannot issue a special use permit for any type of activity unless NOAA has notified the public that that type of activity is subject to the requirements of special use permits. Currently NOAA is in the process of publishing a Federal Register notice to provide such notice. Applicants for special use permits will be required to show that the type of activity they are proposing meets the description of one of the types of activities for which NOAA has provided public notice. This list will be modified from time to time as new categories of activities are listed. As of the publication date of the Federal Register notice in preparation, the following types of activities are eligible for special use permits:

1. The disposal of cremated human remains by a commercial operator in any National Marine Sanctuary;
2. The operation of aircraft below the minimum altitude in restricted zones of National Marine Sanctuaries for commercial purposes;
3. The placement of objects on non-living substrate of the seabed associated with public events; and
4. The discharge and immediate recovery of objects related to special effects of motion pictures.

Anyone conducting prohibited activities without a valid National Marine Sanctuary permit or authorization may be subject to the penalties as provided under Section 307 of the National Marine Sanctuaries Act of 1972 (as amended). A civil penalty of up to \$119,000 for each violation of any regulation may be levied.

B. APPLICATION CONTENTS

1. Cover Sheet or Letter: The cover sheet or letter shall identify the following: 1) name of the National Marine Sanctuary in which the proposed activity will take place; 2) title of the project; 3) name, address, telephone number, and affiliation of the applicant; 4) name, address, telephone

number, and affiliation of and relationship of any colleagues covered by the special use permit; 5) project duration; 6) funding source; and 7) signature of the applicant.

2. **Project Summary or Abstract:** A 250-word (maximum) summary shall include a brief statement of objectives, methods to be used, and why it is preferable that the activity occurs within the boundaries of the Sanctuary. The summary shall also specify the significance of the proposed work to a particular Sanctuary or to the National Marine Sanctuary System.

3. **Technical Information:** This includes clear, concise, and complete statements in the following categories:

a. **Purpose.** Reason for the activity.

b. **Objectives.** State the objectives of the project.

c. **Project Significance.** Explain why the project needs to be conducted in the Sanctuary and the potential benefits to the Sanctuary (if any). Also explain how the proposed activity meets one of the two criteria for special use permits (refer to section D of these guidelines) and how the proposed activity meets one of the types of activities for which special use permits can be issued by the NMSP (refer to section A of these guidelines). If the proposed activity does not meet the description of one of the types of activities for which NOAA has provided public notice, NOAA would need to publish a new Federal Register notice and solicit public comments on the use of special use permits for the type of activity proposed prior to issuing a permit.

d. **Methods.** Describe the tasks required to accomplish the project's objectives. Provide an adequate description of methods and procedures. Describe the rationale for selecting the proposed methods over any alternative methods. Specify the exact location of work within the Sanctuary and provide a map showing the proposed project location(s) and a description of the habitat area affected. Also indicate the intended start date, frequency, and anticipated duration of the proposed activity. Describe how the methods will ensure that there will be no destruction of, loss of, or injury to any Sanctuary resources.

e. **Personnel.** Identify the individuals who would be supervising project activities. Provide qualifications and evidence of ability to perform and supervise tasks. The permittee is ultimately responsible for all activities carried out under special use permits.

4. Environmental Consequences

Discuss the environmental consequences of conducting the activity and indicate whether the activity could be conducted outside the Sanctuary and still accomplish the project's objectives. Explain how this activity will be conducted in manner that will not destroy, cause the loss of, or injure any Sanctuary resource. Describe any methods or techniques that will be employed to reduce the risk of injury to Sanctuary resources posed by the project.

5. Supporting Information

- a. **Financial Support.** Indicate the source of financing for the proposed activity to show that any conditions designed to eliminate impacts to Sanctuary resources can be complied with given the funds available to complete the project.
- b. **Copies of Other Permits.** Applicant must include, if applicable, copies of other federal, state and/or local permits issued (e.g. EPA, U.S. Army Corps of Engineers, local building permits).
- c. **Other Sanctuary Permits or Authorizations.** Applicants should include a listing of all their previous Sanctuary permits/authorizations.
- d. **Comprehensive Liability Insurance.** Applicants will be required to purchase and maintain comprehensive general liability insurance, or to post an equivalent bond, against claims arising out of activities conducted under the permit and to agree to hold the United States harmless against such claims. Applicants should show proof of such insurance with the rest of the application materials.

C. SUBMISSION OF SPECIAL USE PERMIT APPLICATIONS

Three (3) copies of applications for special use permits should be sent to the appropriate sanctuary contact listed in section I below. Special use permit applications must be submitted at least thirty (30) days in advance of the requested effective date to allow sufficient time for evaluation and processing. Sensitive or complicated applications should be submitted 90 days in advance. If additional time is required for review, the applicant will be notified within 20 days of the receipt of the application. Some activities proposed to be conducted under a special use permit may require additional documentation as required by the National Environmental Policy Act. If additional documentation is necessary, the Sanctuary will contact the applicant within 20 days to discuss how best to complete the required documentation and to decide on an appropriate timeline for completing this documentation and making a final decision on the application. Requests for permits must be addressed to the manager or superintendent of the Sanctuary in which the activities are to be conducted. A listing of their addresses and phone numbers can be found in Section I.

D. EVALUATION OF SPECIAL USE PERMIT APPLICATIONS

Special use permit applications are reviewed for completeness and adherence to these guidelines and the NMSA. Applicants will be contacted for clarification if applications are incomplete. Complete applications are reviewed by on-site Sanctuary personnel, NMSP program officials, and, where necessary, outside experts. Section 310 of the NMSA allows the NMSP to issue special use permits for activities that:

1. establish conditions of access to and use of any sanctuary resource; or
 2. promote public use and understanding of a sanctuary resource.
- Applicants should clearly state how their activity meets one of those criteria.

E. CONDITIONS OF SPECIAL USE PERMITS

Based on the reviews of the application, the Sanctuary will approve or deny the special use permit application. If denied, applicants are notified of the reason(s) for denial and informed of the appeal process. If approved, the Sanctuary manager or superintendent will issue the special use permit.

Special use permittees must counter-sign the permit and return copies to the Sanctuary prior to conducting the approved activities. Copies must be signed and returned within 10 days of receipt by the permittee. If not returned within 30 days, the special use permit will automatically be canceled.

Special use permittees must be present during all authorized operations. Special use permits are non-transferable. Special use permittees must abide by all provisions set forth in the special use permit and the NMSA. Project summaries and technical information are incorporated into the conditions of the permit. Authorized activities must be conducted with adequate safeguards for the environment. To the extent possible, the environment shall be returned to the conditions that existed prior to the permitted activity.

Section 310 of the NMSA allows the Secretary of Commerce to issue special use permits to authorize the conduct of specific activities with four conditions. The NMSA requires that special use permits-

1. Shall authorize the conduct of an activity only if that activity is compatible with the purposes for which the Sanctuary is designated and with protection of Sanctuary resources;
2. Shall not authorize the conduct of any activity for a period of more than 5 years unless renewed by the Secretary;
3. Shall require that activities carried out under the permit be conducted in a manner that does not destroy, cause the loss of, or injure Sanctuary resources; and
4. Shall require the permittee to purchase and maintain comprehensive general liability insurance, or post an equivalent bond, against claims arising out of activities conducted under the permit and to agree to hold the United States harmless against such claims.

The Sanctuary manager or superintendent may immediately amend, suspend, or revoke a special use permit granted pursuant to these guidelines and the National Marine Sanctuaries Act, in whole or in part, temporarily or indefinitely, if in his/her view the permittee(s) acted in violation of the terms of the special use permit or of applicable Sanctuary regulations, or for any good cause shown. Formal notice of such action shall be subsequently communicated in writing to the permittee and shall set forth the reason for the action taken. The special use permittee in relation to whom the action is taken may appeal the action as provided for in the Sanctuary regulations.

F. AMENDMENTS TO ACTIVE SPECIAL USE PERMITS

Requests for amendments to active special use permits (e.g. change in project design or location) must conform to these guidelines. Persons desiring to continue authorized activities in the Sanctuary must reapply for an extension of his/her current special use permit before it expires.

Reference to the original application may be given in lieu of a new application, provided the scope of work does not change significantly and all relevant conditions have been met.

G. MONITORING PERFORMANCE

Authorized activities will be monitored to ensure compliance with the conditions of the special use permit. Sanctuary personnel may periodically assess work in progress by visiting the project location and observing any authorized activity or by reviewing any required reports. In most cases permittees will be required to monitor their own compliance with permit terms and conditions as well. Most special use permits have specific conditions that require permittees to monitor their activities and to submit monitoring reports to Sanctuary officials. The discovery of any irregularities in conformance to the special use permit shall be promptly reported and appropriate action shall be taken. Authorized activities will be evaluated and the findings used to evaluate future applications.

H. REPORTING BURDEN

The information requested in these guidelines is necessary to evaluate whether issuance of a special use permit is appropriate. The information is used to evaluate the activity and to determine whether the proposed activity meets the two criteria and four conditions of special use permits provide for by the NMSA. It is through this evaluation and the tracking of all otherwise prohibited activities that the NMSP is able to use permitting as one of the management tools to protect Sanctuary resources and qualities. Submittal of the information requested in these guidelines is required to obtain a special use permit pursuant to the NMSA. Applicants are requested to indicate any information that is considered proprietary business information. Such information is typically exempt from disclosure to anyone requesting information pursuant to the Freedom of Information Act (FOIA). NOAA will make all possible attempts to protect such proprietary information, consistent with all applicable FOIA exemptions in 5 U.S.C. 552(b). Typically exempt information includes trade secrets, commercial and financial information (5 U.S.C. 552(b)(4)). Personal information affecting an individual's privacy will also be kept confidential consistent with 5 U.S.C. 552(b)(6).

Public reporting burden for this collection of information is estimated to average twenty four (24) hours per response (application, annual report, and financial report), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This estimate also includes the significant time that may be required should the applicant choose to themselves complete any documentation that may be required under the National Environmental Policy Act (e.g. Environmental Impact Statement). Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to John Armor, Permit Coordinator, NOAA National Marine Sanctuary Program, 1305 East-West Highway (N/ORM6), 11th Floor, Silver Spring, MD 20910.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to

the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

I. FURTHER INFORMATION

For further information on the NMSP, write or call the NMSP office or the on-site sanctuary contacts listed below:

NATIONAL MARINE SANCTUARY PROGRAM

John Armor, Permit Coordinator
National Marine Sanctuary Program, NOAA
1305 East-West Highway (N/ORM6)
Silver Spring, MD 20910-3282
301-713-3125, x117
Fax: 301-713-0404
John.armor@noaa.gov

CHANNEL ISLANDS NATIONAL MARINE SANCTUARY

LCDR Matt Pickett, Manager
Channel Islands National Marine Sanctuary
113 Harbor Way
Santa Barbara, California 93109
805-966-7107
Fax: 805-568-1582
channelislands@noaa.gov

CORDELL BANK NATIONAL MARINE SANCTUARY

Mr. Ed Ueber, Manager
Cordell Bank National Marine Sanctuary
Fort Mason, Building #201
San Francisco, California 94123
415-556-3509
Fax: 415-556-1660
codellbank@noaa.gov

FAGATELE BAY NATIONAL MARINE SANCTUARY

Ms. Nancy Daschbach, Manager
Fagatele Bay National Marine Sanctuary
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Pago Pago, American Samoa 96799
011-684-633-7354
Fax: 011-684-633-7355

fagatelebay@noaa.gov

FLORIDA KEYS NATIONAL MARINE SANCTUARY

Mr. Billy Causey, Superintendent
Florida Keys National Marine Sanctuary
P.O. Box 500368
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305-743-2437
Fax: 305-743-2357
floridakeys@noaa.gov

FLOWER GARDEN BANKS NATIONAL MARINE SANCTUARY

Mr. G.P. Schmahl, Manager
Flower Garden Banks National Marine Sanctuary
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979-779-2705
Fax: 979-779-2334
flowergarden@noaa.gov

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Mr. Reed Bohne, Manager
Gray's Reef National Marine Sanctuary
10 Ocean Science Circle
Savannah, Georgia 31411
912-598-2345
Fax: 912-598-2367
graysreef@noaa.gov

GULF OF THE FARALLONES NATIONAL MARINE SANCTUARY

Mr. Ed Ueber, Manager
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415-556-3509
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MONITOR NATIONAL MARINE SANCTUARY

Mr. John Broadwater, Manager
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100 Museum Drive
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MONTEREY BAY NATIONAL MARINE SANCTUARY

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Monterey Bay National Marine Sanctuary
ATTN. Scott Kathey, Permit Coordinator
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THUNDER BAY NATIONAL MARINE SANCTUARY AND UNDERWATER PRESERVE

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GUIDELINES FOR SUBMITTING APPLICATIONS FOR NATIONAL MARINE SANCTUARY AUTHORIZATIONS

A. INTRODUCTION

National Marine Sanctuaries are recognized as resource areas of national significance. Their distinctive characteristics have established them as environmental and historic resources for scientific research and public education. Each Sanctuary has specific regulations in place to safeguard marine resources within its boundaries. The National Marine Sanctuary Program has developed a system of permits and authorizations to review requests to conduct otherwise prohibited activities.

Authorizations may be issued by the manager or superintendent of Flower Garden Banks National Marine Sanctuary, Monterey Bay National Marine Sanctuary, Stellwagen Bank National Marine Sanctuary, Olympic Coast National Marine Sanctuary, Florida Keys National Marine Sanctuary, and Thunder Bay National Marine Sanctuary and Underwater Preserve under special circumstances for activities otherwise prohibited by Sanctuary regulations. An authorization must be issued in conjunction with a valid lease, permit, license, approval or other authorization issued by any Federal, State, or local authority of competent jurisdiction. The guidelines presented below describe the Sanctuary authorization process.

Anyone conducting prohibited activities without a valid National Marine Sanctuary permit or authorization may be subject to the penalties as provided under Section 307 of the National Marine Sanctuaries Act of 1972 (as amended). A civil penalty of up to \$119,000 for each violation of any regulation may be levied.

B. APPLICATION CONTENTS

1. Cover Sheet or Letter: The cover sheet or letter shall identify the following: 1) name of the National Marine Sanctuary in which the proposed activity will take place; 2) title of the project; 3) name, address, telephone number, and affiliation of the applicant; 4) name, address, telephone number, and affiliation of and relationship of any colleagues covered by the authorization; 5) project duration; 6) funding source; and 7) signature of the applicant.

2. Project Summary or Abstract: A 250-word (maximum) summary shall include a brief statement of objectives, methods to be used, and why it is preferable that the activity occur within the boundaries of the Sanctuary. The summary shall also specify the significance of the proposed work to a particular Sanctuary or to the National Marine Sanctuary system.

3. Technical Information: This includes clear, concise, and complete statements in the following categories:

- a. Purpose. Reason for the activity.
- b. Objectives. State the objectives of the project.

- c. **Project Significance.** Explain why the project should be performed in the Sanctuary and the potential benefits to the Sanctuary.
- d. **Methods.** Describe the tasks required to accomplish the project's objectives. Provide an adequate description of methods and procedures. Describe the rationale for selecting the proposed methods over any alternative methods. For all authorizations, specify the exact location of work within the Sanctuary and provide a map showing the proposed study or project location(s) and a description of the habitat area affected. Also indicate the intended start date, frequency, and anticipated duration of the activity.
- e. **Personnel.** Identify the individuals who would be supervising project activities. Provide qualifications and evidence of ability to perform and supervise tasks. The authorization holder is ultimately responsible for all activities carried out under this authorization.

4. Environmental Consequences

Discuss the environmental consequences of conducting an otherwise prohibited activity and indicate whether the activity could be conducted outside the Sanctuary and still accomplish the project's objectives. Specify the consequences and explain how the benefits of the activity will outweigh the disadvantages or environmental consequences (short and long term).

5. Supporting Information

- a. **Financial Support.** Provide contract number, performance period, and name of sponsoring agency, if applicable. At a minimum, indicate source of financial support.
- b. **Copies of Other Permits.** Applicant must include, if applicable, copies of other Federal, state and/or local permits issued with regards to this authorization request. For example, EPA, U.S. Army Corps of Engineers, etc.
- c. **Other Sanctuary Permits or Authorizations.** Applicants should include a listing of all their previous Sanctuary permits/authorizations.

C. SUBMISSION OF AUTHORIZATION REQUESTS

One (1) copy of requests for permits should be sent to the appropriate sanctuary contact listed in section I below. Authorization applications must be submitted at least forty-five (45) days in advance of the requested effective date to allow sufficient time for evaluation and processing. Sensitive or complicated requests, or requests for Sanctuary support should be submitted 90 days in advance. If additional time is required for review, the applicant will be notified within 20 days of the receipt of the request. Requests for permits must be addressed to the manager or superintendent of the Sanctuary in which the activities are to be conducted. A listing of their addresses and phone numbers can be found in Section I.

D. EVALUATION OF AUTHORIZATION REQUESTS

Authorization applications are reviewed for completeness and adherence to these guidelines. Applicants will be contacted for clarification if applications are incomplete. Complete applications are reviewed by on-site Sanctuary personnel, National Marine Sanctuary Program (NMSP) program officials, and, where necessary, peer-reviewed by outside experts. Applications are judged on the basis of: 1) relevance or importance to the Sanctuary; 2) scientific and educational merits; 3) appropriateness and environmental consequences of the technical approach; and 4) whether the proposed effort is more appropriately conducted outside the Sanctuary.

E. CONDITIONS OF AUTHORIZATIONS

Based on the reviews of the authorization application, the Sanctuary will approve or deny the authorization. If denied, applicants are notified of the reason(s) for denial and informed of the appeal process. If approved, the Sanctuary manager or superintendent will issue the authorization.

Authorization holders must counter-sign the authorization and return copies to the Sanctuary prior to conducting the approved activities. Copies must be signed and returned within 10 days of receipt by the authorization holder. If not returned within 30 days, the authorization will automatically be canceled.

Authorization holders must be present during all authorized operations. Authorizations are non-transferable. Authorization holders must abide by all provisions set forth in the authorization as well as applicable Sanctuary regulations. Project summaries and technical information are incorporated into the conditions of the authorization. Authorized activities must be conducted with adequate safeguards for the environment. To the extent possible, the environment shall be returned to the conditions that existed prior to the authorized activity.

Two important conditions of any authorization are that the authorization holder submit a project report and log to the appropriate Sanctuary office within 30 days of the authorization's expiration date. The project report is a brief (1-2) page statement summarizing the results of authorized activities. A log should list the days spent in the Sanctuary as well as activities pursued, approximate positions, and general observations. Project reports are used in the Sanctuary interpretive programs and logs are used in the assessment of Sanctuary activities.

The Sanctuary manager or superintendent may immediately amend, suspend, or revoke an authorization granted pursuant to these guidelines and Sanctuary regulations, in whole or in part, temporarily or indefinitely, if in his/her view the authorization holder(s) acted in violation of the terms of the authorization or of applicable Sanctuary regulations, or for any good cause shown. Formal notice of such action shall be subsequently communicated in writing to the authorization holder and shall set forth the reason for the action taken. The authorization holder in relation to whom the action is taken may appeal the action as provided for in the Sanctuary regulations.

F. AMENDMENTS TO ACTIVE AUTHORIZATIONS

Requests for amendments to active authorizations (e.g. change in study design or other form of amendment) must conform to these guidelines. Persons desiring to continue authorized activities in the Sanctuary must reapply for an extension of his/her current authorization before it expires. Reference to the original application may be given in lieu of a new application, provided the scope of work does not change significantly and all cruise logs and project summaries pertinent to the original authorization have been submitted to and approved by the Sanctuary.

G. MONITORING PERFORMANCE

Authorized activities will be monitored to ensure compliance with the conditions of the authorization. Sanctuary personnel may periodically assess work in progress by visiting the study location and observing any authorized activity or by reviewing any required reports. The discovery of any irregularities in conformance to the authorization shall be promptly reported and appropriate action shall be taken. Authorized activities will be evaluated and the findings used to evaluate future applications.

H. REPORTING BURDEN

The information requested in these guidelines is necessary to evaluate whether issuance of an authorization is appropriate. The information is used to evaluate the potential benefits of the activity, to determine whether the proposed methods will achieve the proposed results, and to evaluate any possible detrimental environmental impacts. It is through this evaluation and the tracking of all otherwise prohibited activities that the National Marine Sanctuary Program is able to use permitting as one of the management tools to protect Sanctuary resources and qualities. Submittal of the information requested in these guidelines is required to obtain an authorization pursuant to National Marine Sanctuary Regulations (15 CFR part 922). Applicants are requested to indicate any information that is considered proprietary business information. Such information is typically exempt from disclosure to anyone requesting information pursuant to the Freedom of Information Act (FOIA). NOAA will make all possible attempts to protect such proprietary information, consistent with all applicable FOIA exemptions in 5 U.S.C. 552(b). Typically exempt information includes trade secrets, commercial and financial information (5 U.S.C. 552(b)(4)). Personal information affecting an individual's privacy will also be kept confidential consistent with 5 U.S.C. 552(b)(6).

Public reporting burden for this collection of information is estimated to average one (1) hour per response (application, cruise log, and final report), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to John Armor, Permit Coordinator, NOAA National Marine Sanctuary Program, 1305 East-West Highway (N/ORM6), 11th Floor, Silver Spring, MD 20910.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to

the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

I. FURTHER INFORMATION

For further information on the National Marine Sanctuary Program, write or call the National Marine Sanctuary Program office or the on-site sanctuary contacts listed below:

NATIONAL MARINE SANCTUARY PROGRAM

Mr. John Armor, Permit Coordinator
National Marine Sanctuary Program, NOAA
1305 East-West Highway (N/ORM6)
Silver Spring, MD 20910-3282
301-713-3125, extension 117
Fax: 301-713-0404
John.armor@noaa.gov

FLORIDA KEYS NATIONAL MARINE SANCTUARY

Mr. Billy Causey, Superintendent
Florida Keys National Marine Sanctuary
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Marathon, FL 33050
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FLOWER GARDEN BANKS NATIONAL MARINE SANCTUARY

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NATIONAL MARINE SANCTUARY

Archaeological Research Permit

Application Guidelines

The following guidelines for Archaeological Research permits for the National Marine Sanctuaries have been prepared in compliance with the Federal Archaeological Program laws, regulations and guidelines including The Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation, The Abandoned Shipwreck Act Final Guidelines (F.R. Vol. 55, No. 233, December 4, 1990), the Archaeological Resources Protection Act of 1979; Final Uniform Regulations (43 CFR Part 7), and the NOAA Sanctuaries and Reserves Division Archaeological Research Permit Guidelines (last revised October 1992).

Applications for Research/Recovery Permits should include:

I. Cover Sheet: The cover sheet shall identify:

- A. title of project (ex. "Survey of the USS ALLIGATOR");
- B. applicant's name, address, telephone number, and affiliation;
- C. name, address, affiliation, and of other key personnel;
- D. proposed date of project and anticipated duration;
- E. Demonstrate reasonable ability to fund each phase of intended investigation covered by the permit.
- F. glossary/key words.

II. Project Summary: The applicant should provide a 250-word (maximum) summary of the project including a brief statement of research objectives, scientific methods to be used, and the significance of the proposed work to the established management plan goals of this National Marine Sanctuary. Also include a chart that shows the location and the lat/long of the proposed work area.

III. Technical Information: The applicant should provide clear, concise, and complete statements for the following information. Please note that an archaeological survey must be conducted on a site before an Research/Recovery Permit can be issued (See Archaeological Survey/Inventory Permits).

A. Research Plan - A research plan describing in detail the specific research objectives and goals (methodologies should be addressed in the Operational Plan - see 3 (c) below).

The application should include a description of:

- (1) the archaeological goals and methods to be employed;
- (2) the problems toward which the research will be directed (i.e. what questions will this research answer?); and
- (3) the ways in which other researchers have sought to answer them.

B. Project Significance - The applicant should discuss significant previous research in the area of interest and how the proposed effort may enhance or contribute to improving the state of knowledge of history, anthropology or archaeology. Explain why the proposed effort should be performed in this sanctuary and any potential benefits that

might be imparted to the public's interest and to sanctuary resources protection and management. Discuss potential benefits that might result from the addition of artifacts to the pool of artifacts available for display. Discuss how the project may provide public access to artifacts embedded in submerged lands and not able to be directly examined or physically displayed to the public without removal.

C. Operational Plan - The applicant should describe the tasks required to accomplish the project's objectives. Describe proposed methods to be used for site documentation, excavation, recovery and the storage of artifacts and related materials on site and at the storage lab. Describe the rationale for selecting the proposed methods over any alternative methods.

D. Required Reports - Applicant's signature to this application signifies intent to provide the following reports (See Appendix 1, Report Guidelines):

- (1) Seasonal Reports;
- (2) Final Project Report;
- (3) Artifact Conservation Report.

E. Artifact Handling Plan - The applicant should provide an Artifact Handling Plan that includes the following:

- (1) Artifact removal - Discuss techniques for removal of various types of artifacts expected to be encountered. Specifically address types of artifacts requiring special care such as glass or ceramics and organic artifacts such as rope, leather, textiles, and other fragile objects.
- (2) Artifact processing - Discuss plans for artifact storage between the field and conservation lab. Discuss proposed artifact inventory methodology. Each artifact should be tagged with a Field Catalogue Number to be assigned as soon as it is removed from the water at the site. Additional tags bearing accession numbers may be assigned and affixed by the Marine Sanctuary Division (MSD). In this case, MSD will maintain public records linking the original Field Catalogue Number and any additional numbers assigned.

Unique or valuable artifacts should be photographed from two perspectives with a bar scale, date and the Catalogue Number tag prominently displayed. The Field Catalogue Number tag should be sturdy and waterproof and will should be attached to the artifact in a non-destructive manner so as to accompany the artifact through storage and the conservation process. Bulk or highly repetitive artifacts, such as coins, musket balls, pottery shards, etc. need not be photographed individually, but should be photographed in groups with the artifact tag number containing the Field Catalogue number visible.

F. Conservation Plan - The applicant should provide a detailed plan for the conservation of artifacts. Include methods of conservation and intended processes. The Conservation Plan should include:

- (1) Conservation Methodology - Discuss the methods of conservation and the intended processes for each class of artifact (i.e. ceramic, wood, other organic materials, ferrous metal, and non-ferrous metal);
- (2) Conservation Equipment - Describe the conservation facility's;
- (3) Storage Space - Describe the conservation facility's location and size of the storage space.

G. Curation and Display Plan - The applicant should provide a detailed plan for the curation of artifacts in compliance with Cf. 36 CFR 79, Curation of Federally-Owned and Administered Archaeological Collections. (see Appendix 2)

The Curation Plan should ensure that the following processes are considered:

- (1) Curation Facility and Personnel - Identify the curatorial facility and the professional personnel. Curatorial facilities should have adequate space to ensure the safe storage of artifacts.
- (2) Artifact Storage - Archaeological specimens should be maintained so that their information values are not lost through deterioration. Storage records should be maintained to a professional archival standard;
- (3) Project Records - Project and curation records should be maintained in a manner conforming to standard archival method. Storage should conform to professional archival standards and should allow for accessibility of records to qualified researchers within a reasonable amount of time of having been requested;
- (4) Artifact Availability - Artifact collections must be accessible to qualified researchers within a reasonable amount of time of having been requested;
- (5) Artifact Loans - Artifacts should be available for loan to other institutions for interpretive purposes, subject to reasonable security precautions and scheduling practicalities; and
- (6) Artifact Display - Collections should be available for educational and interpretive purposes, subject to reasonable security precautions. A plan for the display exhibit area will be required if artifacts are intended for display. Exhibit information will include display case design and security, building security and temperature and humidity control. A loan agreement will be prepared between NOAA and the exhibiting institution in keeping with 36 CFR 79 (see above).

H. Environmental Consequences - The applicant should provide an analysis of the extent and nature of potential environmental impacts on sanctuary resources from permitted activity. If impact to natural resources is proposed, the applicant should provide a Site Restoration and Remediation Plan to address any injury or impacts resulting from the project.

IV. Required Archaeological Documentation and Recording: The applicant's signature to this Research/Recovery Application signifies intention to provide the following documentation:

A. Project Log -Master copies of standard log book sheets shall be supplied to the permittee who shall make sufficient copies and fill them out on a daily basis. Copies of all completed field logs must be turned over to NOAA following the completion of the project.

B. Artifact Log - An Artifact Log should be kept at the site and in the storage lab. Each artifact will be assigned a Field Number. A description of the artifact, archaeological provenience data and the recorder's name and the date should be recorded in the log. A copy of the Artifact Log will be turned over to NOAA/MSD at the completion of the project.

C. Photographs and Videotapes - Applicant should provide photographs and/or videotapes (optional) of significant individual site features and/or artifact clusters both in situ and after removal. Images should include photo scale, North arrow and date/site name board.

V. Supporting Information

A. Financial Support - Provide contract number, performance period, and name of sponsoring entity, if any. If none, provide sufficient data to substantiate the fiscal capability to complete the phases of work proposed to be permitted. If artifact recovery is proposed, financial data must address the resources necessary for the conservation, curation and interpretation of the resulting archaeological collection.

B. Coordination with Research in Progress or Proposed - MSD encourages coordination and cost-sharing with other investigators to enhance scientific capabilities and avoid unnecessary duplication of efforts, where applicable.

C. Professional References - Show evidence of the ability of each team member to perform the assigned tasks for the following personnel:

(1) Supervising Archaeologist - The Supervising Archaeologist is responsible for archaeological aspects of the project and need not serve as project manager. The applicant should submit a resume detailing the professional qualifications of the Supervising Archaeologist (including citations and examples of archaeological site reports and professional publications).

In compliance with the "Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation" and the Archaeological Resources Protection Act the Supervising Archaeologist should fulfill the following qualifications:

- A graduate degree in archaeology, anthropology, maritime history equivalent training and experience;
- at least one year of professional experience or equivalent specialized training in archaeological research, administration or management;
- at least four months of supervised field and analytic experience in general North American archaeology and maritime history;
- demonstrated ability to carry research to completion;
- and at least one year of full-time professional experience at a supervisory level in the study of historic marine archaeological resources (for historic

shipwreck studies) or prehistoric marine archaeological resources (for submerged prehistoric studies).

This person shall be able to demonstrate ability in comprehensive analysis and interpretation through authorship of reports and monographs;

(2) Archaeological Assistants - Archaeological Assistants need not meet Supervising Archaeologist qualifications but will serve under the direction of the Supervising Archaeologist. The applicant should provide the name and experience of all qualified archaeological assistants who will assist the supervising Archaeologist in site documentation and research.

(3) Artifact Conservator - The applicant should provide documentation of the Artifact Conservator's demonstrated experience in conservation of artifacts from submerged sites. Professional experience should include experience in the conservation of ferrous and non-ferrous metals, ceramics, glass and organic materials.

D. Letters of Intent - Applicant should provide letters of intent to participate in this project from:

- (1) Supervising Archaeologist
- (2) Conservator

E. References - Provide bibliographic references for any citations made in text.

VI. Requests for Sanctuary Support Services - Certain sanctuaries within the MSD have limited on-site Sanctuary personnel, facilities and equipment that may be used on loan or lease to support research under special circumstances. Requests for support must accompany the permit application and include the following information:

- A. Type of support requested;
- B. Reason for request;
- C. Dates and length of use;
- D. Alternative plans if support is not available.

VII. Compliance with the Federal Archaeological Program - These guidelines have been prepared in compliance with the Federal laws, standards and guidelines that comprised the Federal Archaeological Program [including Executive order 11593, the National Historic Preservation Act as amended 1992, the Abandoned Shipwreck Act, the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation as well as implementing regulations and guidelines].

Applicant's signature on this application for a Research/ Recovery Permit signifies their intention to comply with all guidelines and conditions noted herein. Applicant understands that failure to comply with any of the requirements of this permit application may prevent re-application for new permits and cause all other outstanding permits to be voided. A permittee who is prevented from re-application for new permits or whose outstanding permits are voided shall be entitled to notice and hearing in accordance with NOAA regulations and the Administrative Procedures Act

VIII. Public Reporting Burden

The Marine Sanctuary Program is mandated via the Sanctuaries Act to comply with the laws and regulations of the Federal Archaeological Program (FAP) which includes the National Historic Preservation Act of 1966 (NHPA). The NHPA requires that all federal undertakings, including permitting the disturbance of submerged cultural resources (SCRs), be evaluated to assess potential adverse impacts. The information requested in these guidelines is required to ensure compliance with the federal mandates of the FAP. The information is used to evaluate the potential benefits of the activity, to determine whether the proposed methods will achieve the proposed results, and to evaluate any possible detrimental environmental impacts. It is through this evaluation and the tracking of all cultural resources activities that the NMSP is able to use permitting as one of the management tools to protect submerged cultural resources for which NOAA is the trustee. Submittal of the information requested in these guidelines is required to obtain a permit pursuant to National Marine Sanctuary Regulations (15 CFR part 922).

Applicants are requested to indicate any information that is considered proprietary business information. Such information is typically exempt from disclosure to anyone requesting information pursuant to the Freedom of Information Act (FOIA). NOAA will make all possible attempts to protect such proprietary information, consistent with all applicable FOIA exemptions in 5 U.S.C. 552(b). Typically exempt information includes trade secrets, commercial and financial information (5 U.S.C. 552(b)(4)). Personal information affecting an individual's privacy will also be kept confidential consistent with 5 U.S.C. 552(b)(6).

Public reporting burden for this collection of information is estimated to average thirteen (13) hours per response (application, cruise log, and final report), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Permit Coordinator, NOAA National Marine Sanctuary Program, 1305 East-West Highway (N/ORM6), 11th Floor, Silver Spring, MD 20910. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Appendix 1

Report Guidelines

Three copies of each report will be submitted to the Sanctuary manager. Reports will be reviewed by the MSD Archaeologist and the appropriate State archaeologist.

I. Seasonal Reports - The permittee will provide a Seasonal Report within sixty (60) days of the conclusion of each dive season for the duration of the permit. A one or two page report should include:

- a summary of the season's activities;
- a discussion of any problems encountered that may require a revision of the permit;
- plans for the next field season based on permittee's assessment of the preceding season's work.

The applicant should also submit copies of pertinent photographs, video, maps, artifact logs, and field logs.

II. Final Report - The permittee will provide a detailed plan for a final site report on the activities and results of the project. The Final Report must be submitted within one (1) year of the completion of field work and artifact conservation.

The bound Final Report will include:

- (1) Site Description - a description of the study area;
- (2) Site History - a contextual history relating the site to the general history of the region;
- (3) Research Design - the original project design and research goals for the project;
- (4) Field Work Description - a description of the field activities including a summary of the survey and/or excavation process;
- (5) Field Observations - all observations of notable occurrences, patterns, etc.;
- (6) Data Analysis - full analysis and results of recovered data and artifacts to also include:
- (7) Maps - The applicant should supply the following maps:
 - An overall map showing site in relation to submerged features and nearest land mass (ex. NOAA chart);
 - A pre-excavation plan view (overhead) map showing significant or readily observable exposed artifacts and site features;
 - An overall plan-view site map showing all excavated hull structure;
 - Detailed feature maps for each significant feature to include location of artifacts removed from site. Artifact locations will include the artifact Field Catalogue Number (see 3.e.2 below). If numerous artifacts are retrieved from a specific area they may be listed in table form and keyed to the map location by an index number. They will relate the artifact positions to features in the overall site map. The feature maps will include 3 different perspectives, including overhead or plan view, side/profile view, and (if practicable) frontal/sectional view;

- All maps should show a grid or grid ticks on the outer border of the map in Loran C, Longitude and Latitude, or other recognized coordinate system. Smaller-scale maps should have grids with X-Y coordinates related to datum on overall site map. Maps should include a bar scale, North arrow, and title block which identifies the map. The title block should include the permit number, permittee's name, and year of the permit.

(8) Project Assessment - The Final Report should include a discussion of the applicant's perceived success of the project and recommendations for updating historical contexts and planning goals.

The final report must be reviewed by the Supervising Archaeologist and signed and dated with his/her comments.

III. Conservation Report - The Conservation Report should include an account of all work done on artifacts. Note work done on different materials and/or classes of artifacts, work on significant (unique or fragile) artifacts, and work on composite-type artifacts composed of two or more materials (ex. wood and iron).

The report of the conservation of artifacts should include appendices containing:

- an Artifact List;
- copies of the Conservation Lab Records; and
- before and after photographs of artifacts at the conservation lab.

Appendix 2

The following Federal archaeological guidelines may be obtained from The Departmental Consulting Archaeologist, NPS, P.O. Box 37127, Washington, D.C. 20013-7127:

The Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation

Archaeological Resources Protection Act of 1979; Final Uniform Regulations (43 CFR Part 7)

Cf. 36 CFR 79, Curation of Federally-Owned and Administered Archaeological Collections

NATIONAL MARINE SANCTUARY ARCHAEOLOGICAL Survey and Inventory Permit Reporting Guidelines

Following the completion of the survey activities or the expiration of the Survey/Inventory permit, a report and map shall be submitted as described in the permit conditions. These guidelines describe what should be included. The report and map are necessary before a subsequent Research/Recovery permit can be issued.

The report should include:

- 1) Introduction - What were the dates of the survey? Indicate the general region and the parameters of the survey area in lat/long. How many days were spent conducting remote sensing survey, how many days diving to identify anomalies? Who was involved with the operation and in what capacity? Provide a brief statement outlining the highlights and results of the work.
- 2) What equipment was used:
 - a) For navigation and horizontal positioning?
 - b) For magnetometer and other types of remote sensing?
- 3) How equipment was used, calibrated and configured:
 - a) For navigation and horizontal positioning?
 - b) For magnetometer and other remote sensing equipment?
- 4) Recording of survey information:
 - a) How and when position fixes were recorded?
 - b) How was the magnetometer (and other remote sensing equipment) correlated to the horizontal position data?
 - c) How far apart were the parallel passes and in what direction(s) was the survey vessel navigated (recommended spacing is 150 feet or less)?
- 5) How much was accomplished, and how much is left to accomplish to complete the remote sensing phase of your survey work?
- 6) Provide a general statement about what you found and how these findings shape your future plans. Discuss and interpret the anomaly patterns. What parts of the anomaly patterns appear to be significant and what parts do not? Are there any significant clusters? Were any anomalies identified? If suspected archaeological remains were found, provide a detailed description including:
 - (a) the nature of remains (i.e., ship structural features, ballast, and artifacts);
 - (b) the probable approximate date of site, explaining why you think so;
 - (c) the distribution and extent of remains;

- (d) the integrity of the remains (i.e., does site appear to be disturbed and, if so, recently?); and
- (e) the natural environment in the vicinity of the wreck.

7) Report indexes

- a) Include as a first appendix a list which assigns each anomaly a unique designation. This index serves as a cross reference so anomalies identified in the report can be correlated to their plotted positions on the base map. This appendix should include the anomaly identification designation, its location (e.g., Loran-C coordinates, or Latitude and Longitude in degrees, minutes, and decimal minutes), and gamma intensity.
- b) Include as a second appendix examples of a dozen or so magnetometer chart sections showing some of the anomalies encountered in your contract area (label each example strip chart section with its corresponding designation as assigned in 6a above).

B. The map:

- 1) Encompass a large enough area to include all of your contract and show the contract boundaries. The map(s) should also depict the location of the shoreline and other prominent features such as buried cable, rock outcrops, islands, etc.
 - a) Show a grid or grid ticks on the outer border of the map in Loran C, Longitude and Latitude, or other recognized coordinate system including the system used in the anomaly table in the first appendix.
 - b) Use a bar scale, North arrow, and title block which identifies the map. The title block should include the contract number, contractor's name, and year of the contract.
- 2) Depict your work progress on the base map.
 - a) Show the distance and direction of each survey pass made by the survey vessel.
 - b) Identify each anomaly with a unique indexed number or letter which is to correspond with the appendix listing all anomalies and with all other references to anomalies in the report.

C. If survey included limited test excavations and/or limited removal of artifacts or other materials to identify anomalies, please include the following information:

- 1) A summary of the excavation process including:
 - a) equipment used;
 - b) number, type and provenience of recovered artifacts; and
 - c) method of recovery and on-site storage of artifacts.
- 2) A summary of the conservation process including:
 - a) information on the conservation facility and chief conservator; and
 - b) description of the conservation process including appendices containing artifact lists, lab conservation records, before and after conservation photographs of artifacts.

- 3) A description of post-conservation artifact storage consistent with 36 CFR Part 79.
- 4) A plan-view map of the excavation or recovery area that includes:
 - a) significant bottom features;
 - b) at least two datum reference points;
 - c) significant SCR features; and
 - d) location of recovered material.

Public Reporting Burden

The Marine Sanctuary Program is mandated via the Sanctuaries Act to comply with the laws and regulations of the Federal Archaeological Program (FAP) which includes the National Historic Preservation Act of 1966 (NHPA). The NHPA requires that all federal undertakings, including permitting the disturbance of submerged cultural resources (SCRs), be evaluated to assess potential adverse impacts. The information requested in these guidelines is required to ensure compliance with the federal mandates of the FAP. The information is used to evaluate the potential benefits of the activity, to determine whether the proposed methods will achieve the proposed results, and to evaluate any possible detrimental environmental impacts. It is through this evaluation and the tracking of all cultural resources activities that the NMSP is able to use permitting as one of the management tools to protect submerged cultural resources for which NOAA is the trustee. Submittal of the information requested in these guidelines is required to obtain a permit pursuant to National Marine Sanctuary Regulations (15 CFR part 922). Applicants are requested to indicate any information that is considered proprietary business information. Such information is typically exempt from disclosure to anyone requesting information pursuant to the Freedom of Information Act (FOIA). NOAA will make all possible attempts to protect such proprietary information, consistent with all applicable FOIA exemptions in 5 U.S.C. 552(b). Typically exempt information includes trade secrets, commercial and financial information (5 U.S.C. 552(b)(4)). Personal information affecting an individual's privacy will also be kept confidential consistent with 5 U.S.C. 552(b)(6).

Public reporting burden for this collection of information is estimated to average thirteen (13) hours per response (application, cruise log, and final report), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Permit Coordinator, NOAA National Marine Sanctuary Program, 1305 East-West Highway (N/ORM6), 11th Floor, Silver Spring, MD 20910.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

GUIDELINES FOR SUBMITTING APPLICATIONS FOR RESEARCH AND RECOVERY OF SUBMERGED CULTURAL RESOURCES PERMITS IN THE FLORIDA KEYS NATIONAL MARINE SANCTUARY

The following guidelines for Archaeological Research and Recovery permits for the Florida Keys National Marine Sanctuary have been prepared in compliance with the Federal Archaeological Program laws, regulations and guidelines including The Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation, The Abandoned Shipwreck Act Final Guidelines (F.R. Vol. 55, No. 233, December 4, 1990), the Archaeological Resources Protection Act of 1979; Final Uniform Regulations (43 CFR Part 7), and the NOAA Sanctuaries and Reserves Division Archaeological Research Permit Guidelines (last revised October 1992) and Chapter 267 of the Florida Statutes and the terms and conditions as set forth in the Memorandum of Agreement (MOA) between NOAA and the State of Florida dated and passed by the Florida Cabinet on January 28, 1997. Also considered in the compilation of these guidelines were the "Guidelines for Archaeological Research and Recovery", Historic Shipwreck Salvage Policy Council as seen in "Research, Recovery and Exploration Agreements, Contracts and Guidelines."

Applications for Research/Recovery Permits should include:

I. Cover Sheet: The cover sheet shall identify:

- A. title of project (ex. "Survey of the USS ALLIGATOR");
- B. applicant's name, address, telephone number, and affiliation;
- C. name, address, affiliation, and of other key personnel;
- D. proposed date of project and anticipated duration;
- E. Demonstrate reasonable ability to fund each phase of intended investigation covered by the permit.
- F. glossary/key words.

II. Project Summary: The applicant should provide a 250-word (maximum) summary of the project including a brief statement of research objectives, scientific methods to be used, and the significance of the proposed work to the established management plan goals of the FKNMS. Also include a chart that shows the location and the lat/long of the proposed work area.

III. Technical Information: The applicant should provide clear, concise, and complete statements for the following information. Please note that an archaeological survey must be conducted on a site before an Research/Recovery Permit can be issued (See Archaeological Survey/Inventory Permits).

- A. Research Plan - A research plan describing in detail the specific research objectives and goals (methodologies should be addressed in the Operational Plan - see 3 (c) below). The application should include a description of:
 1. the archaeological goals and methods to be employed;

2. the problems toward which the research will be directed (i.e. what questions will this research answer?); and
3. the ways in which other researchers have sought to answer them.

B. Project Significance - The applicant should discuss significant previous research in the area of interest and how the proposed effort may enhance or contribute to improving the state of knowledge of history, anthropology or archaeology. Explain why the proposed effort should be performed in the FKNMS and any potential benefits that might be imparted to the public's interest and to sanctuary resources protection and management. Discuss potential benefits that might result from the addition of artifacts to the pool of artifacts available for display. Discuss how the project may provide public access to artifacts embedded in submerged lands and not able to be directly examined or physically displayed to the public without removal.

C. Operational Plan - The applicant should describe the tasks required to accomplish the project's objectives. Describe proposed methods to be used for site documentation, excavation, recovery and the storage of artifacts and related materials on site and at the storage lab. Describe the rationale for selecting the proposed methods over any alternative methods.

Documentation and excavation must follow standard archaeological methodology. Acceptable methodology is also to be found in "Guidelines for Archaeological Research and Recovery," Historic Shipwreck Salvage Policy Council as seen in "Research, Recovery and Exploration Agreements, Contracts and Guidelines," Attachment #1, Nov. 95, pp.25 - 32.*

D. Required Reports - Applicant's signature to this application signifies intent to provide the following reports (See Appendix 1, Report Guidelines):

1. Seasonal Reports;
2. Final Project Report;
3. Artifact Conservation Report.

E. Artifact Handling Plan - The applicant should provide an Artifact Handling Plan that includes the following:

1. Artifact removal - Discuss techniques for removal of various types of artifacts expected to be encountered. Specifically address types of artifacts requiring special care such as glass or ceramics and organic artifacts such as rope, leather, textiles, and other fragile objects.
2. Artifact processing - Discuss plans for artifact storage between the field and conservation lab. Discuss proposed artifact inventory methodology. Each artifact should be tagged with a Field Catalogue Number to be assigned as soon as it is removed from the water at the site. Additional tags bearing accession numbers may be assigned and affixed by the

SRD/FKNMS. In this case, SRD/FKNMS will maintain public records linking the original Field Catalogue Number and any additional numbers assigned.

Unique or valuable artifacts should be photographed from two perspectives with a bar scale, date and the Catalogue Number tag prominently displayed. The Field Catalogue Number tag should be sturdy and waterproof and will should be attached to the artifact in a non-destructive manner so as to accompany the artifact through storage and the conservation process. Bulk or highly repetitive artifacts, such as coins, musket balls, pottery shards, etc. need not be photographed individually, but should be photographed in groups with the artifact tag number containing the Field Catalogue number visible.

F. Conservation Plan - The applicant should provide a detailed plan for the conservation of artifacts. Include methods of conservation and intended processes. The Conservation Plan should include:

1. Conservation Methodology - Discuss the methods of conservation and the intended processes for each class of artifact (i.e. ceramic, wood, other organic materials, ferrous metal, and non-ferrous metal);
2. Conservation Equipment - Describe the conservation facility's;
3. Storage Space - Describe the conservation facility's location and size of the storage space.

G. Curation and Display Plan - The applicant should provide a detailed plan for the curation of artifacts if other than the State of Florida as described in the January 28 MOA between NOAA and the State of Florida to ensure their maintenance and safety in keeping with NOAA's and the State of Florida's stewardship responsibilities as co-trustees and in compliance with Cf. 36 CFR 79, Curation of Federally-Owned and Administered Archaeological Collections. (see Appendix 2)

The Curation Plan should ensure that the following processes are considered:

1. Curation Facility and Personnel - Identify the curatorial facility and the professional personnel. Curatorial facilities should have adequate space to ensure the safe storage of artifacts.
2. Artifact Storage - Archaeological specimens should be maintained so that their information values are not lost through deterioration. Storage records should be maintained to a professional archival standard;
3. Project Records - Project and curation records should be maintained in a manner conforming to standard archival method. Storage should conform to professional archival standards and should allow for accessibility of records to qualified researchers within a reasonable amount of time of having been requested:

4. **Artifact Availability** - Artifact collections must be accessible to qualified researchers within a reasonable amount of time of having been requested;
5. **Artifact Loans** - Artifacts should be available for loan to other institutions for interpretive purposes, subject to reasonable security precautions and scheduling practicalities; and
6. **Artifact Display** - Collections should be available for educational and interpretive purposes, subject to reasonable security precautions. A plan for the display exhibit area will be required if artifacts are intended for display. Exhibit information will include display case design and security, building security and temperature and humidity control. A loan agreement will be prepared between NOAA and the exhibiting institution in keeping with 36 CFR 79 (see above).

H. **Environmental Consequences** - The applicant should provide an analysis of the extent and nature of potential environmental impacts on sanctuary resources from permitted activity. If impact to natural resources is proposed, the applicant should provide a Site Restoration and Remediation Plan to address any injury or impacts resulting from the project.

IV. **Required Archaeological Documentation and Recording:** The applicant's signature to this Research/Recovery Application signifies intention to provide the following documentation:

A. **Project Log** - Master copies of standard log book sheets shall be supplied to the permittee who shall make sufficient copies and fill them out on a daily basis. Copies of all completed field logs must be turned over to NOAA following the completion of the project.

B. **Artifact Log** - An Artifact Log should be kept at the site and in the storage lab. Each artifact will be assigned a Field Number. A description of the artifact, archaeological provenience data and the recorder's name and the date should be recorded in the log. A copy of the Artifact Log will be turned over to NOAA/SRD at the completion of the project.

C. **Photographs and Videotapes** - Applicant should provide photographs and/or videotapes (optional) of significant individual site features and/or artifact clusters both in situ and after removal. Images should include photo scale, North arrow and date/site name board.

V. **Supporting Information**

A. **Financial Support** - Provide contract number, performance period, and name of sponsoring entity, if any. If none, provide sufficient data to substantiate the fiscal capability to complete the phases of work proposed to be permitted. If artifact

recovery is proposed, financial data must address the resources necessary for the conservation, curation and interpretation of the resulting archaeological collection.

B. Coordination with Research in Progress or Proposed - SRD encourages coordination and cost-sharing with other investigators to enhance scientific capabilities and avoid unnecessary duplication of efforts, where applicable.

C. Professional References - Show evidence of the ability of each team member to perform the assigned tasks for the following personnel:

1. Supervising Archaeologist - The Supervising Archaeologist is responsible for archaeological aspects of the project and need not serve as project manager. The applicant should submit a resume detailing the professional qualifications of the Supervising Archaeologist (including citations and examples of archaeological site reports and professional publications).

In compliance with the "Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation" and the Archaeological Resources Protection Act the Supervising Archaeologist should fulfill the following qualifications:

- A graduate degree in archaeology, anthropology, maritime history equivalent training and experience;
- at least one year of professional experience or equivalent specialized training in archaeological research, administration or management;
- at least four months of supervised field and analytic experience in general North American archaeology and maritime history;
- demonstrated ability to carry research to completion;
- and at least one year of full-time professional experience at a supervisory level in the study of historic marine archaeological resources (for historic shipwreck studies) or prehistoric marine archaeological resources (for submerged prehistoric studies).

This person shall be able to demonstrate ability in comprehensive analysis and interpretation through authorship of reports and monographs;

2. Archaeological Assistants - Archaeological Assistants need not meet Supervising Archaeologist qualifications but will serve under the direction of the Supervising Archaeologist. The applicant should provide the name and experience of all qualified archaeological assistants who will assist the supervising Archaeologist in site documentation and research.

3. Artifact Conservator - The applicant should provide documentation of the Artifact Conservator's demonstrated experience in conservation of artifacts from submerged sites. Professional experience should include experience in the conservation of ferrous and non-ferrous metals, ceramics, glass and organic materials.

D. Letters of Intent - Applicant should provide letters of intent to participate in this project from:

1. Supervising Archaeologist
2. Conservator

E. References - Provide bibliographic references for any citations made in text.

VI. Requests for Sanctuary Support Services - The FKNMS has limited on-site Sanctuary personnel, facilities and equipment that may be used on loan or lease to support research under special circumstances. Requests for support must accompany the permit application and include the following information:

- A. Type of support requested;
- B. Reason for request;
- C. Dates and length of use;
- D. Alternative plans if support is not available.

VII. Compliance with the Federal Archaeological Program and State of Florida NOAA MOA - These guidelines have been prepared in compliance with the Federal laws, standards and guidelines that comprised the Federal Archaeological Program [including Executive order 11593, the National Historic Preservation Act as amended 1992, the Abandoned Shipwreck Act, the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation as well as implementing regulations and guidelines]. Also included are guidelines implemented under Florida Statute 267 and the MOA of January 28, 1997 by and between the State of Florida and NOAA.

Applicant's signature on this application for a Research/ Recovery Permit signifies their intention to comply with all guidelines and conditions noted herein. Applicant understands that failure to comply with any of the requirements of this permit application may prevent re-application for new permits and cause all other outstanding permits to be voided. A permittee who is prevented from re-application for new permits or whose outstanding permits are voided shall be entitled to notice and hearing in accordance with NOAA regulations and the Administrative Procedures Act. (As per Jan. 28, 1997 MOA).

VIII. Public Reporting Burden

The Marine Sanctuary Program is mandated via the Sanctuaries Act to comply with the laws and regulations of the Federal Archaeological Program (FAP) which includes the National Historic Preservation Act of 1966 (NHPA). The NHPA requires that all federal undertakings, including permitting the disturbance of submerged cultural resources (SCRs), be evaluated to assess potential adverse impacts. The information requested in

these guidelines is required to ensure compliance with the federal mandates of the FAP. The information is used to evaluate the potential benefits of the activity, to determine whether the proposed methods will achieve the proposed results, and to evaluate any possible detrimental environmental impacts. It is through this evaluation and the tracking of all cultural resources activities that the NMSP is able to use permitting as one of the management tools to protect submerged cultural resources for which NOAA is the trustee. Submittal of the information requested in these guidelines is required to obtain a permit pursuant to National Marine Sanctuary Regulations (15 CFR part 922).

Applicants are requested to indicate any information that is considered proprietary business information. Such information is typically exempt from disclosure to anyone requesting information pursuant to the Freedom of Information Act (FOIA). NOAA will make all possible attempts to protect such proprietary information, consistent with all applicable FOIA exemptions in 5 U.S.C. 552(b). Typically exempt information includes trade secrets, commercial and financial information (5 U.S.C. 552(b)(4)). Personal information affecting an individual's privacy will also be kept confidential consistent with 5 U.S.C. 552(b)(6).

Public reporting burden for this collection of information is estimated to average thirteen (13) hours per response (application, cruise log, and final report), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Permit Coordinator, NOAA National Marine Sanctuary Program, 1305 East-West Highway (N/ORM6), 11th Floor, Silver Spring, MD 20910.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

APPENDIX 1

Research and Recovery Permit Report Guidelines

Three copies of each report will be submitted to the FKNMS Superintendent. Reports will be reviewed by the SRD/FKNMS Archaeologist and the Florida DHR Archaeologist

I. Seasonal Reports - The permittee will provide a Seasonal Report within sixty (60) days of the conclusion of each dive season for the duration of the permit. A one or two page report should include:

- a summary of the season's activities;
- a discussion of any problems encountered that may require a revision of the permit;
- plans for the next field season based on permittee's assessment of the preceding season's work.

The applicant should also submit copies of pertinent photographs, video, maps, artifact logs, and field logs.

II. Final Report - The permittee will provide a detailed plan for a final site report on the activities and results of the project. The Final Report must be submitted within one (1) year of the completion of field work and artifact conservation.

The bound Final Report will include:

- A. Site Description - a description of the study area;
- B. Site History - a contextual history relating the site to the general history of the region;
- C. Research Design - the original project design and research goals for the project;
- D. Field Work Description - a description of the field activities including a summary of the survey and/or excavation process;
- E. Field Observations - all observations of notable occurrences, patterns, etc.;
- F. Data Analysis - full analysis and results of recovered data and artifacts to also include:
- G. Maps - The applicant should supply the following maps:
 - An overall map showing site in relation to submerged features and nearest land mass (ex. NOAA chart);
 - A pre-excavation plan view (overhead) map showing significant or readily observable exposed artifacts and site features;
 - An overall plan-view site map showing all excavated hull structure;
 - Detailed feature maps for each significant feature to include location of artifacts removed from site. Artifact locations will include the artifact Field Catalogue Number (see 3.e.2 below). If numerous artifacts are retrieved from a specific area they may be listed in table

form and keyed to the map location by an index number. They will relate the artifact positions to features in the overall site map. The feature maps will include 3 different perspectives, including overhead or plan view, side/profile view, and (if practicable) frontal/sectional view;

- All maps should show a grid or grid ticks on the outer border of the map in Loran C, Longitude and Latitude, or other recognized coordinate system. Smaller-scale maps should have grids with X-Y coordinates related to datum on overall site map. Maps should include a bar scale, North arrow, and title block which identifies the map. The title block should include the permit number, permittee's name, and year of the permit.

H. Project Assessment - The Final Report should include a discussion of the applicant's perceived success of the project and recommendations for updating historical contexts and planning goals.

The final report must be reviewed by the Supervising Archaeologist and signed and dated with his/her comments.

III. Conservation Report - The Conservation Report should include an account of all work done on artifacts. Note work done on different materials and/or classes of artifacts, work on significant (unique or fragile) artifacts, and work on composite-type artifacts composed of two or more materials (ex. wood and iron).

The report of the conservation of artifacts should include appendices containing:

- an Artifact List;
- copies of the Conservation Lab Records; and
- before and after photographs of artifacts at the conservation lab.

APPENDIX 2

The following Federal archaeological guidelines may be obtained from The Departmental Consulting Archaeologist, NPS, P.O. Box 37127, Washington, D.C. 20013-7127:

The Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation

Archaeological Resources Protection Act of 1979; Final Uniform Regulations (43 CFR Part 7)

Cf. 36 CFR 79, Curation of Federally-Owned and Administered Archaeological Collections

* with the following exception:

- p.31, line 10 (Artifact Processing...). All recovered artifacts will be photographed. Bulk artifacts may be photographed in groups.

**GUIDELINES FOR SUBMITTING APPLICATIONS AND LOGS FOR FLORIDA
KEYS NATIONAL MARINE SANCTUARY BAITFISH PERMITS**

Florida Keys National Marine Sanctuary (FKNMS) baitfish permits allow the permit holder to catch baitfish within the Sanctuary Preservation Areas (SPAs) using a cast net or modified lampara net.

Permits are issued free of charge and last for one calendar year. Baitfish permits are issued to an individual and may be used on more than one vessel, but may not be used by more than one person. Persons requesting a permit should submit their name, mailing address, and telephone number to the contact person listed below. Boat name(s) and/or documentation number(s) should also be submitted, when known. This information may be submitted by telephone by calling the individual listed below or in writing by fax, email, courier, or regular mail.

All baitfish permit holders are required to maintain a catch log (attached) and submit this log upon expiration of their permit. An electronic version of the Baitfish Permit Log is available on the Florida Keys National Marine Sanctuary web site at http://www.fknms.nos.noaa.gov/research_monitoring/permits.html or by contacting the individual listed below. This log should be printed, filled out, and mailed to the person listed below within 30 days before the permit expires. Please use the following codes for the SPA name on the form:

| SPA NAME | CODE |
|---------------------------|------|
| Carysfort/South Carysfort | CAR |
| The Elbow | ELB |
| Dry Rocks | KYL |
| Grecian Rocks | GDR |
| French Reef | FRE |
| Molasses Reef | MOL |
| Conch Reef | CON |
| Hen and Chickens | HNC |
| Davis Reef | DAV |
| Cheeca Rocks | CHE |
| Alligator Reef | ALL |
| Coffins Patch | COF |
| Sombrero Key | SOM |
| Newfound Harbor Key | NHK |
| Looe Key | LKS |
| Eastern Dry Rocks | EDR |
| Rock Key | RKK |
| Sand Key | SAN |

The information requested is used to evaluate the appropriateness of allowing unlimited baitfish permits in FKNMS SPAs. The information is necessary for the effective management of the FKNMS resources. Submittal of the information requested in these guidelines is required to obtain a permit pursuant to National Marine Sanctuary Regulations (15 CFR part 922). Applicants are requested to indicate any information that is considered proprietary business information. Such information is typically exempt from disclosure to anyone requesting information pursuant to the Freedom of Information Act (FOIA). NOAA will make all possible attempts to protect such proprietary information, consistent with all applicable FOIA exemptions in 5 U.S.C. 552(b). Typically exempt information includes trade secrets, commercial and financial information (5 U.S.C. 552(b)(4)). Personal information affecting an individual's privacy will also be kept confidential consistent with 5 U.S.C. 552(b)(6).

Public reporting burden for this collection of information is estimated to fifteen (15) minutes per response (application and log), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the individual listed below.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

For further information on FKNMS baitfish permits or to obtain a log please write or call:

Ms. Joanne Delaney, Research Interpreter
Florida Keys National Marine Sanctuary
P.O. Box 500368
Marathon, FL 33050
305-743-2437
Fax: 305-743-2357
Email: Joanne.Delaney@noaa.gov

GUIDELINES FOR SUBMITTING APPLICATIONS FOR MONTEREY BAY NATIONAL MARINE SANCTUARY FIREWORKS AUTHORIZATION

A. INTRODUCTION

National Marine Sanctuaries are recognized as resource areas of national significance. Their distinctive characteristics have established them as environmental and historic resources for scientific research and public education. Each Sanctuary has specific regulations in place to safeguard marine resources within its boundaries. The National Marine Sanctuary Program has developed a system of permits and authorizations to review requests to conduct otherwise prohibited activities.

Monterey Bay National Marine Sanctuary (MBNMS) regulations prohibit the discharge or deposition of any material into the waters of the Sanctuary (except for specific material exempted in the regulations). In addition, the regulations prohibit the discharge or deposition of any material outside the boundary of the Sanctuary that subsequently enters the Sanctuary and injures a Sanctuary resource or quality (except for specific material exempted in the regulations). Both prohibitions can be found in the U.S. Code of Federal Regulations (15 CFR Part 922, Subpart M - Monterey Bay National Marine Sanctuary Regulations).

Pyrotechnic devices detonated over or near the ocean produce "fallout" or residue that falls directly into the water or is carried to the water by winds. Deposition of such matter is a violation of Sanctuary regulations governing discharges unless written authorization is issued by the National Marine Sanctuary Program (NMSP). The Sanctuary program is interested in documenting the type, concentration, and mass of chemicals and material entering the water as a result of exploding rockets or shells.

For the above reasons, any individual or organization sponsoring a fireworks display that will affect the Monterey Bay National Marine Sanctuary must apply for Sanctuary authorization to conduct such activity. The guidelines presented below describe the Sanctuary authorization process.

Anyone conducting prohibited activities without a valid National Marine Sanctuary permit or authorization may be subject to the penalties as provided under Section 307 of the National Marine Sanctuaries Act (as amended). A civil penalty of up to \$119,000 for each violation of any regulation may be levied.

B. DEFINITIONS

Aerial shell - a pyrotechnic device launched or fired into the air

Contractor - a state licensed pyrotechnic exhibitor

Display - fireworks display

Fireworks display - a demonstration of pyrotechnic devices requiring a state operator's license

Impact area - perimeter in which aerial shells explode or detonate and deposit debris

Organization sponsor - the party responsible for initiating and/or contracting the fireworks display

Pyrotechnic device - any device containing a combustible substance that is designed to ignite or explode, creating a visual and/or audible effect (includes aerial shells and ground devices)

Shell - aerial shell

C. APPLICATION CONTENTS

Application for Sanctuary authorization to conduct a fireworks display should be submitted by the person (individual) who will assume full supervisory responsibility for the event. An individual will be named in the authorization document in order to identify a sole point of contact for the event. Authorization must be requested by a member of the organization sponsoring the event - not by the contractor performing the fireworks display.

There is no standard fireworks application form. The application may be in letter form and should provide a full description of the agenda, procedures, and pyrotechnic devices associated with executing the display. The letter should include, but is not limited to:

- The general location where the fireworks display will occur
- The date and time that the display will occur
- The duration of the display
- A description of the purpose for (event related to) the display
- Anticipated effects of the display on the Sanctuary or Sanctuary resources
- The name, address, and phone number of the sponsor and authorization holder
- The name, address, and state license number of the company or party that will actually handle and ignite pyrotechnic devices
- A common-name description of each type of pyrotechnic device to be ignited or launched
- A description of the contents, dimensions, and weight of each type of pyrotechnic device to be ignited or launched
- A description of the chemical elements (and respective volumes) present in each type of pyrotechnic device to be ignited or launched
- The number of aerial shells that will be launched
- A description of the range and detonation altitude of each shell type
- The exact location at which pyrotechnic devices will be ignited or launched
- A description of the impact area (a map of the impact area is acceptable)

Copies of the following documents are required as part of the application:

- Local Fire Marshall Permit
- Applicable City and County Use Permits

- Certificate of Comprehensive General Liability Insurance covering the display sponsor against damages caused by the fireworks display
- U.S. Coast Guard Marine Events Permit if the fireworks display will occur over the water or will in any way affect navigation

If fireworks are to be ignited or launched from an offshore platform, the details of such operation must be included in the authorization request. The Sanctuary Superintendent may request additional information as needed to consider any authorization request.

D. SUBMISSION OF AUTHORIZATION REQUESTS

One (1) copy of requests for authorization should be sent to the MBNMS Permit Coordinator. Authorization applications must be submitted at least forty-five (45) days in advance of the requested effective date to allow sufficient time for evaluation and processing. Sensitive or complicated requests, or requests for Sanctuary support should be submitted 90 days in advance. If additional time is required for review, the applicant will be notified within 20 days of the receipt of the request. Requests for authorizations must be addressed to Superintendent, Monterey Bay National Marine Sanctuary, 299 Foam Street, Monterey, California 93940.

E. EVALUATION OF AUTHORIZATION REQUESTS

Authorization applications are reviewed for completeness and adherence to these guidelines. Applicants will be contacted for clarification if applications are incomplete. Complete applications are reviewed by National Marine Sanctuary Program officials and, where necessary, by outside experts. Applications are judged on the basis of: 1) relevance or importance to the Sanctuary; 2) scientific and educational merits; 3) appropriateness and environmental consequences of the technical approach; and 4) whether the proposed effort is more appropriately conducted outside the Sanctuary.

F. CONDITIONS OF AUTHORIZATIONS

Based on the reviews of the authorization application, the MBNMS will approve or deny the authorization. If denied, applicants are notified of the reason(s) for denial and informed of the appeal process. If approved, the Sanctuary Superintendent will issue the authorization.

Authorization holders must counter-sign the authorization and return copies to the MBNMS prior to conducting the approved activities. Copies must be signed and returned within 10 days of receipt by the authorization holder. If not returned within 30 days, the authorization will automatically be canceled.

Authorization holders must be present during all authorized operations. Authorizations are non-transferable. Authorization holders must abide by all provisions set forth in the authorization as well as applicable Sanctuary regulations. Project summaries and technical information are incorporated into the conditions of the authorization. Authorized activities must be conducted with adequate safeguards for the environment. To the extent possible, the environment shall be returned to the conditions which existed prior to the authorized activity.

Two important conditions of any authorization are that the authorization holder submit a project report and log to the appropriate Sanctuary office within 30 days of the authorization's expiration date. The project report is a brief (1-2) page statement summarizing the results of authorized activities. A log should list the days spent in the Sanctuary as well as activities pursued, approximate positions, and general observations. Project reports are used in the Sanctuary interpretive programs and logs are used in the assessment of Sanctuary activities.

The Sanctuary Superintendent may immediately amend, suspend, or revoke a authorization granted pursuant to these guidelines and Sanctuary regulations, in whole or in part, temporarily or indefinitely, if in his/her view the authorization holder(s) acted in violation of the terms of the authorization or of applicable Sanctuary regulations, or for any good cause shown. Formal notice of such action shall be subsequently communicated in writing to the authorization holder and shall set forth the reason for the action taken. The authorization holder in relation to whom the action is taken may appeal the action as provided for in the Sanctuary regulations.

G. AMENDMENTS TO ACTIVE AUTHORIZATIONS

Requests for amendments to active authorizations (e.g. change in study design or other form of amendment) must conform to these guidelines. Persons desiring to continue authorized activities in the Sanctuary must reapply for an extension of his/her current authorization before it expires. Reference to the original application may be given in lieu of a new application, provided the scope of work does not change significantly and all required logs and project summaries pertinent to the original authorization have been submitted to and approved by the Sanctuary.

H. MONITORING PERFORMANCE

Authorized activities will be monitored to ensure compliance with the conditions of the authorization. Sanctuary personnel may periodically assess work in progress by visiting the event location and observing any authorized activity or by reviewing any required reports. The discovery of any irregularities in conformance to the authorization shall be promptly reported and appropriate action shall be taken. Authorized activities will be evaluated and the findings used to evaluate future applications.

I. REPORTING BURDEN

The information requested in these guidelines is necessary to evaluate whether issuance of an authorization is appropriate. The information is used to evaluate the potential benefits of the activity, to determine whether the proposed methods will achieve the proposed results, and to evaluate any possible detrimental environmental impacts. It is through this evaluation and the tracking of all otherwise prohibited activities that the National Marine Sanctuary Program is able to use permitting as one of the management tools to protect Sanctuary resources and qualities. Submittal of the information requested in these guidelines is required to obtain an authorization pursuant to National Marine Sanctuary Regulations (15 CFR part 922). Applicants are requested to indicate any information that is considered proprietary business information. Such information is typically exempt from disclosure to anyone requesting information pursuant to the

Freedom of Information Act (FOIA). NOAA will make all possible attempts to protect such proprietary information, consistent with all applicable FOIA exemptions in 5 U.S.C. 552(b). Typically exempt information includes trade secrets, commercial and financial information (5 U.S.C. 552(b)(4)). Personal information affecting an individual's privacy will also be kept confidential consistent with 5 U.S.C. 552(b)(6).

Public reporting burden for this collection of information is estimated to average one (1) hour per response (application, cruise log, and final report), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to John Armor, Permit Coordinator, NOAA National Marine Sanctuary Program, 1305 East-West Highway (N/ORM6), 11th Floor, Silver Spring, MD 20910.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

J. FURTHER INFORMATION

For further information on the National Marine Sanctuary Program, write or call the Monterey Bay National Marine Sanctuary or the National Marine Sanctuary Program office contacts listed below:

MONTEREY BAY NATIONAL MARINE SANCTUARY

Mr. William Douros, Superintendent
Monterey Bay National Marine Sanctuary
ATTN. Scott Kathey, Permit Coordinator
299 Foam Street
Monterey, CA 93940
831-647-4201
Fax: 831-647-4250
montereybay@noaa.gov

NATIONAL MARINE SANCTUARY PROGRAM

John Armor, Permit Coordinator
National Marine Sanctuary Program, NOAA
1305 East-West Highway (N/ORM6)
Silver Spring, MD 20910-3282
301-713-3125, extension 117
Fax: 301-713-0404
John.armor@noaa.gov

GUIDELINES FOR SUBMITTING APPLICATIONS FOR NATIONAL MARINE SANCTUARY OVERFLIGHT AUTHORIZATIONS/PERMITS

A. INTRODUCTION

National Marine Sanctuaries are recognized as resource areas of national significance. Their distinctive characteristics have established them as environmental and historic resources for scientific research and public education. Each Sanctuary has specific regulations in place to safeguard marine resources within its boundaries. The National Marine Sanctuary Program has developed a system of permits and authorizations to review requests to conduct otherwise prohibited activities. The guidelines presented below describe the Sanctuary authorization/permit process.

Overflights below 1000 feet within one nautical mile of any of the islands within the Channel Islands National Marine Sanctuary or Gulf of the Farallones National Marine Sanctuary is prohibited by Sanctuary regulations at 15 CFR Part 922.71(a)(5) and 922.82(a)(5) respectively. Overflights below 1000 feet altitude within four prescribed zones of the Monterey Bay National Marine Sanctuary are prohibited by Sanctuary regulation 15 CFR Part 922.132(a)(6) to protect critical seabird and marine mammal habitat from disturbance. Overflights below 2000 feet altitude are prohibited within four prescribed zones of the Olympic Coast National Marine Sanctuary by regulations 15 CFR Part 922.152(a)(6). Any planned overflight that will violate Sanctuary regulations must first be approved by issuance of a Sanctuary "authorization" or "permit".

Authorizations are issued by the Sanctuary manager or superintendent under special circumstances for non-research/education related activities otherwise prohibited by Sanctuary regulations. An authorization must be issued in conjunction with a valid lease, permit, license, approval or other authorization issued by any Federal, State, or local authority of competent jurisdiction.

Permits are issued by the Sanctuary manager or superintendent for research and education related activities otherwise prohibited by Sanctuary regulations. The manager or superintendent can issue such permits if he/she determines that the activity will have only negligible short-term adverse effects on Sanctuary resources and qualities and will further research related to Sanctuary resources and qualities or further the educational, natural, or historical resource value of the Sanctuary.

Anyone conducting prohibited activities without a valid National Marine Sanctuary permit or authorization may be subject to the penalties as provided under Section 307 of the National Marine Sanctuaries Act (as amended). A civil penalty of up to \$119,000 for each violation of any regulation may be levied.

B. APPLICATION CONTENTS

1. Cover Sheet or Letter: The cover sheet or letter shall identify the following: 1) area of the National Marine Sanctuary where the proposed activity will take place; 2) title of the project; 3)

name, address, telephone number, and affiliation of the applicant and responsible authorization/permit holder; 4) name, address, telephone number, and affiliation of and relationship of any colleagues covered by the authorization/permit; 5) project duration; and 6) signature of the applicant. The cover letter must specify the individual(s) who will assume responsibility for the requested authorization/permit. The individual(s) must have the authority to control the activity and assure that permit conditions are met. It is best that the person(s) assuming responsibility for the authorization/permit submit the application. This helps reduce processing time if questions arise or additional information is required.

2. Project Summary or Abstract: A 250-word (maximum) summary shall include a brief statement of objectives, methods to be used, and why it is preferable that the low-altitude overflight occur within an overflight restriction zone(s) of the Sanctuary. The summary shall also specify the significance of the proposed work to the Sanctuary or to the National Marine Sanctuary System.

3. Technical Information: This includes clear, concise, and complete statements in the following categories:

a. Purpose. Reason for the activity.

b. Objectives. State the objectives of the project.

c. Project Significance. Explain why the project should be performed in the Sanctuary and the potential benefits to the Sanctuary.

d. Methods. Describe the tasks required to accomplish the project's objectives. Provide an adequate description of methods and procedures. Describe the rationale for selecting the proposed methods over any alternative methods. Specify the exact location of work within the Sanctuary and provide a map showing the proposed project location(s) and a description of the habitat area affected. Also indicate the intended start date, frequency, anticipated duration of the activity, and hours of flight operations. Specify the number and type of aircraft to be used (make and model), aircraft markings and tail numbers, the lowest planned flight altitude, the overall flight plan and schedule, detailed flight patterns, (repeat transects, circling, hovering, diving, etc.), refueling plan, and landing/takeoff locations. Identify any special equipment that will be mounted on, lowered, or towed from the aircraft. Identify any object planned for release from the aircraft. Also submit a communications plan that identifies call signs and frequencies for all aircraft and project participants.

e. Personnel. Identify the individuals who would be supervising project activities and the name of the pilot(s) and aviation company(ies) involved. Provide qualifications and evidence of ability to perform and supervise tasks. The authorization/permit holder is ultimately responsible for all activities carried out under a Sanctuary authorization or permit. Provide a copy of a current Federal Aviation Administration (FAA) pilot's license and FAA medical certificate for each pilot operating aircraft as part of the proposed activity within the Sanctuary.

4. Environmental Consequences

Discuss the environmental consequences of conducting an otherwise prohibited activity and indicate whether the activity could be conducted outside the Sanctuary and still accomplish the project's objectives. Specify the consequences and explain how the benefits of the activity will outweigh the disadvantages or environmental consequences (short and long term).

5. Supporting Information

- a. Copies of Other Permits. Applicant must include, if applicable, copies of other Federal, state and/or local permits issued with regards to this authorization/permit request. For example, County permits, California Department of Fish and Game, California State Parks, etc.
- b. Other Sanctuary Permits or Authorizations. Applicants should include a listing of all their previous Sanctuary permits/authorizations.

C. SUBMISSION OF AUTHORIZATION/PERMIT REQUESTS

One (1) copy of requests for permits should be sent to the appropriate sanctuary contact listed in section I below. Authorization applications must be submitted at least forty-five (45) days in advance of the requested effective date to allow sufficient time for evaluation and processing. Sensitive or complicated requests, or requests for Sanctuary support should be submitted 90 days in advance. If additional time is required for review, the applicant will be notified within 20 days of the receipt of the request. Requests for permits must be addressed to the manager or superintendent of the Sanctuary in which the activities are to be conducted. A listing of their addresses and phone numbers can be found in Section I.

D. EVALUATION OF AUTHORIZATION/PERMIT REQUESTS

Authorization/permit applications are reviewed for completeness and adherence to these guidelines. Applicants will be contacted for clarification if applications are incomplete. Complete applications are reviewed by on-site Sanctuary personnel, NOAA program officials, and, where necessary, peer-reviewed by outside experts. Applications are judged on the basis of: 1) relevance or importance to the Sanctuary; 2) scientific and educational merits; 3) appropriateness and environmental consequences of the technical approach; and 4) whether the proposed activity is more appropriately conducted outside the Sanctuary.

E. CONDITIONS OF AUTHORIZATIONS/PERMITS

Based on the reviews of the authorization/permit application, the program will approve or deny the proposed activity. If denied, applicants are notified of the reason(s) for denial and informed of the appeal process. Approved authorizations and permits are issued by the Sanctuary manager or superintendent.

Authorization/permit holders must counter-sign the authorization/permit and return copies to on-site Sanctuary personnel prior to conducting the approved activities. Copies must be signed and

returned within 10 days of receipt by the applicant. If not returned within 30 days, the authorization/permit will automatically be canceled.

Authorization/ permit holders must be present during all authorized operations. Authorizations and permits are non-transferable. Authorization/permit holders must abide by all provisions set forth in the authorization/permit as well as applicable Sanctuary regulations. Project summaries and technical information are incorporated into the conditions of the authorization/permit. Authorized activities must be conducted with adequate safeguards for the environment. To the extent possible, the environment shall be returned to the conditions which existed prior to the authorized activity.

Two important conditions of any authorization/permit are that the authorization/permit holder submit a project report and log to the Sanctuary office within 30 days of the authorization/permit's expiration date. The project report is a brief (1-2) page statement summarizing the results of authorized activities. A log should list the days spent in the Sanctuary as well as activities pursued, approximate positions, and general observations. Project reports are used in Sanctuary interpretive programs and logs are used in the assessment of Sanctuary activities.

The Sanctuary manager or superintendent may immediately amend, suspend, or revoke an authorization/permit granted pursuant to these guidelines and Sanctuary regulations, in whole or in part, temporarily or indefinitely, if in his/her view the authorization/permit holder(s) acted in violation of the terms of the authorization/permit or of applicable Sanctuary regulations, or for any good cause shown. Formal notice of such action shall be subsequently communicated in writing to the authorization/permit holder and shall set forth the reason for the action taken. The authorization/permit holder in relation to whom the action is taken may appeal the action as provided for in the Sanctuary regulations.

F. AMENDMENTS TO ACTIVE AUTHORIZATIONS/PERMITS

Requests for amendments to active authorizations/permits (e.g. change in study design or other form of amendment) must conform to these guidelines. Persons desiring to continue authorized activities in the Sanctuary must reapply for an extension of his/her current authorization/permit before it expires. Reference to the original application may be given in lieu of a new application, provided the scope of work does not change significantly and all report logs and project summaries pertinent to the original authorization/permit have been submitted to and approved by the Sanctuary.

G. MONITORING PERFORMANCE

Authorized activities will be monitored to ensure compliance with the conditions of the authorization/permit. Sanctuary personnel may periodically assess work in progress by visiting the project location and observing any authorized activity or by reviewing any required reports. The discovery of any irregularities in conformance to the authorization/permit shall be promptly reported and appropriate action shall be taken. Authorized activities will be evaluated and the findings used to evaluate future applications.

H. REPORTING BURDEN

The information requested in these guidelines is necessary to evaluate whether issuance of an authorization/permit is appropriate. The information is used to evaluate the potential benefits of the activity, to determine whether the proposed methods will achieve the proposed results, and to evaluate any possible detrimental environmental impacts. It is through this evaluation and the tracking of all otherwise prohibited activities that the National Marine Sanctuary Program is able to use permitting as one of the management tools to protect Sanctuary resources and qualities. Submittal of the information requested in these guidelines is required to obtain a permit or authorization pursuant to National Marine Sanctuary Regulations (15 CFR part 922). Applicants are requested to indicate any information that is considered proprietary business information. Such information is typically exempt from disclosure to anyone requesting information pursuant to the Freedom of Information Act (FOIA). NOAA will make all possible attempts to protect such proprietary information, consistent with all applicable FOIA exemptions in 5 U.S.C. 552(b). Typically exempt information includes trade secrets, commercial and financial information (5 U.S.C. 552(b)(4)). Personal information affecting an individual's privacy will also be kept confidential consistent with 5 U.S.C. 552(b)(6).

Public reporting burden for this collection of information is estimated to average one (1) hour per response (application, cruise log, and final report), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to John Armor, Permit Coordinator, NOAA National Marine Sanctuary Program, 1305 East-West Highway (N/ORM6), 11th Floor, Silver Spring, MD 20910.

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I. FURTHER INFORMATION

For further information on the National Marine Sanctuary Program, write or call the National Marine Sanctuary Program office or the on-site sanctuary contacts listed below:

NATIONAL MARINE SANCTUARY PROGRAM

Mr. John Armor, Permit Coordinator
National Marine Sanctuary Program, NOAA
1305 East-West Highway (N/ORM6)
Silver Spring, MD 20910-3282
301-713-3125, x117
Fax: 301-713-0404
John.armor@noaa.gov

CHANNEL ISLANDS NATIONAL MARINE SANCTUARY

LCDR Matt Pickett, Manager
Channel Islands National Marine Sanctuary
113 Harbor Way
Santa Barbara, California 93109
805-966-7107
Fax: 805-568-1582
channelislands@noaa.gov

GULF OF THE FARALLONES NATIONAL MARINE SANCTUARY

Mr. Ed Ueber, Manager
Gulf of the Farallones National Marine Sanctuary
Fort Mason, Building #201
San Francisco, California 94123
415-556-3509
Fax: 415-556-1660
farallones@noaa.gov

MONTEREY BAY NATIONAL MARINE SANCTUARY

Mr. William Douros, Superintendent
Monterey Bay National Marine Sanctuary
ATTN. Scott Kathey, Permit Coordinator
299 Foam Street, Suite D
Monterey, CA 93940
831-647-4201
Fax: 831-647-4250
montereybay@noaa.gov

OLYMPIC COAST NATIONAL MARINE SANCTUARY

Ms Carol Bernthal, Superintendent
Olympic Coast National Marine Sanctuary
138 West First Street
Port Angeles, WA 98362
360-457-6622
Fax: 360-457-8496
olympiccoast@noaa.gov

GUIDELINES FOR SUBMITTING APPLICATIONS FOR MONTEREY BAY NATIONAL MARINE SANCTUARY CONSTRUCTION AUTHORIZATION

A. INTRODUCTION

National Marine Sanctuaries are recognized as resource areas of national significance. Their distinctive characteristics have established them as environmental and historic resources of national significance. With yearly increases in the number of requests to conduct construction activities in National Marine Sanctuaries, guidelines for managing and monitoring such projects are necessary to ensure compatibility with Sanctuary goals and objectives and all other Sanctuary activities.

The guidelines presented below describe the Sanctuary authorization process.

Authorizations may be issued by the Superintendent, Monterey Bay National Marine Sanctuary (MBNMS) under special circumstances for activities otherwise prohibited by Sanctuary regulations if 1) an activity has been authorized by a valid lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation by any Federal, state, or local authority of competent jurisdiction and 2) the Superintendent finds that the activity will not cause long-term or severe impacts to Sanctuary resources, and 3) the applicant complies with all applicable regulations and any specific conditions/terms specified by the Superintendent.

Anyone conducting prohibited activities without a valid National Marine Sanctuary permit or authorization may be subject to the penalties as provided under Section 307 of the National Marine Sanctuaries Act (as amended). A civil penalty of up to \$119,000 for each violation of any regulation may be levied.

B. APPLICATION CONTENTS

1. Cover Sheet or Letter: The cover sheet or letter shall identify the following, if applicable: 1) name of the National Marine Sanctuary in which the proposed activity will take place; 2) title of the project; 3) name, address, telephone number, and affiliation of the applicant; 4) name, address, telephone number, and affiliation of and relationship of any colleagues covered by the authorization; 5) project duration; 6) funding source; and 7) signature of the applicant.

2. Project Summary or Abstract: A 250-word (maximum) summary shall include a brief statement of objectives, methods to be used, and why it is preferable that the activity occur within the boundaries of the Sanctuary. This summary shall specify objectives, methods to be used, and impact of the proposed work to the affected Sanctuary. The summary shall be suitable for use in the public press.

3. Technical Information: This includes clear, concise, and complete statements in the following categories:

a. Objectives. State the objectives of the project.

b. **Project Significance.** Explain why the project must be performed in the Sanctuary and any potential benefits to the Sanctuary.

c. **Methods.** It is very important to provide detailed descriptions in this section. Providing insufficient details may delay review of your application. Describe the tasks required to accomplish the project's objectives. Provide a copy of the construction plan to include comprehensive, detailed descriptions of methods and procedures for accomplishing various tasks (e.g. type of equipment to be used, installation techniques, materials, etc.). Describe the rationale for selecting the proposed methods over any alternative methods. For all authorizations, specify the exact location of work within the Sanctuary and provide a map showing the proposed study or project location(s) and a description of the habitat at the project site. If not to scale, maps must be annotated to describe depth and planned dimensions of the constructed/installed object and the impact area. Maps should also indicate the position of the mean-lower-low-water and mean-high-water lines relative to the project site and the survey data used to define these lines. Also provide details concerning any maintenance or future modifications associated with the project.

d. **Personnel.** Identify the individuals who would be supervising project activities. Provide qualifications and evidence of ability to perform and supervise tasks. The authorization holder is ultimately responsible for all activities carried out under this authorization.

4. Environmental Consequences

Discuss the environmental consequences of conducting an otherwise prohibited activity and indicate whether the activity could be conducted outside the Sanctuary and still accomplish the project's objectives. Specify the consequences and explain how the benefits of the activity will outweigh the disadvantages or environmental consequences (short and long term).

5. Supporting Information

a. **Financial Support.** Provide contract number, performance period, and name of sponsoring agency, if applicable.

b. **Copies of Other Permits.** Applicant must include, if applicable, copies of other Federal, state and/or local permits or authorizations issued with regard to this authorization request. For example, EPA, U.S. Army Corps of Engineers, California Coastal Commission, etc.

c. **Other Sanctuary Permits.** Applicants should include a simple listing of all their previous Sanctuary permits or authorizations.

C. SUBMISSION OF AUTHORIZATION REQUESTS

One (1) copy of requests for authorization should be sent to the MBNMS Permit Coordinator. Permit applications must be submitted at least forty-five (45) days in advance of the requested effective date to allow sufficient time for evaluation and processing. Sensitive or complicated requests, or requests for Sanctuary support should be submitted 90 days in advance. If additional

time is required for review, the applicant will be notified within 20 days of the receipt of the request. Requests for authorizations must be addressed to Superintendent, Monterey Bay National Marine Sanctuary, 299 Foam Street, Monterey, California 93940.

D. EVALUATION OF AUTHORIZATION REQUESTS

Authorization applications are reviewed for completeness and adherence to these guidelines. Applicants will be contacted for clarification if applications are incomplete. Complete applications are reviewed by on-site Sanctuary personnel, and, where necessary, peer-reviewed by outside experts. Applications are judged on the basis of: 1) relevance or importance to the Sanctuary; 2) appropriateness and environmental consequences of the technical approach; and 3) whether the proposed effort is more appropriately conducted outside the Sanctuary.

E. CONDITIONS OF AUTHORIZATIONS

Based on the reviews of the authorization application, the Sanctuary Superintendent will approve or deny the request. If denied, applicants are notified of the reason(s) for denial and informed of the appeal process. Appeals are reviewed by the Director, Office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration (NOAA), Silver Spring, Maryland. If approved, the Sanctuary Superintendent will issue the authorization.

Authorization holders must counter-sign the authorization and return copies to the MBNMS office prior to conducting the authorization activities. Copies must be signed and returned within 10 days of receipt by the authorization holder. If not returned within 30 days, the authorization will automatically be canceled. A NOAA/Sanctuary flag may be issued by the Sanctuary to authorization holders for use while conducting authorized activities at sea. This requirement not only assures that Sanctuary enforcement personnel are aware of authorized activities, but also alerts other Sanctuary users that such activities are in progress. The NOAA/Sanctuary flag must be returned to the Sanctuary office upon completion of the research and no later than 30 days after the authorization expiration date.

Permits must be carried by the work supervisor and aboard servicing vessels and made available on request for inspection by Sanctuary personnel. For underwater diving activities, it is recommended that a copy of the authorization be laminated and available for display.

Authorization holders must be present during all authorization activities. Authorizations and NOAA/Sanctuary flags are non-transferable. Authorization holders must abide by all provisions set forth in the authorization as well as applicable Sanctuary regulations. Project summaries and technical information are incorporated into the conditions of the authorization. Authorized activities must be conducted with adequate safeguards for the environment. To the extent possible, the environment shall be returned to the conditions which existed prior to the authorized activity.

Two important conditions of any authorization are that the authorization holder submit a project report and log to the appropriate Sanctuary office within 30 days of the authorization's expiration date. The project report is a brief (1-2) page statement summarizing the results of authorization

activities. A log should list the days spent in the Sanctuary as well as activities pursued, approximate locations, and general descriptions of the work performed each day. Project reports are used in the Sanctuary interpretive programs and logs are used in the assessment of Sanctuary activities.

The Sanctuary Superintendent may immediately amend, suspend, or revoke an authorization granted pursuant to these guidelines and Sanctuary regulations, in whole or in part, temporarily or indefinitely, if in his/her view the authorization holder(s) acted in violation of the terms of the authorization or of applicable Sanctuary regulations, or for any good cause shown. Formal notice of such action shall be subsequently communicated in writing to the authorization holder and shall set forth the reason for the action taken. The authorization holder in relation to whom the action is taken may appeal the action as provided for in the Sanctuary regulations.

F. AMENDMENTS TO ACTIVE AUTHORIZATIONS

Requests for amendments to active authorization (e.g. change in project design or other form of amendment) must conform to these guidelines. Persons desiring to continue authorized activities in the Sanctuary must reapply for an extension of his/her current authorization before it expires. Reference to the original application may be given in lieu of a new application, provided the scope of work does not change significantly and all logs and project summaries pertinent to the original authorization have been submitted to and approved by the Sanctuary Superintendent.

G. MONITORING PERFORMANCE

Authorized activities will be monitored to ensure compliance with the conditions of the authorization. Sanctuary personnel may periodically assess work in progress by visiting the work site and observing any authorized activity or by reviewing any required reports. The discovery of any irregularities in conformance to the authorization shall be promptly reported and appropriate action shall be taken. Authorized activities will be evaluated and the findings used to evaluate future applications.

H. REPORTING BURDEN

The information requested in these guidelines is necessary to evaluate whether issuance of an authorization is appropriate. The information is used to evaluate the potential benefits of the activity, to determine whether the proposed methods will achieve the proposed results, and to evaluate any possible detrimental environmental impacts. It is through this evaluation and the tracking of all otherwise prohibited activities that the National Marine Sanctuary Program is able to use permitting as one of the management tools to protect Sanctuary resources and qualities. Submittal of the information requested in these guidelines is required to obtain an authorization pursuant to National Marine Sanctuary Regulations (15 CFR part 922). Applicants are requested to indicate any information that is considered proprietary business information. Such information is typically exempt from disclosure to anyone requesting information pursuant to the Freedom of Information Act (FOIA). NOAA will make all possible attempts to protect such proprietary information, consistent with all applicable FOIA exemptions in 5 U.S.C. 552(b). Typically exempt information includes trade secrets, commercial and financial information (5

U.S.C. 552(b)(4)). Personal information affecting an individual's privacy will also be kept confidential consistent with 5 U.S.C. 552(b)(6).

Public reporting burden for this collection of information is estimated to average one (1) hour per response (application, cruise log, and final report), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to John Armor, Permit Coordinator, NOAA National Marine Sanctuary Program, 1305 East-West Highway (N/ORM6), 11th Floor, Silver Spring, MD 20910.

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I. FURTHER INFORMATION

For further information on the National Marine Sanctuary Program, write or call the Monterey Bay National Marine Sanctuary or the National Marine Sanctuary Program office contacts listed below:

MONTEREY BAY NATIONAL MARINE SANCTUARY

Mr. William Douros, Superintendent
Monterey Bay National Marine Sanctuary
ATTN. Scott Kathey, Permit Coordinator
299 Foam Street
Monterey, CA 93940
831-647-4201
Fax: 831-647-4250
montereybay@noaa.gov

NATIONAL MARINE SANCTUARY PROGRAM

Mr. John Armor, Permit Coordinator
National Marine Sanctuary Program, NOAA
1305 East-West Highway (N/ORM6)
Silver Spring, MD 20910-3282
301-713-3125, extension 117
Fax: 301-713-0404
John.armor@noaa.gov

land either from a surface and/or subsurface source.

1. Surface water: This is water flowing over the ground in the form of streams. Local variation in runoff is dependent upon the nature of the soil (porosity and solubility), degree of surface slope, vegetational type and development, local climatic conditions, and volume and intensity of precipitation.

2. Subsurface water: This refers to the precipitation that has been absorbed by the soil and stored below the surface. The distribution of subsurface water depends on local climate, topography, and the porosity and permeability of the underlying soils and rocks. There are two main subtypes of surface water:

a. Vadose water: This is water in the soil above the water table. Its volume with respect to the soil is subject to considerable fluctuation.

b. Groundwater: This is water contained in the rocks below the water table, is usually of more uniform volume than vadose water, and generally follows the topographic relief of the land being high hills and sloping into valleys.

GROUP III—CHEMICAL

A. Salinity. This reflects a complex mixture of salts, the most abundant being sodium chloride, and is a very critical factor in the distribution and maintenance of many estuarine organisms. Based on salinity, there are two basic estuarine types and eight different salinity zones (expressed in parts per thousand-ppt.)

1. Positive estuary: This is an estuary in which the freshwater influx is sufficient to maintain mixing, resulting in a pattern of increasing salinity toward the estuary mouth. It is characterized by low oxygen concentration in the deeper waters and considerable organic content in bottom sediments.

2. Negative estuary: This is found in particularly arid regions, where estuary evaporation may exceed freshwater inflow, resulting in increased salinity in the upper part of the basin, especially if the estuary mouth is restricted so that tidal flow is inhibited. These are typically very salty (hyperhaline), moderately oxygenated at depth, and possess bottom sediments that are poor in organic content.

3. Salinity zones (expressed in ppt):

a. Hyperhaline—greater than 40 ppt.

b. Euhaline—40 ppt to 30 ppt.

c. Mixhaline—30 ppt to 0.5 ppt.

(1) Mixoeuhaline—greater than 30 ppt but less than the adjacent euhaline sea.

(2) Polyhaline—30 ppt to 18 ppt.

(3) Mesohaline—18 ppt to 5 ppt.

(4) Oligohaline—5 ppt to 0.5 ppt.

d. Limnetic: Less than 0.5 ppt.

B. pH Regime: This is indicative of the mineral richness of estuarine waters and falls into three main categories:

1. Acid: Waters with a pH of less than 5.5.

2. Circumneutral: A condition where the pH ranges from 5.5 to 7.4.

3. Alkaline: Waters with a pH greater than 7.4.

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

Subpart A—General

Sec.

922.1 Applicability of regulations.

922.2 Mission, goals, and special policies.

922.3 Definitions.

922.4 Effect of National Marine Sanctuary designation.

Subpart B—Site Evaluation List (SEL)

922.10 General.

Subpart C—Designation of National Marine Sanctuaries

922.20 Standards and procedures for designation.

922.21 Selection of active candidates.

922.22 Development of designation materials.

922.23 Coordination with States and other Federal agencies.

922.24 Congressional documents.

922.25 Designation determination and findings.

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AUTHORITY: 16 U.S.C. 1431 *et seq.*

SOURCE: 60 FR 66877, Dec. 27, 1995, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 922 appear at 62 FR 3789, Jan. 27, 1997; 62 FR 67724, Dec. 30, 1997.

Subpart A—General

§ 922.1 Applicability of regulations.

Unless noted otherwise, the regulations in Subparts A, D and E apply to all thirteen National Marine Sanctuaries for which site-specific regulations appear in Subparts F through R, respectively. Subparts B and C apply to the site evaluation list and to the designation of future Sanctuaries.

[65 FR 39055, June 22, 2000]

§ 922.2 Mission, goals, and special policies.

(a) In accordance with the standards set forth in title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, also known as the National Marine Sanctuaries Act (Act) the mission of the National Marine Sanctuary program (Program) is to identify, designate and manage areas of the marine environment of special national, and in some cases international, significance due to their conservation,

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recreational, ecological, historical, research, educational, or aesthetic qualities.

(b) The goals of the Program are to carry out the mission to:

(1) Identify and designate as National Marine Sanctuaries areas of the marine environment which are of special national significance;

(2) Provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities;

(3) Support, promote, and coordinate scientific research on, and monitoring of, the resources of these marine areas, especially long-term monitoring and research of these areas;

(4) Enhance public awareness, understanding, appreciation, and wise use of the marine environment;

(5) Facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities;

(6) Develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas;

(7) Create models of, and incentives for, ways to conserve and manage these areas;

(8) Cooperate with global programs encouraging conservation of marine resources; and

(9) Maintain, restore, and enhance living resources by providing places for species that depend upon these marine areas to survive and propagate.

(c) To the extent consistent with the policies set forth in the Act, in carrying out the Program's mission and goals:

(1) Particular attention will be given to the establishment and management of marine areas as National Marine Sanctuaries for the protection of the area's natural resource and ecosystem values; particularly for ecologically or

economically important or threatened species or species assemblages, and for offshore areas where there are no existing special area protection mechanisms;

(2) The size of a National Marine Sanctuary, while highly dependent on the nature of the site's resources, will be no larger than necessary to ensure effective management;

(d) Management efforts will be coordinated to the extent practicable with other countries managing marine protected areas;

(e) Program regulations, policies, standards, guidelines, and procedures under the Act concerning the identification, evaluation, registration, and treatment of historical resources shall be consistent, to the extent practicable, with the declared national policy for the protection and preservation of these resources as stated in the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, the Archeological and Historical Preservation Act of 1974, 16 U.S.C. 469 *et seq.*, and the Archeological Resources Protection Act of 1979 (ARPA), 16 U.S.C. 470aa *et seq.* The same degree of regulatory protection and preservation planning policy extended to historical resources on land shall be extended, to the extent practicable, to historical resources in the marine environment within the boundaries of designated National Marine Sanctuaries. The management of historical resources under the authority of the Act shall be consistent, to the extent practicable, with the Federal archeological program by consulting the Uniform Regulations, ARPA (43 CFR part 7) and other relevant Federal regulations. The Secretary of the Interior's Standards and Guidelines for Archeology may also be consulted for guidance. These guidelines are available from the Office of Ocean and Coastal Management at (301) 713-3125.

§ 922.3 Definitions.

Act means title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.*, also known as the National Marine Sanctuaries Act.

Active Candidate means a site selected by the Secretary from the Site Evaluation List for further consideration for possible designation as a National Marine Sanctuary.

Assistant Administrator means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration (NOAA), or designee.

Benthic community means the assemblage of organisms, substrate, and structural formations found at or near the bottom that is periodically or permanently covered by water.

Commercial fishing means any activity that results in the sale or trade for intended profit of fish, shellfish, algae, or corals.

Conventional hook and line gear means any fishing apparatus operated aboard a vessel and composed of a single line terminated by a combination of sinkers and hooks or lures and spooled upon a reel that may be hind- or electrically operated, hand-held or mounted. This term does not include bottom longlines.

Cultural resources means any historical or cultural feature, including archaeological sites, historic structures, shipwrecks, and artifacts.

Director means, except where otherwise specified, the Director of the Office of Ocean and Coastal Resource Management, NOAA, or designee.

Exclusive economic zone means the exclusive economic zone as defined in the Magnuson Fishery Conservation and Management Act, 16 U.S. 1801 *et seq.*

Fish wastes means waste materials resulting from commercial fish processing operations.

Historical resource means any resource possessing historical, cultural, archaeological or paleontological significance, including sites, contextual information, structures, districts, and objects significantly associated with or representative of earlier people, cultures, maritime heritage, and human activities and events. Historical resources include "submerged cultural resources", and also include "historical properties," as defined in the National Historic Preservation Act, as amended, and its implementing regulations, as amended.

Indian tribe means any American Indian tribe, band, group, or community recognized as such by the Secretary of the Interior.

Injure means to change adversely, either in the short or long term, a chemical, biological or physical attribute of, or the viability of. This includes, but is not limited to, to cause the loss of or destroy.

Lightering means at-sea transfer of petroleum-based products, materials, or other matter from vessel to vessel.

Marine means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, including the exclusive economic zone, consistent with international law.

Mineral means clay, stone, sand, gravel, metalliferous ore, non-metalliferous ore, or any other solid material or other matter of commercial value.

National historic landmark means a district, site, building, structure or object designated as such by the Secretary of the Interior under the National Historic Landmarks Program (36 CFR part 65).

National Marine Sanctuary means an area of the marine environment of special national significance due to its resource or human-use values, which is designated as such to ensure its conservation and management.

Person means any private individual, partnership, corporation or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal government, of any State or local unit of government, or of any foreign government.

Regional Fishery Management Council means any fishery council established under section 302 of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

Sanctuary quality means any of those ambient conditions, physical-chemical characteristics and natural processes, the maintenance of which is essential to the ecological health of the Sanctuary, including, but not limited to, water quality, sediment quality and air quality.

Sanctuary resource means any living or non-living resource of a National Marine Sanctuary that contributes to

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the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the Sanctuary, including, but not limited to, the substratum of the area of the Sanctuary, other submerged features and the surrounding seabed, carbonate rock, corals and other bottom formations, coralline algae and other marine plants and algae, marine invertebrates, brine-seep biota, phytoplankton, zooplankton, fish, seabirds, sea turtles and other marine reptiles, marine mammals and historical resources. For Thunder Bay National Marine Sanctuary and Underwater Preserve, Sanctuary resource means an underwater cultural resource as defined at § 922.191.

Secretary means the Secretary of the United States Department of Commerce, or designee.

Shunt means to discharge expended drilling cuttings and fluids near the ocean seafloor.

Site Evaluation List (SEL) means a list of selected natural and historical resource sites selected by the Secretary as qualifying for further evaluation for possible designation as National Marine Sanctuaries.

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, the United States Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States.

Subsistence use means the customary and traditional use by rural residents of areas near or in the marine environment for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles; and for barter, if for food or non-edible items other than money, if the exchange is of a limited and non-commercial nature.

Take or taking means: (1) For any marine mammal, sea turtle, or seabird listed as either endangered or threatened pursuant to the Endangered Species Act, to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect or injure, or to attempt to engage in any such conduct; (2) For any other marine mammal, sea turtle, or seabird,

to harass, hunt, capture, kill, collect or injure, or to attempt to engage in any such conduct. For the purposes of both (1) and (2) of this definition, this includes, but is not limited to, to collect any dead or injured marine mammal, sea turtle or seabird, or any part thereof; to restrain or detain any marine mammal, sea turtle or seabird, or any part thereof, no matter how temporarily; to tag any sea turtle, marine mammal or seabird; to operate a vessel or aircraft or to do any other act that results in the disturbance or molestation of any marine mammal, sea turtle or seabird.

Tropical fish means fish or minimal sport and food value, usually brightly colored, often used for aquaria purposes and which lives in a direct relationship with live bottom communities.

Vessel means a watercraft of any description capable of being used as a means of transportation in/on the waters of a Sanctuary.

[60 FR 66877, Dec. 27, 1995, as amended at 62 FR 4607, Jan. 30, 1997; 65 FR 39055, June 22, 2000]

§ 922.4 Effect of National Marine Sanctuary designation.

The designation of a National Marine Sanctuary, and the regulations implementing it, are binding on any person subject to the jurisdiction of the United States. Designation does not constitute any claim to territorial jurisdiction on the part of the United States for designated sites beyond the U.S. territorial sea, and the regulations implementing the designation shall be applied in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party. No regulation shall apply to a person who is not a citizen, national, or resident alien of the United States, unless in accordance with:

- (a) Generally recognized principles of international law;
- (b) An agreement between the United States and the foreign state of which the person is a citizen; or
- (c) An agreement between the United States and the flag state of the foreign

vessel, if the person is a crew member of the vessel.

Subpart B—Site Evaluation List (SEL)

§ 922.10 General.

(a) The Site Evaluation List (SEL) was established as a comprehensive list of marine sites with high natural resource values and with historical qualities of special national significance that are highly qualified for further evaluation for possible designation as National Marine Sanctuaries.

(b) The SEL is currently inactive. Criteria for inclusion of marine sites on a revised SEL will be issued, with public notice and opportunity to comment, when the Director determines that the SEL should be reactivated.

(c) Only sites on the SEL may be considered for subsequent review as active candidates for designation.

(d) Placement of a site on the SEL, or selection of a site from the SEL as an active candidate for designation as provided for in § 922.21, by itself shall not subject the site to any regulatory control under the Act. Such controls may only be imposed after designation.

Subpart C—Designation of National Marine Sanctuaries

§ 922.20 Standards and procedures for designation.

In designating a National Marine Sanctuary, the Secretary shall apply the standards and procedures set forth in section 303 and section 304 of the Act.

§ 922.21 Selection of active candidates.

(a) The Secretary shall, from time to time, select a limited number of sites from the SEL for Active Candidate consideration based on a preliminary assessment of the designation standards set forth in section 303 of the Act.

(b) Selection of a site as an Active Candidate shall begin the formal Sanctuary designation-evaluation process. A notice of intent to prepare a draft environmental impact statement shall be published in the FEDERAL REGISTER and in newspapers in the area(s) of local concern. A brief written analysis

describing the site shall be provided. The Secretary, at any time, may drop a site from consideration if the Secretary determines that the site does not meet the designation standards and criteria set forth in the Act.

§ 922.22 Development of designation materials.

(a) In designating a National Marine Sanctuary, the Secretary shall prepare the designation materials described in section 304 of the Act.

(b) If a proposed Sanctuary includes waters within the exclusive economic zone, the Secretary shall notify the appropriate Regional Fishery Management Council(s) which shall have one hundred and twenty (120) days from the date of such notification to make recommendations and, if appropriate, prepare draft fishery regulations and to submit them to the Secretary. In preparing its recommendations and draft regulations, the Council(s) shall use as guidance the national standards of section 301(a) of the Magnuson Act (16 U.S.C. 1851) to the extent that they are consistent and compatible with the goals and objectives of the proposed Sanctuary designation. Fishery activities not proposed for regulation under section 304(a)(5) of the Act may be listed in the draft Sanctuary designation document as potentially subject to regulation, without following the procedures specified in section 304(a)(5) of the Act. If the Secretary subsequently determines that regulation of any such fishery activity is necessary, then the procedures specified in section 304(a)(5) of the Act shall be followed.

§ 922.23 Coordination with States and other Federal agencies.

(a) The Secretary shall consult and cooperate with affected States throughout the National Marine Sanctuary designation process. In particular the Secretary shall:

(1) Consult with the relevant State officials prior to selecting any site on the SEL as an Active Candidate pursuant to § 922.21, especially concerning the relationship of any site to State waters and the consistency of the proposed designation with a federally approved State coastal zone management

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program. For the purposes of a consistency review by States with federally approved coastal zone management programs, designation of a National Marine Sanctuary is deemed to be a Federal activity, which, if affecting the State's coastal zone, must be undertaken in a manner consistent to the maximum extent practicable with the approved State coastal zone program as provided by section 307(c)(1) of the Coastal Zone Management Act of 1972, as amended, and implementing regulations at 15 CFR part 930, subpart.

(2) Ensure that relevant State agencies are consulted prior to holding any public hearings pursuant to section 304(a)(3) of the Act.

(3) Provide the Governor(s) of any State(s) in which a proposed Sanctuary would be located an opportunity to certify the designation or any of its terms as unacceptable as specified in section 304(b)(1) of the Act.

(b) The Secretary shall develop proposed regulations relating to activities under the jurisdiction of one or more other Federal agencies in consultation with those agencies.

§ 922.24 Congressional documents.

In designating a National Marine Sanctuary, the Secretary shall prepare and submit to Congress those documents described in section 304 of the Act.

§ 922.25 Designation determination and findings.

(a) In designating a National Marine Sanctuary, the Secretary shall prepare a written Designation Determination and Findings which shall include those findings and determinations described in section 303 of the Act.

(b) In addition to those factors set forth in section 303 of the Act, the Secretary, when making a designation determination, shall consider the Program's fiscal capability to manage the area as a National Marine Sanctuary.

Subpart D—Management Plan Development and Implementation

§ 922.30 General.

(a) The Secretary shall implement each management plan, and applicable

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regulations, including carrying out surveillance and enforcement activities and conducting such research, monitoring, evaluation, and education programs as are necessary and reasonable to carry out the purposes and policies of the Act.

(b) Consistent with Sanctuary management plans, the Secretary shall develop and implement site-specific contingency and emergency-response plans designed to protect Sanctuary resources. The plans shall contain alert procedures and actions to be taken in the event of an emergency such as a shipwreck or an oil spill.

§ 922.31 Promotion and coordination of Sanctuary use.

The Secretary shall take such action as is necessary and reasonable to promote and coordinate the use of National Marine Sanctuaries for research, monitoring, and education purposes. Such action may include consulting with Federal agencies, or other persons to promote use of one or more Sanctuaries for research, monitoring and education, including coordination with the National Estuarine Research Reserve System.

Subpart E—Regulations of General Applicability

§ 922.40 Purpose.

The purpose of the regulations in this Subpart and in Subparts F through R is to implement the designations of the thirteen National Marine Sanctuaries for which site specific regulations appear in Subparts F through R, respectively, by regulating activities affecting them, consistent with their respective terms of designation in order to protect, preserve and manage and thereby ensure the health, integrity and continued availability of the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of these areas. Additional purposes of the regulations implementing the designation of the Florida Keys and Hawaiian Islands Humpback Whale National Marine Sanctuaries are found at §§ 922.160, and 922.180, respectively.

[65 FR 39055, June 22, 2000]

§ 922.41 Boundaries.

The boundary for each of the thirteen National Marine Sanctuaries covered by this part is described in Subparts F through R, respectively.

[65 FR 39055, June 22, 2000]

§ 922.42 Allowed Activities.

All activities (e.g., fishing, boating, diving, research, education) may be conducted unless prohibited or otherwise regulated in Subparts F through R, subject to any emergency regulations promulgated pursuant to §§ 922.44, 922.111(c), 922.165, 922.186, or 922.196, subject to all prohibitions, regulations, restrictions, and conditions validly imposed by any Federal, State, or local authority of competent jurisdiction, including Federal and State fishery management authorities, and subject to the provisions of section 312 of the National Marine Sanctuaries Act (NMSA), (16 U.S.C. 1431 *et seq.*). The Assistant Administrator may only directly regulate fishing activities pursuant to the procedure set forth in section 304(a)(5) of the NMSA.

[65 FR 39055, June 22, 2000]

§ 922.43 Prohibited or otherwise regulated activities.

Subparts F through R set forth site-specific regulations applicable to the activities specified therein.

[65 FR 39055, June 22, 2000]

§ 922.44 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all such activities are subject to immediate temporary regulation, including prohibition. The provisions of this section do not apply to the Cordell Bank, Florida Keys, Hawaiian Islands Humpback Whale, and Thunder Bay National Marine Sanctuaries. See §§ 922.111(c), 922.165, and 922.186, 922.196, respectively, for the authority to issue emergency regulations with respect to those sanctuaries.

[65 FR 39055, June 22, 2000]

§ 922.45 Penalties.

(a) Each violation of the NMSA or FKNMSPA, any regulation in this part, or any permit issued pursuant thereto, is subject to a civil penalty of not more than \$ 100,000. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing administrative proceedings for assessment of civil penalties, permit sanctions, and denials for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR part 904.

[60 FR 66877, Dec. 27, 1995, as amended at 62 FR 4607, Jan. 30, 1997]

§ 922.46 Response costs and damages.

Under section 312 of the Act, any person who destroys, causes the loss of, or injures any Sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss or injury, and any vessel used to destroy, cause the loss of, or injure any Sanctuary resource is liable *in rem* to the United States for response costs and damages resulting from such destruction, loss or injury.

§ 922.47 Pre-existing authorizations or rights and certifications of pre-existing authorizations or rights.

(a) Leases, permits, licenses, or rights of subsistence use or access in existence on the date of designation of any National Marine Sanctuary shall not be terminated by the Director. The Director may, however, regulate the exercise of such leases, permits, licenses, or rights consistent with the purposes for which the Sanctuary was designated.

(b) The prohibitions listed in Subparts F through P, and Subpart R do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in Subpart P, and issued by any Federal, State or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence

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on the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in Subpart P, provided that the holder of such authorization or right complies with certification procedures and criteria promulgated at the time of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in Subpart P, and with any terms and conditions on the exercise of such authorization or right imposed by the Director as a condition of certification as the Director deems necessary to achieve the purposes for which the Sanctuary was designated.

[60 FR 66877, Dec. 27, 1995, as amended at 62 FR 4607, Jan. 30, 1997; 65 FR 39055, June 22, 2000]

§ 922.48 National Marine Sanctuary permits—application procedures and issuance criteria.

(a) A person may conduct an activity prohibited by Subparts F through O, if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and Subparts F through O, as appropriate. For the Florida Keys National Marine Sanctuary, a person may conduct an activity prohibited by Subpart P if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under § 922.166. For the Thunder Bay National Marine Sanctuary and Underwater Preserve, a person may conduct an activity prohibited by Subpart R in accordance with the scope, purpose, terms and conditions of a permit issued under § 922.195.

(b) Applications for permits to conduct activities otherwise prohibited by Subparts F through O should be addressed to the Director and sent to the address specified in Subparts F through O, or Subpart R, as appropriate. An application must include:

- (1) A detailed description of the proposed activity including a timetable for completion;
- (2) The equipment, personnel and methodology to be employed;
- (3) The qualifications and experience of all personnel;
- (4) The potential effects of the activity, if any, on Sanctuary resources and

qualities; and (5) Copies of all other required licenses, permits, approvals or other authorizations.

(c) Upon receipt of an application, the Director may request such additional information from the applicant as he or she deems necessary to act on the application and may seek the views of any persons or entity, within or outside the Federal government, and may hold a public hearing, as deemed appropriate.

(d) The Director, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct a prohibited activity, in accordance with the criteria found in Subparts F through O, or Subpart R, as appropriate. The Director shall further impose, at a minimum, the conditions set forth in the relevant subpart.

(e) A permit granted pursuant to this section is nontransferable.

(f) The Director may amend, suspend, or revoke a permit issued pursuant to this section for good cause. The Director may deny a permit application pursuant to this section, in whole or in part, if it is determined that the permittee or applicant has acted in violation of the terms and conditions of a permit or of the regulations set forth in this section or Subparts F through O, Subpart R or for other good cause. Any such action shall be communicated in writing to the permittee or applicant by certified mail and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are set forth in subpart D of 15 CFR part 904.

[60 FR 66877, Dec. 27, 1995, as amended at 62 FR 4607, Jan. 30, 1997; 65 FR 39056, June 22, 2000]

§ 922.49 Notification and review of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by Subparts L through P, or Subpart R, if such activity is specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary

designation, or in the case of the Florida Keys National Marine Sanctuary after the effective date of the regulations in Subpart P, provided that:

(1) The applicant notifies the Director, in writing, of the application for such authorization (and of any application for an amendment, renewal, or extension of such authorization) within fifteen (15) days of the date of filing of the application or the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in Subpart P, whichever is later;

(2) The applicant complies with the other provisions of this §922.49;

(3) The Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization (or amendment, renewal, or extension); and

(4) The applicant complies with any terms and conditions the Director deems reasonably necessary to protect Sanctuary resources and qualities.

(b) Any potential applicant for an authorization described in paragraph (a) of this section may request the Director to issue a finding as to whether the activity for which an application is intended to be made is prohibited by Subparts L through P, or Subpart R, as appropriate.

(c) Notification of filings of applications should be sent to the Director, Office of Ocean and Coastal Resource Management at the address specified in Subparts L through P, or Subpart R, as appropriate. A copy of the application must accompany the notification.

(d) The Director may request additional information from the applicant as he or she deems reasonably necessary to determine whether to object to issuance of an authorization described in paragraph (a) of this section, or what terms and conditions are reasonably necessary to protect Sanctuary resources and qualities. The information requested must be received by the Director within 45 days of the postmark date of the request. The Director may seek the views of any persons on the application.

(e) The Director shall notify, in writing, the agency to which application has been made of his or her pending re-

view of the application and possible objection to issuance. Upon completion of review of the application and information received with respect thereto, the Director shall notify both the agency and applicant, in writing, whether he or she has an objection to issuance and what terms and conditions he or she deems reasonably necessary to protect Sanctuary resources and qualities, and reasons therefor.

(f) The Director may amend the terms and conditions deemed reasonably necessary to protect Sanctuary resources and qualities whenever additional information becomes available justifying such an amendment.

(g) Any time limit prescribed in or established under this §922.49 may be extended by the Director for good cause.

(h) The applicant may appeal any objection by, or terms or conditions imposed by, the Director to the Assistant Administrator or designee in accordance with the provisions of §922.50.

[62 FR 4608, Jan. 30, 1997, as amended at 65 FR 39056, June 22, 2000]

§922.50 Appeals of administrative action.

(a)(1) Except for permit actions taken for enforcement reasons (see subpart D of 15 CFR part 904 for applicable procedures), an applicant for, or a holder of, a National Marine Sanctuary permit; an applicant for, or a holder of, a Special Use permit issued pursuant to section 310 of the Act; a person requesting certification of an existing lease, permit, license or right of subsistence use or access under §922.47; or, for those Sanctuaries described in Subparts L through P and Subpart R, an applicant for a lease, permit, license or other authorization issued by any Federal, State, or local authority of competent jurisdiction (hereinafter appellant) may appeal to the Assistant Administrator:

(i) The granting, denial, conditioning, amendment, suspension or revocation by the Director of a National Marine Sanctuary or Special Use permit;

(ii) The conditioning, amendment, suspension or revocation of a certification under §922.47; or

(iii) For those Sanctuaries described in Subparts L through P and Subpart R, the objection to issuance of or the imposition of terms and conditions on a lease, permit, license or other authorization issued by any Federal, State, or local authority of competent jurisdiction.

(2) For those National Marine Sanctuaries described in Subparts F through K, any interested person may also appeal the same actions described in §922.50(a)(1)(i) and (ii). For appeals arising from actions taken with respect to these National Marine Sanctuaries, the term "appellant" includes any such interested persons.

(b) An appeal under paragraph (a) of this section must be in writing, state the action(s) by the Director appealed and the reason(s) for the appeal, and be received within 30 days of receipt of notice of the action by the Director. Appeals should be addressed to the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA 1305 East-West Highway, 13th Floor, Silver Spring, MD 20910.

(c)(1) The Assistant Administrator may request the appellant to submit such information as the Assistant Administrator deems necessary in order for him or her to decide the appeal. The information requested must be received by the Assistant Administrator within 45 days of the postmark date of the request. The Assistant Administrator may seek the views of any other persons. For the Monitor National Marine Sanctuary, if the appellant has requested a hearing, the Assistant Administrator shall grant an informal hearing. For all other National Marine Sanctuaries, the Assistant Administrator may determine whether to hold an informal hearing on the appeal. If the Assistant Administrator determines that an informal hearing should be held, the Assistant Administrator may designate an officer before whom the hearing shall be held.

(2) The hearing officer shall give notice in the FEDERAL REGISTER of the time, place and subject matter of the hearing. The appellant and the Director may appear personally or by counsel at the hearing and submit such material and present such arguments as deemed appropriate by the hearing offi-

cer. Within 60 days after the record for the hearing closes, the hearing officer shall recommend a decision in writing to the Assistant Administrator.

(d) The Assistant Administrator shall decide the appeal using the same regulatory criteria as for the initial decision and shall base the appeal decision on the record before the Director and any information submitted regarding the appeal, and, if a hearing has been held, on the record before the hearing officer and the hearing officer's recommended decision. The Assistant Administrator shall notify the appellant of the final decision and the reason(s) therefore in writing. The Assistant Administrator's decision shall constitute final agency action for the purpose of the Administrative Procedure Act.

(e) Any time limit prescribed in or established under this section other than the 30-day limit for filing an appeal may be extended by the Assistant Administrator or hearing office for good cause.

[60 FR 66877, Dec. 27, 1995, as amended at 62 FR 4608, Jan. 30, 1997; 65 FR 39056, June 22, 2000; 65 FR 60097, Oct. 10, 2000]

Subpart F—Monitor National Marine Sanctuary

§922.60 Boundary.

The Monitor National Marine Sanctuary (Sanctuary) consists of a vertical water column in the Atlantic Ocean one mile in diameter extending from the surface to the seabed, the center of which is at 35°00'23" north latitude and 75°24'32" west longitude.

§922.61 Prohibited or otherwise regulated activities.

Except as may be permitted by the Director, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

- (a) Anchoring in any manner, stopping, remaining, or drifting without power at any time;
- (b) Any type of subsurface salvage or recovery operation;
- (c) Diving of any type, whether by an individual or by a submersible;
- (d) Lowering below the surface of the water any grappling, suction, conveyor, dredging or wrecking device;

- (e) Detonating below the surface of the water any explosive or explosive mechanism;
- (f) Drilling or coring the seabed;
- (g) Lowering, laying, positioning or raising any type of seabed cable or cable-laying device;
- (h) Trawling; or
- (i) Discharging waster material into the water in violation of any Federal statute or regulation.

§ 922.62 Permit procedure and criteria.

(a) Any person or entity may conduct in the Sanctuary any activity listed in § 922.61 if such activity is either:

- (1) For the purpose of research related to the Monitor, or
- (2) Pertains to salvage or recovery operations in connection with an air or marine casualty and such person or entity is in possession of a valid permit issued by the Director authorizing the conduct of such activity; except that, no permit is required for the conduct of any activity immediately and urgently necessary for the protection of life, property or the environment.

(b) Any person or entity who wishes to conduct in the Sanctuary an activity for which a permit is authorized by this section (hereafter a permitted activity) may apply in writing to the Director for a permit to conduct such activity citing this section as the basis for the application. Such application should be made to: Director, Office of Ocean and Coastal Resource Management; ATTN: Manager, Monitor National Marine Sanctuary, Building 1519, NOAA, Fort Eustis, VA 23604-5544.

(c) In considering whether to grant a permit for the conduct of a permitted activity for the purpose of research related to the Monitor, the Secretary shall evaluate such matters as:

- (1) The general professional and financial responsibility of the applicant;
- (2) The appropriateness of the research method(s) envisioned to the purpose(s) of the research;
- (3) The extent to which the conduct of any permitted activity may diminish the value of the MONITOR as a source of historic, cultural, aesthetic and/or maritime information;
- (4) The end value of the research envisioned; and

(5) Such other matters as the Director deems appropriate.

(d) In considering whether to grant a permit for the conduct of a permitted activity in the Sanctuary in relation to an air or marine casualty, the Director shall consider such matters as:

- (1) The fitness of the applicant to do the work envisioned;
- (2) The necessity of conducting such activity;
- (3) The appropriateness of any activity envisioned to the purpose of the entry into the Sanctuary;

(4) The extent to which the conduct of any such activity may diminish the value of the Monitor as a source of historic, cultural, aesthetic and/or maritime information; and

(5) Such other matters as the Director deems appropriate.

(e) In considering any application submitted pursuant to this section, the Director shall seek and consider the views of the Advisory Council on Historic Preservation.

(f) The Director may observe any activity permitted by this section; and/or may require the submission of one or more reports of the status or progress of such activity.

Subpart G—Channel Islands National Marine Sanctuary

§ 922.70 Boundary.

The Channel Islands National Marine Sanctuary (Sanctuary) consists of an area of the waters off the coast of California of approximately 1252.5 square nautical miles (NM) adjacent to the following islands and offshore rocks: San Miguel Island, Santa Cruz Island, Santa Rosa Island, Anacapa Island, Santa Barbara Island, Richardson Rock, and Castle Rock (collectively the Islands) extending seaward to a distance of six NM. The boundary coordinates are listed in appendix A to this subpart.

§ 922.71 Prohibited or otherwise regulated activities.

(a) Except as may be necessary for the national defense (subject to the terms and conditions of Article 5, Section 2 of the Designation Document) or

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to respond to an emergency threatening life, property, or the environment, or except as may be permitted by the Director in accordance with §§922.48 and 922.72, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(1) Exploring for, developing, and producing hydrocarbons except pursuant to leases executed prior to March 30, 1981, and except the laying of pipeline, if the following oil spill contingency equipment is available at the site of such operations:

(i) 1500 feet of open ocean containment boom and a boat capable of deploying the boom;

(ii) One oil skimming device capable of open ocean use; and

(iii) Fifteen bales of oil sorbent material, and subject to all prohibitions, restrictions and conditions imposed by applicable regulations, permits, licenses or other authorizations and consistency reviews including those issued by the Department of the Interior, the Coast Guard, the Corps of Engineers, the Environmental Protection Agency and under the California Coastal Management Program and its implementing regulations.

(2) Discharging or depositing any material or other matter except:

(i) Fish or fish parts and chumming materials (bait);

(ii) Water (including cooling water) and other biodegradable effluents incidental to vessel use of the Sanctuary generated by:

(A) Marine sanitation devices;

(B) Routine vessel maintenance, e.g., deck wash down;

(C) Engine exhaust; or

(D) Meals on board vessels;

(iii) Effluents incidental to hydrocarbon exploration and exploitation activities allowed by paragraph (a)(1) of this section.

(3) Except in connection with the laying of any pipeline as allowed by paragraph (a)(1) of this section, within 2 NM of any Island:

(i) Constructing any structure other than a navigation aid,

(ii) Drilling through the seabed, or

(iii) Dredging or otherwise altering the seabed in any way, other than

(A) To anchor vessels, or

(B) To bottom trawl from a commercial fishing vessel.

(4) Except to transport persons or supplies to or from an Island, operating within one NM of an Island any vessel engaged in the trade of carrying cargo, including, but not limited to, tankers and other bulk carriers and barges, or any vessel engaged in the trade of servicing offshore installations. In no event shall this section be construed to limit access for fishing (including kelp harvesting), recreational, or research vessels.

(5) Disturbing seabirds or marine mammals by flying motorized aircraft at less than 1000 feet over the waters within one NM of any Island except:

(i) For enforcement purposes;

(ii) To engage in kelp bed surveys; or

(iii) To transport persons or supplies to or from an Island.

(6) Removing or damaging any historical or cultural resource.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to the prohibitions in this section. The exemption of additional activities having significant impact shall be determined in consultation between the Director and the Department of Defense.

§922.72 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Director in accordance with this section and §922.48 may conduct any activity in the Sanctuary prohibited under §922.71 if such activity is either:

(1) Research related to the resources of the Sanctuary,

(2) To further the educational value of the Sanctuary; or

(3) For salvage or recovery operations.

(b) Permit applications shall be addressed to: Director, Office of Ocean and Coastal Resource Management, ATTN: Manager, Channel Islands National Marine Sanctuary, 113 Harbor Way, Santa Barbara, CA 93109.

(c) In considering whether to grant a permit the Director shall evaluate such matters as:

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(1) The general professional, and financial responsibility of the applicant;

(2) The appropriateness of the methods envisioned to the purpose(s) of the activity;

(3) The extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary as a source of recreation, or as a source of educational or scientific information;

(4) The end value of the activity and

(5) Such other matters as may be deemed appropriate.

(d) The Director may observe any permitted activity and/or require the submission of one or more reports of the status or progress of such activity. Any information obtained shall be available to the public.

APPENDIX A TO SUBPART G OF PART 922—CHANNEL ISLANDS NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

| Point No. | Latitude north | Longitude west |
|---|----------------|----------------|
| Northern Channel Islands Section | | |
| 01 | 33°56'28.959" | 119°16'23.800" |
| 02 | 33°58'03.919" | 119°14'56.964" |
| 03 | 34°01'33.846" | 119°14'07.740" |
| 04 | 34°04'24.203" | 119°15'21.308" |
| 05 | 34°06'06.653" | 119°17'27.002" |
| 06 | 34°06'54.809" | 119°19'46.046" |
| 07 | 34°06'57.988" | 119°23'24.905" |
| 08 | 34°06'51.627" | 119°24'04.198" |
| 09 | 34°07'01.640" | 119°25'40.819" |
| 10 | 34°06'59.904" | 119°26'50.959" |
| 11 | 34°08'02.002" | 119°28'47.501" |
| 12 | 34°08'17.693" | 119°29'27.698" |
| 13 | 34°08'52.234" | 119°30'39.562" |
| 14 | 34°09'16.780" | 119°35'22.667" |
| 15 | 34°09'05.106" | 119°36'41.694" |
| 16 | 34°08'02.782" | 119°39'33.421" |
| 17 | 34°08'46.870" | 119°41'48.621" |
| 18 | 34°09'35.563" | 119°45'57.284" |
| 19 | 34°09'32.627" | 119°46'37.335" |
| 20 | 34°09'33.396" | 119°47'32.285" |
| 21 | 34°09'43.668" | 119°48'09.018" |
| 22 | 34°10'10.616" | 119°50'07.659" |
| 23 | 34°10'21.586" | 119°51'05.146" |
| 24 | 34°10'33.161" | 119°53'17.044" |
| 25 | 34°10'36.545" | 119°55'57.373" |
| 26 | 34°10'21.283" | 119°57'26.403" |
| 27 | 34°08'07.255" | 120°01'07.233" |
| 28 | 34°08'13.144" | 120°02'27.930" |
| 29 | 34°07'47.772" | 120°05'05.449" |
| 30 | 34°07'29.314" | 120°06'36.262" |
| 31 | 34°07'30.691" | 120°09'35.238" |
| 32 | 34°06'36.285" | 120°12'39.335" |
| 33 | 34°06'40.634" | 120°13'33.940" |
| 34 | 34°08'10.759" | 120°15'07.017" |
| 35 | 34°09'12.290" | 120°17'07.046" |
| 35A | 34°09'50.706" | 120°17'31.649" |
| 36 | 34°10'56.346" | 120°18'40.520" |
| 36B | 34°11'28.249" | 120°19'29.213" |
| 37 | 34°12'08.078" | 120°21'00.835" |
| 37C | 34°12'25.468" | 120°25'01.261" |

| Point No. | Latitude north | Longitude west |
|-------------------------------------|----------------|----------------|
| 38 | 34°12'18.754" | 120°25'39.373" |
| 38D | 34°11'33.184" | 120°27'33.921" |
| 39 | 34°12'19.470" | 120°30'22.620" |
| 39E | 34°12'17.540" | 120°32'19.959" |
| 40 | 34°10'54.592" | 120°35'57.887" |
| 40F | 34°06'07.491" | 120°38'27.883" |
| 41 | 34°04'53.454" | 120°38'16.602" |
| 41G | 34°03'30.539" | 120°37'39.442" |
| 42 | 34°01'09.860" | 120°35'04.808" |
| 42H | 34°00'48.573" | 120°34'25.106" |
| 43 | 33°59'13.122" | 120°33'53.385" |
| 44 | 33°57'01.427" | 120°31'54.590" |
| 45 | 33°55'36.973" | 120°27'37.188" |
| 46 | 33°55'30.037" | 120°25'14.587" |
| 47 | 33°54'50.522" | 120°22'29.536" |
| 48 | 33°55'01.640" | 120°19'26.722" |
| 49 | 33°54'34.409" | 120°18'27.344" |
| 50 | 33°53'23.129" | 120°17'39.927" |
| 51 | 33°50'39.990" | 120°15'13.874" |
| 52 | 33°49'53.260" | 120°13'41.904" |
| 53 | 33°49'03.437" | 120°12'06.750" |
| 54 | 33°48'36.087" | 120°11'10.821" |
| 55 | 33°47'39.280" | 120°07'59.707" |
| 56 | 33°47'37.617" | 120°06'04.002" |
| 57 | 33°47'59.351" | 120°04'08.370" |
| 58 | 33°48'38.700" | 120°02'33.188" |
| 59 | 33°48'52.167" | 120°01'50.244" |
| 60 | 33°50'28.486" | 119°57'50.820" |
| 61 | 33°50'55.128" | 119°55'19.934" |
| 62 | 33°52'13.338" | 119°52'53.439" |
| 63 | 33°52'04.900" | 119°52'10.719" |
| 64 | 33°51'39.919" | 119°47'21.152" |
| 65 | 33°51'48.592" | 119°46'13.213" |
| 66 | 33°51'35.798" | 119°44'34.589" |
| 67 | 33°51'44.374" | 119°41'12.738" |
| 68 | 33°52'23.857" | 119°39'14.708" |
| 69 | 33°53'09.365" | 119°37'30.784" |
| 70 | 33°53'12.754" | 119°35'35.793" |
| 71 | 33°53'17.114" | 119°34'54.567" |
| 72 | 33°53'38.865" | 119°32'51.578" |
| 73 | 33°54'02.277" | 119°31'06.274" |
| 74 | 33°54'56.444" | 119°28'54.052" |
| 75 | 33°54'39.349" | 119°27'37.512" |
| 76 | 33°54'15.236" | 119°25'23.779" |
| 77 | 33°54'07.847" | 119°24'22.849" |
| 78 | 33°54'04.682" | 119°22'58.006" |
| 79 | 33°54'14.311" | 119°21'44.573" |
| 80 | 33°54'22.824" | 119°21'09.003" |
| 81 | 33°54'46.904" | 119°19'54.677" |
| 82 | 33°55'05.834" | 119°19'16.027" |
| Santa Barbara Island Section | | |
| 83 | 33°28'56.904" | 119°10'04.092" |
| 84 | 33°26'32.364" | 119°10'01.328" |
| 85 | 33°24'19.904" | 119°08'52.236" |
| 86 | 33°23'26.019" | 119°07'54.826" |
| 87 | 33°22'04.836" | 119°05'16.716" |
| 88 | 33°21'49.387" | 119°04'01.551" |
| 89 | 33°21'44.594" | 119°02'49.887" |
| 90 | 33°21'49.556" | 119°01'37.839" |
| 91 | 33°22'07.538" | 118°59'49.357" |
| 92 | 33°22'27.774" | 118°58'51.623" |
| 93 | 33°22'47.957" | 118°58'07.633" |
| 94 | 33°23'20.805" | 118°57'14.375" |
| 95 | 33°24'18.458" | 118°56'08.450" |
| 96 | 33°26'24.130" | 118°54'51.352" |
| 97 | 33°29'02.820" | 118°54'22.276" |
| 98 | 33°31'27.917" | 118°54'50.367" |
| 99 | 33°32'17.935" | 118°55'18.396" |
| 100 | 33°35'10.090" | 118°59'40.091" |
| 101 | 33°35'24.575" | 119°01'22.108" |
| 102 | 33°35'06.497" | 119°03'59.463" |
| 103 | 33°34'48.322" | 119°05'03.374" |
| 104 | 33°32'37.151" | 119°08'37.201" |

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| Point No. | Latitude north | Longitude west |
|-----------|----------------|----------------|
| 105 | 33°30'41.731" | 119°09'45.845" |

Subpart H—Gulf of the Farallones National Marine Sanctuary

§ 922.80 Boundary.

(a) The Gulf of the Farallones National Marine Sanctuary (Sanctuary) consists of an area of the waters adjacent to the coast of California north and south of the Point Reyes Headlands, between Bodega Head and Rocky Point and the Farallon Islands (including Noonday Rock), and includes approximately 948 square nautical miles (NM). The boundary coordinates are listed in Appendix A to this subpart.

(b) The shoreward boundary follows the mean high tide line and the seaward limit of Point Reyes National Seashore. Between Bodega Head and Point Reyes Headlands, the Sanctuary extends seaward 3 NM beyond State waters. The Sanctuary also includes the waters within 12 NM of the Farallon Islands, and between the Islands and the mainland from Point Reyes Headlands to Rocky Point. The Sanctuary includes Bodega Bay, but not Bodega Harbor.

§ 922.81 Definitions.

In addition to those definitions found at § 922.3, the following definition applies to this subpart:

Areas of Special Biological Significance (ASBS) means those areas established by the State of California prior to the designation of the Sanctuary except that for purposes of the regulations in this subpart, the area established around the Farallon Islands shall not be included.

§ 922.82 Prohibited or otherwise regulated activities.

(a) Except as may be necessary for national defense (subject to the terms and conditions of Article 5, Section 2 of the Designation Document) or to respond to an emergency threatening life, property or the environment, or except as may be permitted by the Director in accordance with § 922.48 and § 922.83, the following activities are prohibited and thus are unlawful for any

person to conduct or to cause to be conducted within the Sanctuary:

(1) Exploring for, developing and producing oil or gas except that pipelines related to hydrocarbon operations outside the Sanctuary may be placed at a distance greater than 2 NM from the Farallon Islands, Bolinas Lagoon, and ASBS where certified to have no significant effect on Sanctuary resources in accordance with § 922.84.

(2) Discharging or depositing any material or other matter except:

(i) Fish or fish parts and chumming materials (bait).

(ii) Water (including cooling water) and other biodegradable effluents incidental to vessel use of the Sanctuary generated by:

(A) Marine sanitation devices;

(B) Routine vessel maintenance, e.g., deck wash down;

(C) Engine exhaust; or

(D) Meals on board vessels.

(iii) Dredge material disposed of at the interim dumpsite now established approximately 10 NM south of the southeast Farallon Island and municipal sewage provided such discharges are certified in accordance with § 922.84.

(3) Except in connection with the laying of pipelines or construction of an outfall if certified in accordance with § 922.84:

(i) Constructing any structure other than a navigation aid,

(ii) Drilling through the seabed, and

(iii) Dredging or otherwise altering the seabed in any way other than by anchoring vessels or bottom trawling from a commercial fishing vessel, except for routine maintenance and navigation, ecological maintenance, mariculture, and the construction of docks and piers in Tomales Bay.

(4) Except to transport persons or supplies to or from islands or mainland areas adjacent to Sanctuary waters, within an area extending 2 NM from the Farallon Islands, Bolinas Lagoon, or any ASBS, operating any vessel engaged in the trade of carrying cargo, including but not limited to tankers and other bulk carriers and barges, or any vessel engaged in the trade of servicing offshore installations. In no event shall this section be construed to limit access for fishing, recreational or research vessels.

(5) Disturbing seabirds or marine mammals by flying motorized aircraft at less than 1000 feet over the waters within one NM of the Farallon Islands, Bolinas Lagoon, or any ASBS except to transport persons or supplies to or from the Islands or for enforcement purposes.

(6) Removing or damaging any historical or cultural resource.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to the prohibitions in this section. The exemption of additional activities having significant impacts shall be determined in consultation between the Director and the Department of Defense.

§922.83 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Director in accordance with this section and §922.48 may conduct any activity in the Sanctuary, prohibited user §922.82, if such an activity is

(1) Research related to the resources of the Sanctuary,

(2) To further the educational value of the Sanctuary, or

(3) For salvage or recovery operations.

(b) Permit applications shall be addressed to the Director, Office of Ocean and Coastal Resource Management, ATTN: Manager, Gulf of the Farallones National Marine Sanctuary, Fort Mason, building #201, San Francisco, CA 94123.

(c) In considering whether to grant a permit, the Director shall evaluate

(1) The general professional and financial responsibility of the applicant,

(2) The appropriateness of the methods envisioned to the purpose(s) of the activity,

(3) The extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary,

(4) The end value of the activity, and

(5) Other matters as deemed appropriate.

(d) The Director may observe any permitted activity and/or require the submission of one or more reports of

the status or progress of such activity. Any information obtained will be made available to the public.

§922.84 Certification of other permits.

(a) A permit, license, or other authorization allowing the discharge of municipal sewage, the laying of any pipeline outside 2 NM from the Farallon Islands, Bolinas Lagoon and ASBS, or the disposal of dredge material at the interim dumpsite now established approximately 10 NM south of the Southeast Farallon Island prior to the selection of a permanent dumpsite shall be valid if certified by the Director as consistent with the purpose of the Sanctuary and having no significant effect on Sanctuary resources. Such certification may impose terms and conditions as deemed appropriate to ensure consistency.

(b) In considering whether to make the certifications called for in this section, the Director may seek and consider the views of any other person or entity, within or outside the Federal government, and may hold a public hearing as deemed appropriate.

(c) Any certification called for in this section shall be presumed unless the Director acts to deny or condition certification within 60 days from the date that the Director receives notice of the proposed permit and the necessary supporting data.

(d) The Director may amend, suspend, or revoke any certification made under this section whenever continued operation would violate any terms or conditions of the certification. Any such action shall be forwarded in writing to both the holder of the certified permit and the issuing agency and shall set forth reason(s) for the action taken.

APPENDIX A TO SUBPART H OF PART 922—GULF OF THE FARALLONES NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

| Point No. | Latitude north | Longitude west |
|-----------|----------------|----------------|
| 1 | 38°15'50.349" | 123°10'48.933" |
| 2 | 38°12'36.338" | 123°07'04.846" |
| 3 | 38°09'57.033" | 123°05'27.435" |
| 4 | 38°08'26.872" | 123°04'52.524" |
| 5 | 38°07'42.125" | 123°05'10.714" |
| 6 | 38°06'08.017" | 123°05'48.920" |
| 7 | 38°05'26.765" | 123°06'09.922" |
| 8 | 38°04'44.587" | 123°06'29.251" |

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| Point No. | Latitude north | Longitude west |
|-----------|----------------|----------------|
| 9 | 38°03'54.439" | 123°06'57.591" |
| 10 | 38°03'07.527" | 123°07'37.755" |
| 11 | 37°59'32.425" | 123°08'24.905" |
| 12 | 37°59'22.344" | 123°14'06.127" |
| 13 | 37°57'31.931" | 123°19'19.187" |
| 14 | 37°54'16.943" | 123°23'18.456" |
| 15 | 37°50'05.522" | 123°25'28.791" |
| 16 | 37°45'33.799" | 123°25'32.666" |
| 17 | 37°41'20.351" | 123°23'29.811" |
| 18 | 37°38'01.053" | 123°19'37.445" |
| 19 | 37°36'04.665" | 123°14'30.483" |
| 20 | 37°35'30.191" | 123°13'31.060" |
| 21 | 37°33'47.197" | 123°11'50.904" |
| 22 | 37°31'12.270" | 123°07'39.618" |
| 23 | 37°30'29.706" | 123°05'42.221" |
| 24 | 37°29'39.287" | 123°00'23.711" |
| 25 | 37°30'34.337" | 122°54'18.139" |
| 26 | 37°31'47.784" | 122°51'31.592" |
| 27 | 37°34'17.533" | 122°48'10.415" |
| 28 | 37°36'58.627" | 122°46'05.779" |
| 29 | 37°39'59.303" | 122°44'59.838" |
| 30 | 37°52'56.355" | 122°37'35.195" |

Subpart I—Gray’s Reef National Marine Sanctuary

§ 922.90 Boundary.

The Gray’s Reef National Marine Sanctuary (Sanctuary) consists of 16.68 square nautical miles (NM) of high sea waters off the coast of Georgia. The Sanctuary boundary includes all waters within a rectangle starting at coordinate 31°21’45”N, 80°55’17”W, commencing to coordinate 31°25’15”N, 80°55’17”W, thence to coordinate 31°25’15”N, 80°49’42”W, thence to coordinate 31°21’45”N, 80°49’42”W, thence back to the point of origin.

§ 922.91 Prohibited or otherwise regulated activities.

(a) Except as may be necessary for national defense (subject to the terms and conditions of Article 5, Section 2 of the Designation Document) or to respond to an emergency threatening life, property, or the environment, or except as may be permitted by the Director in accordance with § 922.48 and § 922.92, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(1) Dredging, drilling, or otherwise altering the seabed in any way nor constructing any structure other than a navigation aid.

(2) Discharging or depositing any material or other matter except:

(i) Fish or parts, bait, and chumming materials;

(ii) Effluent from marine sanitation devices; and

(iii) Vessel cooling waters.

(3) Operating a watercraft other than in accordance with the Federal rules and regulations that would apply if there were no Sanctuary.

(4) Using, placing, or possessing wire fish traps.

(5) Using a bottom trawl, specimen dredge, or similar vessel-towed bottom sampling device.

(6)(i)(A) Breaking, cutting, or similarly damaging, taking, or removing any bottom formation, marine invertebrate, or marine plant.

(B) Taking any tropical fish.

(C) Using poisons, electric charges, explosives, or similar methods to take any marine animal not otherwise prohibited to be taken.

(ii) There shall be a rebuttable presumption that any bottom formation, marine invertebrate, tropical fish, marine plant, or marine animal found in the possession of a person within the Sanctuary have been collected within or removed from the Sanctuary.

(7) Tampering with, damaging, or removing any historic or cultural resources.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to the prohibitions in this section. The exemption of additional activities having significant impacts shall be determined in consultation between the Director and the Department of Defense.

§ 922.92 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Director in accordance with this section and § 922.48 may conduct the specific activity in the Sanctuary including any activity specifically prohibited under § 922.91, if such activity is

(1) Research related to the resources of the Sanctuary,

(2) To further the educational value of the Sanctuary, or

(3) For salvage or recovery operations.

(b) Permit applications shall be addressed to the Director, Office of Ocean

and Coastal Resource Management, ATTN: Manager, Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, GA 31411.

(c) In considering whether to grant a permit, the Director shall evaluate

(1) The general professional and financial responsibility of the applicant,

(2) The appropriateness of the methods envisioned to the purpose(s) of the activity,

(3) The extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary,

(4) The end value of the activity, and

(5) Other matters as deemed appropriate.

(d) The Director may observe any permitted activity and/or require the submission of one or more reports of the status or progress of such activity. Any information obtained will be made available to the public.

Subpart J—Fagatele Bay National Marine Sanctuary

§ 922.100 Scope of regulations.

The provisions of this subpart J apply only to the area of the Territory of American Samoa within the boundary of the Fagatele Bay National Marine Sanctuary (Sanctuary). Neither the provisions of this subpart J nor any permit issued under their authority shall be construed to relieve a person from any other requirements imposed by statute or regulation of the Territory of American Samoa or of the United States. In addition, no statute or regulation of the Territory of American Samoa shall be construed to relieve a person from the restrictions, conditions, and requirements contained in this subpart J.

§ 922.101 Boundary.

The Sanctuary is a 163-acre (0.25 sq. mi.) coastal embayment formed by a collapsed volcanic crater on the island of Tutuila, Territory of American Samoa and includes Fagatele Bay in its entirety. The landward boundary is defined by the mean high high water (MHHW) line between Fagatele Point (14°22'15" S, 170°46'5" W) and Steps Point (14°22'44" S, 170°45'27" W). The seaward boundary of the Sanctuary is defined

by a straight line between Fagatele Point and Steps Point.

§ 922.102 Prohibited or otherwise regulated activities.

(a) Except as may be necessary for national defense or to respond to an emergency threatening life, property, or the environment, or as may be permitted by the Director in accordance with § 922.48 and § 922.104, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(1)(i)(A) Gathering, taking, breaking, cutting, damaging, destroying, or possessing any invertebrate, coral, bottom formation, or marine plant.

(B) Taking, gathering, cutting, damaging, destroying, or possessing any crown-of-thorns starfish (*Acanthaster planci*).

(C) Possessing or using poisons, electrical charges, explosives, or similar environmentally destructive methods.

(D) Possessing or using spearguns, including such devices known as Hawaiian slings, pole spears, arbalettes, pneumatic and spring-loaded spearguns, bows and arrows, bang sticks, or any similar taking device.

(E) Possessing or using a seine, trammel net, or any type of fixed net.

(ii) There shall be a rebuttable presumption that any items listed in this paragraph (a)(1) found in the possession of a person within the Sanctuary have been used, collected, or removed within or from the Sanctuary.

(2)(i) Operating a vessel closer than 200 feet (60.96 meters) from another vessel displaying a dive flag at a speed exceeding three knots.

(ii) Operating a vessel in a manner which causes the vessel to strike or otherwise cause damage to the natural features of the Sanctuary.

(3) Diving or conducting diving operations from a vessel not flying in a conspicuous manner the international code flag alpha "A."

(4) Littering, depositing, or discharging, into the waters of the Sanctuary, any material or other matter.

(5) Disturbing the benthic community by dredging, filling, dynamiting, bottom trawling, or otherwise altering the seabed.

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(6) Removing, damaging, or tampering with any historical or cultural resource within the boundary of the Sanctuary.

(7) Ensnaring, entrapping, or fishing for any sea turtle listed as a threatened or endangered species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

(8) Except for law enforcement purposes, using or discharging explosives or weapons of any description. Distress signaling devices, necessary and proper for safe vessel operation, and knives generally used by fishermen and swimmers shall not be considered weapons for purposes of this section.

(9) Marking, defacing, or damaging in any way, or displacing or removing or tampering with any signs, notices, or placards, whether temporary or permanent, or with any monuments, stakes, posts, or other boundary markers related to the Sanctuary.

(b) In addition to those activities prohibited or otherwise regulated under paragraph (a) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted landward of the straight line connecting Fagatele Point (14°22'15" S, 170°46'5" W) and Matautuloa Benchmark (14°22'18" S, 170°45'35" W).

(1) Possessing or using fishing poles, handlines, or trawls.

(2) Fishing commercially.

§922.103 Management and enforcement.

The National Oceanic and Atmospheric Administration (NOAA) has primary responsibility for the management of the Sanctuary pursuant to the Act. The American Samoa Economic and Development Planning Office (EDPO) will assist NOAA in the administration of the Sanctuary, and act as the lead agency, in conformance with the Designation Document, these regulations, and the terms and provisions of any grant or cooperative agreement. NOAA may act to deputize enforcement agents of the American Samoa Government (ASG) to enforce the regulations in this subpart in accordance with existing law. If NOAA chooses to exercise this provision, a memorandum of understanding shall be executed be-

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tween NOAA and the ASG or the person(s) or entity authorized to act on their behalf.

§922.104 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Director, in consultation with the EDPO, in accordance with this section and §922.48, may conduct an activity otherwise prohibited by §922.102 in the Sanctuary if such activity is judged not to cause long-term or irreparable harm to the resources of the Sanctuary, and is:

(1) Related to research involving Sanctuary resources designed to enhance understanding of the Sanctuary environment or to improve resource management decisionmaking;

(2) Intended to further the educational value of the Sanctuary and thereby enhance understanding of the Sanctuary environmental or improve resource management decisionmaking; or

(3) For salvage or recovery operations.

(b) Permit applications shall be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuary Coordinator, Fagatele Bay National Marine Sanctuary, P.O. Box 4318, Pago Pago, AS 96799.

(c) In considering whether to grant a permit, the Director shall evaluate such matters as:

(1) The general professional and financial responsibility of the applicant;

(2) The appropriateness of the methods being proposed for the purpose(s) of the activity;

(3) The extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary as a source of recreation, education, or scientific information; and

(4) The end value of the activity.

(d) In addition to meeting the criteria in this section and §922.48, the applicant also must demonstrate to the Director that:

(1) The activity shall be conducted with adequate safeguards for the environment; and

(2) The environment shall be returned to, or will regenerate to, the

condition which existed before the activity occurred.

(e) The Director may, at his or her discretion, grant a permit which has been applied for pursuant to this section, in whole or in part, and subject the permit to such condition(s) as he or she deems necessary. A permit granted for research related to the Sanctuary may include, but is not limited to, the following conditions:

(1) The Director may observe any activity permitted by this section;

(2) any information obtained in the research site shall be made available to the public; and

(3) The submission of one or more reports of the status of such research activity may be required.

Subpart K—Cordell Bank National Marine Sanctuary

§ 922.110 Boundary

The Cordell Bank National Marine Sanctuary (Sanctuary) consists of a 397.05 square nautical mile (NM) area of marine waters approximately 50 miles west-northwest of San Francisco, California extending at 180° from the northernmost boundary of the Gulf of the Farallones National Marine Sanctuary (GFNMS) to the 1,000 fathom isobath northwest of the Bank, then south along this isobath to the GFNMS boundary and back to the northwest along this boundary to the beginning point. The boundary coordinates are listed in appendix A to this subpart.

§ 922.111 Prohibited or otherwise regulated activities.

(a) Except as necessary for national defense or to respond to an emergency threatening life, property or the environment, or except as permitted in accordance with §§ 922.48 and 922.112 or certified in accordance with § 922.47, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1)(i) Depositing or discharging, from any location within the boundary of the Sanctuary, material or other matter of any kind except:

(A) Fish, fish parts, chumming materials (bait) produced and discarded during routine fishing activities conducted in the Sanctuary; and

(B) Water (including cooling water) and other biodegradable effluents incidental to use of a vessel in the Sanctuary and generated by: Marine sanitation devices approved by the United States Coast Guard; routine vessel maintenance, e.g., deck wash down; engine exhaust; or meals on board vessels.

(ii) Depositing or discharging, from any location beyond the boundaries of the Sanctuary, material or other matter of any kind, except for the exclusions listed in paragraph (a)(1)(i) of this section, which enter the Sanctuary and injure a Sanctuary resource.

(2) Removing, taking, or injuring or attempting to remove, take, or injure benthic invertebrates or algae located on Cordell Bank or within the 50 fathom isobath surrounding the Bank. There is a rebuttable presumption that any such resource found in the possession of a person within the Sanctuary was taken or removed by that person. This prohibition does not apply to accidental removal, injury, or takings during normal fishing operations.

(3) Exploring for, or developing or producing, oil, gas, or minerals in any area of the Sanctuary.

(b) All activities being carried out by the Department of Defense (DOD) within the Sanctuary on the effective date of designation that are necessary for national defense are exempt from the prohibitions contained in the regulations in this subpart. Additional DOD activities initiated after the effective date of designation that are necessary for national defense will be exempted by the Director after consultation between the Department of Commerce and DOD. DOD activities not necessary for national defense, such as routine exercises and vessel operations, are subject to all prohibitions contained in the regulations in this subpart.

(c) Where necessary to prevent immediate, serious, and irreversible damage to a Sanctuary resource, any activity may be regulated within the limits of the Act on an emergency basis for no more than 120 days.

§ 922.112 Permit procedures and criteria.

(a) If a person wishes to conduct an activity prohibited under § 922.111, that

person must apply for, receive, and have in possession on board any vessel used a valid permit issued pursuant to this section and §922.48 authorizing that person to conduct that activity.

(b) Permit applications shall be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Manager, Cordell Bank National Marine Sanctuary, Fort Mason, Building #201, San Francisco, CA 94123.

(c) The Director, at his or her discretion, may issue a permit subject to such terms and conditions as deemed appropriate, to conduct an activity otherwise prohibited by §922.111, if the Director finds that the activity will further research related to Sanctuary resources; further the educational or historical value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or assist in the management of the Sanctuary. In deciding whether to issue a permit, the Director may consider such factors as the professional qualifications and financial ability of the applicant as related to the proposed activity; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance the values for which the Sanctuary was designated; and the end value of the applicant's overall activity.

APPENDIX A TO SUBPART K OF PART 922—CORDELL BANK NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

| Point No. | Latitude | Longitude |
|-----------|--------------|---------------|
| 1 | 38°15'51.72" | 123°10'52.44" |
| 2 | 38°07'55.88" | 123°38'33.53" |
| 3 | 38°06'45.21" | 123°38'00.40" |
| 4 | 38°04'58.41" | 123°37'14.34" |
| 5 | 38°04'28.22" | 123°37'17.83" |
| 6 | 38°03'42.75" | 123°36'55.66" |
| 7 | 38°03'11.10" | 123°36'19.78" |
| 8 | 38°02'46.12" | 123°36'21.98" |
| 9 | 38°02'02.74" | 123°35'56.56" |
| 10 | 38°01'27.10" | 123°35'55.12" |
| 11 | 38°01'22.28" | 123°36'55.13" |
| 12 | 38°01'11.54" | 123°37'28.21" |
| 13 | 38°00'49.16" | 123°37'29.77" |
| 14 | 37°59'54.49" | 123°36'47.90" |
| 15 | 37°59'12.39" | 123°35'59.55" |
| 16 | 37°58'39.40" | 123°35'14.85" |
| 17 | 37°58'00.57" | 123°34'42.93" |
| 18 | 37°57'18.99" | 123°33'43.15" |

| Point No. | Latitude | Longitude |
|-----------|--------------|---------------|
| 19 | 37°56'56.42" | 123°32'51.97" |
| 20 | 37°56'18.90" | 123°32'49.24" |
| 21 | 37°55'22.37" | 123°32'36.96" |
| 22 | 37°54'26.10" | 123°32'21.73" |
| 23 | 37°53'07.46" | 123°31'46.81" |
| 24 | 37°52'34.93" | 123°31'18.90" |
| 25 | 37°51'42.81" | 123°31'19.10" |
| 26 | 37°50'59.58" | 123°31'02.96" |
| 27 | 37°49'22.64" | 123°29'34.07" |
| 28 | 37°48'49.14" | 123°28'44.61" |
| 29 | 37°48'36.95" | 123°28'08.29" |
| 30 | 37°48'03.37" | 123°28'23.27" |
| 31 | 37°47'41.54" | 123°28'01.97" |
| 32 | 37°47'01.78" | 123°27'16.78" |
| 33 | 37°46'51.92" | 123°26'48.98" |
| 34 | 37°46'13.20" | 123°26'04.79" |
| 35 | 37°46'00.73" | 123°25'36.99" |
| 36 | 37°50'25.31" | 123°25'26.53" |
| 37 | 37°54'32.28" | 123°23'16.49" |
| 38 | 37°57'45.71" | 123°19'17.72" |
| 39 | 37°59'29.27" | 123°14'12.16" |
| 40 | 37°59'43.71" | 123°08'27.55" |
| 41 | 38°03'10.20" | 123°07'44.35" |
| 42 | 38°04'01.64" | 123°06'58.92" |
| 43 | 38°08'33.32" | 123°04'56.24" |
| 44 | 38°12'42.06" | 123°07'10.21" |

[61 FR 51577, Oct. 3, 1996]

Subpart L—Flower Garden Banks National Marine Sanctuary

§922.120 Boundary.

The Flower Garden Banks National Marine Sanctuary (the Sanctuary) consists of two separate areas of ocean waters over and surrounding the East and West Flower Garden Banks, and the submerged lands thereunder including the Banks, in the northwestern Gulf of Mexico. The area designated at the East Bank is located approximately 120 nautical miles (NM) south-southwest of Cameron, Louisiana, and encompasses 19.20 NM², and the area designated at the West Bank is located approximately 110 NM southeast of Galveston, Texas, and encompasses 22.50 NM². The two areas encompass a total of 41.70 NM² (143.21 square kilometers). The boundary coordinates for each area are listed in appendix A to this subpart.

EFFECTIVE DATE NOTE: At 65 FR 81178, Dec. 22, 2000, §922.120 was revised, effective Jan. 22, 2001. For the convenience of the user, the revised text is set forth as follows:

§922.120 Boundary.

The Flower Garden Banks National Marine Sanctuary (the Sanctuary) consists of three separate areas of ocean waters over and surrounding the East and West Flower Garden Banks and Stetson Bank, and the submerged

lands thereunder including the Banks, in the northwestern Gulf of Mexico. The area designated at the East Bank is located approximately 120 nautical miles (nmi) south-southwest of Cameron, Louisiana, and encompasses 19.20 nmi². The area designated at the West Bank is located approximately 110 nmi southeast of Galveston, Texas, and encompasses 22.50 nmi². The area designated at Stetson Bank is located approximately 70 nmi southeast of Galveston, Texas, and encompasses 0.64 nmi². The three areas encompass a total of 42.34 nmi² (145.09 square kilometers). The boundary coordinates for each area are listed in appendix A to this subpart.

§ 922.121 Definitions.

In addition to those definitions found at § 922.3, the following definition applies to this subpart:

No-activity zone means one of the two geographic areas delineated by the Department of the Interior in stipulations for OCS lease sale 112 over and surrounding the East and West Flower Garden Banks as areas in which activities associated with exploration for, development of, or production of hydrocarbons are prohibited. The precise coordinates of these areas are provided in appendix B of this subpart. These particular coordinates define the geographic scope of the “no-activity zones” for purposes of the regulations in this subpart. These coordinates are based on the “¼ ¼ ¼” system formerly used by the Department of the Interior, a method that delineates a specific portion of a block rather than the actual underlying isobath.

EFFECTIVE DATE NOTE: At 65 FR 81178, Dec. 22, 2000, § 922.121 was revised, effective Jan. 22, 2001. For the convenience of the user, the revised text is set forth as follows:

§ 922.121 Definitions.

In addition to those definitions found at § 922.3, the following definition applies to this subpart:

No-activity zone means the two geographic areas delineated by the Department of the Interior in stipulations for OCS lease sale 112 over and surrounding the East and West Flower Garden Banks, and the geographic area delineated by the Department of the Interior in stipulations for OCS lease sale 171 over and surrounding Stetson Bank, as areas in which activities associated with exploration for, development of, or production of hydrocarbons are prohibited. The precise aliquot part description of these areas around the East and West Flower Garden Banks are provided in appendix B of this subpart; the

no-activity zone around Stetson Bank is defined as the 52 meter isobath. These particular aliquot part descriptions for the East and West Flower Garden Banks, and the 52 meter isobath around Stetson Bank, define the geographic scope of the “no-activity zones” for purposes of the regulations in this subpart. The descriptions for the East and West Flower Garden Banks no-activity zones are based on the “¼ ¼ ¼” system formerly used by the Department of the Interior, a method that delineates a specific portion of a block rather than the actual underlying isobath.

§ 922.122 Prohibited or otherwise regulated activities.

(a) Except as specified in paragraphs (c) through (h) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1) Exploring for, developing, or producing oil, gas or minerals except outside of all no-activity zones and provided all drilling cuttings and drilling fluids are shunted to the seabed through a downpipe that terminates an appropriate distance, but no more than ten meters, from the seabed.

(2)(i) Anchoring or otherwise mooring within the Sanctuary a vessel greater than 100 feet (30.48 meters) in registered length.

(ii) Anchoring a vessel of less than or equal to 100 feet (30.48 meters) in registered length within an area of the Sanctuary where a mooring buoy is available.

(iii) Anchoring a vessel within the Sanctuary using more than fifteen feet (4.57 meters) of chain or wire rope attached to the anchor.

(iv) Anchoring a vessel within the Sanctuary using anchor lines (exclusive of the anchor chain or wire rope permitted by paragraph (a)(4) of this section) other than those of a soft fiber or nylon, polypropylene, or similar material.

(3)(i) Discharging or depositing, from within the boundaries of the Sanctuary, any material or other matter except:

(A) Fish, fish parts, chumming materials or bait used in or resulting from fishing with conventional hook and line gear in the Sanctuary;

(B) Biodegradable effluents incidental to vessel use and generated by marine sanitation devices approved in

accordance with section 312 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1322;

(C) Water generated by routine vessel operations (e.g., cooling water, deck wash down, and graywater as defined by section 312 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1322) excluding oily wastes from bilge pumping;

(D) Engine exhaust; or

(E) In areas of the Sanctuary outside the no-activity zones, drilling cuttings and drilling fluids necessarily discharged incidental to the exploration for, development of, or production of oil or gas in those areas and in accordance with the shunting requirements of paragraph (a)(1) unless such discharge injures a Sanctuary resource or quality.

(ii) Discharging or depositing, from beyond the boundaries of the Sanctuary, any material or other matter, except those listed in paragraphs (a)(3)(i) (A) through (D) of this section, that subsequently enters the Sanctuary and injures a Sanctuary resource or quality.

(4) Drilling into, dredging or otherwise altering the seabed of the Sanctuary (except by anchoring); or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary.

(5) Injuring or removing, or attempting to injure or remove, any coral or other bottom formation, coralline algae or other plant, marine invertebrate, brine-seep biota or carbonate rock within the Sanctuary.

(6) Taking any marine mammal or turtle within the Sanctuary, except as permitted by regulations, as amended, promulgated under the Marine Mammal Protection Act, as amended, 16 U.S.C. 1361 *et seq.*, and the Endangered Species Act, as amended, 16 U.S.C. 1531 *et seq.*

(7) Injuring, catching, harvesting, collecting or feeding, or attempting to injure, catch, harvest, collect or feed, any fish within the Sanctuary by use of bottom longlines, traps, nets, bottom trawls or any other gear, device, equipment or means except by use of conventional hook and line gear.

(8) Possessing within the Sanctuary (regardless of where collected, caught,

harvested or removed), except for valid law enforcement purposes, any carbonate rock, coral or other bottom formation, coralline algae or other plant, marine invertebrate, brine-seep biota or fish (except for fish caught by use of conventional hook and line gear).

(9) Possessing or using within the Sanctuary, except possessing while passing without interruption through it or for valid law enforcement purposes, any fishing gear, device, equipment or means except conventional hook and line gear.

(10) Possessing, except for valid law enforcement purposes, or using explosives or releasing electrical charges within the Sanctuary.

(b) If any valid regulation issued by any Federal authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation deemed by the Director as more protective of Sanctuary resources and qualities shall govern.

(c) The prohibitions in paragraphs (a)(2) (i), (iii), and (iv), (4) and (10) of this section do not apply to necessary activities conducted in areas of the Sanctuary outside the no-activity zones and incidental to exploration for, development of, or production of oil or gas in those areas.

(d) The prohibitions in paragraphs (a) (2) through (10) of this section do not apply to activities necessary to respond to emergencies threatening life, property, or the environment.

(e)(1) The prohibitions in paragraphs (a) (2) through (10) of this section do not apply to activities being carried out by the Department of Defense as of the effective date of Sanctuary designation (January 18, 1994). Such activities shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources and qualities. The prohibitions in paragraphs (a) (2) through (10) of this section do not apply to any new activities carried out by the Department of Defense that do not have the potential for any significant adverse impacts on Sanctuary resources or qualities. Such activities shall be carried out in a manner that

minimizes any adverse impact on Sanctuary resources and qualities. New activities with the potential for significant adverse impacts on Sanctuary resources or qualities may be exempted from the prohibitions in paragraphs (a) (2) through (10) of this section by the Director after consultation between the Director and the Department of Defense. If it is determined that an activity may be carried out, such activity shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources and qualities.

(2) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings, caused by a component of the Department of Defense, the cognizant component shall promptly coordinate with the Director for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

(f) The prohibitions in paragraphs (a) (2) through (10) of this section do not apply to any activity executed in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to §922.48 and §922.123 or a Special Use permit issued pursuant to section 310 of the Act.

(g) The prohibitions in paragraphs (a) (2) through (10) of this section do not apply to any activity authorized by any lease, permit, license, approval or other authorization issued after January 18, 1994, provided that the applicant complies with §922.49, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities.

(h) Notwithstanding paragraphs (f) and (g) of this section, in no event may the Director issue a National Marine Sanctuary permit under §922.48 and §922.123 or a Special Use permit under section 10 of the Act authorizing, or otherwise approve, the exploration for, development of, or production of oil, gas or minerals in a no-activity zone.

Any leases, permits, approvals, or other authorizations authorizing the exploration for, development of, or production of oil, gas or minerals in a no-activity zone and issued after the January 18, 1994 shall be invalid.

§ 922.123 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by §922.122(a) (2) through (10) if conducted in accordance with the scope, purpose, terms, and conditions of a permit issued under this section and §922.48.

(b) Applications for such permits should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Manager, Flower Garden Banks National Marine Sanctuary, 1716 Briarcrest Drive, Suite 702, Bryan, TX 77802.

(c) The Director, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by §922.122(a) (2) through (10), if the Director finds that the activity will: further research related to Sanctuary resources; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or assist in managing the Sanctuary. In deciding whether to issue a permit, the Director shall consider such factors as: the professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and the duration of its effects; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities; the cumulative effects of the activity; and the end value of the activity. In addition, the Director may consider such other factors as he or she deems appropriate.

(d) It shall be a condition of any permit issued that the permit or a copy thereof be displayed on board all vessels or aircraft used in the conduct of the activity.

(e) The Director may, *inter alia*, make it a condition of any permit issued that any information obtained under the permit be made available to the public.

(f) The Director may, *inter alia*, make it a condition of any permit issued that a NOAA official be allowed to observe any activity conducted under the permit and/or that the permit holder submit one or more reports on the status, progress, or results of any activity authorized by the permit.

EFFECTIVE DATE NOTE: At 65 FR 81178, Dec. 22, 2000, §922.123, was amended by revising paragraph (b), effective Jan. 22, 2001. For the convenience of the user, the revised text is set forth as follows:

§922.123 Permit procedures and criteria.

* * * * *

(b) Applications for such permits should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Manager, Flower Garden Banks National Marine Sanctuary, 216 West 26th Street, Suite 104, Bryan, TX 77803.

* * * * *

APPENDIX A TO SUBPART L OF PART 922—FLOWER GARDEN BANKS NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

The boundary coordinates are based on geographic positions of the North American Datum of 1927 (NAD 27).

| Point No. | Latitude | Longitude |
|--------------------------------|--------------|--------------|
| East Flower Garden Bank | | |
| E-1 | 27°52'52.13" | 93°37'40.52" |
| E-2 | 27°53'33.81" | 93°38'22.33" |
| E-3 | 27°55'13.31" | 93°38'39.07" |
| E-4 | 27°57'30.14" | 93°38'32.26" |
| E-5 | 27°58'27.79" | 93°37'42.93" |
| E-6 | 27°59'00.29" | 93°35'29.56" |
| E-7 | 27°58'59.23" | 93°35'09.91" |
| E-8 | 27°55'20.23" | 93°34'13.75" |
| E-9 | 27°54'03.35" | 93°34'18.42" |
| E-10 | 27°53'25.95" | 93°35'03.79" |
| E-11 | 27°52'51.14" | 93°36'57.59" |
| West Flower Garden Bank | | |
| W-1 | 27°49'09.24" | 93°50'43.35" |
| W-2 | 27°50'10.23" | 93°52'07.96" |
| W-3 | 27°51'13.14" | 93°52'50.68" |
| W-4 | 27°51'31.24" | 93°52'49.79" |
| W-5 | 27°52'49.55" | 93°52'21.89" |
| W-6 | 27°54'59.08" | 93°49'41.87" |
| W-7 | 27°54'57.08" | 93°48'38.52" |
| W-8 | 27°54'33.46" | 93°47'10.36" |
| W-9 | 27°54'13.51" | 93°46'48.96" |
| W-10 | 27°53'7.67" | 93°46'50.67" |
| W-11 | 27°52'56.44" | 93°47'14.10" |
| W-12 | 27°50'38.31" | 93°47'22.86" |
| W-13 | 27°49'11.23" | 93°48'42.59" |

EFFECTIVE DATE NOTE: At 65 FR 81178, Dec. 22, 2000, appendix A to subpart L of part 922 was revised, effective Jan. 22, 2001. For the convenience of the user, the revised text is set forth as follows:

APPENDIX A TO SUBPART L OF PART 922—FLOWER GARDEN BANKS NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

This appendix contains a second set of boundary coordinates using the geographic positions of the North American Datum of 1983 (NAD 83). FGBNMS coordinates are now provided in both North American Datum of 1927 (NAD 27) and NAD 83.

| Point | Latitude (N) | Longitude (W) |
|--|-----------------------|-----------------------|
| East Flower Garden Bank: (NAD 27) | | |
| E-1 | 27 deg. 52' 53.82718' | 93 deg. 37' 41.30310' |
| E-2 | 27 deg. 53' 34.83434' | 93 deg. 38' 23.35445' |
| E-3 | 27 deg. 55' 13.64286' | 93 deg. 38' 40.34368' |
| E-4 | 27 deg. 57' 30.71927' | 93 deg. 38' 33.26982' |
| E-5 | 27 deg. 58' 27.66896' | 93 deg. 37' 46.12447' |
| E-6 | 27 deg. 59' 01.41554' | 93 deg. 35' 31.74954' |
| E-7 | 27 deg. 59' 00.50888' | 93 deg. 35' 09.69198' |
| E-8 | 27 deg. 55' 22.38258' | 93 deg. 34' 14.79162' |
| E-9 | 27 deg. 54' 04.05605' | 93 deg. 34' 18.88720' |
| E-10 | 27 deg. 53' 26.70972' | 93 deg. 35' 05.00978' |
| E-11 | 27 deg. 52' 52.06998' | 93 deg. 36' 57.23078' |
| West Flower Garden Bank: (NAD 27) | | |
| W-1 | 27 deg. 49' 10.16324' | 93 deg. 50' 45.27154' |
| W-2 | 27 deg. 50' 12.35976' | 93 deg. 52' 10.47158' |
| W-3 | 27 deg. 51' 12.82777' | 93 deg. 52' 51.63488' |
| W-4 | 27 deg. 51' 32.41145' | 93 deg. 52' 50.66983' |
| W-5 | 27 deg. 52' 49.88791' | 93 deg. 52' 24.77053' |
| W-6 | 27 deg. 55' 00.93450' | 93 deg. 49' 43.68090' |
| W-7 | 27 deg. 54' 58.33040' | 93 deg. 48' 37.54501' |

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| Point | Latitude (N) | Longitude (W) |
|--|-----------------------|-----------------------|
| W-8 | 27 deg. 54' 35.26067' | 93 deg. 47' 10.34866' |
| W-9 | 27 deg. 54' 14.80334' | 93 deg. 46' 49.28963' |
| W-10 | 27 deg. 53' 35.63704' | 93 deg. 46' 51.25825' |
| W-11 | 27 deg. 52' 57.34474' | 93 deg. 47' 15.26428' |
| W-12 | 27 deg. 50' 40.26361' | 93 deg. 47' 22.14179' |
| W-13 | 27 deg. 49' 10.89894' | 93 deg. 48' 42.72307' |
| Stetson Bank: (NAD 27) | | |
| S-1 | 28 deg. 09' 30.06738' | 94 deg. 18' 31.34461' |
| S-2 | 28 deg. 10' 09.24374' | 94 deg. 18' 29.57042' |
| S-3 | 28 deg. 10' 06.88036' | 94 deg. 17' 23.26201' |
| S-4 | 28 deg. 09' 27.70425' | 94 deg. 17' 25.04315' |
| East Flower Garden Bank: (NAD 83) | | |
| E-1 | 27 deg. 52' 54.84288' | 93 deg. 37' 41.84187' |
| E-2 | 27 deg. 53' 35.80428' | 93 deg. 38' 23.89520' |
| E-3 | 27 deg. 55' 14.61048' | 93 deg. 38' 40.88638' |
| E-4 | 27 deg. 57' 31.68349' | 93 deg. 38' 33.81421' |
| E-5 | 27 deg. 58' 28.63153' | 93 deg. 37' 46.66809' |
| E-6 | 27 deg. 59' 02.37658' | 93 deg. 35' 32.28918' |
| E-7 | 27 deg. 59' 01.46983' | 93 deg. 35' 10.23088' |
| E-8 | 27 deg. 55' 23.34849' | 93 deg. 34' 15.32560' |
| E-9 | 27 deg. 54' 05.02387' | 93 deg. 34' 19.42020' |
| E-10 | 27 deg. 53' 27.67871' | 93 deg. 35' 05.54379' |
| E-11 | 27 deg. 52' 53.04047' | 93 deg. 36' 57.76805' |
| West Flower Garden Bank: (NAD 83) | | |
| W-1 | 27 deg. 49' 11.14452' | 93 deg. 50' 45.83401' |
| W-2 | 27 deg. 50' 13.34001' | 93 deg. 52' 11.03791' |
| W-3 | 27 deg. 51' 13.80672' | 93 deg. 52' 52.20349' |
| W-4 | 27 deg. 51' 33.38988' | 93 deg. 52' 51.23867' |
| W-5 | 27 deg. 52' 50.86415' | 93 deg. 52' 25.33954' |
| W-6 | 27 deg. 55' 01.90633' | 93 deg. 49' 44.24605' |
| W-7 | 27 deg. 54' 59.30189' | 93 deg. 48' 38.10780' |
| W-8 | 27 deg. 54' 36.23221' | 93 deg. 47' 10.90806' |
| W-9 | 27 deg. 54' 15.77527' | 93 deg. 46' 49.84801' |
| W-10 | 27 deg. 53' 36.60997' | 93 deg. 46' 51.81616' |
| W-11 | 27 deg. 52' 58.31880' | 93 deg. 47' 15.82251' |
| W-12 | 27 deg. 50' 41.24120' | 93 deg. 47' 22.69837' |
| W-13 | 27 deg. 49' 11.87936' | 93 deg. 48' 43.28125' |
| Stetson Bank: (NAD 83) | | |
| S-1 | 28 deg. 09' 31.02671' | 94 deg. 18' 31.98164' |
| S-2 | 28 deg. 10' 10.20196' | 94 deg. 18' 30.20776' |
| S-3 | 28 deg. 10' 07.83821' | 94 deg. 17' 23.89688' |
| S-4 | 28 deg. 09' 28.66320' | 94 deg. 17' 25.67770' |

APPENDIX B TO SUBPART L OF PART 922—COORDINATES FOR THE DEPARTMENT OF THE INTERIOR TOPOGRAPHIC LEASE STIPULATIONS FOR OCS LEASE SALE 112

East Flower Garden Bank

Block A-366
SE¹/₄, SW¹/₄; S¹/₂, NE¹/₄, SE¹/₄; SE¹/₄, NW¹/₄, SE¹/₄; S¹/₂, SE¹/₄;

Block A-367
W¹/₂, NW¹/₄, SW¹/₄; SW¹/₄, W¹/₄, SW¹/₄.

Block A-374
W¹/₂, NW¹/₄, NW¹/₄; W¹/₂, SW¹/₄, NW¹/₄; SE¹/₄, SW¹/₄, NW¹/₄; SW¹/₄, NE¹/₄, SW¹/₄; W¹/₂, SW¹/₄; W¹/₂, SE¹/₄, SW¹/₄; SE¹/₄, SE¹/₄, SW¹/₄.

Block A-375

E¹/₂; E¹/₂, NW¹/₄, NW¹/₄, SW¹/₄, NW¹/₄, NW¹/₄; E¹/₂, SW¹/₄, NW¹/₄; NW¹/₄, SW¹/₄, NW¹/₄, SW¹/₄;

Block A-388
NE¹/₄; E¹/₂, NW¹/₄; E¹/₂, NW¹/₄, NW¹/₄; NE¹/₄, SW¹/₄, NW¹/₄; E¹/₂, SW¹/₄; E¹/₂, NE¹/₄, SW¹/₄; NW¹/₄, NE¹/₄, SW¹/₄; NE¹/₄, NW¹/₄, SW¹/₄; NE¹/₄, SE¹/₄, SW¹/₄; NE¹/₄; NE¹/₄, SE¹/₄; W¹/₂, NE¹/₄, SE¹/₄; NW¹/₄, SE¹/₄; NE¹/₄, SW¹/₄, SE¹/₄;

Block A-389
NE¹/₄, NW¹/₄; NW¹/₄, NW¹/₄; SW¹/₄, NW¹/₄; NE¹/₄, SE¹/₄, NW¹/₄; W¹/₂, SE¹/₄, NW¹/₄; N¹/₂, NW¹/₄, SW¹/₄.

West Flower Garden Bank

Block A-383
E¹/₂, SE¹/₄, SE¹/₄; SW¹/₂, SE¹/₄, SE¹/₄.

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Block A-384

W¹/₂, SW¹/₄, NE¹/₄; SE¹/₄, SW¹/₄, NE¹/₄; S¹/₂, SE¹/₄, NE¹/₄; SE¹/₄, NW¹/₄; E¹/₂, SW¹/₄; E¹/₂, NW¹/₄, SW¹/₄; SW¹/₄, NW¹/₄, SW¹/₄; SW¹/₄, SW¹/₄; SE¹/₄.

Block A-385

SW¹/₄, SW¹/₄, NW¹/₄; N¹/₄, SW¹/₄; NW¹/₄, SW¹/₄, SW¹/₄.

Block A-397

W¹/₂, W¹/₂, NW¹/₄; W¹/₂, NW¹/₄, SW¹/₄; NW¹/₄, SW¹/₄, SW¹/₄.

Block A-398

Entire block

Block A-399

E¹/₂; SE¹/₄, NE¹/₄, NW¹/₄; E¹/₂, SE¹/₄, NW¹/₄; E¹/₂, NE¹/₄, SW¹/₄; SW¹/₄, NE¹/₄, SW¹/₄; NE¹/₄, SE¹/₄, SW¹/₄.

Block A-401

NE¹/₄, NE¹/₄; N¹/₂, NW¹/₄, NE¹/₄; NE¹/₄, SE¹/₄, NE¹/₄.

Block A-Block 134

That portion of the block north of a line connecting points 17 and 18, defined under the universal transverse mercator grid system as follows: Point 17: X = 1,378,080.00'; Y = 10,096,183.00'; Point 18: X = 1,376,079.41'; Y = 10,096,183.00'; Block A-135

That portion of the block northwest of a line connecting points 16 and 17, defined under the universal transverse mercator grid system as follows: Point 16: X = 1,383,293.84'; Y = 10,103,281.93'; Point 17: X = 1,378,080.00'; Y = 10,096,183.00'.

EFFECTIVE DATE NOTE: At 65 FR 81180, Dec. 22, 2000, appendix B to subpart L of part 922 was revised, effective Jan. 22, 2001. For the convenience of the user, the revised text is set forth as follows:

APPENDIX B TO SUBPART L OF PART 922—COORDINATES FOR THE DEPARTMENT OF THE INTERIOR TOPOGRAPHIC LEASE STIPULATIONS FOR OCS LEASE SALE 171

ALIQUOT PART DESCRIPTION OF BIOLOGICAL STIPULATION AREA EAST GARDEN BANK

Block A-366 Texas Leasing Map No. 7C (High Island Area East Addition South Extension)

SE¹/₄, SW¹/₄; S¹/₂, NE¹/₄, SE¹/₄; SE¹/₄, NW¹/₄, SE¹/₄; S¹/₂, SE¹/₄.

Block A-376

W¹/₂, NW¹/₄, SW¹/₄; SW¹/₄, SW¹/₄, SW¹/₄.

Block A-374

W¹/₂, NW¹/₄, NW¹/₄; W¹/₂, SW¹/₄, NW¹/₄; SE¹/₄, SW¹/₄, NW¹/₄; SW¹/₄, NE¹/₄, SW¹/₄, W¹/₂, SW¹/₄; W¹/₂, SE¹/₄, SW¹/₄; SE¹/₄, SE¹/₄, SW¹/₄.

Block A-375

E¹/₂; E¹/₂, NW¹/₄; E¹/₂, NW¹/₄, NW¹/₄; SW¹/₄, NW¹/₄, NW¹/₄; E¹/₂, SW¹/₄, NW¹/₄; NW¹/₄, SW¹/₄, NW¹/₄; SW¹/₄.

Block A-388

NE¹/₄; E¹/₂, NW¹/₄; E¹/₂, NW¹/₄, NW¹/₄; NE¹/₄, SW¹/₄, NW¹/₄; E¹/₂, NE¹/₄, SW¹/₄; NW¹/₄, NE¹/₄, SW¹/₄; NE¹/₄, NW¹/₄, SW¹/₄; NE¹/₄, SE¹/₄; W¹/₂, NE¹/₄, SE¹/₄; NW¹/₄,

Block A-389

NE¹/₄, NW¹/₄; NW¹/₄, NW¹/₄; SW¹/₄, NW¹/₄; NE¹/₄, SE¹/₄, NW¹/₄; W¹/₂, SE¹/₄, NW¹/₄; N¹/₂, NW¹/₄, SW¹/₄.

ALIQUOT PART DESCRIPTION OF BIOLOGICAL STIPULATION AREA WEST GARDEN BANK

Block A-383 Texas Leasing Map No. 7C (High Island Area East Addition South Extension)

E¹/₂, SE¹/₄, SE¹/₄; SW¹/₄, SE¹/₄, SE¹/₄.

Block A-384

W¹/₂, SW¹/₄, NE¹/₄; SE¹/₄, SW¹/₄, NE¹/₄; S¹/₂, SE¹/₄, NE¹/₄; SE¹/₄, NW¹/₄; E¹/₂, SW¹/₄; E¹/₂, NW¹/₄, SW¹/₄, SW¹/₄, NW¹/₄, SW¹/₄; SW¹/₄, SW¹/₄; SE¹/₄.

Block A-385

SW¹/₄, SW¹/₄, NW¹/₄; NW¹/₄, SW¹/₄; NW¹/₄, SW¹/₄, SW¹/₄.

Block A-397

W¹/₂, W¹/₂, NW¹/₄; W¹/₂, NW¹/₄, SW¹/₄; NW¹/₄, SW¹/₄, SW¹/₄.

Block A-398

Entire block.

Block A-399

E¹/₂, SE¹/₄, NE¹/₄, NW¹/₄; E¹/₂, SE¹/₄, NW¹/₄; E¹/₂, NE¹/₄, SW¹/₄; SW¹/₄, NE¹/₄, SW¹/₄; NE¹/₄, SE¹/₄, SW¹/₄.

Block A-401

NE¹/₄, NE¹/₄; N¹/₂, NW¹/₄, NE¹/₄; NE¹/₄, SE¹/₄, NE¹/₄.

Block 134 Official Protraction Diagram NG15-02 (Garden Banks)

That portion of the block north of a line connecting a point on the east boundary of Block 134, X=1,378,080.00', Y=10,096,183.00', with a point on the west boundary of Block 134, X=1,367,079,385', Y=10,096,183.000', defined under the Universal Transverse Mercator grid system.

*Block 135 Official Protraction Diagram NG15-02
(Garden Banks)*

That portion of the block northwest of a line connecting the southeast corner of Texas Leasing Map No. 7C, Block A-398, X=1,383,293.840', Y=10,103,281.930', with a point on the west boundary of Official Protraction Diagram NG15-02, Block 135, X=1,378,080.000', Y=10,096,183.000', defined under the Universal Transverse Mercator grid system.

Subpart M—Monterey Bay National Marine Sanctuary

§ 922.130 Boundary.

(a) The Monterey Bay National Marine Sanctuary (Sanctuary) consists of an area of approximately 4,024 square nautical miles of coastal and ocean waters, and the submerged lands thereunder, in and surrounding Monterey Bay, off the central coast of California.

(b) The northern terminus of the boundary is located along the southern boundary of the Gulf of the Farallones National Marine Sanctuary (GFNMS) and runs westward to approximately 123°07'W. The boundary then extends south in an arc which generally follows the 500 fathom isobath. At approximately 37°03'N, the boundary arcs south to 122°25'W, 36°10'N, due west of Partington Point. The boundary again follows the 500 fathom isobath south to 121°41'W, 35°33'N, due west of Cambria. The boundary then extends shoreward towards the mean high-water line. The landward boundary is defined by the mean high-water line between the GFNMS and Cambria, exclusive of a small area off the north coast of San Mateo County and the City and County of San Francisco between Point Bonita and Point San Pedro. Pillar Point, Santa Cruz, Moss Landing and Monterey harbors are excluded from the Sanctuary boundary shoreward from their respective International Collision at Sea regulation (Colreg.) demarcation lines except for Moss Landing Harbor, where all of Elkhorn Slough east of the Highway One bridge is included within the Sanctuary boundary. The boundary coordinates are listed in appendix A to this subpart.

§ 922.131 Definitions.

In addition to those definitions found at § 922.3, the following definitions apply to this subpart:

Attract or *attracting* means the conduct of any activity that lures or may lure white sharks by using food, bait, chum, dyes, acoustics or any other means, except the mere presence of human beings (e.g., swimmers, divers, boaters, kayakers, surfers).

Federal Project means any water resources development project conducted by the U.S. Army Corps of Engineers or operating under a permit or other authorization issued by the Corps of Engineers and authorized by Federal law.

Hand tool means a hand-held implement, utilized for the collection of jade pursuant to § 922.132(a)(1), that is no greater than 36 inches in length and has no moving parts (e.g., dive knife, pry bar or abalone iron). Pneumatic, mechanical, electrical, hydraulic or explosive tools are, therefore, examples of what does not meet this definition.

Motorized personal water craft means any motorized vessel that is less than fifteen feet in length as manufactured, is capable of exceeding a speed of fifteen knots, and has the capacity to carry not more than the operator and one other person while in operation. The term includes, but is not limited to, jet skis, wet bikes, surf jets, miniature speed boats, air boats, and hovercraft.

[60 FR 66877, Dec. 27, 1995, as amended at 61 FR 66917, Dec. 19, 1996; 63 FR 15087, Mar. 30, 1998]

§ 922.132 Prohibited or otherwise regulated activities.

(a) Except as specified in paragraphs (b) through (f) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1) Exploring for, developing or producing oil, gas or minerals within the Sanctuary except: jade may be collected (meaning removed) from the area bounded by the 35°55'20" N latitude parallel (coastal reference point: beach access stairway at south Sand Dollar Beach), the 35°53'20" N latitude parallel (coastal reference point: westernmost

tip of Cape San Martin), and from the mean high tide line seaward to the 90-foot isobath (depth line) (the "authorized area") *provided that*:

(i) Only jade already loose from the seabed may be collected;

(ii) No tool may be used to collect jade except:

(A) A hand tool (as defined in §922.131) to maneuver or lift the jade or scratch the surface of a stone as necessary to determine if it is jade;

(B) A lift bag or multiple lift bags with a combined lift capacity of no more than two hundred pounds; or

(C) A vessel (except for motorized personal watercraft) (see paragraph (a)(7) of this section) to provide access to the authorized area;

(iii) Each person may collect only what that person individually carries; and

(iv) For any loose piece of jade that cannot be collected under paragraphs (a)(1) (ii) and (iii) of this section, any person may apply for a permit to collect such a loose piece by following the procedures in §922.133.

(2)(i) Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter except:

(A) Fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary;

(B) Biodegradable effluent incidental to vessel use and generated by marine sanitation devices approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322 *et seq.*;

(C) Water generated by routine vessel operations (e.g., cooling water, deck wash down and graywater as defined by section 312 of the FWPCA) excluding oily wastes from bilge pumping;

(D) Engine exhaust; or

(E) Dredged material deposited at disposal sites authorized by the U.S. Environmental Protection Agency (EPA) (in consultation with the U.S. Army Corps of Engineers (COE)) prior to the effective date of Sanctuary designation (January 1, 1993), provided that the activity is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval existing on January 1, 1993.

(ii) 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 paragraphs (a)(2)(i) (A) through (D) of this section and dredged material deposited at the authorized disposal sites described in appendix B to this subpart, provided that the dredged material disposal is pursuant to, and complies with the terms and conditions of, a valid Federal permit or approval.

(3) Moving, removing or injuring, or attempting to move, remove or injure, a Sanctuary historical resource. This prohibition does not apply to moving, removing or injury resulting incidentally from kelp harvesting, aquaculture or traditional fishing operations.

(4) Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary except as an incidental result of:

(i) Anchoring vessels;

(ii) Aquaculture, kelp harvesting or traditional fishing operations;

(iii) Installation of navigation aids;

(iv) Harbor maintenance in the areas necessarily associated with Federal Projects in existence on January 1, 1993, including dredging of entrance channels and repair, replacement or rehabilitation of breakwaters and jetties;

(v) Construction, repair, replacement or rehabilitation of docks or piers; or

(vi) Collection of jade pursuant to paragraph (a)(1) of this section, provided that there is no constructing, placing, or abandoning any structure, material, or other matter on the seabed of the Sanctuary.

(5) Taking any marine mammal, sea turtle or seabird in or above the Sanctuary, except as permitted by regulations, as amended, promulgated under the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*

(6) Flying motorized aircraft, except as necessary for valid law enforcement

purposes, at less than 1000 feet above any of the four zones within the Sanctuary described in appendix C to this subpart.

(7) Operating motorized personal water craft within the Sanctuary except within the four designated zones and access routes within the Sanctuary described in appendix D to this subpart.

(8) Possessing within the Sanctuary (regardless of where taken, moved or removed from), except as necessary for valid law enforcement purposes, any historical resource, or any marine mammal, sea turtle or seabird taken in violation of regulations, as amended, promulgated under the MMPA, ESA or MBTA.

(9) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

(10) Attracting any white shark in that part of the Sanctuary out to the seaward limit of State waters. For the purposes of this prohibition, the seaward limit of State waters is a line three nautical miles distant from the coastline of the State, where the coastline is the line of ordinary low water along the portion of the coast in direct contact with the open sea. The coastline for Monterey Bay, which is inland waters, is the straight line marking the seaward limit of the Bay, determined by connecting the following two points: 36°57'6" N, 122°01'45" W and 36°38'16" N, 121°56'3" W.

(b) The prohibitions in paragraphs (a)(2) through (9) of this section do not apply to activities necessary to respond to emergencies threatening life, property or the environment.

(c)(1) All Department of Defense activities shall be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities. The prohibitions in paragraphs (a) (2) through (9) of this section do not apply to existing military activities carried out by the Department of Defense, as specifically identified in the Final environmental Impact Statement and Management Plan for the Proposed Monterey Bay National Marine Sanc-

tuary (NOAA, 1992). (Copies of the FEIS/MP are available from the Monterey Bay National Marine Sanctuary, 299 Foam Street, Suite D, Monterey, CA 93940). New activities may be exempted from the prohibitions in paragraphs (a) (2) through (9) of this section by the Director after consultation between the Director and the Department of Defense.

(2) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings, caused by the Department of Defense, the cognizant component shall promptly coordinate with the Director for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

(d) The prohibitions in paragraph (a)(1) of this section as it pertains to jade collection in the Sanctuary, paragraphs (a) (2) and (8) of this section, and paragraph (a)(10) of this section do not apply to any activity executed in accordance with the scope, purpose, terms and conditions of a National Marine Sanctuary permit issued pursuant to §§ 922.48 and 922.133 or a Special Use permit issued pursuant to section 310 of the Act.

(e) The prohibitions in paragraphs (a) (2) through (8) of this section do not apply to any activity authorized by any lease, permit, license, approval or other authorization issued after January 1, 1993 and issued by any Federal, State or local authority of competent jurisdiction, provided that the applicant complies with § 922.49, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities. Amendments, renewals and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date.

(f) Notwithstanding paragraphs (d) and (e) of this section, in no event may the Director issue a National Marine Sanctuary permit under §§ 922.48 and

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922.133 or a Special Use permit under section 310 of the Act authorizing, or otherwise approve: the exploration for, development or production of oil, gas or minerals within the Sanctuary, except for the collection of jade pursuant to paragraph (a)(1) of this section; the discharge of primary-treated sewage within the Sanctuary (except by certification, pursuant to § 922.47, of valid authorizations in existence on January 1, 1993 and issued by other authorities of competent jurisdiction); or the disposal of dredged material within the Sanctuary other than at sites authorized by EPA (in consultation with COE) prior to January 1, 1993. Any purported authorizations issued by other authorities within the Sanctuary shall be invalid.

[60 FR 66877, Dec. 27, 1995, as amended at 61 FR 66917, Dec. 19, 1996; 62 FR 35338, July 1, 1997; 63 FR 15087, Mar. 30, 1998]

§ 922.133 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by § 922.132(a)(1) as it pertains to jade collection in the Sanctuary, § 922.132(a) (2) through (8), and § 922.132(a) (10), if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and 922.48.

(b) Applications for such permits should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Manager, Monterey Bay National Marine Sanctuary, 299 Foam Street, Suite D, Monterey, CA 93940.

(c) The Director, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by § 922.132(a)(1) as it pertains to jade collection in the Sanctuary, § 922.132(a) (2) through (8), and § 922.132(a)(10) if the Director finds the activity will have only negligible short-term adverse effects on Sanctuary resources and qualities and will: further research related to Sanctuary resources and qualities; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; allow

the removal, without the use of pneumatic, mechanical, electrical, hydraulic or explosive tools, of loose jade from the Jade Cove area under § 922.132(a)(1)(iv); assist in managing the Sanctuary; or further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of California. In deciding whether to issue a permit, the Director shall consider such factors as: the professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and the duration of its effects; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities; the cumulative effects of the activity; and the end value of the activity. For jade collection, preference will be given for applications proposing to collect loose pieces of jade for research or educational purposes. In addition, the Director may consider such other factors as he or she deems appropriate.

(d) It shall be a condition of any permit issued that the permit or a copy thereof be displayed on board all vessels or aircraft used in the conduct of the activity.

(e) The Director may, *inter alia*, make it a condition of any permit issued that any data or information obtained under the permit be made available to the public.

(f) The Director may, *inter alia*, make it a condition of any permit issued that a NOAA official be allowed to observe any activity conducted under the permit and/or that the permit holder submit one or more reports on the status, progress or results of any activity authorized by the permit.

[60 FR 66877, Dec. 27, 1995, as amended at 63 FR 15088, Mar. 30, 1998]

§ 922.134 Notification and review.

(a) [Reserved]

(b)(1) NOAA has entered into a Memorandum of Agreement (MOA) with the State of California, EPA and the Association of Monterey Bay Area Governments regarding the Sanctuary regulations relating to water quality

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within State waters within the Sanctuary. With regard to permits, the MOA encompasses:

(i) National Pollutant Discharge Elimination System (NPDES) permits issued by the State of California under §13377 of the California Water Code; and

(ii) Waste Discharge Requirements issued by the State of California under §13263 of the California Water Code.

(2) The MOA specifies how the process of §922.49 will be administered within State waters within the Sanctuary in coordination with the State permit program.

[60 FR 66877, Dec. 27, 1995, as amended at 62 FR 62694, Nov. 25, 1997]

APPENDIX A TO SUBPART M OF PART 922—MONTEREY BAY NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

[Appendix based on North American datum of 1983.]

| Point | Latitude | Longitude |
|----------|-----------------|------------------|
| 1 | 37°52'56.09055" | 122°37'39.12564" |
| 2 | 37°39'59.06176" | 122°45' 3.79307" |
| 3 | 37°36'58.39164" | 122°46' 9.73871" |
| 4 | 37°34'17.30224" | 122°48'14.38141" |
| 5 | 37°31'47.55649" | 122°51'35.56769" |
| 6 | 37°30'34.11030" | 122°54'22.12170" |
| 7 | 37°29'39.05866" | 123°00'27.70792" |
| 8 | 37°30'29.47603" | 123°05'46.22767" |
| 9 | 37°31'17.66945" | 123°07'47.63363" |
| 10 | 37°27'10.93594" | 123°08'24.32210" |
| 11 | 37°20'35.37491" | 123°07'54.12763" |
| 12 | 37°13'50.21805" | 123°06'15.50600" |
| 13 | 37°07'48.76810" | 123°01'43.10994" |
| 14 | 37°03'46.60999" | 122°54'45.39513" |
| 15 | 37°02'06.30955" | 122°46'35.02125" |
| 16 | 36°55'17.56782" | 122°48'21.41121" |
| 17 | 36°48'22.74244" | 122°48'56.29007" |
| 18 | 36°41'30.91516" | 122°48'19.40739" |
| 19 | 36°34'45.76070" | 122°46'26.96772" |
| 20 | 36°28'24.18076" | 122°43'32.43527" |
| 21 | 36°22'20.70312" | 122°39'28.42026" |
| 22 | 36°16'43.93588" | 122°34'26.77255" |
| 23 | 36°11'44.53838" | 122°28'37.16141" |
| 24 | 36°07'26.88988" | 122°21'54.97541" |
| 25 | 36°04'07.08898" | 122°14'39.75924" |
| 26 | 36°01'28.22233" | 122°07'00.19068" |
| 27 | 35°59'45.46381" | 121°58'56.36189" |
| 28 | 35°58'59.12170" | 121°50'26.47931" |
| 29 | 35°58'53.63866" | 121°45'22.82363" |
| 30 | 35°55'45.60623" | 121°42'40.28540" |
| 31 | 35°50'15.84256" | 121°43'09.20193" |
| 32 | 35°43'14.26690" | 121°42'43.79121" |
| 33 | 35°35'41.88635" | 121°41'25.07414" |
| 34 | 35°33'11.75999" | 121°37'49.74192" |
| 35 | 35°33'17.45869" | 121°05'52.89891" |
| 36 | 37°35'39.73180" | 122°31'14.96033" |
| 37 | 37°36'49.21739" | 122°37'00.22577" |
| 38 | 37°46'00.98983" | 122°39'00.40466" |
| 39 | 37°49'05.69080" | 122°31'46.30542" |

APPENDIX B TO SUBPART M OF PART 922—DREDGED MATERIAL DISPOSAL SITES ADJACENT TO THE MONTEREY BAY NATIONAL MARINE SANCTUARY

(Appendix based on North American Datum of 1983.)

As of January 1, 1993, the U.S. Army Corps of Engineers operates the following dredged material disposal site adjacent to the Sanctuary off of the Golden Gate:

| Point | Latitude | Longitude |
|---------|------------|-------------|
| 1 | 37°45.875' | 122°34.140' |
| 2 | 37°44.978' | 122°37.369' |
| 3 | 37°44.491' | 122°37.159' |
| 4 | 37°45.406' | 122°33.889' |
| 5 | 37°45.875' | 122°34.140' |

In addition, the U.S. Environmental Protection Agency, as of January 1, 1993, is (in consultation with the U.S. Army Corps of Engineers) in the process of establishing a dredged material disposal site outside the northern boundary of the Monterey Bay National Marine Sanctuary and within one of three study areas described in 57 FR 43310, Sept. 18, 1992. When that disposal site is authorized, this appendix will be updated to incorporate its precise location.

APPENDIX C TO SUBPART M OF PART 922—ZONES WITHIN THE SANCTUARY WHERE OVERFLIGHTS BELOW 1000 FEET ARE PROHIBITED

The four zones are:

(1) From mean high water out to three nautical miles (NM) between a line extending from Point Santa Cruz on a southwesterly heading of 220° and a line extending from 2.0 NM north of Pescadero Point on a southwesterly heading of 240°;

(2) From mean high water out to three NM between a line extending from the Carmel River mouth on a westerly heading of 270° and a line extending due west along latitude 35° 33'17.5612" off of Cambria;

(3) From mean high water and within a five NM arc drawn from a center point at the end of Moss Landing Pier; and

(4) Over the waters of Elkhorn Slough east of the Highway On bridge to Elkhorn Road.

APPENDIX D TO SUBPART M OF PART 922—ZONES AND ACCESS ROUTES WITHIN THE SANCTUARY WHERE THE OPERATION OF MOTORIZED PERSONAL WATERCRAFT IS ALLOWED

The four zones and access routes are:

(1) The approximately one [1.0] NM² area off Pillar Point Harbor from harbor launch ramps, through harbor entrance to the northern boundary of Zone One bounded by (a) 37°29.6' N (flashing 5-second breakwater

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entrance light and horn located at the seaward end of the outer west breakwater), 122°29.1' W; (b) 37°28.9' N (bell buoy), 122°29.0' W; (c) 37°28.8' N, 122°28' W; and (d) 37°29.6' N, 122°28' W;

(2) The approximately five [5.0] NM² area off of Santa Cruz Small Craft Harbor from harbor launch ramps, through harbor entrance, and then along a 100 yard wide access route southwest along a true bearing of approximately 196° (180° magnetic) to the whistle buoy at 36°56.3' N, 122°00.6' W. Zone Two is bounded by (a) 36°55' N, 122°02' W; (b) 36°55' N, 121°58' W; (c) 36°56.5' N, 121°58' W; and (d) 36°56.5' N, 122°02' W;

(3) The approximately six [6.0] NM² area off of Moss Landing Harbor from harbor launch ramps, through harbor entrance, and then along a 100 yard wide access route due west to the eastern boundary of Zone Three bounded by (a) 36°50' N, 121°49.3' W; (b) 36°50' N, 121°50.8' W; (c) 36°46.7' N, 121°50.8' W; (d) 36°46.7' N, 121°49' W; (e) 36°47.9' N (bell buoy), 121°48.1' W; and (f) 36°48.9' N, 121°48.2' W; and

(4) The approximately five [5.0] NM² area off of Monterey Harbor from harbor launch ramps to the seaward end of the U.S. Coast Guard Pier, and then along a 100 yard wide access route due north to the southern boundary of Zone Four bounded by (a) 36°38.7' N, 121°55.4' W; (b) 36°36.9' N, 121°52.5' W; (c) 36°38.3' N, 121°51.3' W; and (d) 36°40' N, 121°54.4' W.

[60 FR 66877, Dec. 27, 1995, as amended at 61 FR 14964, Apr. 4, 1996]

Subpart N—Stellwagen Bank National Marine Sanctuary

§ 922.140 Boundary.

(a) The Stellwagen Bank National Marine Sanctuary (Sanctuary) consists of an area of approximately 638 square nautical miles (NM) of Federal marine waters and the submerged lands thereunder, over and around Stellwagen Bank and other submerged features off the coast of Massachusetts. The boundary encompasses the entirety of Stellwagen Bank; Tillies Bank, to the northeast of Stellwagen Bank; and portions of Jeffreys Ledge, to the north of Stellwagen Bank.

(b) The Sanctuary boundary is identified by the following coordinates, indicating the most northeast, southeast, southwest, west-northwest, and north-northwest points:
42°45'59.83"N×70°13'01.77"W (NE);
42°05'35.51"N×70°02'08.14"W (SE);
42°07'44.89"W×70°28'15.44"W (SW);
42°32'53.52"N×70°35'52.38"W (WNW); and

42°39'04.08"N×70°30'11.29"W (NNW). The western border is formed by a straight line connecting the most southwest and the west-northwest points of the Sanctuary. At the most west-northwest point, the Sanctuary border follows a line contiguous with the three-mile jurisdictional boundary of Massachusetts to the most north-northwest point. From this point, the northern border is formed by a straight line connecting the most north-northwest point and the most northeast point. The eastern border is formed by a straight line connecting the most northeast and the most southeast points of the Sanctuary. The southern border follows a straight line between the most southwest point and a point located at 42°06'54.57"N × 70°16'42.7" W. From that point, the southern border then continues in a west-to-east direction along a line contiguous with the three-mile jurisdictional boundary of Massachusetts until reaching the most southeast point of the Sanctuary. The boundary coordinates are listed in appendix A to this subpart.

§ 922.141 Definitions.

In addition to those definitions found at § 922.3, the following definitions apply to this subpart:

Industrial material means mineral, as defined in § 922.3.

Traditional fishing means those commercial or recreational fishing methods which have been conducted in the past within the Sanctuary.

§ 922.142 Prohibited or otherwise regulated activities.

(a) Except as specified in paragraphs (b) through (f) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1)(i) Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter except:

(A) Fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary;

(B) Biodegradable effluent incidental to vessel use and generated by marine sanitation devices approved in accordance with section 312 of the Federal Water Pollution Control Act, as

amended, (FWPCA), 33 U.S.C. 1322 *et seq.*;

(C) Water generated by routine vessel operations (e.g., cooling water, deck wash down and graywater as defined by section 312 of the FWPCA) excluding oily wastes from bilge pumping; or

(D) Engine exhaust.

(ii) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter, except those listed in paragraphs (a)(1)(i) (A) through (D) of this section, that subsequently enters the Sanctuary and injures a Sanctuary resource or quality.

(2) Exploring for, developing or producing industrial materials within the Sanctuary.

(3) Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary, except as an incidental result of:

(i) Anchoring vessels;

(ii) Traditional fishing operations; or

(iii) Installation of navigation aids.

(4) Moving, removing or injuring, or attempting to move, remove or injure, a Sanctuary historical resource. This prohibition does not apply to moving, removing or injury resulting incidentally from traditional fishing operations.

(5) Taking any marine reptile, marine mammal or seabird in or above the Sanctuary, except as permitted by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*

(6) Lightering in the Sanctuary.

(7) Possessing within the Sanctuary (regardless of where taken, moved or removed from), except as necessary for valid law enforcement purposes, any historical resource, or any marine mammal, marine reptile or seabird taken in violation of the MMPA, ESA or MBTA.

(8) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

(b) The prohibitions in paragraphs (a) (1), and (3) through (8) of this section do not apply to any activity necessary to respond to an emergency threatening life, property or the environment.

(c)(1)(i) All Department of Defense military activities shall be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities.

(ii) Department of Defense military activities may be exempted from the prohibitions in paragraphs (a) (1) and (3) through (7) of this section by the Director after consultation between the Director and the Department of Defense.

(iii) If it is determined that an activity may be carried out, such activity shall be carried out in a manner that avoids to the maximum extent practicable any advance impact on Sanctuary resources and qualities. Civil engineering and other civil works projects conducted by the U.S. Army Corps of Engineers are excluded from the scope of this paragraph(c).

(2) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings caused by the Department of Defense, the Department of Defense shall promptly coordinate with the Director for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

(d) The prohibitions in paragraphs (a) (1) and (3) through (7) of this section do not apply to any activity executed in accordance with the scope, purpose, terms and conditions of a National Marine Sanctuary permit issued pursuant to §922.48 and §922.143 or a Special Use permit issued pursuant to section 310 of the Act.

(e) The prohibitions in paragraphs (a)(1) and (3) through (7) of this section do not apply any activity authorized by any lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation (November 4, 1992) and issued by any Federal, State or local authority of

competent jurisdiction, provided that the applicant complies with §922.49, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities. Amendments, renewals and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date.

(f) Notwithstanding paragraphs (d) and (e) of this section, in no event may the Director issue a permit under §922.48 and §922.143, or under section 310 of the act, authorizing, or otherwise approving, the exploration for, development or production of industrial materials within the Sanctuary, or the disposal of dredged materials within the Sanctuary (except by a certification, pursuant to §922.47, of valid authorizations in existence on November 4, 1992) and any leases, licenses, permits, approvals or other authorizations authorizing the exploration for, development or production of industrial materials in the Sanctuary issued by other authorities after November 4, 1992, shall be invalid.

§922.143 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by §922.142 (a) (1) and (3) through (7) if conducted in accordance with scope, purpose, manner, terms and conditions of a permit issued under this section and §922.48.

(b) Applications for such permits should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Manager, Stellwagen Bank National Marine Sanctuary, 14 Union Street, Plymouth, MA 02360.

(c) The Director, at his or her discretion may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by §922.142(a) (1) and (3) through (7), if the Director finds that the activity will have only negligible short-term adverse effects on Sanctuary resources and qualities and will: further research related to Sanctuary resources and qualities; further

the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or assist in managing the Sanctuary. In deciding whether to issue a permit, the Director may consider such factors as: the professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and the duration of its effects; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities; the cumulative effects of the activity; and the end value of the activity. In addition, the Director may consider such other factors as he or she deems appropriate.

(d) It shall be a condition of any permit issued that the permit or a copy thereof be displayed on board all vessels or aircraft used in the conduct of the activity.

(e) The Director may, *inter alia*, make it a condition of any permit issued that any data or information obtained under the permit be made available to the public.

(f) The Director may, *inter alia*, make it a condition of any permit issued that a NOAA official be allowed to observe any activity conducted under the permit an/or that the permit holder submit one or more reports on the status, progress or results of any activity authorized by the permit.

APPENDIX A TO SUBPART N OF PART 922—STELLWAGEN BANK NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

[Appendix Based on North American Datum of 1927]

| Pt. | Latitude | Longitude | Loran | |
|-----|--------------|--------------|-----------|-----------|
| | | | 9960W | 9960X |
| E1 | 42°45'59.83" | 70°13'01.77" | 13,607.19 | 25,728.57 |
| E2 | 42°05'35.51" | 70°02'08.14" | 13,753.39 | 25,401.78 |
| E3 | 42°06'8.25" | 70°03'17.55" | 13,756.72 | 25,412.46 |
| E4 | 42°06'2.53" | 70°04'03.36" | 13,760.30 | 25,417.53 |
| E5 | 42°07'02.70" | 70°05'13.61" | 13,764.52 | 25,427.27 |
| E6 | 42°07'13.0" | 70°06'23.75" | 13,770.54 | 25,434.45 |
| E7 | 42°07'35.95" | 70°07'27.89" | 13,775.08 | 25,442.51 |
| E8 | 42°07'42.33" | 70°08'26.07" | 13,780.35 | 25,448.27 |
| E9 | 42°07'59.94" | 70°09'19.78" | 13,784.24 | 25,455.02 |
| E10 | 42°08'04.95" | 70°10'24.40" | 13,790.27 | 25,461.28 |
| E11 | 42°07'55.19" | 70°11'47.67" | 13,799.38 | 25,467.56 |
| E12 | 42°07'59.84" | 70°13'03.35" | 13,806.58 | 25,474.95 |

[Appendix Based on North American Datum of 1927]

| Pt. | Latitude | Longitude | Loran | |
|-----|--------------|--------------|-----------|-----------|
| | | | 9960W | 9960X |
| E13 | 42°07'46.55" | 70°14'21.91" | 13,815.52 | 25,480.62 |
| E14 | 42°07'27.29" | 70°15'22.95" | 13,823.21 | 25,484.05 |
| E15 | 42°06'54.57" | 70°16'42.71" | 13,833.88 | 25,487.79 |
| E16 | 42°07'44.89" | 70°28'15.44" | 13,900.14 | 25,563.22 |
| E17 | 42°32'53.52" | 70°35'52.38" | 13,821.60 | 25,773.51 |
| E18 | 42°33'30.24" | 70°35'14.96" | 13,814.43 | 25,773.54 |
| E19 | 42°33'48.14" | 70°35'03.81" | 13,811.68 | 25,774.28 |
| E20 | 42°34'30.45" | 70°34'22.98" | 13,803.64 | 25,774.59 |
| E21 | 42°34'50.37" | 70°33'21.93" | 13,795.43 | 25,770.55 |
| E22 | 42°35'16.08" | 70°32'32.29" | 13,787.92 | 25,768.31 |
| E23 | 42°35'41.80" | 70°31'44.20" | 13,780.57 | 25,766.25 |
| E24 | 42°36'23.08" | 70°30'58.98" | 13,772.14 | 25,766.14 |
| E25 | 42°37'15.51" | 70°30'23.01" | 13,763.69 | 25,768.12 |
| E26 | 42°37'58.88" | 70°30'06.60" | 13,758.09 | 25,771.07 |
| E27 | 42°38'32.46" | 70°30'06.54" | 13,755.07 | 25,774.58 |
| E28 | 42°39'04.08" | 70°30'11.29" | 13,752.75 | 25,778.35 |

Subpart O—Olympic Coast National Marine Sanctuary

§ 922.150 Boundary.

(a) The Olympic Coast National Marine Sanctuary (Sanctuary) consists of an area of approximately 2500 square nautical miles (NM) (approximately 8577 sq. kilometers) of coastal and ocean waters, and the submerged lands thereunder, off the central and northern coast of the State of Washington.

(b) The Sanctuary boundary extends from Koitlah Point due north to the United States/Canada international boundary. The Sanctuary boundary then follows the U.S./Canada international boundary seaward to the 100 fathom isobath. The seaward boundary of the Sanctuary approximates the 100 fathom isobath in a southerly direction from the U.S./Canada international boundary to a point due west of the mouth of the Copalis River cutting across the heads of Nitnat, Juan de Fuca and Quinault Canyons. The coastal boundary of the Sanctuary is the mean higher high water line when adjacent to Federally managed lands cutting across the mouths of all rivers and streams, except where adjacent to Indian reservations, State and county owned lands; in such case, the coastal boundary is the mean lower low water line. La Push harbor is excluded from the Sanctuary boundary shoreward of the International Collision at Sea regulation (Colreg.) demarcation lines. The boundary coordinates are listed in appendix A to this subpart.

§ 922.151 Definitions.

In addition to those definitions found at § 922.3, the following definitions apply to this subpart:

Federal Project means any water resources development project conducted by the U.S. Army Corps of Engineers or operating under a permit or other authorization issued by the Corps of Engineers and authorized by Federal law.

Indian reservation means a tract of land set aside by the Federal Government for use by a Federally recognized American Indian tribe and includes, but is not limited to, the Makah, Quileute, Hoh and Quinault Reservations.

Traditional fishing means fishing using a commercial or recreational fishing method that has been used in the Sanctuary before the effective date of Sanctuary designation (July 22, 1994), including the retrieval of fishing gear.

Treaty means a formal agreement between the United States Government and an Indian tribe.

§ 922.152 Prohibited or otherwise regulated activities.

(a) Except as specified in paragraphs (b) through (g) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1) Exploring for, developing or producing oil, gas or minerals within the Sanctuary.

(2)(i) Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter except:

(A) Fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary;

(B) Biodegradable effluent incidental to vessel use and generated by marine sanitation devices approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322 *et seq.*;

(C) Water generated by routine vessel operations (e.g., cooling water, deck wash down and graywater as defined by section 312 of the FWPCA) excluding oily wastes from bilge pumping;

(D) Engine exhaust; or

(E) Dredge spoil in connection with beach nourishment projects related to harbor maintenance activities.

(ii) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter, except those listed in paragraphs (a)(2)(i) (A) through (E) of this section, that subsequently enters the Sanctuary and injures a Sanctuary resource or quality.

(3) Moving, removing or injuring, or attempting to move, remove or injure, a Sanctuary historical resource. This prohibition does not apply to moving, removing or injury resulting incidentally from traditional fishing operations.

(4) Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary, except as an incidental result of:

- (i) Anchoring vessels;
- (ii) Traditional fishing operations;
- (iii) Installation of navigation aids;

(iv) Harbor maintenance in the areas necessarily associated with Federal Projects in existence on July 22, 1994, including dredging of entrance channels and repair, replacement or rehabilitation of breakwaters and jetties;

(v) Construction, repair, replacement or rehabilitation of boat launches, docks or piers, and associated breakwaters and jetties; or

(vi) Beach nourishment projects related to harbor maintenance activities.

(5) Taking any marine mammal, sea turtle or seabird in or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.*, or pursuant to any Indian treaty with an Indian tribe to which the United States is a party, provided that the Indian treaty right is exercised in accordance with the MMPA, ESA and MBTA, to the extent that they apply.

(6) Flying motorized aircraft at less than 2,000 feet both above the Sanctuary within one NM of the Flattery Rocks, Quillayute Needles, or Copalis National Wildlife Refuge, or within one

NM seaward from the coastal boundary of the Sanctuary, except for activities related to tribal timber operations conducted on reservation lands, or to transport persons or supplies to or from reservation lands as authorized by a governing body of an Indian tribe.

(7) Possessing within the Sanctuary (regardless of where taken, moved or removed from) any historical resource, or any marine mammal, sea turtle, or seabird taken in violation of the MMPA, ESA or MBTA, to the extent that they apply.

(8) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

(b) The prohibitions in paragraph (a) (2) through (4), (6) and (7) of this section do not apply to activities necessary to respond to emergencies threatening life, property or the environment.

(c) The prohibitions in paragraphs (a) (2) through (4), (6) and (7) of this section do not apply to activities necessary for valid law enforcement purposes.

(d)(1) All Department of Defense military activities shall be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities.

(i) Except as provided in paragraph (d)(2) of this section, the prohibitions in paragraphs (a) (2) through (7) of this section do not apply to the following military activities performed by the Department of Defense in W-237A, W-237B, and Military Operating Areas Olympic A and B in the Sanctuary:

(A) Hull integrity tests and other deep water tests;

(B) Live firing of guns, missiles, torpedoes, and chaff;

(C) Activities associated with the Quinault Range including the in-water testing of non-explosive torpedoes; and

(D) Anti-submarine warfare operations.

(ii) New activities may be exempted from the prohibitions in paragraphs (a) (2) through (7) of this section by the Director after consultation between the

Director and the Department of Defense. If it is determined that an activity may be carried out, such activity shall be carried out in a manner that avoids to the maximum extent practicable any adverse impact on Sanctuary resources and qualities. Civil engineering and other civil works projects conducted by the U.S. Army Corps of Engineers are excluded from the scope of this paragraph (d).

(2) The Department of Defense is prohibited from conducting bombing activities within the Sanctuary.

(3) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings caused by the Department of Defense, the Department of Defense shall promptly coordinate with the Director for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

(e) The prohibitions in paragraphs (a) (2) through (7) of this section do not apply to any activity executed in accordance with the scope, purpose, terms and conditions of a National Marine Sanctuary permit issued pursuant to § 922.48 and § 922.153 or a Special Use permit issued pursuant to section 310 of the Act.

(f) Members of a federally recognized Indian tribe may exercise aboriginal and treaty-secured rights, subject to the requirements of other applicable law, without regard to the requirements of this part. The Director may consult with the governing body of a tribe regarding ways the tribe may exercise such rights consistent with the purposes of the Sanctuary.

(g) The prohibitions in paragraphs (a) (2) through (7) of this section do not apply to any activity authorized by any lease, permit, license, or other authorization issued after July 22, 1994 and issued by any Federal, State or local authority of competent jurisdiction, provided that the applicant complies with § 922.49, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and

conditions the Director deems necessary to protect Sanctuary resources and qualities. Amendments, renewals and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date.

(h) Notwithstanding paragraphs (e) and (g) of this section, in no event may the Director issue a National Marine Sanctuary permit under §§ 922.48 and 922.153 or a Special Use permit under section 310 of the Act authorizing, or otherwise approve: The exploration for, development or production of oil, gas or minerals within the Sanctuary; the discharge of primary-treated sewage within the Sanctuary (except by certification, pursuant to § 922.47, of valid authorizations in existence on July 22, 1994 and issued by other authorities of competent jurisdiction); the disposal of dredged material within the Sanctuary other than in connection with beach nourishment projects related to harbor maintenance activities; or bombing activities within the Sanctuary. Any purported authorizations issued by other authorities after July 22, 1994 for any of these activities within the Sanctuary shall be invalid.

§ 922.153 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by paragraphs (a) (2) through (7) of § 922.152 if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and § 922.48.

(b) Applications for such permits should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Manager, Olympic Coast National Marine Sanctuary, 138 West First Street, Port Angeles, WA 98362.

(c) The Director, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by paragraphs (a) (2) through (7) of § 922.152, if the Director finds that the activity will not substantially injure Sanctuary resources and qualities and will: further research related to Sanctuary resources and qualities; further the educational, natural or historical resource value of the

Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; assist in managing the Sanctuary; further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of Washington; or promote the welfare of any Indian tribe adjacent to the Sanctuary. In deciding whether to issue a permit, the Director may consider such factors as: the professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and the duration of its effects; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities; the cumulative effects of the activity; the end value of the activity; and the impacts of the activity on adjacent Indian tribes. Where the issuance or denial of a permit is requested by the governing body of an Indian tribe, the Director shall consider and protect the interests of the tribe to the fullest extent practicable in keeping with the purposes of the Sanctuary and his or her fiduciary duties to the tribe. The Director may also deny a permit application pursuant to this section, in whole or in part, if it is determined that the permittee or applicant has acted in violation of the terms or conditions of a permit or of the regulations in this subpart. In addition, the Director may consider such other factors as he or she deems appropriate.

(d) It shall be a condition of any permit issued that the permit or a copy thereof be displayed on board all vessels or aircraft used in the conduct of the activity.

(e) The Director may, *inter alia*, make it a condition of any permit issued that any data or information obtained under the permit be made available to the public.

(f) The Director may, *inter alia*, make it a condition of any permit issued that a NOAA official be allowed to observe any activity conducted under the permit and/or that the permit holder submit one or more reports on the status,

progress or results of any activity authorized by the permit.

(g) The Director shall obtain the express written consent of the governing body of an Indian tribe prior to issuing a permit, if the proposed activity involves or affects resources of cultural or historical significance to the tribe.

(h) Removal, or attempted removal of any Indian cultural resource or artifact may only occur with the express written consent of the governing body of the tribe or tribes to which such resource or artifact pertains, and certification by the Director that such activities occur in a manner that minimizes damage to the biological and archeological resources. Prior to permitting entry onto a significant cultural site designated by a tribal governing body, the Director shall require the express written consent of the governing body of the tribe or tribes to which such cultural site pertains.

§ 922.154 Consultation with the State of Washington, affected Indian tribes, and adjacent county governments.

(a) The Director shall regularly consult with the State of Washington, the governing bodies of tribes with reservations adjacent to the Sanctuary, and adjacent county governments regarding areas of mutual concern, including Sanctuary programs, permitting, activities, development, and threats to Sanctuary resources.

(b) The Director shall, when requested by such governments, enter into a memorandum of understanding regarding such consultations.

APPENDIX A TO SUBPART O OF PART 922—OLYMPIC COAST NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

[Based on North American Datum of 1983]

| Point | Latitude | Longitude |
|----------|-------------|--------------|
| 1 | 47°07'45" | 124°11'02" |
| 2 | 47°07'45" | 124°58'12" |
| 3 | 47°35'05" | 125°00'00" |
| 4 | 47°40'05" | 125°04'44" |
| 5 | 47°50'01" | 125°05'42" |
| 6 | 47°57'13" | 125°29'13" |
| 7 | 48°07'33" | 125°38'20" |
| 8 | 48°15'00" | 125°40'54" |
| 9 | 48°18'21.2" | 125°30'02.9" |
| 10 | 48°20'15.2" | 125°22'52.9" |
| 11 | 48°26'46.2" | 125°09'16.9" |
| 12 | 48°27'09.2" | 125°08'29.9" |

[Based on North American Datum of 1983]

| Point | Latitude | Longitude |
|----------|-------------|--------------|
| 13 | 48°28'08.2" | 125°05'51.9" |
| 14 | 48°29'43.2" | 125°00'10.9" |
| 15 | 48°29'56.2" | 124°59'19.9" |
| 16 | 48°30'13.2" | 124°54'56.9" |
| 17 | 48°30'21.2" | 124°50'25.9" |
| 18 | 48°30'10.2" | 124°47'17.9" |
| 19 | 48°29'36.4" | 124°43'38.1" |
| 20 | 48°28'08" | 124°38'13" |
| 21 | 48°23'17" | 124°38'13" |

Subpart P—Florida Keys National Marine Sanctuary

SOURCE: 62 FR 32161, June 12, 1997, unless otherwise noted.

§ 922.160 Purpose.

(a) The purpose of the regulations in this subpart is to implement the comprehensive management plan for the Florida Keys National Marine Sanctuary by regulating activities affecting the resources of the Sanctuary or any of the qualities, values, or purposes for which the Sanctuary is designated, in order to protect, preserve and manage the conservation, ecological, recreational, research, educational, historical, and aesthetic resources and qualities of the area. In particular, the regulations in this part are intended to protect, restore, and enhance the living resources of the Sanctuary, to contribute to the maintenance of natural assemblages of living resources for future generations, to provide places for species dependent on such living resources to survive and propagate, to facilitate to the extent compatible with the primary objective of resource protection all public and private uses of the resources of the Sanctuary not prohibited pursuant to other authorities, to reduce conflicts between such compatible uses, and to achieve the other policies and purposes of the Florida Keys National Marine Sanctuary and Protection Act and the National Marine Sanctuaries Act.

(b) Section 304(e) of the NMSA requires the Secretary to review management plans and regulations every five years, and make necessary revisions. Upon completion of the five year review of the Sanctuary management plan and regulations, the Secretary will repropose the regulations in their

entirety with any proposed changes thereto, including those regulations in subparts A and E of this part that apply to the Sanctuary. The Governor of the State of Florida will have the opportunity to review the re-proposed regulations before they take effect and if the Governor certifies such regulations as unacceptable, they will not take effect in State waters of the Sanctuary.

§ 922.161 Boundary.

The Sanctuary consists of all submerged lands and waters from the mean high water mark to the boundary described in Appendix I to this subpart, with the exception of areas within the Dry Tortugas National Park. Appendix I to this subpart sets forth the precise Sanctuary boundary established by the Florida Keys National Marine Sanctuary and Protection Act. (See FKNMSPA §5(b)(2)).

§ 922.162 Definitions.

(a) The following definitions apply to the Florida Keys National Marine Sanctuary regulations. To the extent that a definition appears in §922.3 and this section, the definition in this section governs.

Acts means the Florida Keys National Marine Sanctuary and Protection Act, as amended, (FKNMSPA) (Pub. L. 101-605), and the National Marine Sanctuaries Act (NMSA), also known as Title III of the Marine Protection, Research, and Sanctuaries Act, as amended, (MPRSA) (16 U.S.C. 1431 *et seq.*).

Adverse effect means any factor, force, or action that independently or cumulatively damages, diminishes, degrades, impairs, destroys, or otherwise harms any Sanctuary resource, as defined in section 302(8) of the NMSA (16 U.S.C. 1432(8)) and in this section, or any of the qualities, values, or purposes for which the Sanctuary is designated.

Airboat means a vessel operated by means of a motor driven propeller that pushes air for momentum.

Areas To Be Avoided means the areas in which vessel operations are prohibited pursuant to section 6(a)(1) of the FKNMSPA (see §922.164(a)). Appendix VII to this subpart sets forth the geographic coordinates of these areas, including any modifications thereto

made in accordance with section 6(a)(3) of the FKNMSPA.

Closed means all entry or use is prohibited.

Coral means the corals of the Class Hydrozoa (stinging and hydrocorals); the Class Anthozoa, Subclass Hexacorallia, Order Scleractinia (stony corals) and Antipatharia (black corals).

Coral area means marine habitat where coral growth abounds including patch reefs, outer bank reefs, deep-water banks, and hardbottoms.

Coral reefs means the hard bottoms, deep-water banks, patch reefs, and outer bank reefs.

Ecological Reserve means an area of the Sanctuary consisting of contiguous, diverse habitats, within which uses are subject to conditions, restrictions and prohibitions, including access restrictions, intended to minimize human influences, to provide natural spawning, nursery, and permanent residence areas for the replenishment and genetic protection of marine life, and also to protect and preserve natural assemblages of habitats and species within areas representing a broad diversity of resources and habitats found within the Sanctuary. Appendix IV to this subpart sets forth the geographic coordinates of these areas.

Existing Management Area means an area of the Sanctuary that is within or is a resource management area established by NOAA or by another Federal authority of competent jurisdiction as of the effective date of these regulations where protections above and beyond those provided by Sanctuary-wide prohibitions and restrictions are needed to adequately protect resources. Appendix II to this subpart sets forth the geographic coordinates of these areas.

Exotic species means a species of plant, invertebrate, fish, amphibian, reptile or mammal whose natural zoogeographic range would not have included the waters of the Atlantic Ocean, Caribbean, or Gulf of Mexico without passive or active introduction to such area through anthropogenic means.

Fish means finfish, mollusks, crustaceans, and all forms of marine animal and plant life other than marine mammals and birds.

Fishing means:

(1) The catching, taking, or harvesting of fish; the attempted catching, taking, or harvesting of fish; any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or any operation at sea in support of, or in preparation for, any activity described in this subparagraph (1).

(2) Such term does not include any scientific research activity which is conducted by a scientific research vessel.

Hardbottom means a submerged marine community comprised of organisms attached to exposed solid rock substrate. Hardbottom is the substrate to which corals may attach but does not include the corals themselves.

Idle speed only/no-wake means a speed at which a boat is operated that is no greater than 4 knots or does not produce a wake.

Idle speed only/no-wake zone means a portion of the Sanctuary where the speed at which a boat is operated may be no greater than 4 knots or may not produce a wake.

Live rock means any living marine organism or an assemblage thereof attached to a hard substrate, including dead coral or rock but not individual mollusk shells (e.g., scallops, clams, oysters). Living marine organisms associated with hard bottoms, banks, reefs, and live rock may include, but are not limited to: sea anemones (Phylum Cnidaria: Class Anthozoa: Order Actinaria); sponges (Phylum Porifera); tube worms (Phylum Annelida), including fan worms, feather duster worms, and Christmas tree worms; bryozoans (Phylum Bryozoa); sea squirts (Phylum Chordata); and marine algae, including Mermaid's fan and cups (*Udotea* spp.), corraline algae, green feather, green grape algae (*Caulerpa* spp.) and watercress (*Halimeda* spp.).

Marine life species means any species of fish, invertebrate, or plant included in sections (2), (3), or (4) of Rule 46-42.001, Florida Administrative Code, reprinted in Appendix VIII to this subpart.

Military activity means an activity conducted by the Department of Defense with or without participation by foreign forces, other than civil engineering and other civil works projects

conducted by the U.S. Army Corps of Engineers.

No-access buffer zone means a portion of the Sanctuary where vessels are prohibited from entering regardless of the method of propulsion.

No motor zone means an area of the Sanctuary where the use of internal combustion motors is prohibited. A vessel with an internal combustion motor may access a no motor zone only through the use of a push pole, paddle, sail, electric motor or similar means of operation but is prohibited from using its internal combustion motor.

Not available for immediate use means not readily accessible for immediate use, e.g., by being stowed unbaited in a cabin, locker, rod holder, or similar storage area, or by being securely covered and lashed to a deck or bulkhead.

Officially marked channel means a channel marked by Federal, State of Florida, or Monroe County officials of competent jurisdiction with navigational aids except for channels marked idle speed only/no wake.

Personal watercraft means any jet or air-powered watercraft operated by standing, sitting, or kneeling on or behind the vessel, in contrast to a conventional boat, where the operator stands or sits inside the vessel, and that uses an inboard engine to power a water jet pump for propulsion, instead of a propeller as in a conventional boat.

Prop dredging means the use of a vessel's propulsion wash to dredge or otherwise alter the seabed of the Sanctuary. Prop dredging includes, but is not limited to, the use of propulsion wash deflectors or similar means of dredging or otherwise altering the seabed of the Sanctuary. Prop dredging does not include the disturbance to bottom sediments resulting from normal vessel propulsion.

Prop scarring means the injury to seagrasses or other immobile organisms attached to the seabed of the Sanctuary caused by operation of a vessel in a manner that allows its propeller or other running gear, or any part thereof, to cause such injury (e.g., cutting seagrass rhizomes). Prop scarring does not include minor disturbances to bottom sediments or seagrass

blades resulting from normal vessel propulsion.

Residential shoreline means any man-made or natural:

- (1) Shoreline,
- (2) Canal mouth,
- (3) Basin, or

(4) Cove adjacent to any residential land use district, including improved subdivision, suburban residential or suburban residential limited, sparsely settled, urban residential, and urban residential mobile home under the Monroe County land development regulations.

Sanctuary means the Florida Keys National Marine Sanctuary.

Sanctuary Preservation Area means an area of the Sanctuary that encompasses a discrete, biologically important area, within which uses are subject to conditions, restrictions and prohibitions, including access restrictions, to avoid concentrations of uses that could result in significant declines in species populations or habitat, to reduce conflicts between uses, to protect areas that are critical for sustaining important marine species or habitats, or to provide opportunities for scientific research. Appendix V to this subpart sets forth the geographic coordinates of these areas.

Sanctuary wildlife means any species of fauna, including avifauna, that occupy or utilize the submerged resources of the Sanctuary as nursery areas, feeding grounds, nesting sites, shelter, or other habitat during any portion of their life cycles.

Seagrass means any species of marine angiosperms (flowering plants) that inhabit portions of the seabed in the Sanctuary. Those species include, but are not limited to: *Thalassia testudinum* (turtle grass); *Syringodium filiforme* (manatee grass); *Halodule wrightii* (shoal grass); *Halophila decipiens*, *H. engelmannii*, *H. johnsonii*; and *Ruppia maritima*.

Special-use Area means an area of the Sanctuary set aside for scientific research and educational purposes, recovery or restoration of Sanctuary resources, monitoring, to prevent use or user conflicts, to facilitate access and use, or to promote public use and understanding of Sanctuary resources. Appendix VI to this subpart sets forth

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the geographic coordinates of these areas.

Tank vessel means any vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that—

- (1) Is a United States flag vessel;
- (2) Operates on the navigable waters of the United States; or
- (3) Transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States [46 U.S.C. 2101].

Traditional fishing means those commercial or recreational fishing activities that were customarily conducted within the Sanctuary prior to its designation as identified in the Environmental Impact Statement and Management Plan for this Sanctuary.

Tropical fish means any species included in section (2) of Rule 46-42.001, Florida Administrative Code, reproduced in Appendix VIII to this subpart, or any part thereof.

Vessel means a watercraft of any description, including, but not limited to, motorized and non-motorized watercraft, personal watercraft, airboats, and float planes while maneuvering on the water, capable of being used as a means of transportation in/on the waters of the Sanctuary. For purposes of this part, the terms “vessel,” “watercraft,” and “boat” have the same meaning.

Wildlife Management Area means an area of the Sanctuary established for the management, protection, and preservation of Sanctuary wildlife resources, including such an area established for the protection and preservation of endangered or threatened species or their habitats, within which access is restricted to minimize disturbances to Sanctuary wildlife; to ensure protection and preservation consistent with the Sanctuary designation and other applicable law governing the protection and preservation of wildlife resources in the Sanctuary. Appendix III to this subpart lists these areas and their access restrictions.

(b) Other terms appearing in the regulations in this part are defined at 15 CFR 922.3, and/or in the Marine Protection, Research, and Sanctuaries Act

(MPRSA), as amended, 33 U.S.C. 1401 *et seq.* and 16 U.S.C. 1431 *et seq.*

§922.163 Prohibited activities—Sanctuary-wide.

(a) Except as specified in paragraph (b) through (e) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1) *Mineral and hydrocarbon exploration, development and production.* Exploring for, developing, or producing minerals or hydrocarbons within the Sanctuary.

(2) *Removal of, injury to, or possession of coral or live rock.* (i) Moving, removing, taking, harvesting, damaging, disturbing, breaking, cutting, or otherwise injuring, or possessing (regardless of where taken from) any living or dead coral, or coral formation, or attempting any of these activities, except as permitted under 50 CFR part 638.

(ii) Harvesting, or attempting to harvest, any live rock from the Sanctuary, or possessing (regardless of where taken from) any live rock within the Sanctuary, except as authorized by a permit for the possession or harvest from aquaculture operations in the Exclusive Economic Zone, issued by the National Marine Fisheries Service pursuant to applicable regulations under the appropriate Fishery Management Plan, or as authorized by the applicable State authority of competent jurisdiction within the Sanctuary for live rock cultured on State submerged lands leased from the State of Florida, pursuant to applicable State law. *See* §370.027, Florida Statutes and implementing regulations.

(3) *Alteration of, or construction on, the seabed.* Drilling into, dredging, or otherwise altering the seabed of the Sanctuary, or engaging in prop-dredging; or constructing, placing or abandoning any structure, material, or other matter on the seabed of the Sanctuary, except as an incidental result of:

(i) Anchoring vessels in a manner not otherwise prohibited by this part (see §§922.163(a)(5)(ii) and 922.164(d)(1)(v));

(ii) Traditional fishing activities not otherwise prohibited by this part;

(iii) Installation and maintenance of navigational aids by, or pursuant to valid authorization by, any Federal,

State, or local authority of competent jurisdiction;

(iv) Harbor maintenance in areas necessarily associated with Federal water resource development projects in existence on July 1, 1997, including maintenance dredging of entrance channels and repair, replacement, or rehabilitation of breakwaters or jetties;

(v) Construction, repair, replacement, or rehabilitation of docks, seawalls, breakwaters, piers, or marinas with less than ten slips authorized by any valid lease, permit, license, approval, or other authorization issued by any Federal, State, or local authority of competent jurisdiction.

(4) *Discharge or deposit of materials or other matter.* (i) Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter, except:

(A) Fish, fish parts, chumming materials, or bait used or produced incidental to and while conducting a traditional fishing activity in the Sanctuary;

(B) Biodegradable effluent incidental to vessel use and generated by a marine sanitation device approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322 *et seq.*;

(C) Water generated by routine vessel operations (e.g., deck wash down and graywater as defined in section 312 of the FWPCA), excluding oily wastes from bilge pumping; or

(D) Cooling water from vessels or engine exhaust;

(ii) 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) of this section and those authorized under Monroe County land use permits or under State permits.

(5) *Operation of vessels.* (i) Operating a vessel in such a manner as to strike or otherwise injure coral, seagrass, or any other immobile organism attached to the seabed, including, but not limited to, operating a vessel in such a manner as to cause prop-scarring.

(ii) Having a vessel anchored on living coral other than hardbottom in water depths less than 40 feet when visibility is such that the seabed can be seen.

(iii) Except in officially marked channels, operating a vessel at a speed greater than 4 knots or in manner which creates a wake:

(A) Within an area designated idle speed only/no wake;

(B) Within 100 yards of navigational aids indicating emergent or shallow reefs (international diamond warning symbol);

(C) Within 100 feet of the red and white "divers down" flag (or the blue and white "alpha" flag in Federal waters);

(D) Within 100 yards of residential shorelines; or

(E) Within 100 yards of stationary vessels.

(iv) Operating a vessel in such a manner as to injure or take wading, roosting, or nesting birds or marine mammals.

(v) Operating a vessel in a manner which endangers life, limb, marine resources, or property.

(6) *Conduct of diving/snorkeling without flag.* Diving or snorkeling without flying in a conspicuous manner the red and white "divers down" flag (or the blue and white "alpha" flag in Federal waters).

(7) *Release of exotic species.* Introducing or releasing an exotic species of plant, invertebrate, fish, amphibian, or mammals into the Sanctuary.

(8) *Damage or removal of markers.* Marking, defacing, or damaging in any way or displacing, removing, or tampering with any official signs, notices, or placards, whether temporary or permanent, or with any navigational aids, monuments, stakes, posts, mooring buoys, boundary buoys, trap buoys, or scientific equipment.

(9) *Movement of, removal of, injury to, or possession of Sanctuary historical resources.* Moving, removing, injuring, or possessing, or attempting to move, remove, injure, or possess, a Sanctuary historical resource.

(10) *Take or possession of protected wildlife.* Taking any marine mammal, sea turtle, or seabird in or above the Sanctuary, *except* as authorized by the

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Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA) 16 U.S.C. 703 *et seq.*

(11) *Possession or use of explosives or electrical charges.* Possessing, or using explosives, except powerheads, or re-leasing electrical charges within the Sanctuary.

(12) *Harvest or possession of marine life species.* Harvesting, possessing, or landing any marine life species, or part thereof, within the Sanctuary, except in accordance with rules 46-42.001 through 46-42.003, 46-42.0035, and 46-42.004 through 46-42.007, and 46.42.009 of the Florida Administrative Code, reproduced in Appendix VIII to this subpart, and such rules shall apply *mutatis mutandis* (with necessary editorial changes) to all Federal and State waters within the Sanctuary.

(13) *Interference with law enforcement.* Interfering with, obstructing, delaying or preventing an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Acts or any regulation or permit issued under the Acts.

(b) Notwithstanding the prohibitions in this section and in §922.164, and any access and use restrictions imposed pursuant thereto, a person may conduct an activity specifically authorized by, and conducted in accordance with the scope, purpose, terms, and conditions of, a National Marine Sanctuary permit issued pursuant to §922.166.

(c) Notwithstanding the prohibitions in this section and in §922.164, and any access and use restrictions imposed pursuant thereto, a person may conduct an activity specifically authorized by a valid Federal, State, or local lease, permit, license, approval, or other authorization in existence on the effective date of these regulations, or by any valid right of subsistence use or access in existence on the effective date of these regulations, provided that the holder of such authorization or right complies with §922.167 and with any terms and conditions on the exercise of such authorization or right imposed by the Director as a condition of certification as he or she deems reasonably necessary to achieve the purposes

for which the Sanctuary was designated.

(d) Notwithstanding the prohibitions in this section and in §922.164, and any access and use restrictions imposed pursuant thereto, a person may conduct an activity specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization issued after the effective date of these regulations, provided that the applicant complies with §922.168, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems reasonably necessary to protect Sanctuary resources and qualities. Amendments, renewals and extensions of authorizations in existence on the effective date of these regulations constitute authorizations issued after the effective date of these regulations.

(e)(1) All military activities shall be carried out in a manner that avoids to the maximum extent practical any adverse impacts on Sanctuary resources and qualities. The prohibitions in paragraph (a) of this section and §922.164 do not apply to existing classes of military activities which were conducted prior to the effective date of these regulations, as identified in the Environmental Impact Statement and Management Plan for the Sanctuary. New military activities in the Sanctuary are allowed and may be exempted from the prohibitions in paragraph (a) of this section and in §922.164 by the Director after consultation between the Director and the Department of Defense pursuant to section 304(d) of the NMSA. When a military activity is modified such that it is likely to destroy, cause the loss of, or injure a Sanctuary resource or quality in a manner significantly greater than was considered in a previous consultation under section 304(d) of the NMSA, or it is likely to destroy, cause the loss of, or injure a Sanctuary resource or quality not previously considered in a previous consultation under section 304(d) of the NMSA, the activity is considered a new activity for purposes of this paragraph. If it is determined that an

activity may be carried out, such activity shall be carried out in a manner that avoids to the maximum extent practical any adverse impact on Sanctuary resources and qualities.

(2) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings caused by the Department of Defense, the cognizant component shall promptly coordinate with the Director for the purpose of taking appropriate actions to prevent, respond to or mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

(f) The prohibitions contained in paragraph (a)(5) of this section do not apply to Federal, State and local officers while performing enforcement duties and/or responding to emergencies that threaten life, property, or the environment in their official capacity.

(g) Notwithstanding paragraph (b) of this section and paragraph (a) of § 922.168, in no event may the Director issue a permit under § 922.166 authorizing, or otherwise approve, the exploration for, leasing, development, or production of minerals or hydrocarbons within the Sanctuary, the disposal of dredged material within the Sanctuary other than in connection with beach renourishment or Sanctuary restoration projects, or the discharge of untreated or primary treated sewage (except by a certification, pursuant to § 922.167, of a valid authorization in existence on the effective date of these regulations), and any purported authorizations issued by other authorities after the effective date of these regulations for any of these activities within the Sanctuary shall be invalid.

(h) Any amendment to these regulations shall not take effect in Florida State waters until approved by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida. Any fishery regulations in the Sanctuary shall not take effect in Florida State waters until established by the Florida Marine Fisheries Commission.

§ 922.164 Additional activity regulations by Sanctuary area.

In addition to the prohibitions set forth in § 922.163, which apply throughout the Sanctuary, the following regulations apply with respect to activities conducted within the Sanctuary areas described in this section and in Appendix (II) through (VII) to this subpart. Activities located within two or more overlapping Sanctuary areas are concurrently subject to the regulations applicable to each overlapping area.

(a) *Areas to be avoided.* Operating a tank vessel or a vessel greater than 50 meters in registered length is prohibited in all areas to be avoided, except if such vessel is a public vessel and its operation is essential for national defense, law enforcement, or responses to emergencies that threaten life, property, or the environment. Appendix VII to this subpart sets forth the geographic coordinates of these areas.

(b) *Existing management areas—(1) Key Largo and Looe Key Management Areas.* The following activities are prohibited within the Key Largo and Looe Key Management Areas (also known as the Key Largo and Looe Key National Marine Sanctuaries) described in Appendix II to this subpart:

(i) Removing, taking, damaging, harmfully disturbing, breaking, cutting, spearing or similarly injuring any coral or other marine invertebrate, or any plant, soil, rock, or other material, except commercial taking of spiny lobster and stone crab by trap and recreational taking of spiny lobster by hand or by hand gear which is consistent with these regulations and the applicable regulations implementing the applicable Fishery Management Plan.

(ii) Taking any tropical fish.

(iii) Fishing with wire fish traps, bottom trawls, dredges, fish sleds, or similar vessel-towed or anchored bottom fishing gear or nets.

(iv) Fishing with, carrying or possessing, except while passing through without interruption or for law enforcement purposes: pole spears, air rifles, bows and arrows, slings, Hawaiian slings, rubber powered arbaletes, pneumatic and spring-loaded guns or similar devices known as spearguns.

(2) *Great White Heron and Key West National Wildlife Refuge Management Areas.* Operating a personal watercraft, operating an airboat, or water skiing except within Township 66 South, Range 29 East, Sections 5, 11, 12 and 14; Township 66 South, Range 28 East, Section 2; Township 67 South, Range 26 East, Sections 16 and 20, all Tallahassee Meridian, are prohibited within the marine portions of the Great White Heron and Key West National Wildlife Refuge Management Areas described in Appendix II to this subpart.

(c) *Wildlife management areas.* (1) Marine portions of the Wildlife Management Areas listed in Appendix III to this subpart or portions thereof may be designated “idle speed only/no-wake,” “no-motor” or “no-access buffer” zones or “closed”. The Director, in cooperation with other Federal, State, or local resource management authorities, as appropriate, shall post signs conspicuously, using mounting posts, buoys, or other means according to location and purpose, at appropriate intervals and locations, clearly delineating an area as an “idle speed only/no wake”, a “no-motor”, or a “no-access buffer” zone or as “closed”, and allowing instant, long-range recognition by boaters. Such signs shall display the official logo of the Sanctuary.

(2) The following activities are prohibited within the marine portions of the Wildlife Management Areas listed in Appendix III to this subpart:

(i) In those marine portions of any Wildlife Management Area designated an “idle speed only/no wake” zone in Appendix III to this subpart, operating a vessel at a speed greater than idle speed only/no wake.

(ii) In those marine portions of any Wildlife Management Area designated a “no-motor” zone in Appendix III to this subpart, using internal combustion motors or engines for any purposes. A vessel with an internal combustion motor or engine may access a “no-motor” zone only through the use of a push pole, paddle, sail, electric motor or similar means of propulsion.

(iii) In those marine portions of any Wildlife Management Area designated a “no-access buffer” zone in Appendix III of this subpart, entering the area by vessel.

(iv) In those marine portions of any Wildlife Management Area designated as closed in Appendix III of this subpart, entering or using the area.

(3) The Director shall coordinate with other Federal, State, or local resource management authorities, as appropriate, in the establishment and enforcement of access restrictions described in paragraph (c)(2) (i)-(iv) of this section in the marine portions of Wildlife Management Areas.

(4) The Director may modify the number and location of access restrictions described in paragraph (c)(2) (i)-(iv) of this section within the marine portions of a Wildlife Management Area if the Director finds that such action is reasonably necessary to minimize disturbances to Sanctuary wildlife, or to ensure protection and preservation of Sanctuary wildlife consistent with the purposes of the Sanctuary designation and other applicable law governing the protection and preservation of wildlife resources in the Sanctuary. The Director will effect such modification by:

(i) Publishing in the FEDERAL REGISTER, after notice and an opportunity for public comments in accordance, an amendment to the list of such areas set forth in Appendix III to this subpart, and a notice regarding the time and place where maps depicting the precise locations of such restrictions will be made available for public inspection, and

(ii) Posting official signs delineating such restrictions in accordance with paragraph (c)(1) of this section.

(d) *Ecological Reserves and Sanctuary Preservation Areas.* (1) The following activities are prohibited within the Ecological Reserves described in Appendix IV to this subpart, and within the Sanctuary Preservation Areas, described in Appendix V to this subpart:

(i) Discharging or depositing any material or other matter except cooling water or engine exhaust.

(ii) Possessing, moving, harvesting, removing, taking, damaging, disturbing, breaking, cutting, spearing, or otherwise injuring any coral, marine invertebrate, fish, bottom formation, algae, seagrass or other living or dead organism, including shells, or attempting any of these activities. However,

fish, invertebrates, and marine plants may be possessed aboard a vessel in an Ecological Reserve or Sanctuary Preservation Area, provided such resources can be shown not to have been harvested within, removed from, or taken within, the Ecological Reserve or Sanctuary Preservation Area, as applicable, by being stowed in a cabin, locker, or similar storage area prior to entering and during transit through such reserves or areas, provided further that in an Ecological Reserve or Sanctuary Preservation Area located in Florida State waters, such vessel is in continuous transit through the Ecological Reserve or Sanctuary Preservation Area.

(iii) Except for catch and release fishing by trolling in the Conch Reef, Alligator Reef, Sombbrero Reef, and Sand Key SPAs, fishing by any means. However, gear capable of harvesting fish may be aboard a vessel in an Ecological Reserve or Sanctuary Preservation Area, provided such gear is not available for immediate use when entering and during transit through such Ecological Reserve or Sanctuary Preservation Area, and no presumption of fishing activity shall be drawn therefrom.

(iv) Touching living or dead coral, including but not limited to, standing on a living or dead coral formation.

(v) Placing any anchor in a way that allows the anchor or any portion of the anchor apparatus (including the anchor, chain or rope) to touch living or dead coral, or any attached organism. When anchoring dive boats, the first diver down must inspect the anchor to ensure that it is not touching living or dead coral, and will not shift in such a way as to touch such coral or other attached organisms. No further diving shall take place until the anchor is placed in accordance with these requirements.

(vi) Anchoring instead of mooring when a mooring buoy is available or anchoring in other than a designated anchoring area when such areas have been designated and are available.

(vii) Except for passage without interruption through the area, for law enforcement purposes, or for purposes of monitoring pursuant to paragraph (d)(2) of this section, violating a temporary access restriction imposed by

the Director pursuant to paragraph (d)(2) of this section.

(2) The Director may temporarily restrict access to any portion of any Sanctuary Preservation Area or Ecological Reserve if the Director, on the basis of the best available data, information and studies, determines that a concentration of use appears to be causing or contributing to significant degradation of the living resources of the area and that such action is reasonably necessary to allow for recovery of the living resources of such area. The Director will provide for continuous monitoring of the area during the pendency of the restriction. The Director will provide public notice of the restriction by publishing a notice in the FEDERAL REGISTER, and by such other means as the Director may deem appropriate. The Director may only restrict access to an area for a period of 60 days, with one additional 60 day renewal. The Director may restrict access to an area for a longer period pursuant to a notice and opportunity for public comment rulemaking under the Administrative Procedure Act. Such restriction will be kept to the minimum amount of area necessary to achieve the purposes thereof.

(e) *Special-use Areas.* (1) The Director may set aside discrete areas of the Sanctuary as Special-use Areas, and, by designation pursuant to this paragraph, impose the access and use restrictions specified in paragraph (e)(3) of this section. Special-use Areas are described in Appendix VI to this subpart, in accordance with the following designations and corresponding objectives:

(i) "Recovery area" to provide for the recovery of Sanctuary resources from degradation or other injury attributable to human uses;

(ii) "Restoration area" to provide for restoration of degraded or otherwise injured Sanctuary resources;

(iii) "Research-only area" to provide for scientific research or education relating to protection and management, through the issuance of a Sanctuary General permit for research pursuant to § 922.166 of these regulations; and

(iv) "Facilitated-use area" to provide for the prevention of use or user conflicts or the facilitation of access and

use, or to promote public use and understanding, of Sanctuary resources through the issuance of special-use permits.

(2) A Special-use Area shall be no larger than the size the Director deems reasonably necessary to accomplish the applicable objective.

(3) Persons conducting activities within any Special-use Area shall comply with the access and use restrictions specified in this paragraph and made applicable to such area by means of its designation as a "recovery area," "restoration area," "research-only area," or "facilitated-use area." Except for passage without interruption through the area or for law enforcement purposes, no person may enter a Special-use Area except to conduct or cause to be conducted the following activities:

(i) In such area designated as a "recovery area" or a "restoration area", habitat manipulation related to restoration of degraded or otherwise injured Sanctuary resources, or activities reasonably necessary to monitor recovery of degraded or otherwise injured Sanctuary resources;

(ii) In such area designated as a "research only area", scientific research or educational use specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of a valid National Marine Sanctuary General or Historical Resources permit, or

(iii) In such area designated as a "facilitated-use area", activities specified by the Director or specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a valid Special-use permit.

(4)(i) The Director may modify the number of, location of, or designations applicable to, Special-use Areas by publishing in the FEDERAL REGISTER, after notice and an opportunity for public comment in accordance with the Administrative Procedure Act, an amendment to Appendix VI to this subpart, except that, with respect to such areas designated as a "recovery area," "restoration area," or "research only area," the Director may modify the number of, location of, or designation applicable to, such areas by publishing a notice of such action in the FEDERAL

REGISTER if the Director determines that immediate action is reasonably necessary to:

(A) Prevent significant injury to Sanctuary resources where circumstances create an imminent risk to such resources;

(B) Initiate restoration activity where a delay in time would significantly impair the ability of such restoration activity to succeed;

(C) Initiate research activity where an unforeseen natural event produces an opportunity for scientific research that may be lost if research is not initiated immediately.

(i) If the Director determines that a notice of modification must be promulgated immediately in accordance with paragraph (e)(4)(i) of this section, the Director will, as part of the same notice, invite public comment and specify that comments will be received for 15 days after the effective date of the notice. As soon as practicable after the end of the comment period, the Director will either rescind, modify or allow the modification to remain unchanged through notice in the FEDERAL REGISTER.

(f) Additional Wildlife Management Areas, Ecological Reserves, Sanctuary Preservation Areas, or Special-use Areas, and additional restrictions in such areas, shall not take effect in Florida State waters unless first approved by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida.

(g) Anchoring on Tortugas Bank. Vessels 50 meters or greater in registered length are prohibited from anchoring on the Tortugas Bank. The coordinates of the area on the Tortugas Bank, west of the Dry Tortugas National Park, closed to anchoring by vessels 50 meters or greater in registered length are:

- (1) 24° 45.75'N 82° 54.40'W
- (2) 24° 45.60'N 82° 54.40'W
- (3) 24° 39.70'N 83° 00.05'W
- (4) 24° 32.00'N 83° 00.05'W
- (5) 24° 37.00'N 83° 06.00'W
- (6) 24° 40.00'N 83° 06.00'W

[62 FR 32161, June 12, 1997, as amended at 63 FR 43873, Aug. 17, 1998]

§ 922.165 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. Emergency regulations shall not take effect in Florida territorial waters until approved by the Governor of the State of Florida. Any temporary regulation may be in effect for up to 60 days, with one 60-day extension. Additional or extended action will require notice and comment rule-making under the Administrative Procedure Act, notice in local newspapers, notice to Mariners, and press releases.

§ 922.166 Permits—application procedures and issuance criteria.

(a) *National Marine Sanctuary General Permit.* (1) A person may conduct an activity prohibited by §§ 922.163 or 922.164, other than an activity involving the survey/inventory, research/recovery, or deaccession/transfer of Sanctuary historical resources, if such activity is specifically authorized by, and provided such activity is conducted in accordance with the scope, purpose, terms and conditions of, a National Marine Sanctuary General permit issued under this paragraph (a).

(2) The Director, at his or her discretion, may issue a General permit under this paragraph (a), subject to such terms and conditions as he or she deems appropriate, if the Director finds that the activity will:

- (i) Further research or monitoring related to Sanctuary resources and qualities;
- (ii) Further the educational value of the Sanctuary;
- (iii) Further the natural or historical resource value of the Sanctuary;
- (iv) Further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty;
- (v) Assist in managing the Sanctuary; or
- (vi) Otherwise further Sanctuary purposes, including facilitating multiple use of the Sanctuary, to the extent compatible with the primary objective of resource protection.

(3) The Director shall not issue a General permit under this paragraph (a), unless the Director also finds that:

- (i) The applicant is professionally qualified to conduct and complete the proposed activity;
- (ii) The applicant has adequate financial resources available to conduct and complete the proposed activity;
- (iii) The duration of the proposed activity is no longer than necessary to achieve its stated purpose;
- (iv) The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's goals in relation to the activity's impacts on Sanctuary resources and qualities;
- (v) The proposed activity will be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities, considering the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, any indirect, secondary or cumulative effects of the activity, and the duration of such effects;
- (vi) It is necessary to conduct the proposed activity within the Sanctuary to achieve its purposes; and
- (vii) The reasonably expected end value of the activity to the furtherance of Sanctuary goals and purposes outweighs any potential adverse impacts on Sanctuary resources and qualities from the conduct of the activity.

(4) For activities proposed to be conducted within any of the areas described in § 922.164 (b)–(e), the Director shall not issue a permit unless he or she further finds that such activities will further and are consistent with the purposes for which such area was established, as described in §§ 922.162 and 922.164 and in the management plan for the Sanctuary.

(b) *National Marine Sanctuary Survey/Inventory of Historical Resources Permit.*

(1) A person may conduct an activity prohibited by §§ 922.163 or 922.164 involving the survey/inventory of Sanctuary historical resources if such activity is specifically authorized by, and is conducted in accordance with the scope, purpose, terms and conditions of, a Survey/Inventory of Historical Resources permit issued under this paragraph (b). Such permit is not required if such survey/inventory activity does

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not involve any activity prohibited by §§922.163 or 922.164. Thus, survey/inventory activities that are non-intrusive, do not include any excavation, removal, or recovery of historical resources, and do not result in destruction of, loss of, or injury to Sanctuary resources or qualities do not require a permit. However, if a survey/inventory activity will involve test excavations or removal of artifacts or materials for evaluative purposes, a Survey/Inventory of Historical Resources permit is required. Regardless of whether a Survey/Inventory permit is required, a person may request such permit. Persons who have demonstrated their professional abilities under a Survey/Inventory permit will be given preference over other persons in consideration of the issuance of a Research/Recovery permit. While a Survey/Inventory permit does not grant any rights with regards to areas subject to pre-existing rights of access which are still valid, once a permit is issued for an area, other survey/inventory permits will not be issued for the same area during the period for which the permit is valid.

(2) The Director, at his or her discretion, may issue a Survey/Inventory permit under this paragraph (b), subject to such terms and conditions as he or she deems appropriate, if the Director finds that such activity:

(i) Satisfies the requirements for a permit issued under paragraph (a)(3) of this section;

(ii) Either will be non-intrusive, not include any excavation, removal, or recovery of historical resources, and not result in destruction of, loss of, or injury to Sanctuary resources or qualities, or if intrusive, will involve no more than the minimum manual alteration of the seabed and/or the removal of artifacts or other material necessary for evaluative purposes and will cause no significant adverse impacts on Sanctuary resources or qualities; and

(iii) That such activity will be conducted in accordance with all requirements of the Programmatic Agreement for the Management of Submerged Cultural Resources in the Florida Keys National Marine Sanctuary among NOAA, the Advisory Council on Historic Preservation, and the State of

Florida (hereinafter SCR Agreement), and that such permit issuance is in accordance with such SCR Agreement. Copies of the SCR Agreement may also be examined at, and obtained from, the Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, 12th floor, Silver Spring, MD 20910; or from the Florida Keys National Marine Sanctuary Office, P.O. Box 500368, Marathon, FL 33050.

(c) *National Marine Sanctuary Research/Recovery of Sanctuary Historical Resources Permit.* (1) A person may conduct any activity prohibited by §§922.163 or 922.164 involving the research/recovery of Sanctuary historical resources if such activity is specifically authorized by, and is conducted in accordance with the scope, purpose, terms and conditions of, a Research/Recovery of Historical Resources permit issued under this paragraph (c).

(2) The Director, at his or her discretion, may issue a Research/Recovery of Historical Resources permit, under this paragraph (c), and subject to such terms and conditions as he or she deems appropriate, if the Director finds that:

(i) Such activity satisfies the requirements for a permit issued under paragraph (a)(3) of this section;

(ii) The recovery of the resource is in the public interest as described in the SCR Agreement;

(iii) Recovery of the resource is part of research to preserve historic information for public use; and

(iv) Recovery of the resource is necessary or appropriate to protect the resource, preserve historical information, and/or further the policies and purposes of the NMSA and the FKNMSPA, and that such permit issuance is in accordance with, and that the activity will be conducted in accordance with, all requirements of the SCR Agreement.

(d) *National Marine Sanctuary Special-use Permit.* (1) A person may conduct any commercial or concession-type activity prohibited by §§922.163 or 922.164, if such activity is specifically authorized by, and is conducted in accordance

with the scope, purpose, terms and conditions of, a Special-use permit issued under this paragraph (d). A Special-use permit is required for the deaccession/transfer of Sanctuary historical resources.

(2) The Director, at his or her discretion, may issue a Special-use permit in accordance with this paragraph (d), and subject to such terms and conditions as he or she deems appropriate and the mandatory terms and conditions of section 310 of the NMSA, if the Director finds that issuance of such permit is reasonably necessary to: establish conditions of access to and use of any Sanctuary resource; or promote public use and understanding of any Sanctuary resources. No permit may be issued unless the activity is compatible with the purposes for which the Sanctuary was designated and can be conducted in a manner that does not destroy, cause the loss of, or injure any Sanctuary resource, and if for the deaccession/transfer of Sanctuary Historical Resources, unless such permit issuance is in accordance with, and that the activity will be conducted in accordance with, all requirements of the SCR Agreement.

(3) The Director may assess and collect fees for the conduct of any activity authorized by a Special-use permit issued pursuant to this paragraph (d). No Special-use permit shall be effective until all assessed fees are paid, unless otherwise provided by the Director by a fee schedule set forth as a permit condition. In assessing a fee, the Director shall include:

(i) All costs incurred, or expected to be incurred, in reviewing and processing the permit application, including, but not limited to, costs for:

- (A) Number of personnel;
- (B) Personnel hours;
- (C) Equipment;
- (D) Biological assessments;
- (E) Copying; and

(F) Overhead directly related to reviewing and processing the permit application;

(ii) All costs incurred, or expected to be incurred, as a direct result of the conduct of the activity for which the Special-use permit is being issued, including, but not limited to:

(A) The cost of monitoring the conduct both during the activity and after the activity is completed in order to assess the impacts to Sanctuary resources and qualities;

(B) The use of an official NOAA observer, including travel and expenses and personnel hours; and

(C) Overhead costs directly related to the permitted activity; and

(iii) An amount which represents the fair market value of the use of the Sanctuary resource and a reasonable return to the United States Government.

(4) Nothing in this paragraph (d) shall be considered to require a person to obtain a permit under this paragraph for the conduct of any fishing activities within the Sanctuary.

(e) *Applications.* (1) Applications for permits should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuary Superintendent, Florida Keys National Marine Sanctuary, P.O. Box 500368, Marathon, FL 33050. All applications must include:

(i) A detailed description of the proposed activity including a timetable for completion of the activity and the equipment, personnel and methodology to be employed;

(ii) The qualifications and experience of all personnel;

(iii) The financial resources available to the applicant to conduct and complete the proposed activity;

(iv) A statement as to why it is necessary to conduct the activity within the Sanctuary;

(v) The potential impacts of the activity, if any, on Sanctuary resources and qualities;

(vi) The benefit to be derived from the activity; and

(vii) Such other information as the Director may request depending on the type of activity. Copies of all other required licenses, permits, approvals, or other authorizations must be attached to the application.

(2) Upon receipt of an application, the Director may request such additional information from the applicant as he or she deems reasonably necessary to act on the application and may seek the views of any persons. The Director may require a site visit as

part of the permit evaluation. Unless otherwise specified, the information requested must be received by the Director within 30 days of the postmark date of the request. Failure to provide such additional information on a timely basis may be deemed by the Director to constitute abandonment or withdrawal of the permit application.

(f) A permit may be issued for a period not exceeding five years. All permits will be reviewed annually to determine the permittee's compliance with permit scope, purpose, terms and conditions and progress toward reaching the stated goals and appropriate action taken under paragraph (g) of this section if warranted. A permittee may request permit renewal pursuant to the same procedures for applying for a new permit. Upon the permittee's request for renewal, the Director shall review all reports submitted by the permittee as required by the permit conditions. In order to renew the permit, the Director must find that the:

(1) Activity will continue to further the purposes for which the Sanctuary was designated in accordance with the criteria applicable to the initial issuance of the permit;

(2) Permittee has at no time violated the permit, or these regulations; and

(3) The activity has not resulted in any unforeseen adverse impacts to Sanctuary resources or qualities.

(g) The Director may amend, suspend, or revoke a permit for good cause. The Director may deny a permit application, in whole or in part, if it is determined that the permittee or applicant has acted in violation of a previous permit, of these regulations, of the NMSA or FKNMSPA, or for other good cause. Any such action shall be communicated in writing to the permittee or applicant by certified mail and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are set forth in Subpart D of 15 CFR part 904.

(h) The applicant for or holder of a National Marine Sanctuary permit may appeal the denial, conditioning, amendment, suspension or revocation of the permit in accordance with the procedures set forth in §922.50.

(i) A permit issued pursuant to this section other than a Special-use permit is nontransferable. Special-use permits may be transferred, sold, or assigned with the written approval of the Director. The permittee shall provide the Director with written notice of any proposed transfer, sale, or assignment no less than 30 days prior to its proposed consummation. Transfers, sales, or assignments consummated in violation of this requirement shall be considered a material breach of the Special-use permit, and the permit shall be considered void as of the consummation of any such transfer, sale, or assignment.

(j) The permit or a copy thereof shall be maintained in legible condition on board all vessels or aircraft used in the conduct of the permitted activity and be displayed for inspection upon the request of any authorized officer.

(k) Any permit issued pursuant to this section shall be subject to the following terms and conditions:

(1) All permitted activities shall be conducted in a manner that does not destroy, cause the loss of, or injure Sanctuary resources or qualities, except to the extent that such may be specifically authorized.

(2) The permittee agrees to hold the United States harmless against any claims arising out of the conduct of the permitted activities.

(3) All necessary Federal, State, and local permits from all agencies with jurisdiction over the proposed activities shall be secured before commencing field operations.

(1) In addition to the terms and conditions listed in paragraph (k) of this section, any permit authorizing the research/recovery of historical resources shall be subject to the following terms and conditions:

(1) A professional archaeologist shall be in charge of planning, field recovery operations, and research analysis.

(2) An agreement with a conservation laboratory shall be in place before field recovery operations are begun, and an approved nautical conservator shall be in charge of planning, conducting, and supervising the conservation of any artifacts and other materials recovered.

(3) A curation agreement with a museum or facility for curation, public access and periodic public display, and

maintenance of the recovered historical resources shall be in place before commencing field operations (such agreement for the curation and display of recovered historical resources may provide for the release of public artifacts for deaccession/transfer if such deaccession/transfer is consistent with preservation, research, education, or other purposes of the designation and management of the Sanctuary. Deaccession/transfer of historical resources requires a Special-use permit issued pursuant to paragraph (d) and such deaccession/transfer shall be executed in accordance with the requirements of the SCR Agreement).

(4) The site's archaeological information is fully documented, including measured drawings, site maps drawn to professional standards, and photographic records.

(m) In addition to the terms and conditions listed in paragraph (k) and (l) of this section, any permit issued pursuant to this section is subject to such other terms and conditions, including conditions governing access to, or use of, Sanctuary resources, as the Director deems reasonably necessary or appropriate and in furtherance of the purposes for which the Sanctuary is designated. Such terms and conditions may include, but are not limited to:

(1) Any data or information obtained under the permit shall be made available to the public.

(2) A NOAA official shall be allowed to observe any activity conducted under the permit.

(3) The permittee shall submit one or more reports on the status, progress, or results of any activity authorized by the permit.

(4) The permittee shall submit an annual report to the Director not later than December 31 of each year on activities conducted pursuant to the permit. The report shall describe all activities conducted under the permit and all revenues derived from such activities during the year and/or term of the permit.

(5) The permittee shall purchase and maintain general liability insurance or other acceptable security against potential claims for destruction, loss of, or injury to Sanctuary resources arising out of the permitted activities. The

amount of insurance or security should be commensurate with an estimated value of the Sanctuary resources in the permitted area. A copy of the insurance policy or security instrument shall be submitted to the Director.

§ 922.167 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by §§ 922.163 or 922.164 if such activity is specifically authorized by a valid Federal, State, or local lease, permit, license, approval, or other authorization in existence on July 1, 1997, or by any valid right of subsistence use or access in existence on July 1, 1997, provided that:

(1) The holder of such authorization or right notifies the Director, in writing, within 90 days of July 1, 1997, of the existence of such authorization or right and requests certification of such authorization or right;

(2) The holder complies with the other provisions of this § 922.167; and

(3) The holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification, by the Director, to achieve the purposes for which the Sanctuary was designated.

(b) The holder of an authorization or right described in paragraph (a) of this section authorizing an activity prohibited by §§ 922.163 or 922.164 may conduct the activity without being in violation of applicable provisions of §§ 922.163 or 922.164, pending final agency action on his or her certification request, provided the holder is in compliance with this § 922.167.

(c) Any holder of an authorization or right described in paragraph (a) of this section may request the Director to issue a finding as to whether the activity for which the authorization has been issued, or the right given, is prohibited by §§ 922.163 or 922.164, thus requiring certification under this section.

(d) Requests for findings or certifications should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuary Superintendent, Florida Keys National Marine Sanctuary, P.O. Box 500368,

Marathon, FL 33050. A copy of the lease, permit, license, approval, or other authorization must accompany the request.

(e) The Director may request additional information from the certification requester as he or she deems reasonably necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The information requested must be received by the Director within 45 days of the postmark date of the request. The Director may seek the views of any persons on the certification request.

(f) The Director may amend any certification made under this §922.167 whenever additional information becomes available justifying such an amendment.

(g) Upon completion of review of the authorization or right and information received with respect thereto, the Director shall communicate, in writing, any decision on a certification request or any action taken with respect to any certification made under this §922.167, in writing, to both the holder of the certified lease, permit, license, approval, other authorization, or right, and the issuing agency, and shall set forth the reason(s) for the decision or action taken.

(h) Any time limit prescribed in or established under this §922.167 may be extended by the Director for good cause.

(i) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in §922.50.

(j) Any amendment, renewal, or extension made after July 1, 1997, to a lease, permit, license, approval, other authorization or right is subject to the provisions of §922.49.

APPENDIX I TO SUBPART P OF PART 922—
FLORIDA KEYS NATIONAL MARINE
SANCTUARY BOUNDARY COORDINATES

(APPENDIX BASED ON NORTH AMERICAN DATUM
OF 1983)

The boundary of the Florida Keys National Marine Sanctuary—

(a) Begins at the northeasternmost point of Biscayne National Park located at ap-

proximately 25 degrees 39 minutes north latitude, 80 degrees 5 minutes west longitude, then runs eastward to the 300-foot isobath located at approximately 25 degrees 39 minutes north latitude, 80 degrees 4 minutes west longitude;

(b) Then runs southward and connects in succession the points at the following coordinates:

(i) 25 degrees 34 minutes north latitude, 80 degrees 4 minutes west longitude,

(ii) 25 degrees 28 minutes north latitude, 80 degrees 5 minutes west longitude, and

(iii) 25 degrees 21 minutes north latitude, 80 degrees 7 minutes west longitude;

(iv) 25 degrees 16 minutes north latitude, 80 degrees 8 minutes west longitude;

(c) Then runs southwesterly approximating the 300-foot isobath and connects in succession the points at the following coordinates:

(i) 25 degrees 7 minutes north latitude, 80 degrees 13 minutes west longitude,

(ii) 24 degrees 57 minutes north latitude, 80 degrees 21 minutes west longitude,

(iii) 24 degrees 39 minutes north latitude, 80 degrees 52 minutes west longitude,

(iv) 24 degrees 30 minutes north latitude, 81 degrees 23 minutes west longitude,

(v) 24 degrees 25 minutes north latitude, 81 degrees 50 minutes west longitude,

(vi) 24 degrees 22 minutes north latitude, 82 degrees 48 minutes west longitude,

(vii) 24 degrees 37 minutes north latitude, 83 degrees 6 minutes west longitude,

(viii) 24 degrees 40 minutes north latitude, 83 degrees 6 minutes west longitude,

(ix) 24 degrees 46 minutes north latitude, 82 degrees 54 minutes west longitude,

(x) 24 degrees 44 minutes north latitude, 81 degrees 55 minutes west longitude,

(xi) 24 degrees 51 minutes north latitude, 81 degrees 26 minutes west longitude, and

(xii) 24 degrees 55 minutes north latitude, 80 degrees 56 minutes west longitude;

(d) then follows the boundary of Everglades National Park in a southerly then northeasterly direction through Florida Bay, Buttonwood Sound, Tarpon Basin, and Blackwater Sound;

(e) after Division Point, then departs from the boundary of Everglades National Park and follows the western shoreline of Manatee Bay, Barnes Sound, and Card Sound;

(f) then follows the southern boundary of Biscayne National Park to the southeasternmost point of Biscayne National Park; and

(g) then follows the eastern boundary of Biscayne National Park to the beginning point specified in paragraph (a).

APPENDIX II TO SUBPART P OF PART
922—EXISTING MANAGEMENT AREAS
BOUNDARY COORDINATES

The Existing Management Areas are located within the following geographic boundary coordinates:

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National Oceanic and Atmospheric Administration,
Preexisting National Marine Sanctuaries:

| Point | Latitude | Longitude |
|---|-------------|-------------|
| Key Largo-Management Area (Key Largo National Marine Sanctuary) | | |
| 1 | 25°19.45' N | 80°12.00' W |
| 2 | 25°16.02' N | 80°08.07' W |
| 3 | 25°07.05' N | 80°12.05' W |
| 4 | 24°58.03' N | 80°19.08' W |
| 5 | 25°02.02' N | 80°25.25' W |
| Looe Key Management Area (Looe Key National Marine Sanctuary) | | |
| 1 | 24°31.62' N | 81°26.00' W |
| 2 | 24°33.57' N | 81°26.00' W |
| 3 | 24°34.15' N | 81°23.00' W |
| 4 | 24°32.20' N | 81°23.00' W |
| United States Fish and Wildlife Service: Great White Heron National Wildlife Refuge (based on the North American Datum of 1983) | | |
| 1 | 24°43.8' N | 81°48.6' W |
| 2 | 24°43.8' N | 81°37.2' W |
| 3 | 24°49.2' N | 81°37.2' W |
| 4 | 24°49.2' N | 81°19.8' W |
| 5 | 24°48.0' N | 81°19.8' W |
| 6 | 24°48.0' N | 81°14.4' W |
| 7 | 24°49.2' N | 81°14.4' W |
| 8 | 24°49.2' N | 81°08.4' W |
| 9 | 24°43.8' N | 81°08.4' W |
| 10 | 24°43.8' N | 81°14.4' W |
| 11 | 24°43.2' N | 81°14.4' W |
| 12 | 24°43.2' N | 81°16.2' W |
| 13 | 24°42.6' N | 81°16.2' W |
| 14 | 24°42.6' N | 81°21.0' W |
| 15 | 24°41.4' N | 81°21.0' W |
| 16 | 24°41.4' N | 81°22.2' W |
| 17 | 24°43.2' N | 81°22.2' W |
| 18 | 24°43.2' N | 81°22.8' W |
| 19 | 24°43.8' N | 81°22.8' W |

| Point | Latitude | Longitude |
|--|------------|------------|
| 20 | 24°43.8' N | 81°24.0' W |
| 21 | 24°43.2' N | 81°24.0' W |
| 22 | 24°43.2' N | 81°26.4' W |
| 23 | 24°43.8' N | 81°26.4' W |
| 24 | 24°43.8' N | 81°27.0' W |
| 25 | 24°43.2' N | 81°27.0' W |
| 26 | 24°43.2' N | 81°29.4' W |
| 27 | 24°42.6' N | 81°29.4' W |
| 28 | 24°42.6' N | 81°30.6' W |
| 29 | 24°41.4' N | 81°30.6' W |
| 30 | 24°41.4' N | 81°31.2' W |
| 31 | 24°40.8' N | 81°31.2' W |
| 32 | 24°40.8' N | 81°32.4' W |
| 33 | 24°41.4' N | 81°32.4' W |
| 34 | 24°41.4' N | 81°34.2' W |
| 35 | 24°40.8' N | 81°34.2' W |
| 36 | 24°48.0' N | 81°35.4' W |
| 37 | 24°39.6' N | 81°35.4' W |
| 38 | 24°39.6' N | 81°36.0' W |
| 39 | 24°39.0' N | 81°36.0' W |
| 40 | 24°39.0' N | 81°37.2' W |
| 41 | 24°37.8' N | 81°37.2' W |
| 42 | 24°37.8' N | 81°37.8' W |
| 43 | 24°37.2' N | 81°37.8' W |
| 44 | 24°37.2' N | 81°40.2' W |
| 45 | 24°36.0' N | 81°40.2' W |
| 46 | 24°36.0' N | 81°40.8' W |
| 47 | 24°35.4' N | 81°40.8' W |
| 48 | 24°35.4' N | 81°42.0' W |
| 49 | 24°36.0' N | 81°42.0' W |
| 50 | 24°36.0' N | 81°48.6' W |
| Key West National Wildlife Refuge | | |
| 1 | 24°40' N | 81°49' W |
| 2 | 24°40' N | 82°10' W |
| 3 | 24°27' N | 82°10' W |
| 4 | 24°27' N | 81°49' W |

When differential Global Positioning Systems data becomes available, these coordinates may be revised by FEDERAL REGISTER notice to reflect the increased accuracy of such data.

APPENDIX III TO SUBPART P OF PART 922—WILDLIFE MANAGEMENT AREAS ACCESS RESTRICTIONS

| Area | Access restrictions |
|--------------------------------------|---|
| Bay Keys | No-motor zone (300 feet) around one key; idle speed only/no-wake zones in tidal creeks. |
| Boca Grande Key | South one-half of beach closed (beach above mean high water closed by Department of the Interior). |
| Woman Key | One-half of beach and sand spit on southeast side closed (beach and sand spit above mean high water closed by Department of the Interior). |
| Cayo Agua Keys | Idle speed only/no-wake zones in all navigable tidal creeks. |
| Cotton Key | No-motor zone on tidal flat. |
| Snake Creek | No-motor zone on tidal flat. |
| Cottrell Key | No-motor zone (300 feet) around entire key. |
| Little Mullet Key | No-access buffer zone (300 feet) around entire key. |
| Big Mullet Key | No-motor zone (300 feet) around entire key. |
| Crocodile Lake | No-access buffer zone (100 feet) along shoreline between March 1 and October 1. |
| East Harbor Key | No-access buffer zone (300 feet) around northernmost island. |
| Lower Harbor Keys | Idle speed only/no-wake zones in selected tidal creeks. |
| Eastern Lake Surprise | Idle speed only/no-wake zone east of highway U.S. 1. |
| Horseshoe Key | No-access buffer zone (300 feet) around main island (main island closed by Department of the Interior). |
| Marquesas Keys | (i) No-motor zones (300 feet) around three smallest keys on western side of chain; (ii) no-access buffer zone (300 feet) around one island at western side of chain; (iii) idle speed only/no-wake zone in southwest tidal creek. |
| Tidal flat south of Marvin Key | No-access buffer zone on tidal flat. |

| Area | Access restrictions |
|-------------------------|--|
| Mud Keys | (i) Idle speed only/no-wake zones in the two main tidal creeks; (ii) two smaller creeks on west side closed. |
| Pelican Shoal | No-access buffer zone out to 50 meters from shore between April 1 and August 31 (shoal closed by the Florida Game and Freshwater Fish Commission). |
| Rodriguez Key | No-motor zone on tidal flats. |
| Dove Key | No-motor zone on tidal flats; area around the two small islands closed. |
| Tavernier Key | No-motor zone on tidal flats. |
| Sawyer Keys | Tidal creeks on south side closed. |
| Snipe Keys | (i) Idle speed only/no-wake zone in main tidal creek; (ii) no-motor zone in all other tidal creeks. |
| Upper Harbor Key | No-access buffer zone (300 feet) around entire key. |
| East Content Keys | Idle speed only/no-wake zones in tidal creeks between southwesternmost keys. |
| West Content Keys | Idle speed only/no-wake zones in selected tidal creeks; no-access buffer zone in one cove. |
| Little Crane Key | No-access buffer zone (300 feet) around entire key. |

APPENDIX IV TO SUBPART P OF PART 922—ECOLOGICAL RESERVES BOUNDARY COORDINATES

One Ecological Reserve—the Western Sambos Ecological Reserve—is designated in the area of Western Sambos reef. NOAA has committed to designating a second Ecological Reserve within two years from issuance of this plan in the area of the Dry Tortugas. The establishment of a Dry Tortugas Ecological Reserve will be proposed by a notice of proposed rulemaking with a proposed boundary determined through a joint effort among the Sanctuary, and the National Park Service, pursuant to a public process involving a team consisting of managers, scientists, conservationists, and affected user groups.

The Western Sambos Ecological Reserve (based on differential Global Positioning Systems data) is located within the following geographic boundary coordinates:

* WESTERN SAMBOS

| Point | Latitude | Longitude |
|---------|-------------------|-------------|
| 1 | 24°33.70' N | 81°40.80' W |
| 2 | 24°28.85' N | 81°41.90' W |
| 3 | 24°28.50' N | 81°43.70' W |
| 4 | 24°33.50' N | 81°43.10' W |

(* Denotes located in State waters)

APPENDIX V TO SUBPART P OF PART 922—SANCTUARY PRESERVATION AREAS BOUNDARY COORDINATES

The Sanctuary Preservation Areas (SPAs) (based on differential Global Positioning Systems data) are located within the following geographic boundary coordinates:

| Point | Latitude | Longitude |
|-----------------------|-------------|-------------|
| Alligator Reef | | |
| 1 | 24°50.98' N | 80°36.84' W |
| 2 | 24°50.51' N | 80°37.35' W |
| 3 | 24°50.81' N | 80°37.63' W |

| Point | Latitude | Longitude |
|--|-------------|-------------|
| 4 | 24°51.23' N | 80°37.17' W |
| Carysfort/South Carysfort Reef | | |
| 1 | 25°13.78' N | 80°12.00' W |
| 2 | 25°12.03' N | 80°12.98' W |
| 3 | 25°12.24' N | 80°13.77' W |
| 4 | 25°14.13' N | 80°12.78' W |
| *Cheeca Rocks | | |
| 1 | 24°54.42' N | 80°36.91' W |
| 2 | 24°54.25' N | 80°36.77' W |
| 3 | 24°54.10' N | 80°37.00' W |
| 4 | 24°54.22' N | 80°37.15' W |
| Coffins Patch | | |
| 1 | 24°41.47' N | 80°57.68' W |
| 2 | 24°41.12' N | 80°57.53' W |
| 3 | 24°40.75' N | 80°58.33' W |
| 4 | 24°41.06' N | 80°58.48' W |
| Conch Reef | | |
| 1 | 24°57.48' N | 80°27.47' W |
| 2 | 24°57.34' N | 80°27.26' W |
| 3 | 24°56.78' N | 80°27.52' W |
| 4 | 24°56.96' N | 80°27.73' W |
| Catch and release fishing by trolling only is allowed in this SPA. | | |
| Davis Reef | | |
| 1 | 24°55.61' N | 80°30.27' W |
| 2 | 24°55.41' N | 80°30.05' W |
| 3 | 24°55.11' N | 80°30.35' W |
| 4 | 24°55.34' N | 80°30.52' W |
| Dry Rocks | | |
| 1 | 25°07.59' N | 80°17.91' W |
| 2 | 25°07.41' N | 80°17.70' W |
| 3 | 25°07.25' N | 80°17.82' W |
| 4 | 25°07.41' N | 80°18.09' W |
| Grecian Rocks | | |
| 1 | 25°06.91' N | 80°18.20' W |
| 2 | 25°06.67' N | 80°18.06' W |
| 3 | 25°06.39' N | 80°18.32' W |
| 4 | 25°06.42' N | 80°18.48' W |
| 5 | 25°06.81' N | 80°18.44' W |

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| Point | Latitude | Longitude |
|--|-------------|-------------|
| * Eastern Dry Rocks | | |
| 1 | 24°27.92' N | 81°50.55' W |
| 2 | 24°27.73' N | 81°50.33' W |
| 3 | 24°27.47' N | 81°50.80' W |
| 4 | 24°27.72' N | 81°50.86' W |
| The Elbow | | |
| 1 | 25°08.97' N | 80°15.63' W |
| 2 | 25°08.95' N | 80°15.22' W |
| 3 | 25°08.18' N | 80°15.64' W |
| 4 | 25°08.50' N | 80°16.07' W |
| French Reef | | |
| 1 | 25°02.20' N | 80°20.63' W |
| 2 | 25°01.81' N | 80°21.02' W |
| 3 | 25°02.36' N | 80°21.27' W |
| * Hen and Chickens | | |
| 1 | 24°56.38' N | 80°32.86' W |
| 2 | 24°56.21' N | 80°32.63' W |
| 3 | 24°55.86' N | 80°32.95' W |
| 4 | 24°56.04' N | 80°33.19' W |
| Looe Key | | |
| 1 | 24°33.24' N | 81°24.03' W |
| 2 | 24°32.70' N | 81°23.85' W |
| 3 | 24°32.52' N | 81°24.70' W |
| 4 | 24°33.12' N | 81°24.81' W |
| Molasses Reef | | |
| 1 | 25°01.00' N | 80°22.53' W |
| 2 | 25°01.06' N | 80°21.84' W |
| 3 | 25°00.29' N | 80°22.70' W |
| 4 | 25°00.72' N | 80°22.83' W |
| * Newfound Harbor Key | | |
| 1 | 24°37.10' N | 81°23.34' W |
| 2 | 24°36.85' N | 81°23.28' W |
| 3 | 24°36.74' N | 81°23.80' W |
| 4 | 24°37.00' N | 81°23.86' W |
| * Rock Key | | |
| 1 | 24°27.48' N | 81°51.35' W |
| 2 | 24°27.30' N | 81°51.15' W |
| 3 | 24°27.21' N | 81°51.60' W |
| 4 | 24°27.45' N | 81°51.65' W |
| * Sand Key | | |
| 1 | 24°27.58' N | 81°52.29' W |
| 2 | 24°27.01' N | 81°52.32' W |
| 3 | 24°27.02' N | 81°52.95' W |
| 4 | 24°27.61' N | 81°52.94' W |
| Catch and re- lease fishing by trolling only is allowed in this SPA. | | |
| Sombrero Key | | |
| 1 | 24°37.91' N | 81°06.78' W |
| 2 | 24°37.50' N | 81°06.19' W |
| 3 | 24°37.25' N | 81°06.89' W |
| Catch and re- lease fishing by trolling only is allowed in this SPA. | | |

(* denotes located in State waters)

APPENDIX VI TO SUBPART P OF PART 922—SPECIAL-USE AREAS BOUNDARY COORDINATES AND USE DESIGNATIONS

The Special-use Areas (based on differential Global Positioning Systems data) are located within the following geographic boundary coordinates:

| Point | Latitude | Longitude |
|---------------------------------------|-------------|-------------|
| Conch Reef (Research Only) | | |
| 1 | 24°56.83' N | 80°27.26' W |
| 2 | 24°57.10' N | 80°26.93' W |
| 3 | 24°56.99' N | 80°27.42' W |
| 4 | 24°57.34' N | 80°27.26' W |
| Eastern Sambos (Research Only) | | |
| 1 | 24°29.84' N | 81°39.59' W |
| 2 | 24°29.55' N | 81°39.35' W |
| 3 | 24°29.37' N | 81°39.96' W |
| 4 | 24°29.77' N | 81°40.03' W |
| Looe Key (Research Only) | | |
| 1 | 24°34.17' N | 81°23.01' W |
| 2 | 24°33.98' N | 81°22.96' W |
| 3 | 24°33.84' N | 81°23.60' W |
| 4 | 24°34.23' N | 81°23.68' W |
| Tennessee Reef (Research Only) | | |
| 1 | 24°44.77' N | 80°47.12' W |
| 2 | 24°44.57' N | 80°46.98' W |
| 3 | 24°44.68' N | 80°46.59' W |
| 4 | 24°44.95' N | 80°46.74' W |

APPENDIX VII TO SUBPART P OF PART 922—AREAS TO BE AVOIDED BOUNDARY COORDINATES

| Point | Latitude | Longitude |
|--|-------------|-------------|
| In The Vicinity of the Florida Keys | | |
| (Reference Charts: United States 11466, 27th Edition—September 1, 1990 and United States 11450, 4th Edition—August 11, 1990) | | |
| 1 | 25°45.00' N | 80°06.10' W |
| 2 | 25°38.70' N | 80°02.70' W |
| 3 | 25°22.00' N | 80°03.00' W |
| 4 | 25°00.20' N | 80°13.40' W |
| 5 | 24°37.90' N | 80°47.30' W |
| 6 | 24°29.20' N | 81°17.30' W |
| 7 | 24°22.30' N | 81°43.17' W |
| 8 | 24°28.00' N | 81°43.17' W |
| 9 | 24°28.70' N | 81°43.50' W |
| 10 | 24°29.80' N | 81°43.17' W |
| 11 | 24°33.10' N | 81°35.15' W |
| 12 | 24°33.60' N | 81°26.00' W |
| 13 | 24°38.20' N | 81°07.00' W |
| 14 | 24°43.20' N | 80°53.20' W |
| 15 | 24°46.10' N | 80°46.15' W |
| 16 | 24°51.10' N | 80°37.10' W |
| 17 | 24°57.50' N | 80°27.50' W |
| 18 | 25°09.90' N | 80°16.20' W |
| 19 | 25°24.00' N | 80°09.10' W |
| 20 | 25°31.50' N | 80°07.00' W |
| 21 | 25°39.70' N | 80°06.85' W |
| 22 | 25°45.00' N | 80°06.10' W |

| Point | Latitude | Longitude |
|-------|----------|-----------|
|-------|----------|-----------|

In the Vicinity of Key West Harbor

(Reference Chart: United States 11434, 21st Edition—August 11, 1990)

| | | |
|----------|-------------|-------------|
| 23 | 24°27.95' N | 81°48.65' W |
| 24 | 24°23.00' N | 81°53.50' W |
| 25 | 24°26.60' N | 81°58.50' W |
| 26 | 24°27.75' N | 81°55.70' W |
| 27 | 24°29.35' N | 81°53.40' W |
| 28 | 24°29.35' N | 81°50.00' W |
| 29 | 24°27.95' N | 81°48.65' W |

Area Surrounding the Marquesas Keys

(Reference Chart: United States 11434, 21st Edition—August 11, 1990)

| | | |
|----------|-------------|-------------|
| 30 | 24°26.60' N | 81°59.55' W |
| 31 | 24°23.00' N | 82°03.50' W |
| 32 | 24°23.60' N | 82°27.80' W |
| 33 | 24°34.50' N | 82°37.50' W |
| 34 | 24°43.00' N | 82°26.50' W |
| 35 | 24°38.31' N | 81°54.06' W |
| 36 | 24°37.91' N | 81°53.40' W |
| 37 | 24°36.15' N | 81°51.78' W |
| 38 | 24°34.40' N | 81°50.60' W |
| 39 | 24°33.44' N | 81°49.73' W |
| 40 | 24°31.20' N | 81°52.10' W |
| 41 | 24°28.70' N | 81°56.80' W |
| 42 | 24°26.60' N | 81°59.55' W |

Area Surrounding the Dry Tortugas Islands

(Reference Chart: United States 11434, 21st Edition—August 11, 1990)

| | | |
|----------|-------------|-------------|
| 43 | 24°32.00' N | 82°53.50' W |
| 44 | 24°32.00' N | 83°00.05' W |
| 45 | 24°39.70' N | 83°00.05' W |
| 46 | 24°45.60' N | 82°54.40' W |
| 47 | 24°45.60' N | 82°47.2' W |
| 48 | 24°42.80' N | 82°43.90' W |
| 49 | 24°39.50' N | 82°43.90' W |
| 50 | 24°35.60' N | 82°46.40' W |
| 51 | 24°32.00' N | 82°53.50' W |

APPENDIX VIII TO SUBPART P OF PART 922—MARINE LIFE RULE [AS EXCERPTED FROM CHAPTER 46-42 OF THE FLORIDA ADMINISTRATIVE CODE]

- 46-42.001 Purpose and Intent; Designation of Restricted Species; Definition of "Marine Life Species."
- 46-42.002 Definitions.
- 46-42.003 Prohibition of Harvest: Longspine Urchin, Bahama Starfish.
- 46-42.0035 Live Landing and Live Well Requirements.
- 46-42.0036 Harvest in Biscayne National Park.*
- 46-42.004 Size Limits.
- 46-42.005 Bag Limits.
- 46-42.006 Commercial Season, Harvest Limits.
- 46-42.007 Gear Specifications and Prohibited Gear.
- 46-42.008 Live Rock.*
- 46-42.009 Prohibition on the Taking, Destruction, or Sale of Marine Corals and Sea Fans.

*—Part 42.0036 was not reproduced because it does not apply to the Sanctuary.

*—Part 42.008 was not reproduced because it is regulated pursuant to this Part 922.163(2)(ii).

46-42.001 Purpose and Intent; Designation of Restricted Species; Definition of "Marine Life Species".—

(1)(a) The purpose and intent of this chapter are to protect and conserve Florida's tropical marine life resources and assure the continuing health and abundance of these species. The further intent of this chapter is to assure that harvesters in this fishery use nonlethal methods of harvest and that the fish, invertebrates, and plants so harvested be maintained alive for the maximum possible conservation and economic benefits.

(b) It is the express intent of the Marine Fisheries Commission that landing of live rock propagated through aquaculture will be allowed pursuant to the provisions of this chapter.

(2) The following fish species, as they occur in waters of the state and in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters, are hereby designated as restricted species pursuant to Section 370.01(20), Florida Statutes:

- (a) Moray eels—Any species of the Family Muraenidae.
- (b) Snake eels—Any species of the Genera *Myrichthys* and *Myrophis* of the Family Ophichthidae.
- (c) Toadfish—Any species of the Family Batrachoididae.
- (d) Frogfish—Any species of the Family Antennariidae.
- (e) Batfish—Any species of the Family Ogcocephalidae.
- (f) Clingfish—Any species of the Family Gobiesocidae.
- (g) Trumpetfish—Any species of the Family Aulostomidae.
- (h) Cornetfish—Any species of the Family Fistulariidae.
- (i) Pipefish/seahorses—Any species of the Family Syngnathidae.
- (j) Hamlet/seabass—Any species of the Family Serranidae, except groupers of the genera *Epinephalus* and *Mycteroperca*, and seabass of the genus *Centropristis*.
- (k) Basslets—Any species of the Family Grammistidae.
- (l) Cardinalfish—Any species of the Family Apogonidae.
- (m) High-hat, Jackknife-fish, Spotted drum, Cubbyu—Any species of the genus *Equetus* of the Family Scaenidae.
- (n) Reef Croakers—Any of the species *Odontocion dentex*.
- (o) Sweepers—Any species of the Family Pempheridae.
- (p) Butterflyfish—Any species of the Family Chaetodontidae.

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(q) Angelfish—Any species of the Family Pomacanthidae.

(r) Damselfish—Any species of the Family Pomacentridae.

(s) Hawkfish—Any species of the Family Cirrhitidae.

(t) Wrasse/hogfish/razorfish—Any species of the Family Labridae, except hogfish, *Lachnolaimus maximus*.

(u) Parrotfish—Any species of the Family Scaridae.

(v) Jawfish—Any species of the Family Opistognathidae.

(w) Blennies—Any species of the Families Clinidae or Blenniidae.

(x) Sleepers—Any species of the Family Eleotrididae.

(y) Gobies—Any species of the Family Gobiidae.

(z) Tangs and surgeonfish—Any species of the Family Acanthuridae.

(aa) Filefish/triggerfish—Any species of the Family Balistes, except gray triggerfish, *Balistidae capriscus*.

(bb) Trunkfish/cowfish—Any species of the Family Ostraciidae.

(cc) Pufferfish/burrfish/balloonfish—Any of the following species:

1. Balloonfish—*Diodon holocanthus*.
2. Sharpnose puffer—*Canthigaster rostrata*.
3. Striped burrfish—*Chilomycterus schoepfi*.

(3) The following invertebrate species, as they occur in waters of the state and in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters, are hereby designated as restricted species pursuant to Section 370.01(20), Florida Statutes:

(a) Sponges—Any species of the Class Demospongia, except sheepswool, yellow, grass, glove, finger, wire, reef, and velvet sponges, Order Dictyoceratida.

(b) Upside-down jellyfish—Any species of the Genus *Cassiopeia*.

(c) Siphonophores/hydroids—Any species of the Class Hydrozoa, except fire corals, Order Milleporina.

(d) Soft corals—Any species of the Subclass Octocorallia, except sea fans *Gorgonia labellum* and *Gorgonia ventalina*.

(e) Sea anemones—Any species of the Orders Actinaria, Zoanthidea, Corallimorpharia, and Ceriantharia.

(f) Featherduster worms/calcareous tubeworms—Any species of the Families Sabellidae and Serpulidae.

(g) Star-shells—Any of the species *Astraea americana* or *Astraea phoebia*.

(h) Nudibranchs/sea slugs—Any species of the Subclass Opisthobranchia.

(i) Fileclams—Any species of the Genus *Lima*.

(j) Octopods—Any species of the Order Octopoda, except the common octopus, *Octopodus vulgaris*.

(k) Shrimp—Any of the following species:

1. Cleaner shrimp and peppermint shrimp—Any species of the Genera *Periclimenes* or *Lysmata*.

2. Coral shrimp—Any species of the Genus *Stenopus*.

3. Snapping shrimp—Any species of the Genus *Alpheus*.

(1) Crabs—Any of the following species:

1. Yellowline arrow crab—*Stenorhynchus seticornis*.

2. Furcate spider or decorator crab—*Stenocionops furcata*.

3. Thinstripe hermit crab—*Clibanarius vittatus*.

4. Polkadotted hermit crab—*Phimochirus operculatus*.

5. Spotted porcelain crab—*Porcellana sayana*.

6. Nimble spray or urchin crab—*Percnon gibbesi*.

7. False arrow crab—*Metoporphaphis calcarata*.

(m) Starfish—Any species of the Class Asteroidea, except the Bahama starfish, *Oreaster reticulatus*.

(n) Brittlestars—Any species of the Class Ophiuroidea.

(o) Sea urchins—Any species of the Class Echinoidea, except longspine urchin, *Diadema antillarum*, and sand dollars and sea biscuits, Order Clypeasteroidea.

(p) Sea cucumbers—Any species of the Class Holothuroidea.

(q) Sea lillies—Any species of the Class Crinoidea.

(4) The following species of plants, as they occur in waters of the state and in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters, are hereby designated as restricted species pursuant to Section 370.01(20), Florida Statutes:

(a) Caulerpa—Any species of the Family Caulerpaceae.

(b) Halimeda/mermaid's fan/mermaid's shaving brush—Any species of the Family Halimedaceae.

(c) Coralline red algae—Any species of the Family Corallinaceae.

(5) For the purposes of Section 370.06(2)(d), Florida Statutes, the term "marine life species" is defined to mean those species designated as restricted species in subsections (2), (3), and (4) of this rule.

Specific Authority 370.01(20), 370.027(2), 370.06(2)(d), F.S. Law Implemented 370.01(20), 370.025, 370.027, 370.06(2)(d), F.S. History—New 1-1-91, Amended 7-1-92, 1-1-95.

46-42.002 Definitions.— As used in this rule chapter:

(1) "Barrier net," also known as a "fence net," means a seine used beneath the surface of the water by a diver to enclose and concentrate tropical fish and which may be made of either nylon or monofilament.

(2) "Drop net" means a small, usually circular, net with weights attached along the outer edge and a single float in the center,

used by a diver to enclose and concentrate tropical fish.

(3) "Hand held net" means a landing or dip net as defined in Rule 46-4.002(4), except that a portion of the bag may be constructed of clear plastic material, rather than mesh.

(4) "Harvest" means the catching or taking of a marine organism by any means whatsoever, followed by a reduction of such organism to possession. Marine organisms that are caught but immediately returned to the water free, alive, and unharmed are not harvested. In addition, temporary possession of a marine animal for the purpose of measuring it to determine compliance with the minimum or maximum size requirements of this chapter shall not constitute harvesting such animal, provided that it is measured immediately after taking, and immediately returned to the water free, alive, and unharmed if undersize or oversize.

(5) "Harvest for commercial purposes" means the taking or harvesting of any tropical ornamental marine life species or tropical ornamental marine plant for purposes of sale or with intent to sell. The harvest of tropical ornamental marine life species or tropical ornamental marine plants in excess of the bag limit shall constitute prima facie evidence of intent to sell.

(6) "Land," when used in connection with the harvest of marine organisms, means the physical act of bringing the harvested organism ashore.

(7) "Live rock" means rock with living marine organisms attached to it.

(8) "Octocoral" means any erect, nonencrusting species of the Subclass Octocorallia, except the species *Gorgonia flabellum* and *Gorgonia ventalina*.

(9) "Slurp gun" means a self-contained, handheld device that captures tropical fish by rapidly drawing seawater containing such fish into a closed chamber.

(10) "Total length" means the length of a fish as measured from the tip of the snout to the tip of the tail.

(11) "Trawl" means a net in the form of an elongated bag with the mouth kept open by various means and fished by being towed or dragged on the bottom. "Roller frame trawl" means a trawl with all of the following features and specifications:

(a) A rectangular rigid frame to keep the mouth of the trawl open while being towed.

(b) The lower horizontal beam of the frame has rollers to allow the trawl to roll over the bottom and any obstructions while being towed.

(c) The trawl opening is shielded by a grid of vertical bars spaced no more than 3 inches apart.

(d) The trawl is towed by attaching a line or towing cable to a tongue located above and at the center of the upper horizontal beam of the frame.

(e) The trawl has no doors attached to keep the mouth of the trawl open.

(12) "Tropical fish" means any species included in subsection (2) of Rule 46-42.001, or any part thereof.

(13) "Tropical ornamental marine life species" means any species included in subsections (2) or (3) of Rule 46-42.001, or any part thereof.

(14) "Tropical ornamental marine plant" means any species included in subsection (4) of Rule 46-42.001.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History—New 1-1-91, Amended 7-1-92, 1-1-95.

46-42.003 Prohibition of Harvest: Longspine Urchin, Bahama Starfish.— No person shall harvest, possess while in or on the waters of the state, or land any of the following species:

- (1) Longspine urchin, *Diadema antillarum*.
- (2) Bahama starfish, *Oreaster reticulatus*.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History—New 1-1-91, Amended 7-1-92.

46-42.0035 Live Landing and Live Well Requirements.—

(1) Each person harvesting any tropical ornamental marine life species or any tropical ornamental marine plant shall land such marine organism alive.

(2) Each person harvesting any tropical ornamental marine life species or any tropical ornamental marine plant shall have aboard the vessel being used for such harvest a continuously circulating live well or aeration or oxygenation system of adequate size and capacity to maintain such harvested marine organisms in a healthy condition.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History—New 7-1-92.

46-42.004 Size Limits.—

(1) Angelfishes.—

(a) No person harvesting for commercial purposes shall harvest, possess while in or on the waters of the state, or land any of the following species of angelfish, of total length less than that set forth below:

1. One-and-one-half (1 1/2) inches for:

- a. Gray angelfish (*Pomacanthus arcuatus*).
- b. French angelfish (*Pomacanthus paru*).

2. One-and-three-quarters (1 3/4) inches for:

- a. Blue angelfish (*Holacanthus bermudensis*).
- b. Queen angelfish (*Holacanthus ciliaris*).
3. Two (2) inches for rock beauty (*Holacanthus tricolor*).

(b) No person shall harvest, possess while in or on the waters of the state, or land any angelfish (Family Pomacanthidae), of total length greater than that specified below:

1. Eight (8) inches for angelfish, except rock beauty (*Holacanthus tricolor*).
2. Five (5) inches for rock beauty.

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(c) Except as provided herein, no person shall purchase, sell, or exchange any angelfish smaller than the limits specified in paragraph (a) or larger than the limits specified in paragraph (b). This prohibition shall not apply to angelfish legally harvested outside of state waters or federal Exclusive Economic Zone (EEZ) waters adjacent to state waters, which angelfish are entering Florida in interstate or international commerce. The burden shall be upon any person possessing such angelfish for sale or exchange to establish the chain of possession from the initial transaction after harvest, by appropriate receipt(s), bill(s) of sale, or bill(s) of lading, and any customs receipts, and to show that such angelfish originated from a point outside the waters of the State of Florida or federal Exclusive Economic Zone (EEZ) waters adjacent to Florida waters and entered the state in interstate or international commerce. Failure to maintain such documentation or to promptly produce same at the request of any duly authorized law enforcement officer shall constitute prima facie evidence that such angelfish were harvested from Florida waters or adjacent EEZ waters for purposes of this paragraph.

(2) Butterflyfishes.—

(a) No person harvesting for commercial purposes shall harvest, possess while in or on the waters of the state, or land any butterflyfish (Family Chaetodontidae) of total length less than one (1) inch.

(b) No person shall harvest, possess while in or on the waters of the state, or land any butterflyfish of total length greater than 4 inches.

(3) Gobies—No person shall harvest, possess while in or on the waters of the state, or land any gobie (Family Gobiidae) of total length greater than 2 inches.

(4) Jawfishes—No person shall harvest, possess while in or on the waters of the state, or land any jawfish (Family Opistognathidae) of total length greater than 4 inches.

(5) Spotfin and Spanish hogfish—

(a) No person shall harvest, possess while in or on the waters of this state, or land any Spanish hogfish (*Bodianus rufus*) of total length less than 2 inches.

(b) No person shall harvest, possess while in or on the waters of this state, or land any Spanish hogfish (*Bodianus rufus*) or spotfin hogfish (*Bodianus pulchellus*) of total length greater than 8 inches.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History—New 1-1-91, Amended 7-1-92, 1-1-95.

46-42.005 Bag limit.—

(1) Except as provided in Rule 46-42.006 or subsections (3) or (4) of this rule, no person shall harvest, possess while in or on the waters of the state, or land more than 20 individuals per day of tropical ornamental marine life species, in any combination.

(2) Except as provided in Rule 46-42.006, no person shall harvest, possess while in or on the waters of the state, or land more than one (1) gallon per day of tropical ornamental marine plants, in any combination of species.

(3) Except as provided in Rule 46-42.006, no person shall harvest, possess while in or on the waters of the state, or land more than 5 angelfishes (Family Pomacanthidae) per day. Each angelfish shall be counted for purposes of the 20 individual bag limit specified in subsection (1) of this rule.

(4)(a) Unless the season is closed pursuant to paragraph (b), no person shall harvest, possess while in or on the waters of the state, or land more than 6 colonies per day of octocorals. Each colony of octocoral or part thereof shall be considered an individual of the species for purposes of subsection (1) of this rule and shall be counted for purposes of the 20 individual bag limit specified therein. Each person harvesting any octocoral as authorized by this rule may also harvest substrate within 1 inch of the perimeter of the holdfast at the base of the octocoral, provided that such substrate remains attached to the octocoral.

(b) If the harvest of octocorals in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters is closed to all harvesters prior to September 30 of any year, the season for harvest of octocorals in state waters shall also close until the following October 1, upon notice given by the Secretary of the Department of Environmental Protection, in the manner provided in s.120.52(16)(d), Florida Statutes.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History—New 1-1-91, Amended 1-1-95.

46-42.006 Commercial Season, Harvest Limits.—

(1) Except as provided in Rule 46-42.008(7), no person shall harvest, possess while in or on the waters of the state, or land quantities of tropical ornamental marine life species or tropical ornamental marine plants in excess of the bag limits established in Rule 46-42.005 unless such person possesses a valid salt-water products license with both a marine life fishery endorsement and a restricted species endorsement issued by the Department of Environmental Protection.

(2) Persons harvesting tropical ornamental marine life species or tropical ornamental marine plants for commercial purposes shall have a season that begins on October 1 of each year and continues through September 30 of the following year. These persons shall not harvest, possess while in or on the waters of the state, or land tropical ornamental marine life species in excess of the following limits:

(a) A limit of 75 angelfish (Family Pomacanthidae) per person per day or 150 angelfish per vessel per day, whichever is less.

(b) A limit of 75 butterflyfishes (Family Chaetodontidae) per vessel per day.

(c) There shall be no limits on the harvest for commercial purposes of octocorals unless and until the season for all harvest of octocorals in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters is closed. At such time, the season for harvest of octocorals in state waters shall also close until the following October 1, upon notice given by the Secretary of the Department of Environmental Protection, in the manner provided in Section 120.52(16)(d), Florida Statutes. Each person harvesting any octocoral as authorized by this rule may also harvest substrate within 1 inch of the perimeter of the holdfast at the base of the octocoral, provided that such substrate remains attached to the octocoral.

(d) A limit of 400 giant Caribbean or "pink-tipped" anemones (Genus *Condylactis*) per vessel per day.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History—New 1-1-91, Amended 7-1-92, 1-1-95.

46-42.007 Gear Specifications and Prohibited Gear.—

(1) The following types of gear shall be the only types allowed for the harvest of any tropical fish, whether from state waters or from federal Exclusive Economic Zone (EEZ) waters adjacent to state waters:

(a) Hand held net.

(b) Barrier net, with a mesh size not exceeding $\frac{3}{4}$ inch stretched mesh.

(c) Drop net, with a mesh size not exceeding $\frac{3}{4}$ inch stretched mesh.

(d) Slurp gun.

(e) Quinaldine may be used for the harvest of tropical fish if the person using the chemical or possessing the chemical in or on the waters of the state meets each of the following conditions:

1. The person also possesses and maintains aboard any vessel used in the harvest of tropical fish with quinaldine a special activity license authorizing the use of quinaldine, issued by the Division of Marine Resources of the Department of Environmental Protection pursuant to Section 370.08(8), Florida Statutes.

2. The quinaldine possessed or applied while in or on the waters of the state is in a diluted form of no more than 2% concentration in solution with seawater. Prior to dilution in seawater, quinaldine shall only be mixed with isopropyl alcohol or ethanol.

(f) A roller frame trawl operated by a person possessing a valid live bait shrimping license issued by the Department of Environmental Protection pursuant to Section 370.15, Florida Statutes, if such tropical fish are taken as an incidental bycatch of shrimp lawfully harvested with such trawl.

(g) A trawl meeting the following specifications used to collect live specimens of

the dwarf seahorse, *Hippocampus zosterae*, if towed by a vessel no greater than 15 feet in length at no greater than idle speed:

1. The trawl opening shall be no larger than 12 inches by 48 inches.

2. The trawl shall weigh no more than 5 pounds wet when weighed out of the water.

(2) This rule shall not be construed to prohibit the use of any bag or container used solely for storing collected specimens or the use of a single blunt rod in conjunction with any allowable gear, which rod meets each of the following specifications:

(a) The rod shall be made of nonferrous metal, fiberglass, or wood.

(b) The rod shall be no longer than 36 inches and have a diameter no greater than $\frac{3}{4}$ inch at any point.

(3) No person shall harvest in or from state waters any tropical fish by or with the use of any gear other than those types specified in subsection (1); provided, however, that tropical fish harvested as an incidental bycatch of other species lawfully harvested for commercial purposes with other types of gear shall not be deemed to be harvested in violation of this rule, if the quantity of tropical fish so harvested does not exceed the bag limits established in Rule 46-42.005.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History—New 1-1-91, Amended 7-1-92, 1-1-95.

46-42.009 Prohibition on the Taking, Destruction, or Sale of Marine Corals and Sea Fans; Exception; Repeal of Section 370.114, Florida Statutes.—

(1) Except as provided in subsection (2), no person shall take, attempt to take, or otherwise destroy, or sell, or attempt to sell, any sea fan of the species *Gorgonia flabellum* or of the species *Gorgonia ventalina*, or any hard or stony coral (Order Scleractinia) or any fire coral (Genus *Millepora*). No person shall possess any such fresh, uncleaned, or uncured sea fan, hard or stony coral, or fire coral.

(2) Subsection (1) shall not apply to:

(a) Any sea fan, hard or stony coral, or fire coral legally harvested outside of state waters or federal Exclusive Economic Zone (EEZ) waters adjacent to state waters and entering Florida in interstate or international commerce. The burden shall be upon any person possessing such species to establish the chain of possession from the initial transaction after harvest, by appropriate receipt(s), bill(s) of sale, or bill(s) of lading, and any customs receipts, and to show that such species originated from a point outside the waters of the State of Florida or federal Exclusive Economic Zone (EEZ) adjacent to state waters and entered

the state in interstate or international commerce. Failure to maintain such documentation or to promptly produce same at the request of any duly authorized law enforcement officer shall constitute prima facie evidence that such species were harvested from Florida waters in violation of this rule.

(b) Any sea fan, hard or stony coral, or fire coral harvested and possessed pursuant to permit issued by the Department of Environmental Protection for scientific or educational purposes as authorized in Section 370.10(2), Florida Statutes.

(c) Any sea fan, hard or stony coral, or fire coral harvested and possessed pursuant to the aquacultured live rock provisions of Rule 46-42.008(3)(a) or pursuant to a Live Rock Aquaculture Permit issued by the National Marine Fisheries Service under 50 CFR Part 638 and meeting the following requirements:

(1) Persons possessing these species in or on the waters of the state shall also possess a state submerged lands lease for live rock aquaculture and a Department of Environmental Protection permit for live rock culture deposition and removal or a federal Live Rock Aquaculture Permit. If the person possessing these species is not the person named in the documents required herein, then the person in such possession shall also possess written permission from the person so named to transport aquacultured live rock pursuant to this exception.

(2) The nearest office of the Florida Marine Patrol shall be notified at least 24 hours in advance of any transport in or on state waters of aquacultured live rock pursuant to this exception.

(3) Persons possessing these species off the water shall maintain and produce upon the request of any duly authorized law enforcement officer sufficient documentation to establish the chain of possession from harvest on a state submerged land lease for live rock aquaculture or in adjacent Exclusive Economic Zone (EEZ) waters pursuant to a federal Live Rock Aquaculture Permit.

(4) Any sea fan, hard or stony coral, or fire coral harvested pursuant to Rule 46-42.008(3)(a) shall remain attached to the cultured rock.

Specific Authority 370.027(2), F.S.; Section 6, Chapter 83-134, Laws of Florida, as amended by Chapter 84-121, Laws of Florida. Law Implemented 370.025, 370.027, F.S.; Section 6, Chapter 83-134, Laws of Florida, as amended by Chapter 84-121, Laws of Florida. History—New 1-1-95.2222

Subpart Q—Hawaiian Islands Humpback Whale National Marine Sanctuary

AUTHORITY: 16 U.S.C. 1431 *et seq.* and subtitle C, title II, Pub. L. 102-587, 106 Stat. 5055.

SOURCE: 64 FR 66570, Nov. 29, 1999, unless otherwise noted.

§ 922.180 Purpose.

(a) The purpose of the regulations in this subpart is to implement the designation of the Hawaiian Islands Humpback Whale National Marine Sanctuary by regulating activities affecting the resources of the Sanctuary or any of the qualities, values, or purposes for which the Sanctuary was designated, in order to protect, preserve, and manage the conservation, ecological, recreational, research, educational, historical, cultural, and aesthetic resources and qualities of the area. The regulations are intended to supplement and complement existing regulatory authorities; to facilitate to the extent compatible with the primary objective of protecting the humpback whale and its habitat, all public and private uses of the Sanctuary, including uses of Hawaiian natives customarily and traditionally exercised for subsistence, cultural, and religious purposes, as well as education, research, recreation, commercial and military activities; to reduce conflicts between compatible uses; to maintain, restore, and enhance the humpback whale and its habitat; to contribute to the maintenance of natural assemblages of humpback whales for future generations; to provide a place for humpback whales that are dependent on their Hawaiian Islands wintering habitat for reproductive activities, including breeding, calving, and nursing, and for the long-term survival of their species; and to achieve the other purposes and policies of the HINMSA and NMSA.

(b) These regulations may be modified to fulfill the Secretary's responsibilities for the Sanctuary, including the provision of additional protections for humpback whales and their habitat, if reasonably necessary, and the conservation and management of other marine resources, qualities and ecosystems of the Sanctuary determined to be of national significance. The Secretary shall consult with the Governor of the State of Hawaii on any modification to the regulations contained in this part. For any modification of the regulations contained in this part that

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would constitute a change in a term of the designation, as contained in the Designation Document for the Sanctuary, the Secretary shall follow the applicable requirements of sections 303 and 304 of the NMSA, and sections 2305 and 2306 of the HINMSA.

(c) Section 304(e) of the NMSA requires the Secretary to review management plans and regulations every five years, and make necessary revisions. Upon completion of the five year review of the Sanctuary management plan and regulations, the Secretary will repropose the Sanctuary management plan and regulations in their entirety with any proposed changes thereto. The Governor of the State of Hawaii will have the opportunity to review the re-proposed management plan and regulations before they take effect and if the Governor certifies any term or terms of such management plan or regulations as unacceptable, the unacceptable term or terms will not take effect in State waters of the Sanctuary.

§922.181 Boundary.

(a) Except for excluded areas described in paragraph (b) of this section, the Hawaiian Islands Humpback Whale National Marine Sanctuary consists of the submerged lands and waters off the coast of the Hawaiian Islands seaward from the shoreline, cutting across the mouths of rivers and streams:

(1) To the 100-fathom (183 meter) isobath from Kaili Point eastward to Mokolea Point, Kauai;

(2) To the 100-fathom (183 meter) isobath from Puaena Point eastward to Mahie Point, and from the Kapahulu Groin in Waikiki eastward to Makapuu Point, Oahu;

(3) To the 100-fathom (183 meter) isobath from Cape Halawa, Molokai, south and westward to Ilio Point, Molokai; southwestward to include Penguin Banks; eastward along the east side of Lanai; to the waters seaward of the three nautical mile limit north of Kahoolawe, to the Hanamanoia Lighthouse on Maui, and northward along the shoreline to Lipoa Point, Maui;

(4) To the deep water area of Pailolo Channel from Cape Halawa, Molokai, to Lipoa Point, Maui, and southward;

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(5) To the 100-fathom (183 meter) isobath from Upolu Point southward to Keahole Point, Hawaii.

(b) Excluded from the Sanctuary boundary are the following commercial ports and small boat harbors:

- HAWAII (BIG ISLAND)
 - Kawaihae Boat Harbor & Small Boat Basin
- LANAI
 - Kaumalapau Harbor, Manele Harbor
- MAUI
 - Lahaina Boat Harbor
 - Maalaea Boat Harbor
- MOLOKAI
 - Hale o Lono Harbor
 - Kaunakakai Harbor
- OAHU
 - Kuapa Pond (Hawaii Kai)

(c) The coordinates of the lateral extents of each boundary area within the Sanctuary boundary appear in Appendix A of this subpart Q.

§922.182 Definitions.

(a) *Acts* means the Hawaiian Islands National Marine Sanctuary Act (HINMSA; sections 2301-2307 of Pub. L. 102-587), and the National Marine Sanctuaries Act (NMSA; also known as Title III of the Marine Protection, Research, and Sanctuaries Act (MPRSA), as amended, 16 U.S.C. 1431 *et seq.*).

Adverse impact means an impact that independently or cumulatively damages, diminishes, degrades, impairs, destroys, or otherwise harms.

Alteration of the seabed means drilling into, dredging, or otherwise altering a natural physical characteristic of the seabed of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on the seabed of the Sanctuary.

Habitat means those areas that provide space for individual and population growth and normal behavior of humpback whales, and include sites used for reproductive activities, including breeding, calving and nursing.

Military activities means those military activities conducted by or under the auspices of the Department of Defense and any combined military activities carried out by the Department

of Defense and the military forces of a foreign nation.

Sanctuary means the Hawaiian Islands Humpback Whale National Marine Sanctuary.

Sanctuary resource means any humpback whale, or the humpback whale's habitat within the Sanctuary.

Shoreline means the upper reaches of the wash of the waves, other than storm or seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.

Take or taking a humpback whale means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect or injure a humpback whale, or to attempt to engage in any such conduct. The term includes, but is not limited to, any of the following activities: collecting any dead or injured humpback whale, or any part thereof; restraining or detaining any humpback whale, or any part thereof, no matter how temporarily; tagging any humpback whale; operating a vessel or aircraft or doing any other act that results in the disturbing or molesting of any humpback whale.

(b) Other terms appearing in the regulations in this subpart are defined at 15 CFR 922.3, and/or in the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401 *et seq.*, and 16 U.S.C. 1431 *et seq.*

§ 922.183 Allowed activities.

(a) All activities except those prohibited by § 922.184 may be undertaken in the Sanctuary subject to any emergency regulations promulgated pursuant to § 922.185, subject to the inter-agency cooperation provisions of section 304(d) of the NMSA [16 U.S.C. 1434(d)] and § 922.187 of this subpart, and subject to the liability established by section 312 of the NMSA and § 922.46 of this part. All activities are also subject to all prohibitions, restrictions, and conditions validly imposed by any other Federal, State, or county authority of competent jurisdiction.

(b) Included as activities allowed under the first sentence of paragraph (a) of this § 922.183 are all classes of military activities, internal or exter-

nal to the Sanctuary, that are being or have been conducted before the effective date of these regulations, as identified in the Final Environmental Impact Statement/Management Plan. Paragraphs (a)(1) through (a)(5) of § 922.184 do not apply to these classes of activities, nor are these activities subject to further consultation under section 304(d) of the NMSA.

(c) Military activities proposed after the effective date of these regulations are also included as allowed activities under the first sentence of paragraph (a) of this § 922.183. Paragraphs (a)(1) through (a)(5) of § 922.184 apply to these classes of activities unless—

(1) They are not subject to consultation under section 304(d) of the NMSA and § 922.187 of this subpart, or

(2) Upon consultation under section 304(d) of the NMSA and § 922.187 of this subpart, NOAA's findings and recommendations include a statement that paragraphs (a)(1) through (a)(5) of § 922.184 do not apply to the military activity.

(d) If a military activity described in paragraphs (b) or (c)(2) of this § 922.183 is modified such that it is likely to destroy, cause the loss of, or injure a Sanctuary resource in a manner significantly greater than was considered in a previous consultation under section 304(d) of the NMSA and § 922.187 of this subpart, or if the modified activity is likely to destroy, cause the loss of, or injure any Sanctuary resource not considered in a previous consultation under section 304(d) of the NMSA and § 922.187 of this subpart, the modified activity will be treated as a new military activity under paragraph (c) of this section.

(e) If a proposed military activity subject to section 304(d) of the NMSA and § 922.187 of this subpart is necessary to respond to an emergency situation and the Secretary of Defense determines in writing that failure to undertake the proposed activity during the period of consultation would impair the national defense, the Secretary of the military department concerned may request the Director that the activity proceed during consultation. If the Director denies such a request, the Secretary of the military department concerned may decide to proceed with

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the activity. In such case, the Secretary of the military department concerned shall provide the Director with a written statement describing the effects of the activity on Sanctuary resources once the activity is completed.

§ 922.184 Prohibited activities.

(a) The following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted.

(1) Approaching, or causing a vessel or other object to approach, within the Sanctuary, by any means, within 100 yards of any humpback whale except as authorized under the Marine Mammal Protection Act, as amended (MMPA), 16 U.S.C. 1361 *et seq.*, and the Endangered Species Act, as amended (ESA), 16 U.S.C. 1531 *et seq.*;

(2) Operating any aircraft above the Sanctuary within 1,000 feet of any humpback whale except as necessary for takeoff or landing from an airport or runway, or as authorized under the MMPA and the ESA;

(3) Taking any humpback whale in the Sanctuary except as authorized under the MMPA and the ESA;

(4) Possessing within the Sanctuary (regardless of where taken) any living or dead humpback whale or part thereof taken in violation of the MMPA or the ESA;

(5) Discharging or depositing any material or other matter in the Sanctuary; altering the seabed of the Sanctuary; or discharging or depositing any material or other matter outside the Sanctuary if the discharge or deposit subsequently enters and injures a humpback whale or humpback whale habitat, provided that such activity:

(i) Requires a Federal or State permit, license, lease, or other authorization; and

(ii) Is conducted:

(A) Without such permit, license, lease, or other authorization, or

(B) not in compliance with the terms or conditions of such permit, license, lease, or other authorization.

(6) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of either of the Acts or any regulations issued under either of the Acts.

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(b) The prohibitions in paragraphs (a)(1) through (a)(5) of this § 922.184 do not apply to activities necessary to respond to emergencies threatening life, property or the environment; or to activities necessary for valid law enforcement purposes. However, while such activities are not subject to paragraphs (a)(1) through (a)(5) of this § 922.184, this paragraph (b) does not exempt the activity from the underlying prohibition or restriction under other applicable laws and regulations (e.g., MMPA, ESA, and CWA).

(c) Any Sanctuary fishery regulations shall not take effect in Hawaii State waters until established by the State Board of Land and Natural Resources.

§ 922.185 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource, or to minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. Before issuance of such regulations the Director shall consult to the extent practicable with any relevant Federal agency and the Governor of the State of Hawaii. Emergency regulations shall not take effect in State waters of the Sanctuary until approved by the Governor of Hawaii.

§ 922.186 Penalties; appeals.

(a) Pursuant to section 307 of the NMSA, each violation of either of the Acts, or any regulation in this subpart is subject to a civil penalty of not more than \$100,000. Each such violation is subject to forfeiture of property or Sanctuary resources seized in accordance with section 307 of the NMSA. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing the administrative proceedings for assessment of civil penalties for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR Part 904.

(c) A person subject to an action taken for enforcement reasons for violation of these regulations or either of the Acts may appeal pursuant to the

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applicable procedures in 15 CFR Part 904.

§ 922.187 Interagency Cooperation.

Under section 304(d) of the NMSA, Federal agency actions internal or external to a national marine sanctuary, including private activities authorized by licenses, leases, or permits, that are likely to destroy, cause the loss of, or injure any sanctuary resource are subject to consultation with the Director. The Federal agency proposing an action shall determine whether the activity is likely to destroy, cause the loss of, or injure a Sanctuary resource. To the extent practicable, consultation procedures under section 304(d) of the NMSA may be consolidated with interagency cooperation procedures required by other statutes, such as the ESA. The Director will attempt to provide coordinated review and analysis of all environmental requirements.

APPENDIX A TO SUBPART Q OF PART 922—HAWAIIAN ISLANDS HUMPBACK WHALE, NATIONAL MARINE SANCTUARY BOUNDARY DESCRIPTION AND COORDINATES OF THE LATERAL BOUNDARY CLOSURES AND EXCLUDED AREAS.

Appendix A provides a text and pictorial (see Figures 1-3) description of the Sanctuary boundary with specific lateral closure points and exclusion areas. The lateral extents (bounds) of each boundary area are closed by straight lines defined by at least two points. It may be necessary to extend these lines beyond the defining points to intersect the actual 100 fathom contour or the shoreline. Each point corresponds to a bounds number indicated in Figure 2. Digital files of the Sanctuary boundary (available in three common formats, ESRI Shape File, MapInfo Table, and an ASCII Exchange Format) are available from the Sanctuary office in Kihei, Maui, at the address listed above or by calling (808) 879-2818. These digital geographies are the best available representation of the verbal legal delineation and were derived from: the Hawaiian shoreline as supplied by State of Hawaii through the Office

of Planning GIS Office, the NOAA and State of Hawaii agreed upon lateral boundary and exclusion areas, and the 100 fathom isobath digitized from the following 1:80,000 scale NOAA nautical charts-19327—West Coast of Hawaii (9th ED, 4/29/89),

19347—Channels between Molokai, Maui, Lanai, and Kahoolawe (17th ED, 12/13/97),

19351—Channels between Oahu, Molokai, and Lanai (8th ED, 7/01/1989),

19357—Island of Oahu (20th ED, 9/21/1996), and 19381—Island of Kauai (8th ED, 7/17/1993)].

For the portion of the Lanai region of the HIHWNMS west of Chart 19351, [157°42.8' west] the 100 fathom contour was derived from the 1:250,000 chart 19340—Hawaii to Oahu (24th ED, 1/09/1993).

All digital geography data have been referenced to WGS84 (NAD83) and have been converted to geographic (latitude and longitude) coordinates.

SANCTUARY BOUNDARY

A. As defined by the specific lateral boundaries in B, and except for excluded areas described in paragraph C of this section, the Hawaiian Islands Humpback Whale National Marine Sanctuary consists of the submerged lands and waters off the coast of the Hawaiian Islands seaward from the shoreline, cutting across the mouths of rivers and streams (see Figure 1):

1. To the 100-fathom (183 meter) isobath from Kailiu Point eastward to Mokolea Point, Kauai;

2. To the 100-fathom (183 meter) isobath from Puaena Point eastward to Mahie Point, and from the Kapahulu Groin in Waikiki eastward to Makapuu Point, Oahu;

3. To the 100-fathom (183 meter) isobath from Cape Halawa, Molokai, south and westward to Ilio Point, Molokai; southwestward to include Penguin Banks; eastward along the east side of Lanai; to the waters seaward of the three nautical mile limit north of Kahoolawe, to the Hanamanoia Lighthouse on Maui, and northward along the shoreline to Lipoa Point, Maui;

4. To the deep water area of Pailolo Channel from Cape Halawa, Molokai, to Lipoa Point, Maui, and southward;

5. To the 100-fathom (183 meter) isobath from Upolu Point southward to Keahole Point, Hawaii.

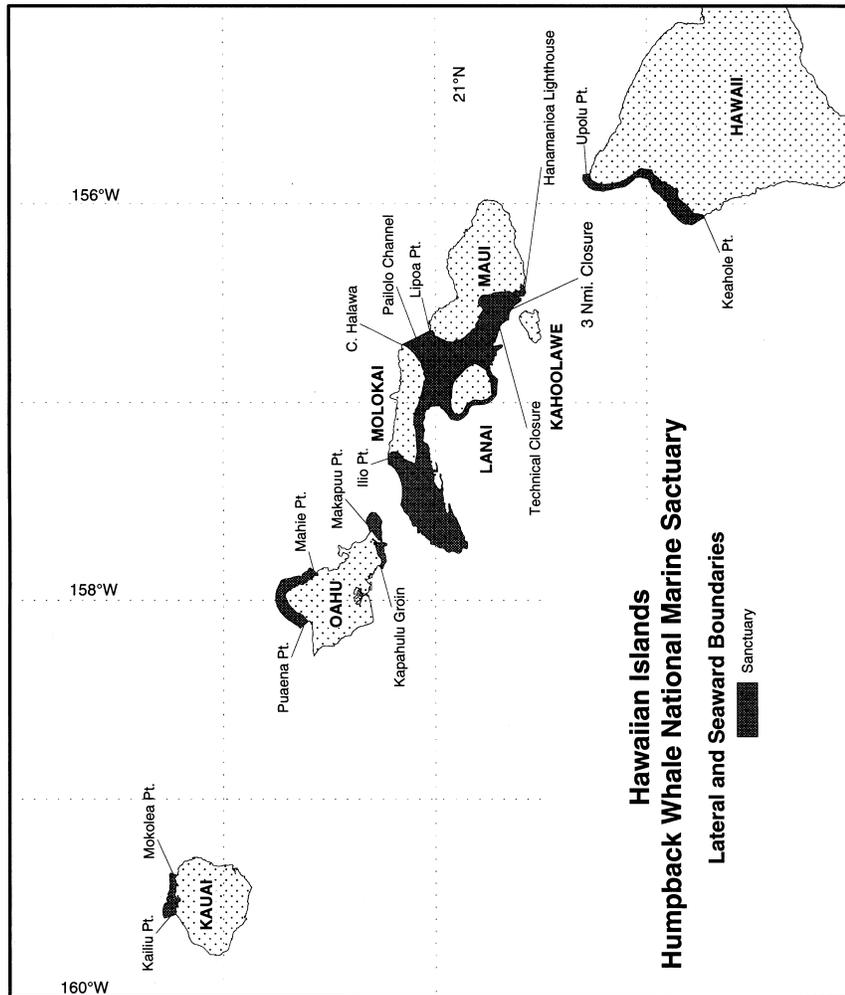


Figure 1

B. Lateral Closure Bounds for the Hawaiian Islands Humpback Whale National Marine Sanctuary Boundary (see Figure 2).

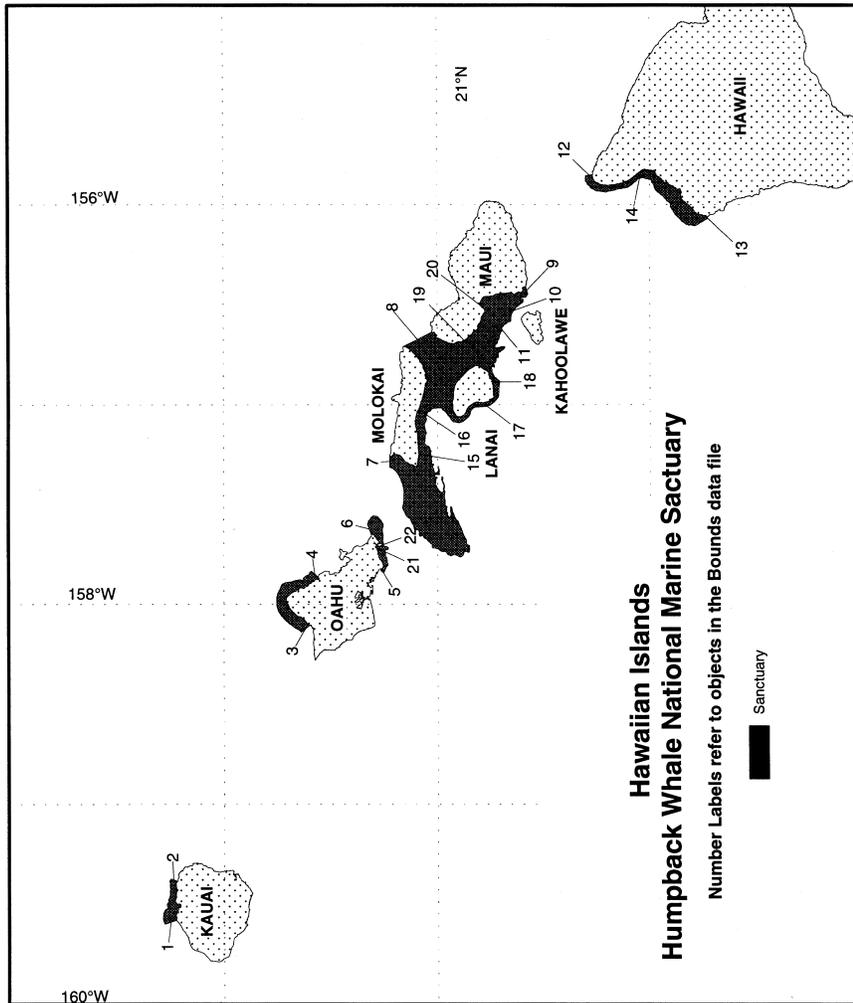


Figure 2

| Bound No. (Fig. 2) | Geographic name | No. of points | Latitude | Longitude |
|-----------------------|--|------------------|-------------|---------------|
| 1 | Kailiu Pt., Kauai | 2 | 22°13'24.7" | -159°34'52.2" |
| | | | 22°16'33.5" | -159°35'59.4" |
| 2 | Mokolea Pt., Kauai | 2 | 22°13'29.9" | -159°22'55.8" |
| | | | 22°14'55.4" | -159°22'19.3" |
| 3 | Puaena Pt., N. Oahu | 2 | 21°38'24.6" | -158°8'26.0" |
| | | | 21°36'8.4" | -158°6'24.5" |
| 4 | Mahie Pt., N. Oahu | 2 | 21°33'37.3" | -157°51'51.9" |
| | | | 21°35'32.2" | -157°50'55.5" |
| 5 | Kapahulu Groin, S. Oahu | 3 | 21°15'5.7" | -157°50'27.5" |
| | | | 21°16'6.1" | -157°49'25.7" |
| | | | 21°16'6.2" | -157°49'23.8" |
| 6 | Makapuu Pt., S. Oahu | 2 | 21°18'39.6" | -157°38'56.7" |
| | | | 21°19'44.7" | -157°35'46.1" |
| 7 | Ilio Pt, Molokai | 2 | 21°13'25.7" | -157°18'45.8" |
| | | | 21°13'27.0" | -157°15'14.4" |
| 8 | Pailolo Channel, C. Halawa to Lipoa Pt. | 2 | 21°1'29.8" | -156°38'22.0" |
| | | | 21°9'29.5" | -156°42'37.2" |
| 9 | Hanamaoia Lighthouse, Maui | 2 | 20°34'21.8" | -156°26'51.1" |
| | | | 20°34'58.4" | -156°24'45.2" |
| 10 | 3 Nmi. closure around Kahoolawe | 51 | 20°35'58.1" | -156°29'32.0" |
| | | | 20°35'59.9" | -156°29'33.0" |
| | | | 20°36'3.9" | -156°29'35.5" |
| | | | 20°36'6.6" | -156°29'36.9" |
| | | | 20°36'16.3" | -156°29'43.1" |
| | | | 20°36'25.7" | -156°29'49.9" |
| | | | 20°36'34.6" | -156°29'57.3" |
| | | | 20°36'39.9" | -156°30'2.2" |
| | | | 20°36'43.8" | -156°30'5.5" |
| | | | 20°36'50.8" | -156°30'12.1" |
| | | | 20°36'59.0" | -156°30'16.5" |
| | | | 20°37'58.7" | -156°30'22.7" |
| | | | 20°37'18.1" | -156°30'29.5" |
| | | | 20°37'27.0" | -156°30'36.8" |
| | | | 20°37'35.5" | -156°30'44.8" |
| | | | 20°37'43.4" | -156°30'53.4" |
| | | | 20°37'50.9" | -156°31'2.4" |
| | | | 20°37'56.4" | -156°31'10.0" |
| | | | 20°37'59.0" | -156°31'13.2" |
| | | | 20°38'6.0" | -156°31'22.7" |
| | | | 20°38'8.6" | -156°31'26.8" |
| | | | 20°38'10.8" | -156°31'29.9" |
| | | | 20°38'17.2" | -156°31'39.9" |
| | | | 20°38'18.9" | -156°31'43.0" |
| | | | 20°38'23.4" | -156°31'48.4" |
| | | | 20°38'30.3" | -156°31'58.0" |
| | | | 20°38'36.6" | -156°32'7.9" |
| | | | 20°38'42.4" | -156°32'18.3" |
| | | | 20°38'43.4" | -156°32'20.5" |
| | | | 20°38'46.4" | -156°32'25.9" |
| | | | 20°38'51.5" | -156°32'36.7" |
| | | | 20°38'56.0" | -156°32'47.7" |
| | | | 20°38'59.8" | -156°32'59.1" |
| | | | 20°39'3.0" | -156°33'10.7" |
| | | | 20°39'4.0" | -156°33'15.7" |
| | | | 20°39'4.4" | -156°33'17.0" |
| | | | 20°39'5.3" | -156°33'21.1" |
| | | | 20°39'6.8" | -156°33'28.7" |
| | | | 20°39'8.6" | -156°33'40.7" |
| | | | 20°39'8.9" | -156°33'44.4" |
| | | | 20°39'9.7" | -156°33'49.6" |
| | | | 20°39'10.1" | -156°33'53.8" |
| | | | 20°39'11.0" | -156°34'0.3" |
| | | | 20°39'12.1" | -156°34'12.4" |
| | | | 20°39'12.5" | -156°34'24.4" |
| | | | 20°39'12.4" | -156°34'25.4" |
| | | | 20°39'12.6" | -156°34'30.5" |
| | | | 20°39'12.2" | -156°34'42.6" |
| | | | 20°39'11.8" | -156°34'47.7" |
| | | | 20°39'11.7" | -156°34'48.9" |
| | | | 20°39'11.3" | -156°34'55.8" |
| 11 | Technical Cosure | 2 | 20°41'39.2" | -156°37'7.5" |
| | North of Kahoolawe | | 20°41'45.0" | -156°38'3.6" |

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| Bound No. (Fig. 2) | Geographic name | No. of points | Latitude | Longitude |
|--------------------|--|---------------|-------------|---------------|
| 12 | Upolu Pt., Hawaii (Big Island) | 2 | 20°16'5.3" | -155°51'0.5" |
| 13 | Keahole Pt., Hawaii (Big Island) | 2 | 20°17'59.9" | -155°51'17.2" |
| | | | 19°43'39.6" | -156°3'42.7" |
| | | | 19°43'41.5" | -156°4'14.5" |

C. Excluded Ports and Harbors Bounds (see Figure 3).

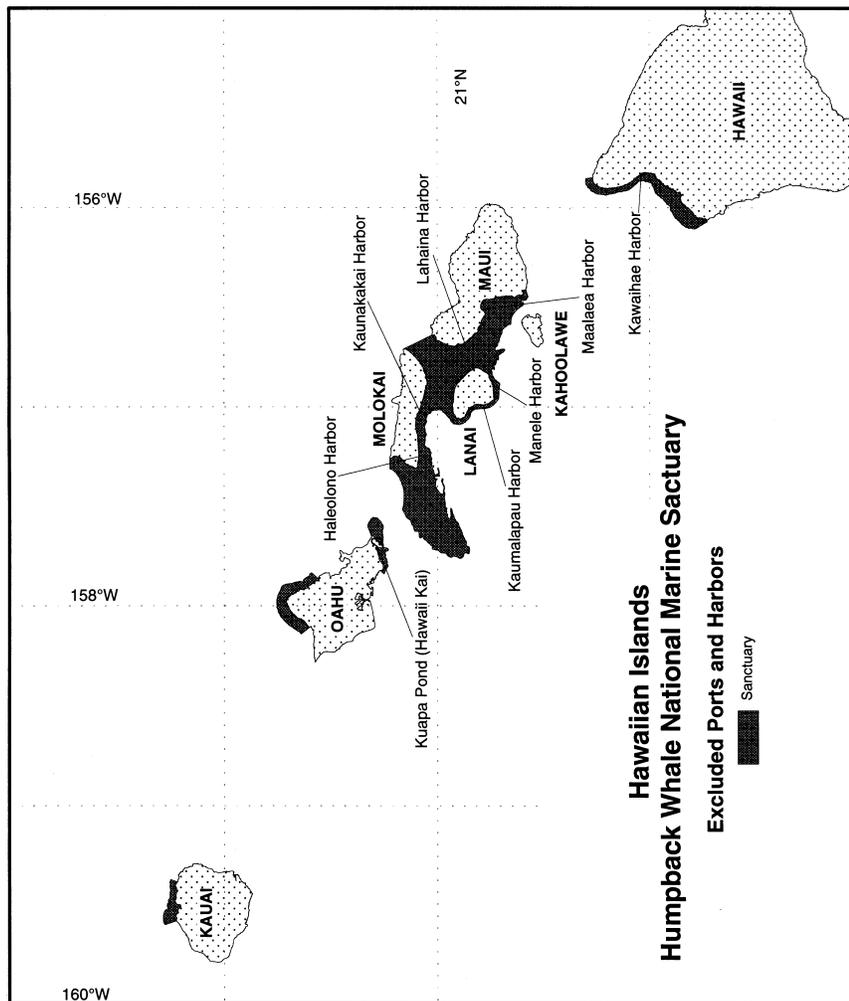


Figure 3

| Bound No. (Fig.2) | Geographic Name | No. of Points | Latitude | Longitude |
|-------------------|---|---------------|---|--|
| 14 | Kawaihae Harbor, Big Island exclusion | 2 | 20°2'14.3" 20°2'25.3" | – 155°50'2.5" – 155°49'57.7" |
| 15 | Haleolono Harbor, Molokai exclusion | 2 | 21°5'3.5" 21°5'4.8" | – 157°14'58.6" – 157°14'55.2" |
| 16 | Kaunakakai Harbor, Molokai exclusion | 4 | 21°5'13.9" 21°4'49.2" 21°4'38.5" 21°5'7.4" | – 157°1'35.7" – 157°1'58.3" – 157°1'41.2" – 157°1'15.0" |
| 17 | Kaumalapau Harbor, Lanai exclusion | 2 | 20°47'9.2" 20°47'1.1" | – 156°59'32.2" – 156°59'31.3" |
| 18 | Manele Harbor, Lanai exclusion | 2 | 20°44'33.2" 20°44'35.2" | – 156°53'12.9" – 156°53'14.1" |
| 19 | Lahaina Harbor, Maui exclusion | 2 | 20°52'18.3" 20°52'18.8" | – 156°40'45.0" – 156°40'44.0" |
| 20 | Maalaea Harbor, Maui exclusion | 2 | 20°47'32.1" 20°47'24.8" | – 156°30'35.0" – 156°30'39.6" |
| 21 | Western closure Kuapa Pond (Hawaii Kai), Oahu | 2 | 21°17'7.0" 21°17'6.5" | – 157°43'7.7" – 157°43'7.0" |
| 22 | Eastern closure Kuapa Pond (Hawaii Kai), Oahu | 2 | 21°16'53.3" 21°16'51.9" | – 157°42'42.7" – 157°42'40.3" |

Subpart R—Thunder Bay National Marine Sanctuary and Underwater Preserve

SOURCE: 65 FR 39056, June 22, 2000, unless otherwise noted.

§ 922.190 Boundary.

The Thunder Bay National Marine Sanctuary and Underwater Preserve (Sanctuary) consists of an area of approximately 448 square miles (1169 square kilometers) of waters of Lake Huron and the submerged lands thereunder, over, around, and under the underwater cultural resources in Thunder Bay. The boundary forms an approximately rectangular area by extending along the ordinary high water mark between the northern and southern boundaries of Alpena County, cutting across the mouths of rivers and streams, and lakeward from those points along latitude lines to longitude 83 degrees west. The coordinates of the boundary are set forth in Appendix A to this Subpart.

§ 922.191 Definitions.

(a) The following terms are defined for purposes of Subpart R:

Minor project means any project listed in Appendix B to this Subpart.

Programmatic Agreement means the agreement among NOAA, the Federal Advisory Council on Historic Preservation, and the State of Michigan, developed pursuant to the National Marine

Sanctuaries Act (NMSA), 16 U.S.C. 1431 *et seq.* and section 106 of the National Historic Preservation Act of 1966 as amended, 16 U.S.C. 470 *et seq.*, which, in part, sets forth the procedures for review and approval of State Permits that authorize activities prohibited by the Sanctuary regulations.

State Archaeologist means the State Archaeologist, Michigan Historical Center, Michigan Department of State.

State Permit means any lease, permit, license, approval, or other authorization issued by the State of Michigan for the conduct of activities or projects within the Thunder Bay National Marine Sanctuary and Underwater Preserve that are prohibited by the regulations at § 922.193.

Traditional fishing means those commercial, recreational, and subsistence fishing activities that were customarily conducted within the Sanctuary prior to its designation, as identified in the Final Environmental Impact Statement and Management Plan for this Sanctuary. Copies of the Final Environmental Impact Statement/Management Plan (FEIS/MP) are available upon request to the Marine Sanctuaries Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910, (301) 713-3125.

Traditional fishing includes tribal fishing rights as provided for in the

1836 Treaty of Washington and subsequent court decisions related to the Treaty.

Underwater cultural resource means:

(1) Any sunken watercraft, including a ship, boat, canoe, skiff, raft, or barge; the rigging, gear, fittings, trappings, and equipment of any sunken watercraft; the personal property of the officers, crew, and passengers of any sunken watercraft; and the cargo of any sunken watercraft, that sank prior to the effective date of Sanctuary designation; and

(2) Any of the above that sinks on or after the date of Sanctuary designation determined to be an underwater cultural resource by the Director pursuant to § 922.198. Underwater cultural resource also means any historical remnant of docks or piers or associated material, or materials resulting from activities of historic and prehistoric Native Americans.

(b) Other terms appearing in the regulations are defined at 15 CFR part 922 subpart A, and/or in the National Marine Sanctuaries Act, as amended, 16 U.S.C. 1431 *et seq.*

§ 922.192 Joint Management Committee.

(a) A state/federal Joint Management Committee shall be established to oversee and engage in decision-making authority for the Thunder Bay National Marine Sanctuary and Underwater Preserve.

(b) The Joint Management Committee shall be comprised of one Federal employee named by the NOAA Administrator and one state employee named by the Governor of Michigan. The Federal employee cannot be the sanctuary manager (the individual who exercises day-to-day management over the Sanctuary) and must have a civil service grade higher than that of the sanctuary manager.

(c) The Joint Management Committee shall:

(1) Develop a position description for, recruit prospective candidates for the position of, interview candidates for the position of, and take part in the annual performance evaluation of, the sanctuary manager;

(2) Approve revisions to the Management Plan;

(3) Approve annual work plans;

(4) Approve, on an annual basis, the expenditure of allocated state and federal funds and other sources of revenue for the Thunder Bay National Marine Sanctuary and Underwater Preserve, in accordance with the Management Plan and the annual work plans; and

(5) Make decisions on other key issues related to management of the Thunder Bay National Marine Sanctuary and Underwater Preserve.

(d) The Joint Management Committee shall meet as agreed to by the members but not less than once annually.

(e) If the Joint Management Committee is unable to reach agreement on an issue, the members shall follow the "Consultation and Conflict Resolution" procedures set forth in the Interlocal Agreement between NOAA and the State of Michigan.

(f) The Joint Management Committee may invite affected public parties to participate in selected aspects of Sanctuary management as:

(1) Parties to the Interlocal Agreement pursuant to the Michigan Urban Cooperation Act of 1967, MCL 124.501 *et seq.*; and/or

(2) Pursuant to the NMSA.

§ 922.193 Prohibited or otherwise regulated activities.

(a) Except as specified in paragraphs (b) through (d) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1) Recovering, altering, destroying, possessing, or attempting to recover, alter, destroy, or possess an underwater cultural resource.

(2) Drilling into, dredging or otherwise altering the lakebottom associated with underwater cultural resources, including contextual information; or constructing, placing or abandoning any structure, material or other matter on the lakebottom associated with underwater cultural resources, except as an incidental result of:

(i) Anchoring vessels;

(ii) Traditional fishing operations; or

(iii) Minor projects (as defined in Appendix B of this subpart) that do not

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adversely affect underwater cultural resources.

(3) Using grappling hooks or other anchoring devices on underwater cultural resource sites that are marked with a mooring buoy.

(4) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulations issued under the Act.

(b) Members of a federally-recognized Indian tribe may exercise treaty-secured rights, subject to the requirements of other applicable law, without regard to the requirements of this subpart. The Director may consult with the governing body of a tribe regarding ways the tribe may exercise such rights consistent with the purposes of the Sanctuary, provided that the rights are authorized by the tribe by regulation, license, or permit.

(c) The prohibitions in paragraphs (a)(1) through (3) of this section do not apply to valid law enforcement activities, or any activity necessary to respond to an emergency threatening life or the environment.

(d) The prohibitions in paragraphs (a)(1) through (3) of this section do not apply to any activity:

(1) Specifically authorized by, and conducted in accordance with the scope, purpose, terms and conditions of, a permit issued pursuant to §922.195 or a Special Use Permit issued pursuant to section 310 of the NMSA.

(2) Specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization in existence on the effective date of these regulations, or by any valid right of subsistence use or access in existence on the effective date of these regulations, provided that the holder of such authorization or right complies with §922.194 and §922.47 and with any terms and conditions for the exercise of such authorization or right imposed by the Director as a condition of certification as he or she deems reasonably necessary to achieve the purposes for which the Sanctuary was designated.

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§922.194 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by §922.193 (a)(1) through (3) if such activity is specifically authorized by a valid Federal, State, or local lease, permit, license, approval, or other authorization in existence on the effective date of Sanctuary designation, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, *provided that*:

(1) for any State or local lease, permit, license, approval, or other authorization, or any right of subsistence use, the State Archaeologist certifies to the Director, within 90 days of the effective date of designation, that the activity authorized under the State or local lease, permit, license, approval, or other authorization, or any right of subsistence use, is being conducted consistent with the Programmatic Agreement, in which case such activity shall be deemed to have met the requirements of this section and §922.47; or

(2) In the case where either:

(i) The State Archaeologist does not certify that the activity authorized under a State or local lease, permit, license, approval, or other authorization, or right of subsistence use is being conducted consistent with the Programmatic Agreement; or

(ii) The activity is conducted pursuant only to a Federal permit, the holder of the authorization or right complies with paragraphs (b) through (k) of this section.

(b) For an activity described in paragraph (a)(2) of this section, the holder of the authorization or right may conduct the activity prohibited by §922.193 (a)(1) through (3) *provided that*:

(1) The holder of such authorization or right notifies the Director, in writing, within 90 days of the effective date of Sanctuary designation, of the existence of such authorization or right and requests certification of such authorization or right;

(2) The holder complies with the other provisions of §922.194; and

(3) The holder complies with any terms and conditions on the exercise of

such authorization or right imposed as a condition of certification, by the Director, to achieve the purposes for which the Sanctuary was designated.

(c) The holder of an authorization or right described in paragraph (a)(2) of this section authorizing an activity prohibited by §922.193 may conduct the activity without being in violation of applicable provisions of §922.193, pending final agency action on his or her certification request, provided the holder is in compliance with this §922.194.

(d) Any holder of an authorization or right described in paragraph (a)(2) of this section may request the Director to issue a finding as to whether the activity for which the authorization has been issued, or the right given, is prohibited by §922.193, thus requiring certification under this section.

(e) Requests for findings or certifications should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuary Manager, Thunder Bay National Marine Sanctuary and Underwater Preserve, 1305 East-West Highway, N/ORM, Silver Spring, Maryland, 20910. A copy of the lease, permit, license, approval, or other authorization must accompany the request.

(f) The Director may request additional information from the certification requester as he or she deems reasonably necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The Director must receive the information requested within 45 days of the postmark date of the request. The Director may seek the views of any persons on the certification request.

(g) The Director may amend any certification made under this §922.194 whenever additional information becomes available justifying such an amendment.

(h) Upon completion of review of the authorization or right and information received with respect thereto, the Director shall communicate, in writing, any decision on a certification request or any action taken with respect to any certification made under this §922.194, in writing, to both the holder

of the certified lease, permit, license, approval, other authorization, or right, and the issuing agency, and shall set forth the reason(s) for the decision or action taken.

(i) Any time limit prescribed in or established under this §922.194 may be extended by the Director for good cause.

(j) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in §922.50.

(k) Any amendment, renewal, or extension made after the effective date of Sanctuary designation, to a lease, permit, license, approval, other authorization or right is subject to the provisions of §922.195 and §922.49.

(l) For any activity authorized pursuant to §922.193 (b), the holder of such license or permit shall notify the Director, in writing, within 90 days of the effective date of Sanctuary designation, of the existence of such authorization or right.

§922.195 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by §922.193 (a)(1) through (3), if conducted in accordance with the scope, purpose, terms and conditions of a State Permit *provided that*:

(1) The State Archaeologist certifies to NOAA that the activity authorized under the State Permit will be conducted consistent with the Programmatic Agreement, in which case such State Permit shall be deemed to have met the requirements of §922.49; or

(2) In the case where the State Archaeologist does not certify that the activity to be authorized under a State Permit will be conducted consistent with the Programmatic Agreement, the person complies with the requirements of §922.49 of this part.

(b) If no State Permit is required to conduct an activity prohibited by §922.193 (a)(1) through (3) of this subpart, a person may conduct such activity if it is conducted in accordance with the scope, purpose, terms and conditions of a Federal permit, *provided that* the person complies with the provisions of §922.49 of this part.

(c) In instances where the conduct of an activity is prohibited by §922.193 (a)(1) through (3) of this subpart is not addressed under a State or other Federal lease, license, permit or other authorization, a person must obtain a Sanctuary permit from NOAA pursuant to §922.48 (c) through (f) of this part and the Programmatic Agreement in order to conduct the activity.

(d) A permit for recovery of an underwater cultural resource may be issued if:

(1) The proposed activity satisfies the requirements for permits described under paragraphs (a) through (c) of this section;

(2) The recovery of the underwater cultural resource is in the public interest;

(3) Recovery of the underwater cultural resource is part of research to preserve historic information for public use; and

(4) Recovery of the underwater cultural resource is necessary or appropriate to protect the resource, preserve historical information, or further the policies of the Sanctuary.

(e) A person shall file an application for a permit with the Michigan Department of Environmental Quality, Land and Water Management Division, P.O. Box 30458, Lansing, MI, 48909-7958. The application shall contain all of the following information:

(1) The name and address of the applicant;

(2) Research plan that describes in detail the specific research objectives and previous work done at the site. An archaeological survey must be conducted on a site before an archaeological permit allowing excavation can be issued;

(3) Description of significant previous work in the area of interest, how the proposed effort would enhance or contribute to improving the state of knowledge, why the proposed effort should be performed in the Sanctuary, and its potential benefits to the Sanctuary;

(4) An operational plan that describes the tasks required to accomplish the project's objectives and the professional qualifications of those conducting and supervising those tasks (see §922.195(e)(9) of this section. The

plan must provide adequate description of methods to be used for excavation, recovery and the storage of artifacts and related materials on site, and describe the rationale for selecting the proposed methods over any alternative methods;

(5) Archaeological recording, including site maps, feature maps, scaled photographs, and field notes;

(6) An excavation plan describing the excavation, recovery and handling of artifacts;

(7)(i) A conservation plan documenting:

(A) The conservation facility's equipment;

(B) Ventilation temperature and humidity control; and

(C) storage space.

(ii) Documentation of intended conservation methods and processes must also be included;

(8) A curation and display plan for the curation of the conserved artifacts to ensure the maintenance and safety of the artifacts in keeping with the Sanctuary's federal stewardship responsibilities under the Federal Archaeology Program (36 CFR Part 79, Curation of Federally-Owned and Administered Archaeological Collections); and

(9) Documentation of the professional standards of an archaeologist supervising the archaeological recovery of historical artifacts. The minimum professional qualifications in archaeology are a graduate degree in archaeology, anthropology, or closely related field plus:

(i) At least one year of full-time professional experience or equivalent specialized training in archeological research, administration or management;

(ii) At least four months of supervised field and analytic experience in general North American archaeology;

(iii) Demonstrated ability to carry research to completion; and

(iv) At least one year of full-time professional experience at a supervisory level in the study of archeological resources in the underwater environment.

§922.196 Emergency regulations.

(a) Where necessary to prevent or minimize the destruction of, loss of, or

injury to an underwater cultural resource, or to minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. An emergency regulation shall not take effect without the approval of the Governor of Michigan.

(b) Emergency regulations remain in effect until a date fixed in the rule or six months after the effective date, whichever is earlier. The rule may be extended once for not more than six months.

§ 922.197 Consultation with affected federally-recognized Indian tribes.

The Director shall regularly consult with the governing bodies of affected federally-recognized Indian tribes regarding areas of mutual concern.

§ 922.198 Procedures for determining watercraft and related items which sink on or after the date of Sanctuary designation to be an underwater cultural resource.

The Director, in consultation with the State of Michigan, appropriate federal agencies, and the governing body of any affected federally-recognized tribe, may determine, after providing 45 days for public comment, that any sunken watercraft, including a ship, boat, canoe, skiff, raft, or barge; the rigging, gear, fittings, trappings, and equipment of any sunken watercraft; the personal property of the officers, crew, and passengers of any sunken watercraft; and the cargo of any sunken watercraft, that sinks on or after the date of Sanctuary designation, to be an underwater cultural resource if such is determined by the Director to be 50 years or older and of special national significance due to architectural significance or association with individuals or events that are significant to local or national history.

APPENDIX A TO SUBPART R OF PART 922—THUNDER BAY NATIONAL MARINE SANCTUARY AND UNDERWATER PRESERVE BOUNDARY COORDINATES

[Based on North American Datum of 1983]

| Point | Latitude | Longitude |
|---------|-------------|-------------|
| 1 | 45°12'25.5" | 83°23'18.6" |

| Point | Latitude | Longitude |
|---------|-------------|-------------|
| 2 | 45°12'25.5" | 83°00'00" |
| 3 | 44°51'30.5" | 83°00'00" |
| 4 | 44°51'30.5" | 83°19'17.3" |

APPENDIX B TO SUBPART R OF PART 922—MINOR PROJECTS FOR PURPOSES OF § 922.193(A)(2)(III)

Pursuant to Michigan State Administrative Rule R 322.1013 of Part 325, Great Lakes Submerged Lands of Public Act 451 (Michigan State Statute), the Michigan Department of Environmental Quality (Department) issues permits for projects that are of a minor nature which are not controversial, which have minimal adverse environmental impact, which will be constructed of clean, non-polluting materials, which do not impair the use of the adjacent bottomlands by the public, and which do not adversely affect riparian interests of adjacent owners. The following projects are minor projects:

(a) Noncommercial single piers, docks, and boat hoists which meet the following design criteria:

(i) are of a length or size not greater than the length or size of similar structures in the vicinity and on the watercourse involved; and

(ii) provide for the free littoral flow of water and drift material.

(b) Spring piles and pile clusters when their design and purpose is usual for such projects in the vicinity and on the watercourse involved.

(c) Seawalls, bulkheads, and other permanent revetment structures which meet all of the following purpose and design criteria:

(i) the proposed structure fulfills an identifiable need for erosion protection, bank stabilization, protection of uplands, or improvements on uplands;

(ii) the structure will be constructed of suitable materials free from pollutants, waste metal products, debris, or organic materials;

(iii) the structure is not more than 300 feet in length and is located in an area on the body of water where other similar structures already exist;

(iv) the placement of backfill or other fill associated with the construction does not exceed an average of 3 cubic yards per running foot along the shoreline and a maximum of 300 cubic yards; and

(v) the structure or any associated fill will not be placed in a wetland area or placed in any manner that impairs surface water flow into or out of any wetland area.

(d) Groins 50 feet or less in length, as measured from the toe to bluff, which meet all of the following criteria:

(i) the groin is low profile, with the lakeward end not more than 1 foot above the existing water level; and

(ii) the groin is placed at least ½ of the groin length from the adjacent property line or closer with written approval of the adjacent riparian.

(e) Filling for restoration of existing permitted fill, fills placed incidental to construction of other structures, and fills that do not exceed 300 cubic yards as a single and complete project, where the fill is of suitable material free from pollutants, waste metal products, debris, or organic materials.

(f) Dredging for the maintenance of previously dredged areas or dredging of not more than 300 cubic yards as a single and complete project when both of the following criteria are met:

(i) No reasonable expectation exists that the materials to be dredged are polluted; and

(ii) All dredging materials will be removed to an upland site exclusive of wetland areas.

(g) Structural repair of man-made structures, except as exempted by Michigan State Administrative Rule R 322.1008(3), when their design and purpose meet both of the following criteria:

(i) The repair does not alter the original use of a recently serviceable structure; and

(ii) The repair will not adversely affect public trust values or interests, including navigation and water quality.

(h) Fish or wildlife habitat structures which meet both of the following criteria:

(i) Are placed so the structures do not impede or create a navigational hazard; and

(ii) Are anchored to the bottomlands.

(i) Scientific structures such as staff gauges, water monitoring devices, water quality testing devices, survey devices, and core sampling devices, if the structures do not impede or create a navigational hazard.

(j) Navigational aids which meet both of the following criteria:

(i) Are approved by the United States Coast Guard; and

(ii) Are approved under Michigan State Act No. 303 of the Public Acts of 1967, as amended, being Section 281.1001 *et seq.* of the Michigan Compiled Laws, and known as the Marine Safety Act.

(k) Extension of a project where work is being performed under a current permit and which will result in no damage to natural resources.

(l) A sand trap wall which meets all of the following criteria:

(i) The wall is 300 feet or less in length along the shoreline;

(ii) The wall does not extend more than 30 feet lakeward of the toe of bluff;

(iii) The wall is low profile, that is, it is not more than 1 foot above the existing water level; and

(iv) The wall is constructed of wood or steel or other non-polluting material.

(m) Physical removal of man-made structures or natural obstructions which meet all of the following criteria:

(i) The debris and spoils shall be removed to an upland site, not in a wetland, in a manner which will not allow erosion into public waters;

(ii) The shoreline and bottom contours shall be restored to an acceptable condition; and

(iii) Upon completion of structure removal, the site does not constitute a safety or navigational hazard. Department staff shall consider fisheries and wildlife resource values when evaluating applications for natural obstruction removal.

PART 923—COASTAL ZONE MANAGEMENT PROGRAM REGULATIONS

Subpart A—General

Sec.

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923.2 Definitions.

923.3 General requirements.

Subpart B—Uses Subject to Management

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923.11 Uses subject to management.

923.12 Uses of regional benefit.

923.13 Energy facility planning process.

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Sec. 1431. Findings, purposes, and policies

● (a) Findings

The Congress finds that -

- (1) this Nation historically has recognized the importance of protecting special areas of its public domain, but these efforts have been directed almost exclusively to land areas above the high-water mark;
- (2) certain areas of the marine environment possess conservation, recreational, ecological, historical, research, educational, or esthetic qualities which give them special national, and in some cases international, significance;
- (3) while the need to control the effects of particular activities has led to enactment of resource-specific legislation, these laws cannot in all cases provide a coordinated and comprehensive approach to the conservation and management of special areas of the marine environment;
- (4) a Federal program which identifies special areas of the marine environment will contribute positively to marine resources conservation, research, and management;
- (5) such a Federal program will also serve to enhance public awareness, understanding, appreciation, and wise use of the marine environment; and
- (6) protection of these special areas can contribute to maintaining a natural assemblage of living resources for future generations.

● (b) Purposes and policies

The purposes and policies of this chapter are -

- (1) to identify and designate as national marine sanctuaries areas of the marine environment which are of special national significance;
- (2) to provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities;
- (3) to support, promote, and coordinate scientific research on, and monitoring of, the resources of these marine areas, especially long-term monitoring and research of these areas;
- (4) to enhance public awareness, understanding, appreciation, and wise use of the marine environment;
- (5) to facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to

other authorities;

- (6) to develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas;
- (7) to create models of, and incentives for, ways to conserve and manage these areas;
- (8) to cooperate with global programs encouraging conservation of marine resources; and
- (9) to maintain, restore, and enhance living resources by providing places for species that depend upon these marine areas to survive and propagate.

Sec. 1432. Definitions

As used in this chapter, the term -

- (1) "draft management plan" means the plan described in section [1434](#)(a)(1)(C)(v) of this title;
- (2) "Magnuson Act" means the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);
- (3) "marine environment" means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, including the exclusive economic zone, consistent with international law;
- (4) "Secretary" means the Secretary of Commerce;
- (5) "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States;
- (6) "damages" includes -
 - (A) compensation for -
 - (i)
 - (I) the cost of replacing, restoring, or acquiring the equivalent of a sanctuary resource; and
 - (II) the value of the lost use of a sanctuary resource pending its restoration or replacement or the acquisition of an equivalent sanctuary resource; or
 - (ii) the value of a sanctuary resource if the sanctuary resource cannot be restored or replaced or if the equivalent of such resource cannot be acquired;
 - (B) the cost of damage assessments under section [1443](#)(b)(2) of this title; and
 - (C) the reasonable cost of monitoring appropriate to the injured, restored, or replaced resources;
- (7) "response costs" means the costs of actions taken or authorized by the Secretary to minimize destruction or loss of, or injury to, sanctuary resources, or to minimize the imminent risks of such destruction, loss, or injury;
- (8) "sanctuary resource" means any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, research,

educational, or aesthetic value of the sanctuary; and

(9) "exclusive economic zone" means the exclusive economic zone as defined in the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

Sec. 1433. Sanctuary designation standards

● (a) Standards

The Secretary may designate any discrete area of the marine environment as a national marine sanctuary and promulgate regulations implementing the designation if the Secretary -

- (1) determines that the designation will fulfill the purposes and policies of this chapter; and
- (2) finds that -
 - (A) the area is of special national significance due to its resource or human-use values;
 - (B) existing State and Federal authorities are inadequate or should be supplemented to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;
 - (C) designation of the area as a national marine sanctuary will facilitate the objectives in subparagraph (B); and
 - (D) the area is of a size and nature that will permit comprehensive and coordinated conservation and management.

● (b) Factors and consultations required in making determinations and findings

○ (1) Factors

For purposes of determining if an area of the marine environment meets the standards set forth in subsection (a) of this section, the Secretary shall consider -

- (A) the area's natural resource and ecological qualities, including its contribution to biological productivity, maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened species or species assemblages, maintenance of critical habitat of endangered species, and the biogeographic representation of the site;
- (B) the area's historical, cultural, archaeological, or paleontological significance;
- (C) the present and potential uses of the area that depend on maintenance of the area's resources, including commercial and recreational fishing, subsistence uses, other commercial and recreational activities, and research and education;
- (D) the present and potential activities that may adversely affect the factors identified in subparagraphs (A), (B), and (C);
- (E) the existing State and Federal regulatory and management authorities applicable to the area and the adequacy of those authorities to fulfill the purposes and policies of this chapter;

- (F) the manageability of the area, including such factors as its size, its ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities;
 - (G) the public benefits to be derived from sanctuary status, with emphasis on the benefits of long-term protection of nationally significant resources, vital habitats, and resources which generate tourism;
 - (H) the negative impacts produced by management restrictions on income-generating activities such as living and nonliving resources development; and
 - (I) the socioeconomic effects of sanctuary designation.
- (2) Consultation
- In making determinations and findings, the Secretary shall consult with -
- (A) the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate;
 - (B) the Secretaries of State, Defense, Transportation, and the Interior, the Administrator, and the heads of other interested Federal agencies;
 - (C) the responsible officials or relevant agency heads of the appropriate State and local government entities, including coastal zone management agencies, that will or are likely to be affected by the establishment of the area as a national marine sanctuary;
 - (D) the appropriate officials of any Regional Fishery Management Council established by section 302 of the Magnuson Act (16 U.S.C. 1852) that may be affected by the proposed designation; and
 - (E) other interested persons.
- (3) Resource assessment report
- In making determinations and findings, the Secretary shall draft, as part of the environmental impact statement referred to in section [1434\(a\)\(2\)](#) of this title, a resource assessment report documenting present and potential uses of the area, including commercial and recreational fishing, research and education, minerals and energy development, subsistence uses, and other commercial, governmental, or recreational uses. The Secretary, in consultation with the Secretary of the Interior, shall draft a resource assessment section for the report regarding any commercial, governmental, or recreational resource uses in the area under consideration that are subject to the primary

jurisdiction of the Department of the Interior. The Secretary, in consultation with the Secretary of Defense, the Secretary of Energy, and the Administrator, shall draft a resource assessment section for the report, including information on any past, present, or proposed future disposal or discharge of materials in the vicinity of the proposed sanctuary. Public disclosure by the Secretary of such information shall be consistent with national security regulations.

Sec. 1434. Procedures for designation and implementation

● (a) Sanctuary proposal

○ (1) Notice

In proposing to designate a national marine sanctuary, the Secretary shall -

- (A) issue, in the Federal Register, a notice of the proposal, proposed regulations that may be necessary and reasonable to implement the proposal, and a summary of the draft management plan;
- (B) provide notice of the proposal in newspapers of general circulation or electronic media in the communities that may be affected by the proposal; and
- (C) on the same day the notice required by subparagraph (A) is issued, the Secretary shall submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate documents, including an executive summary, consisting of -
 - (i) the terms of the proposed designation;
 - (ii) the basis of the findings made under section [1433\(a\)](#) of this title with respect to the area;
 - (iii) an assessment of the considerations under section 1433(b)(1) of this title;
 - (iv) proposed mechanisms to coordinate existing regulatory and management authorities within the area;
 - (v) the draft management plan detailing the proposed goals and objectives, management responsibilities, resource studies, interpretive and educational programs, and enforcement, including surveillance activities for the area;
 - (vi) an estimate of the annual cost of the proposed designation, including costs of personnel, equipment and facilities, enforcement, research, and public education;
 - (vii) the draft environmental impact statement;
 - (viii) an evaluation of the advantages of cooperative State and Federal management if all or part of a proposed marine sanctuary is within the territorial limits of any State or is superjacent to the subsoil and seabed within the seaward boundary of a State, as that boundary is established under the Submerged Lands Act (43 U.S.C. 1301 et seq.); and
 - (ix) the proposed regulations referred to in subparagraph (A).

○ (2) Environmental impact statement

The Secretary shall -

- (A) prepare a draft environmental impact statement, as provided by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), on the proposal that includes the resource assessment report required under section 1433(b)(3) of this title, maps depicting the boundaries of the proposed designated area, and the existing and potential uses and resources of the area; and
- (B) make copies of the draft environmental impact statement available to the public.

○ (3) Public hearing

No sooner than thirty days after issuing a notice under this subsection, the Secretary shall hold at least one public hearing in the coastal area or areas that will be most affected by the proposed designation of the area as a national marine sanctuary for the purpose of receiving the views of interested parties.

○ (4) Terms of designation

The terms of designation of a sanctuary shall include the geographic area proposed to be included within the sanctuary, the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value, and the types of activities that will be subject to regulation by the Secretary to protect those characteristics. The terms of designation may be modified only by the same procedures by which the original designation is made.

○ (5) Fishing regulations

The Secretary shall provide the appropriate Regional Fishery Management Council with the opportunity to prepare draft regulations for fishing within the Exclusive Economic Zone as the Council may deem necessary to implement the proposed designation. Draft regulations prepared by the Council, or a Council determination that regulations are not necessary pursuant to this paragraph, shall be accepted and issued as proposed regulations by the Secretary unless the Secretary finds that the Council's action fails to fulfill the purposes and policies of this chapter and the goals and objectives of the proposed designation. In preparing the draft regulations, a Regional Fishery Management Council shall use as guidance the national standards of section 301(a) of the Magnuson Act (16 U.S.C. 1851) to the extent that the standards are consistent and compatible with the goals and objectives of the proposed designation. The Secretary shall prepare the fishing regulations, if the Council declines to make a determination with respect to the need for regulations, makes a determination which is rejected by the

Secretary, or fails to prepare the draft regulations in a timely manner. Any amendments to the fishing regulations shall be drafted, approved, and issued in the same manner as the original regulations. The Secretary shall also cooperate with other appropriate fishery management authorities with rights or responsibilities within a proposed sanctuary at the earliest practicable stage in drafting any sanctuary fishing regulations.

○ (6) Committee action

After receiving the documents under subsection (a)(1)(C) of this section, the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate may each hold hearings on the proposed designation and on the matters set forth in the documents. If within the forty-five day period of continuous session of Congress beginning on the date of submission of the documents, either Committee issues a report concerning matters addressed in the documents, the Secretary shall consider this report before publishing a notice to designate the national marine sanctuary.

● (b) Taking effect of designations

○ (1) Notice

In designating a national marine sanctuary, the Secretary shall publish in the Federal Register notice of the designation together with final regulations to implement the designation and any other matters required by law, and submit such notice to the Congress. The Secretary shall advise the public of the availability of the final management plan and the final environmental impact statement with respect to such sanctuary. The Secretary shall issue a notice of designation with respect to a proposed national marine sanctuary site not later than 30 months after the date a notice declaring the site to be an active candidate for sanctuary designation is published in the Federal Register under regulations issued under this Act, or shall publish not later than such date in the Federal Register findings regarding why such notice has not been published. No notice of designation may occur until the expiration of the period for Committee action under subsection (a)(6) of this section. The designation (and any of its terms not disapproved under this subsection) and regulations shall take effect and become final after the close of a review period of forty-five days of continuous session of Congress beginning on the day on which such notice is published unless, in the case of a national marine sanctuary that is located partially or entirely within the seaward boundary of any State, the Governor affected certifies to the Secretary that the designation or any of its terms is

unacceptable, in which case the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the seaward boundary of the State.

○ (2) Withdrawal of designation

If the Secretary considers that actions taken under paragraph (1) will affect the designation of a national marine sanctuary in a manner that the goals and objectives of the sanctuary cannot be fulfilled, the Secretary may withdraw the entire designation. If the Secretary does not withdraw the designation, only those terms of the designation not certified under paragraph (1) shall take effect.

○ (3) Procedures

In computing the forty-five-day periods of continuous session of Congress pursuant to subsection (a)(6) of this section and paragraph (1) of this subsection -

- (A) continuity of session is broken only by an adjournment of Congress sine die; and
- (B) the days on which either House of Congress is not in session because of an adjournment of more than three days to a day certain are excluded.

● (c) Access and valid rights

- (1) Nothing in this chapter shall be construed as terminating or granting to the Secretary the right to terminate any valid lease, permit, license, or right of subsistence use or of access that is in existence on the date of designation of any national marine sanctuary.
- (2) The exercise of a lease, permit, license, or right is subject to regulation by the Secretary consistent with the purposes for which the sanctuary is designated.

● (d) Interagency cooperation

○ (1) Review of agency actions

- (A) In general
Federal agency actions internal or external to a national marine sanctuary, including private activities authorized by licenses, leases, or permits, that are likely to destroy, cause the loss of, or injure any sanctuary resource are subject to consultation with the Secretary.
- (B) Agency statements required
Subject to any regulations the Secretary may establish each Federal agency proposing an action described in subparagraph (A) shall provide the Secretary with a written statement describing the action and its potential effects on sanctuary resources at the earliest practicable time, but in no case later than 45 days before the final approval of the action unless such Federal agency and the Secretary agree to a different schedule.

○ (2) Secretary's recommended alternatives

If the Secretary finds that a Federal agency action is likely to destroy, cause the loss of, or injure a sanctuary resource, the Secretary shall (within 45 days of receipt of complete information on the proposed agency action) recommend reasonable and prudent alternatives, which may include conduct of the action elsewhere, which can be taken by the Federal agency in implementing the agency action that will protect sanctuary resources.

○ (3) Response to recommendations

The agency head who receives the Secretary's recommended alternatives under paragraph (2) shall promptly consult with the Secretary on the alternatives. If the agency head decides not to follow the alternatives, the agency head shall provide the Secretary with a written statement explaining the reasons for that decision.

● (e) Review of management plans

Not more than five years after the date of designation of any national marine sanctuary, and thereafter at intervals not exceeding five years, the Secretary shall evaluate the substantive progress toward implementing the management plan and goals for the sanctuary, especially the effectiveness of site-specific management techniques, and shall revise the management plan and regulations as necessary to fulfill the purposes and policies of this chapter.

Sec. 1435. Application of regulations; international negotiations and cooperation**● (a) Regulations**

This chapter and the regulations issued under section [1434](#) of this title shall be applied in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party. No regulation shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States, unless in accordance with -

- (1) generally recognized principles of international law;
- (2) an agreement between the United States and the foreign state of which the person is a citizen; or
- (3) an agreement between the United States and the flag state of a foreign vessel, if the person is a crewmember of the vessel.

● (b) Negotiations

The Secretary of State, in consultation with the Secretary, shall take appropriate action to enter into negotiations with other governments to make necessary arrangements for the protection of any national marine sanctuary and to promote the purposes for which the sanctuary is established.

● (c) International cooperation

The Secretary, in consultation with the Secretary of State and other appropriate Federal agencies, shall cooperate with other governments and international organizations in furtherance of the purposes and policies of this chapter and consistent with applicable regional and multilateral arrangements for the protection and management of special marine areas.

Sec. 1436. Prohibited activities

It is unlawful to -

- (1) destroy, cause the loss of, or injure any sanctuary resource managed under law or regulations for that sanctuary;
- (2) possess, sell, deliver, carry, transport, or ship by any means any sanctuary resource taken in violation of this section;
- (3) interfere with the enforcement of this chapter; or
- (4) violate any provision of this chapter or any regulation or permit issued pursuant to this chapter.

Sec. 1437. Enforcement

- (a) In general
The Secretary shall conduct such enforcement activities as are necessary and reasonable to carry out this chapter.
- (b) Powers of authorized officers
Any person who is authorized to enforce this chapter may -
 - (1) board, search, inspect, and seize any vessel suspected of being used to violate this chapter or any regulation or permit issued under this chapter and any equipment, stores, and cargo of such vessel;
 - (2) seize wherever found any sanctuary resource taken or retained in violation of this chapter or any regulation or permit issued under this chapter;
 - (3) seize any evidence of a violation of this chapter or of any regulation or permit issued under this chapter;
 - (4) execute any warrant or other process issued by any court of competent jurisdiction; and
 - (5) exercise any other lawful authority.
- (c) Civil penalties
 - (1) Civil penalty
Any person subject to the jurisdiction of the United States who violates this chapter or any regulation or permit issued under this chapter shall be liable to the United States for a civil penalty of not more than \$100,000 for each such violation, to be assessed by the Secretary. Each day of a continuing violation shall constitute a separate violation.
 - (2) Notice
No penalty shall be assessed under this subsection until after the person charged has been given notice and an opportunity for a hearing.
 - (3) In rem jurisdiction
A vessel used in violating this chapter or any regulation or permit issued under this chapter shall be liable in rem for any civil penalty assessed for such violation. Such penalty shall constitute a maritime lien on the vessel and may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.
 - (4) Review of civil penalty
Any person against whom a civil penalty is assessed under this subsection may obtain review in the United States district court for the appropriate district by filing a complaint in such court not later than 30 days after the date of such order.

- (5) Collection of penalties
If any person fails to pay an assessment of a civil penalty under this section after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.
- (6) Compromise or other action by Secretary
The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is or may be imposed under this section.
- (d) Forfeiture
 - (1) In general
Any vessel (including the vessel's equipment, stores, and cargo) and other item used, and any sanctuary resource taken or retained, in any manner, in connection with or as a result of any violation of this chapter or of any regulation or permit issued under this chapter shall be subject to forfeiture to the United States pursuant to a civil proceeding under this subsection. The proceeds from forfeiture actions under this subsection shall constitute a separate recovery in addition to any amounts recovered as civil penalties under this section or as civil damages under section [1443](#) of this title. None of those proceeds shall be subject to set-off.
 - (2) Application of the customs laws
The Secretary may exercise the authority of any United States official granted by any relevant customs law relating to the seizure, forfeiture, condemnation, disposition, remission, and mitigation of property in enforcing this chapter.
 - (3) Disposal of sanctuary resources
Any sanctuary resource seized pursuant to this chapter may be disposed of pursuant to an order of the appropriate court, or, if perishable, in a manner prescribed by regulations promulgated by the Secretary. Any proceeds from the sale of such sanctuary resource shall for all purposes represent the sanctuary resource so disposed of in any subsequent legal proceedings.
 - (4) Presumption
For the purposes of this section there is a rebuttable presumption that all sanctuary resources found on board a vessel that is used or seized in connection with a violation of this chapter or of any regulation or permit issued under this chapter were taken or retained in violation of this chapter or of a

regulation or permit issued under this chapter.

- (e) Payment of storage, care, and other costs

- (1) Expenditures

- (A) Notwithstanding any other law, amounts received by the United States as civil penalties, forfeitures of property, and costs imposed under paragraph (2) shall be retained by the Secretary in the manner provided for in section 9607(f)(1) of title 42.
- (B) Amounts received under this section for forfeitures and costs imposed under paragraph (2) shall be used to pay the reasonable and necessary costs incurred by the Secretary to provide temporary storage, care, maintenance, and disposal of any sanctuary resource or other property seized in connection with a violation of this chapter or any regulation or permit issued under this chapter.
- (C) Amounts received under this section as civil penalties and any amounts remaining after the operation of subparagraph (B) shall be used, in order of priority, to -
 - (i) manage and improve the national marine sanctuary with respect to which the violation occurred that resulted in the penalty or forfeiture;
 - (ii) pay a reward to any person who furnishes information leading to an assessment of a civil penalty, or to a forfeiture of property, for a violation of this chapter or any regulation or permit issued under this chapter; and
 - (iii) manage and improve any other national marine sanctuary.

- (2) Liability for costs

Any person assessed a civil penalty for a violation of this chapter or of any regulation or permit issued under this chapter, and any claimant in a forfeiture action brought for such a violation, shall be liable for the reasonable costs incurred by the Secretary in storage, care, and maintenance of any sanctuary resource or other property seized in connection with the violation.

- (f) Subpoenas

In the case of any hearing under this section which is determined on the record in accordance with the procedures provided for under section [554](#) of title 5, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths.

- (g) Use of resources of State and other Federal agencies

The Secretary shall, whenever appropriate, use by agreement the personnel, services, and facilities of State and other Federal departments, agencies, and instrumentalities, on a reimbursable or nonreimbursable basis, to carry out the Secretary's responsibilities under this section.

- (h) Coast Guard authority not limited

Nothing in this section shall be considered to limit the authority of the Coast Guard to enforce this or any other Federal law under section [89](#) of title 14.

- (i) Injunctive relief

If the Secretary determines that there is an imminent risk of destruction or loss of or injury to a sanctuary resource, or that there has been actual destruction or loss of, or injury to, a sanctuary resource which may give rise to liability under section [1443](#) of this title, the Attorney General, upon request of the Secretary, shall seek to obtain such relief as may be necessary to abate such risk or actual destruction, loss, or injury, or to restore or replace the sanctuary resource, or both. The district courts of the United States shall have jurisdiction in such a case to order such relief as the public interest and the equities of the case may require.

- (j) Area of application and enforceability

The area of application and enforceability of this chapter includes the territorial sea of the United States, as described in Presidential Proclamation 5928 of December 27, 1988, which is subject to the sovereignty of the United States, and the United States exclusive economic zone, consistent with international law.

Sec. 1439. Severability

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of this Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

Sec. 1440. Research, monitoring, and education

● (a) In general

The Secretary shall conduct research, monitoring, evaluation, and education programs as are necessary and reasonable to carry out the purposes and policies of this chapter.

● (b) Promotion and coordination of sanctuary use

The Secretary shall take such action as is necessary and reasonable to promote and coordinate the use of national marine sanctuaries for research, monitoring, and education purposes. Such action may include consulting with Federal agencies, States, local governments, regional agencies, interstate agencies, or other persons to promote use of one or more sanctuaries for research, monitoring, and education, including coordination with the National Estuarine Research Reserve System.

Sec. 1441. Special use permits

● (a) Issuance of permits

The Secretary may issue special use permits which authorize the conduct of specific activities in a national marine sanctuary if the Secretary determines such authorization is necessary -

- (1) to establish conditions of access to and use of any sanctuary resource; or
- (2) to promote public use and understanding of a sanctuary resource.

● (b) Permit terms

A permit issued under this section -

- (1) shall authorize the conduct of an activity only if that activity is compatible with the purposes for which the sanctuary is designated and with protection of sanctuary resources;
- (2) shall not authorize the conduct of any activity for a period of more than 5 years unless renewed by the Secretary;
- (3) shall require that activities carried out under the permit be conducted in a manner that does not destroy, cause the loss of, or injure sanctuary resources; and
- (4) shall require the permittee to purchase and maintain comprehensive general liability insurance against claims arising out of activities conducted under the permit and to agree to hold the United States harmless against such claims.

● (c) Fees

○ (1) Assessment and collection

The Secretary may assess and collect fees for the conduct of any activity under a permit issued under this section.

○ (2) Amount

The amount of a fee under this subsection shall be equal to the sum of -

- (A) costs incurred, or expected to be incurred, by the Secretary in issuing the permit;
- (B) costs incurred, or expected to be incurred, by the Secretary as a direct result of the conduct of the activity for which the permit is issued, including costs of monitoring the conduct of the activity; and
- (C) an amount which represents the fair market value of the use of the sanctuary resource and a reasonable return to the United States Government.

○ (3) Use of fees

Amounts collected by the Secretary in the form of fees under this section may be used by the Secretary -

- (A) for issuing and administering permits under this section;
and
- (B) for expenses of designating and managing national marine sanctuaries.

- (d) Violations

Upon violation of a term or condition of a permit issued under this section, the Secretary may -

- (1) suspend or revoke the permit without compensation to the permittee and without liability to the United States;
- (2) assess a civil penalty in accordance with section 1437 of this title; or
- (3) both.

- (e) Reports

Each person issued a permit under this section shall submit an annual report to the Secretary not later than December 31 of each year which describes activities conducted under that permit and revenues derived from such activities during the year.

- (f) Fishing

Nothing in this section shall be considered to require a person to obtain a permit under this section for the conduct of any fishing activities in a national marine sanctuary.

The Acting Assistant Secretary for Administration, with the concurrence of the General Counsel formally determined on May 31, 2001, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the June 19 meeting of the Committee and of any subcommittee thereof, dealing with privileged or confidential commercial information may be exempt from the provisions of the Act relating to open meeting and public participation therein because these items are concerned with matters that are within the purview of 5 U.S.C. 552b (c)(4) and (9)(B). A copy of the Notice of Determination is available for public inspection and copying in the Department of Commerce Records Inspection Facility, Room 6020, Main Commerce.

Dated: May 31, 2001.

Thomas Sobotta,

Acting Director, Office of Automotive Affairs.

[FR Doc. 01-14175 Filed 6-4-01; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 053101A]

National Marine Sanctuary Permits

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c) (2) (A)).

DATES: Written comments must be submitted on or before August 6, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to John Armor, Permit Coordinator, 1305 East-West Highway (N/ORM6), Silver Spring, Maryland,

20910 (telephone 301-713-3125, ext. 117).

SUPPLEMENTARY INFORMATION:

I. Abstract

Persons wishing to conduct otherwise prohibited activities in a National Marine Sanctuary must apply for and receive a permit. Persons issued permits must file reports on the activity conducted. The information is required to ensure that the proposed activity is consistent with the objectives of the sanctuary, and the reports are needed to ensure compliance with permit conditions and to increase knowledge regarding the sanctuary's resources.

II. Method of Collection

Specific requirements are detailed in various subparts of 15 CFR part 922. Persons wanting a permit are sent guidelines for the application process or an application form.

III. Data

OMB Number: 0648-0141.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Not-for-profit institutions, individuals or households, business or other for-profit organizations, and state, local, or tribal government.

Estimated Number of Respondents: 336.

Estimated Time Per Response: One hour each for a general permit application, cruise or flight log, and report; 2 hours each for a historical resource permit application, cruise log, and report; 24 hours each for a special use permit application, final report, and financial report; 15 minutes for a permit amendment; 15 minutes each for a baitfish permit application and a logbook; 15 minutes for researcher entries to a research registry; 30 minutes to request certification of a pre-existing lease, license, or permit; 1 hour for a notification of a request for a permit from another agency, cruise or flight log, and report; and 1.5 hours for a permit appeal.

Estimated Total Annual Burden Hours: 886.

Estimated Total Annual Cost to Public: \$800.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c)

ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 29, 2001.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 01-14127 Filed 6-4-01; 8:45 am]

BILLING CODE 3510-08-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 053101B]

Cooperative Charting Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before August 6, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ken Forster, N/CS26, Station 7308, 1315 East-West Highway, Silver Spring, MD 20910-3282 (phone 301-713-2737, ext. 130).

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA's National Ocean Service (NOS) produces the official nautical charts of the United States. As part of its