

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 11/19/2009

Department of Commerce  
National Oceanic and Atmospheric Administration  
FOR CERTIFYING OFFICIAL: Suzanne Hilding  
FOR CLEARANCE OFFICER: Diana Hynek

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 08/03/2009

ACTION REQUESTED: New collection (Request for a new OMB Control Number)  
TYPE OF REVIEW REQUESTED: Regular  
ICR REFERENCE NUMBER: 200906-0648-014  
AGENCY ICR TRACKING NUMBER:  
TITLE: Socioeconomics of Commercial Fishers and For Hire Diving and Fishing Operations in the Flower Garden Banks National Marine Sanctuary  
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change  
OMB CONTROL NUMBER: 0648-0597

The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 11/30/2012

DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	0	0	0
New	80	240	0
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	80	240	0
Change due to Agency Adjustment	0	0	0
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official: Kevin F. Neyland  
Deputy Administrator,  
Office Of Information And Regulatory Affairs

List of ICs

IC Title	Form No.	Form Name	CFR Citation
Commercial Fishing Operations Questionnaire	NA	Commerical Fishing Operations Questionnaire	
For Hire Dive Operations Questionnaire	NA	For Hire Dive Operations Questionnaire	
For Hire Recreational Fishing Operations Questionnaire	NA	For Hire Charter and Party/Headboats Questionnaire	

# 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 <span style="float: right;">b. <input type="checkbox"/> None</span> 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, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT**

**SOCIOECONOMICS OF COMMERCIAL FISHERS AND FOR HIRE DIVING AND  
FISHING OPERATIONS IN THE FLOWER GARDEN BANKS NATIONAL MARINE  
SANCTUARY**

**OMB CONTROL No. 0648-xxxx**

**U.S. Department of Commerce  
National Ocean and Atmospheric Administration  
National Ocean Service  
Office of National Marine Sanctuaries  
1305 East West Highway, SSMC4, 11<sup>th</sup> floor  
Silver Spring, MD 20910**

**Contact: Dr. Vernon R. (Bob) Leeworthy  
(301) 713-7261  
Bob.Leeworthy@noaa.gov**

## A. JUSTIFICATION

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

The [National Marine Sanctuaries Act](#) (16 USC 1431, *et seq.*) authorizes the use of research and monitoring within National Marine Sanctuaries (NMS). In 1996, the Flower Gardens Bank National Marine Sanctuary (FGBNMS) was added to the system of NMS via [15 CFR Part 922, subpart L](#). In 2001, Stetson Bank was added in a revision of 15 CFR Part 922.

The National Marine Sanctuaries Act (NMSA) specifies that each NMS should revise their management plans on a five-year cycle. The FGBNMS has begun the management plan review process. The NMSA also allows for the creation of Sanctuary Advisory Councils (SACs). SACs are comprised of representatives of all NMS stakeholders. Management Plan Review (MPR) is a public process and the SACs, along with a series of public meetings, are used to help scope out issues in revising the management plans and regulations. SAC Working Groups are often used to evaluate management or regulatory alternatives. In the current MPR for the FGBNMS, two major issues have emerged: boundary expansion and research-only areas. In addition, several new or modified regulations are being considered to meet specific needs for diver safety and resource protection (no anchoring/mooring buoy use requirement and a more stringent pollution discharge regulation).

To address each one these issues, the FGBNMS Management and SAC or SAC Working Group is provided a socioeconomic panel to develop information and tools to assess the socioeconomic impacts of management strategies and regulatory alternatives. Dr. Vernon R. (Bob) Leeworthy, the Office of National Marine Sanctuaries (ONMS) Chief Economist, leads the socioeconomic panel, which can include other social scientists from other agencies or from universities. The information and tools developed in this process will also provide the necessary information for meeting agency requirements for socioeconomic impact analyses under the [National Environmental Policy Act](#) (NEPA), [Executive Order 12086](#) (Regulatory Impact Review) and an Initial and Final Regulatory Flexibility Analyses (impacts on small businesses).

### 2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

#### How and Purpose

This information request involves compiling socioeconomic information for three key user groups: commercial fishers, for hire recreational dive operations and for hire recreational fishing operations (charter and party/head boat operations). Socioeconomic information includes socioeconomic/demographic profiles (e.g. age, race/ethnicity, income, and household/family size), costs-and-earnings of business operation, spatial use patterns, and knowledge, attitudes, and perceptions (KAP) of FGBNMS existing and proposed management strategies and regulations.

The purpose of the information collection is to obtain the necessary information to build tools to assist FGBNMS management and a stakeholder working group in assessing the socioeconomic impacts of management strategies and regulatory alternatives in the design the management strategies and/or regulatory alternatives rather than simple agency after the fact evaluation of alternatives. In addition, the KAP module of questions will be used to establish baselines for future monitoring and evaluation efforts.

Overall, there are three basic populations to be surveyed who operate in the Northwest Gulf of Mexico Study Area (see maps posted as supplemental documents): 1) Commercial fishers, 2) For Hire Recreational Dive Operations, and 3) For Hire Recreational Fishing Operations (Charter and Party/Head boat operations).

## COMMERCIAL FISHERS

For the commercial fishers, the survey is divided into two parts. Part 1 obtains basic socioeconomic/demographic information, costs-and-earnings, and spatial distribution of use. Part 2 obtains knowledge, attitudes and perceptions of existing and proposed management strategies and regulations.

***Part 1: General Information, Economic Information and Fishery Specific Catch, Effort and Trip Costs.*** The questions are similar to those submitted under OMB Control Number 0648-0534, Expiration Date: 7/31/2009 for the Florida Keys National Marine Sanctuary (FKNMS). The questions have been slightly modified to fit the FGBNMS.

*General Information:* This section obtains information to develop socioeconomic/demographic profiles and support analyses of socioeconomic impacts. The header contains a place to code date and location of the interview. Contact information is obtained in case follow-up efforts are required and for review of information by the respondent before finalizing data. Question 1 obtains information on the age of the owner/operator. Questions 2a and 2b obtain information on race/ethnicity of the owner/operator. Question 3 asks about the number of family members supported by the business. Question 4 asks about membership in organizations that might provide information and support to the business. Question 5 focuses on the association with fish houses. Belonging to a fish house can change the business decision process with fishermen only going out when receiving orders from fish houses. Questions 6 and 7 ask about ports used. Questions 5 through 7 establish the location of where economic impacts of the fishing activity take place. Questions 8 thru 10 address the experience of the commercial fisher in total, in the Gulf of Mexico and the FGBNMS. Questions 11 and 12 address the commercial fisher's dependency on commercial fishing as a source of income. Question 13 also addresses dependency on commercial fishing by classification of the fishing occupation.

*Economic Information:* This section addresses costs-and-earnings of the commercial fishing operation. This section was designed to conform to other studies being conducted on the economics of the Gulf of Mexico commercial fisheries (see answer to Question 4 below on Duplication of Effort). Each of the questions ask for information for the last year. Last year will be the year before we implement and will be filled in at the time we implement the information collection. Question 14 and 14a focus on the replacement value of current equipment and gear

and the balance of any loans for vessels and equipment. This information will help assess the return on capital and equity. Question 15 focuses on other overhead expenses, while Question 16 addresses trip related expenses. Questions 15 and 16 ask for annual expenses for the past season. This is the recommendation of NOAA Fisheries economists doing similar work in other fisheries in the Gulf of Mexico, so we are maintaining consistency of information collection across different efforts.

Questions 17 and 18 focus on total fishing revenues for the past year and the distribution by major spatial units related to areas being considered for boundary expansion of the FGBNMS. For Question 18, we will collect either the revenue for each area or the percent of the total revenue from Question 17 by area. This will establish dependency on the different areas for commercial fishing revenues. Boundary expansion or areas could result in displacement of some commercial fishing activities (non hook-and-line fishing in boundary expansion areas and all fishing in areas).

*Fishery Specific Catch, Effort and Trip Costs:* Questions 19 and 20 provide control totals for each major area, Question 19 for pounds and value of catch by species/species groups and Question 20 for days of fishing effort by species/species groups, for which more detailed spatial distributions are to be obtained via Question 22. In Questions 20 and 21, we combined snappers and groupers because they are usually caught with the same gears in the same places and there would be a problem in double-counting days and costs or in separating them out.

Question 21 provides detailed costs per day of fishing by species/species group. This information will provide the basis of estimating the economic impacts on a fishing operation from displacement by either boundary expansion or a area.

Also, for Question 21, we designed the format to be consistent with that used by the Southeast Fisheries Science Center's Stone Crab questionnaire (OMB Control Number 0648-0560, Expiration Date: 6/30/2010). Here we pick up information on the seasonality of different fisheries, since many fishermen engage in multiple fisheries over different seasons, and we get information on gear used. Gear used is important because current regulations in the FGBNMS allow only hook-and-line fishing, so boundary expansion would displace non hook-and-line fishing.

Question 22 takes a different approach in obtaining detailed spatial resolution of "expected catch". The purpose of this information is to assess the potential impacts of boundary expansion and area alternatives. This is by its nature forward looking, thus past spatial distribution of effort may not be good representation of future impact. Commercial fishers will be asked to provide the percent distribution of where they expect to make their future catches by species/species groups at spatial resolutions of 1-minute by 1-minute of one nautical square mile grid cells. Detailed maps will be provided with NOAA Nautical chart layers with latitude and longitude lines and key reference point such as different oil platforms/rigs and the key bottom bank structures and depth contours. The catch totals provided in Question 19 will provide the information to weight percentage distributions across commercial fishing operations when extrapolating to population totals by spatial unit.

***Part 2: Knowledge, Attitudes & Perceptions of Sanctuary Management Strategies and Regulations.*** The questions are similar to those submitted under OMB Control Number 0648-0534, Expiration Date: 7/31/2009, which is focused on a 10-year replication for three user groups; commercial fishermen, dive shop owners/operators, and members of local environmental groups in the Florida Keys National Marine Sanctuary (FKNMS). The questions have been modified to the issues in the FGBNMS, but follow the same general format.

This module contains 37 questions. Question 1 addresses sources where respondents get their information and the usefulness of each source of information. This is extremely important to FGBNMS education and outreach personnel for identifying effective means of communicating with commercial fishers.

Questions 2 thru 8 address commercial fisher's perceptions of the FGBNMS with respect to the processes and procedures followed in creating and enforcing management strategies and regulations. A 1 to 5 point scale is used, with 1 meaning Strongly Agree to 5 meaning Strongly Disagree.

Questions 9 thru 37 ask questions about the attitudes and perceptions of FGBNMS existing and proposed management strategies and regulations, and if commercial fishers support FGBNMS management. Questions 9 thru 33 and Question 35 use a 1 to 5 point scale, with 1 meaning Strongly Agree to 5 meaning Strongly Disagree. Question 34 asks about commercial fishers' perceptions of the resource conditions using a 1 to 5 point scale, with 1 meaning Better Condition to 5 meaning a Worse Condition. Questions 36 and 37 are opened ended response questions asking for what areas commercial fisher's think FGBNMS has been most successful or least successful.

## **FOR HIRE RECREATIONAL DIVING OPERATIONS**

As with the commercial fishers, the questionnaire for the for hire recreational diving operations is divided into two parts. Part 1 obtains basic socioeconomic/demographic information, costs-and-earnings, and spatial distribution of use. Part 2 obtains knowledge, attitudes and perceptions of existing and proposed management strategies and regulations. Past research and advice from members of the SAC representing the dive industry informed us that dive operations also take people out for recreational fishing and wildlife observation tours (e.g. whale watching, bird watching, etc.). The questionnaire was modified to account for this practice.

***Part 1: General Information, Economic Information and Person-days and Trip Costs.*** The questions are similar to those submitted under OMB Control Number 0648-0534, Expiration Date: 7/31/2009 for the Florida Keys National Marine Sanctuary (FKNMS). The questions have been slightly modified to fit the FGBNMS.

*General Information:* This section obtains information to develop socioeconomic/demographic profiles and support analyses of socioeconomic impacts. Information requested is the same as in the questionnaire for the commercial fishers with minor modifications for adapting to the dive operations.

*Economic Information:* This section addresses costs-and-earnings of the dive operation. This section was designed to conform to other studies being conducted on the economics of the Gulf of Mexico recreational for hire fishing operations, but modified to take into account the differences for diving and wildlife observation activities (see answer to Question 4 below on Duplication of Effort). Questions 14 thru 17 focus on the operations capacity for number of passengers on all their vessels, by type of activity. Question 18 asks for the number of employees by classification (e.g. full, part-time, or seasonal). Questions 19 and 20 focus on the replacement value of current equipment and gear and the balance of any loans for vessels and equipment. This information will help assess the return on capital and equity. Question 21 focuses on other overhead expenses, while Question 22 addresses trip related expenses. Questions 21 and 22 ask for annual expenses for the past year. This is the recommendation of NOAA Fisheries economists doing similar work on for hire recreational fishing operations in the Gulf of Mexico, so we are maintaining consistency of information collection across different efforts.

Questions 23 and 24 focus on total dive operation revenues for the past year and the distribution by major spatial units related to areas being considered for boundary expansion of the FGBNMS. This will establish dependency on the different areas for dive operation revenues. Boundary expansion or areas could result in displacement of some activities (non hook-and-line fishing in boundary expansion areas and all fishing in areas).

*Person-days and Trip Costs:* Questions 25 and 26 provide control totals for each major area, Question 25 for person-days of activity by type of activity and Question 26 for person-days of activity by type of activity for the three banks in the current FGBNMS. Person-days are the best measurement of use for recreational activities. A definition is provided which says a person-day is one person doing an activity for a whole day or any part of the day. This measurement corresponds generally to what the operations record in their log books as the number of passengers taken to a specific location on a specific day. There is some potential for double-counting across activities, so totals across activities is asked and it is not required that the sum by activity equal the total.

Question 27 provides detailed costs per day of operation by type of activity. This information will provide the basis of estimating the economic impacts on a dive operation from displacement by either boundary expansion or a area.

Question 28 takes a different approach in obtaining detailed spatial resolution of “expected person-days”. The purpose of this information is to assess the potential impacts of boundary expansion and area alternatives. This is by its nature forward looking, thus past spatial distribution of effort may not be good representation of future impact. Dive owners/operators will be asked to provide the percent distribution of where they expect to undertake their future effort by type of activity at spatial resolutions of 1-minute by 1-minute of one nautical square mile grid cells. Detailed maps will be provided with NOAA Nautical chart layers with latitude and longitude lines and key reference point such as different oil platforms/rigs and the key bottom bank structures and depth contours. The person-day totals provided in Question 25 will

provide the information to weight percentage distributions across dive operations when extrapolating to population totals by spatial unit.

***Part 2: Knowledge, Attitudes & Perceptions of Sanctuary Management Strategies and Regulations.*** The questions are similar to those submitted under OMB Control Number 0648-0534, Expiration Date: 7/31/2009, which is focused on a 10-year replication for three user groups; commercial fishermen, dive shop owners/operators, and members of local environmental groups in the Florida Keys National Marine Sanctuary (FKNMS). The questions have been modified to the issues in the FGBNMS, but follow the same general format.

This module contains 38 questions. The questions are the same as used in the commercial fishers questionnaire to allow for comparisons across user groups. Question 23 was modified to address dive operators and an additional question was added (Question 34) to address the requirement of using dive flag.

## **FOR HIRE RECREATIONAL FISHING OPERATIONS**

As with the commercial fishers and for hire recreational diving operations, the questionnaire for the for hire recreational fishing operations is divided into two parts. Part 1 obtains basic socioeconomic/demographic information, costs-and-earnings, and spatial distribution of use. Part 2 obtains knowledge, attitudes and perceptions of existing and proposed management strategies and regulations.

***Part 1: General Information, Economic Information, and Person-days and Trip Costs.*** The questions are similar as those submitted under OMB Approval Number 0648-0534, Expiration Date: 7/31/2009 for the Florida Keys National Marine Sanctuary (FKNMS). The questions have been slightly modified to fit the FGBNMS.

*General Information:* This section obtains information to develop socioeconomic/demographic profiles and support analyses of socioeconomic impacts. Information in this section is the same as in the for hire diving operations questionnaire with slight modifications for the for hire recreational fishing operations.

*Economic Information:* This section addresses costs-and-earnings of the fishing operation. Again, this section is similar to that for the for hire diving operations with only slight modifications.

*Person-days and Trip Costs:* Questions 23 and 24 provide control totals for each major area, and again this section is similar to that used for the for hire diving operations with slight modifications.

***Part 2: Knowledge, Attitudes & Perceptions of Sanctuary Management Strategies and Regulations.*** The questions are similar to those submitted under OMB Control Number 0648-0534, Expiration Date: 7/31/2009, which is focused on a 10-year replication for three user groups; commercial fishermen, dive shop owners/operators, and members of local environmental

groups in the Florida Keys National Marine Sanctuary (FKNMS). The questions have been modified to the issues in the FGBNMS, but follow the same general format.

This module contains the same 38 questions used for the for hire diving operations. Question 23 was modified to focus on charter/party boat (for hire fishing) operators.

### **By Whom**

The Chief Economist for the Office of National Marine Sanctuaries (ONMS) and the ONMS Senior Economist will develop geographic information system (GIS) tools and socioeconomic models for estimating socioeconomic impacts of management strategies and regulatory alternatives.

### **How Frequently**

This is a one-time application for the current submission. Some of the elements of this submission will be replicated to support socioeconomic monitoring. However, it is ONMS policy to work with NMS stakeholders in designing socioeconomic research and monitoring programs, which would determine whether and how often to replicate measurements.

## ***How Collection Complies with NOAA Information Quality Guidelines***

***Utility:*** Completing this information collection will give FGBNMS stakeholders fair representation in the design of management strategies and regulations by providing information to support the assessment of socioeconomic impacts of management strategy and regulatory alternatives.

Education and outreach is an important management tool in the FGBNMS. The information provided in this project will be an overwhelming boon to the Education and Outreach Program of the FGBNMS. Knowledge of who are the users of the FGBNMS, their knowledge, attitudes and perceptions of Sanctuary management strategies and regulations and, how users get their information are all important in designing effective education and outreach efforts.

***Integrity:*** Procedures have been established to protect the proprietary information provided by all respondents to all surveys. All personal identification information is removed from all databases to be sent to NOAA or distributed to the public. Each individual is assigned a database identification number in the database so the data from different portions of the survey can be linked for analysis. Release of proprietary information is further protected by the [Freedom of Information Act](#) (5 USC 522 (b) (4)) concerning trade secrets or proprietary information, such as commercial business and financial records (*see also Part A, Question 10*).

All project reports are converted to Read-Only in portable document format (pdf) before being placed on the NOAA Web site for public dissemination.

*Objectivity:* All analyses and reports developed in this project will be peer reviewed before release to the public. This is the NOAA standard for socioeconomic information under the Information Quality Act. All survey modules of questions included in this project have all been through peer review as well. Most of the survey questions have been tested and analyzed in previous applications. New modules of questions have been peer reviewed.

**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.**

No automated, electronic, mechanical, or other technological or other forms of information technology are being used. All surveys are conducted face-to-face and recorded on paper forms.

**4. Describe efforts to identify duplication.**

In March 2009, an Economic Workshop, organized by the Gulf States Marine Fisheries Commission, was held in New Orleans, Louisiana. The purpose of the workshop was to assemble all researchers currently planning economic or socioeconomic studies on Gulf of Mexico commercial and recreational fisheries and share details of each proposed research design to avoid duplication of effort and consistency across applications. The ONMS Chief Economist (Chief Economist) attended and presented what is proposed in this submission. It was determined that the proposed work here is unique and a valuable addition. Further, efforts are made in this submission to achieve consistency in measurement of similar information (i.e. costs-and-earnings categories for commercial and recreational fishing operations). This will allow for direct comparisons across similar populations throughout the Gulf of Mexico.

Bob Leeworthy has also conducted a literature review to determine if and to what extent existing information might meet the needs for the FGBNMS. The review indicated that any information was considered outdated. Bob presented what was known to the FGBNMS SAC and commercial fisher, recreational dive operation and recreational fishing operation representatives all thought that new information collection was needed to adequately represent their interests. Each user group was consulted on each component of the information collection to ensure we were not duplicating efforts and that user group members would comply with the information request.

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

All the business entities in this information collection request can be classified as small businesses. Our approach is not to send out questionnaires to be filled out by survey respondents. Instead, we send out an information collection team to the home or office of the business owner/operator and the information collection team works with the respondent to complete the information collection. In arranging information collection interviews, our approach is to discuss the types of information we will be asking for in order for the respondent to prepare to make records available to the team. For cost-and-earnings, financial records will be needed. For spatial use information or catch information, access to log-books will be requested.

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

NOAA and the managers of the FGBNMS, with the advice and consent from the FGBNMS SAC, have agreed to build the necessary information and tools to allow for the assessment of socioeconomic impacts in the design of management strategies and regulations. The information collection proposed here is in response to the issues identified by the user groups as necessary elements of a socioeconomic impact analyses. The management plan review process is well underway in the FGBNMS and the information collection proposed here is critical to meeting the needs of FGBNMS stakeholders. In addition, many federal agencies that manage natural resources have been tasked by the National Academy of Sciences to adopt adaptive management practices. Adaptive management requires research and monitoring, both ecological and socioeconomic, to be able to assess what is happening to both the natural resources and the humans that depend upon those resources. The FGBNMS has taken important steps along these lines and is living up to their compact with the stakeholders who are participating in the management plan revision process. Not completing these data collections would leave NOAA and the FGBNMS in violation of these agreements.

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

Data collection will be consistent with 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 published on December 23, 2008 (73 FR 78723) solicited public comment on this collection. None was received.

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

No payments or gifts are provided to respondents.

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

As stated on the survey instruments, any identifying information (name, name of business, address and telephone number) will be viewed only by the contractor compiling the data, and will be destroyed by the contractor collecting the information at the end of the information collection. In addition, the [Freedom of Information Act](#) (5 USC 522(b)(4)) authorizes non-

disclosure by a federal agency of trade secrets or proprietary information, such as commercial business and financial records. All other information will be available for distribution.

**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 will be asked.

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

We estimate that there are approximately 50 commercial fishing operations in the relevant portions of the Northwest Gulf of Mexico Study Area that would be potentially impacted by FGBNMS boundary expansion or research-only areas. This information was obtained through the use of the Vessel Monitoring System (VMS) which tracks commercial vessel locations. We expect it will, on average, require three (3) hours of interview/record compilation time for each commercial fishing operation. We also assume we will get a 100% response rate or a census, but response rates could go as low as 85%, based on past research. At the 85% response rate, we would expect 43 completed interviews for 129 hours, but to allow for a 100% response, we are requesting 150 hours.

For the For Hire Recreational Diving Operations, we have identified a population of 10 operations. We expect to get a 100% response rate or a census. The representative for the dive industry on the FGBNMS SAC has assured us that all of their members are highly supportive of the effort and we should expect full cooperation. Again, we expect that, on average, the interview and compilation of information time will be three (3) hours, for a total of 30 hours.

For the For Hire Recreational Fishing Operations, we have identified a population of 20 operations. Again, we expect to get a 100% response rate or a census. The representatives for the recreational fishing industry have assured us that their members are highly supportive of the effort and we should expect full cooperation. Again, we expect that, on average, the interview and compilation of information time will be three (3) hours, for a total of 60 hours.

**The total burden hour estimate across all three groups is estimated to be 240 hours. If this estimate is annualized over three years, the estimate is 80 hours per year.**

Table 1. Estimate of Burden Hours

	Total	Annualized <sup>1</sup>
Estimated Number of Respondents		
Commercial fishermen	50	16.7
For Hire Recreational Diving Operations	10	3.3
For Hire Recreational Fishing Operations	20	6.7
Total	80	26.7
Estimated time per Respondent		
Commercial fishermen	3hrs	
Dive Shop Owners/Operators	3hrs	
Members of Local Environmental Groups	3hrs	
Estimated Total Annual Burden Hours		
Commercial fishermen	150	50.0
Dive Shop Owners/Operators	30	10.0
Members of Local Environmental Groups	60	20.0
Total	240	80.0

1. Annualized equals total divided by three years of approval.

**13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in Question 12 above).**

There will be no cost to respondents beyond burden hours.

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

Data collection, GIS information and socioeconomic analysis tool development, and basic reports will take about nine months to complete.

Additional costs to the Federal government include the staff time of NOAA employees in developing survey questionnaire, sample designs and support items; developing and overseeing contracts to conduct surveys, do analyses and develop reports; develop data documentation on CD-ROM; post project reports on NOAA web site in pdf; and travel to support use of the GIS and socioeconomic impact analysis tools to evaluate management and regulatory alternatives with stakeholder working groups. Total other costs to the Federal government are estimated at \$30,000. So the total project costs to the Federal government are estimated at \$96,600 over a three year period. When annualized, the costs are estimated to be \$32,200.

Table 2. Total Project Cost to the Federal Government (Costs over three years):

---

Socioeconomics of Commercial Fishers and For Hire Recreational Diving and Fishing Operations in the Flower Gardens Bank National Marine Sanctuary

Contracts for Data Collectors.....	\$30,000
NOAA Staff time in developing questionnaires, maps, contracts and tools:	
a. Development and oversight.....	\$42,000
1. ZP-04 Economist 300 hours * \$80/hour.....	\$24,000
2. ZP-04 Economist 300 hours * \$62/hour.....	\$18,600
b. Travel.....	\$24,000
Total Cost to Federal Government.....	\$96,600

---

Annualized Cost to Federal Government (Total Project Costs to the Federal government divided by three years): \$32,200.

**15. Explain the reasons for any program changes or adjustments.**

This is a new collection.

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

All reports will be peer reviewed per the NOAA standard under the Information Quality Act and posted on the ONMS Socioeconomic web site:  
<http://sanctuaries.noaa.gov/science/socioeconomic>. A new page(s) will be set up on this web site for the FGBNMS.

All data and documentation will be put on CD-ROM and will be made available to the general public, subject to any masking of the data required to protect privacy.

**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.**

NA.

**18. Explain each exception to the certification statement.**

NA.

## **B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

**1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection method to be used. Data on the number of entities (e.g. establishments, State and local governmental units, households, or persons) in the universe and the corresponding sample are to be provided in tabular form. The tabulation must also include expected response rates for the collection as a whole. If the collection has been conducted before, provide the actual response rate achieved.**

Commercial Fishers. We estimate the population of commercial fishing operations that operate in the relevant portions of the Northwest Gulf of Mexico Study Area that would be potentially impacted by FGBNMS boundary expansion or research-only areas to number 50 operations. This information was obtained through the use of the Vessel Monitoring System (VMS) mandated by NOAA Fisheries, which tracks commercial vessel locations.

The actual determination was a two-step procedure. In Step 1, we asked NOAA Fisheries Southeast Fisheries Science Center for the names and addresses for all commercial fishing vessels that operate in NOAA Fisheries Gulf of Mexico statistical areas 14, 15 and 16, which most closely overlay our Northwest Gulf of Mexico Study Area. However, this resulted in over 1,000 vessels. In Step 2, we narrowed the list down to 50 operations by asking NOAA Fisheries for the vessels that have operated over the past three years in more precise geographic locations corresponding to the areas where boundary expansion and areas will be considered. NOAA Fisheries has required that all commercial fishing vessels have Vessel Monitoring Systems (VMS). Use of this information allowed us to more precisely define the relevant commercial fishing population.

We expect between an 85% and 100% response rate, based on our past applications of the same methods of information collection used in the Florida Keys. In our most recent application in the Florida Keys, which included all of the same types of information, we achieved a 90% response rate. As in the Florida Keys application, we will not send questionnaires to commercial fishers to fill out. Instead, we send a team of data collectors into the home or office of the commercial fishers and the data collection team works with the commercial fishers to fill out our questionnaires and spatial catch information work sheets. Interviews are set up in advance and the commercial fishers are informed of the types of information that will be collected and what kinds of records (e.g. log books and financial records) are required for the information collection.

For the For Hire Recreational Diving Operations, we have identified a population of 10 operations. This was done by reviewing past research on all Texas Gulf of Mexico For Hire Dive Operations and updating from telephone Yellow book and web sites. We expect to get a 100% response rate or a census. The representative for the dive industry on the FGBNMS SAC has assured us that all of their members are highly supportive of the effort and we should expect full cooperation.

For the For Hire Recreational Fishing Operations, we have identified a population of 20 operations. We identified these operations through NOAA Fisheries, telephone yellow book, web sites and fishing magazines. Again, we expect a 100% response rate or a census. The

representatives for the recreational fishing industry have assured us that their members are highly supportive of the effort and we should expect full cooperation.

**2. Describe the procedures for the collection, including: the statistical methodology for stratification and sample selection; the estimation procedure; the degree of accuracy needed for the purpose described in the justification; any unusual problems requiring specialized sampling procedures; and any use of periodic (less frequent than annual) data collection cycles to reduce burden.**

Generally, we expect to get a census for all three user groups. For commercial fishers, we expect, based on past experience, that the minimum response rate would be 85%. In past experiences, the 15% that don't respond accounted for less than 5% of total catch, so we think we will be as close to a census as practical.

**3. Describe the methods used to maximize response rates and to deal with nonresponse. The accuracy and reliability of the information collected must be shown to be adequate for the intended uses. For collections based on sampling, a special justification must be provided if they will not yield "reliable" data that can be generalized to the universe studied.**

In January 2009, Mr. Leeworthy attended the FGBNMS SAC Meeting and presented all that we currently know about the commercial fishers, for hire recreational diving industry and the for hire recreational fishing industry. The FGBNMS SAC representatives for each of these three user groups all agreed that the information currently available was inadequate to address the assessment of the potential socioeconomic impact of various boundary alternatives for FGBNMS boundary expansion alternatives or areas. Bob presented what information collection he thought would provide the necessary information to build a decision support tool to allow FGBNMS management and a working group of the SAC to evaluate regulatory alternatives in designing boundary expansion or areas. User group representatives each said they would contact their memberships and do their best to make sure we got maximum cooperation.

In past applications (most recent in Florida Keys—see OMB Control No. 0648-0534), we did achieve over 85% response rates for both commercial fishing operations and dive operations. In addition, we had no item non response, even for income questions, as we experience when surveying households. So we do not expect nonresponse bias to be a significant issue for the populations in this information collection request.

**4. Describe any tests of procedures or methods to be undertaken. Tests are encouraged as effective means to refine collections, but if ten or more test respondents are involved OMB must give prior approval.**

All of the questionnaires and methods proposed here have been employed in past information collections and so are well tested. They all have been slightly modified for application to the FGBNMS. We have also worked through the FGBNMS SAC to make sure that the members of each user group will know why it is important to provide the information and how it will be used, in order to receive a high level of cooperation in providing the information requested.

**5. Provide the name and telephone number of individuals consulted on the statistical aspects of the design, and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.**

Dr. Vernon R. (Bob) Leeworthy  
Chief Economist  
NOAA/NOS/Office of National Marine Sanctuaries  
1305 East West Highway, SSMC4, 11<sup>th</sup> floor  
Silver Spring, MD 20910  
Telephone: (301) 713-7261  
Fax: (301) 713-0404  
E-mail: [Bob.Leeworthy@noaa.gov](mailto:Bob.Leeworthy@noaa.gov)

Dr. Robert Ditton  
Department of Wildlife and Fisheries Sciences  
Texas A&M University  
College Station, TX 77840-2258 USA  
Telephone: 979-845-9841  
E-mail: (w) [r-ditton@neo.tamu.edu](mailto:r-ditton@neo.tamu.edu)

Dr. James Waters  
Chief Economist  
NOAA, National Marine Fisheries Service  
Southeast Fisheries Science Center  
101 Pivers Island Rd  
Beaufort, NC 28516  
Telephone: 252-728-8710  
E-mail: [Jim.Waters@noaa.gov](mailto:Jim.Waters@noaa.gov)

Dr. Juan Agar  
Senior Staff Economist  
NOAA, National Marine Fisheries Service  
Southeast Fisheries Science Center  
75 Virginia Beach Dr.  
Miami, FL 33149  
Telephone: 305-361-4218  
E-mail: [Juan.Agar@noaa.gov](mailto:Juan.Agar@noaa.gov)

Dr. David Carter  
Senior Staff Economist  
NOAA, National Marine Fisheries Service  
Southeast Fisheries Science Center  
75 Virginia Beach Dr.  
Miami, FL 33149  
Telephone: 305-361-4467  
E-mail: [David.W.Carter@noaa.gov](mailto:David.W.Carter@noaa.gov)

Christopher Liese  
Staff Economist  
NOAA, National Marine Fisheries Service  
Southeast Fisheries Science Center  
75 Virginia Beach Dr.  
Miami, FL 33149  
Telephone: 305-361-4467  
E-mail: [Christopher.Liese@noaa.gov](mailto:Christopher.Liese@noaa.gov)

## References

- Gulf States Fisheries Economics Workshop. 2009. New Orleans, Louisiana, March 19-20, 2009. Gulf States Marine Fisheries Commission, Ocean Springs, Mississippi. Alex L. Miller Workshop Coordinator.
- Liese, Christopher, Carter, David, and Curtis, Rita. 2009. Surveying the For-Hire Sector: Economic Heterogeneity in the Southeastern U.S. Charter Boat Industry. Staff Paper, NOAA Fisheries Service, Southeast Fishery Science Center, Miami, Florida, pp 20.
- Shivlani, M., Leeworthy V.R., Murray, T.J., Suman, D.O., and F. Tonioli. 2008. Knowledge, Attitudes and Perceptions of Management Strategies and Regulations of the Florida Keys National Marine Sanctuary by Commercial Fishers, Dive Operators, and Environmental Group Members: A Baseline Characterization and 10-year Comparison. Marine Sanctuaries Conservation Series ONMS-08-06. U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Office of National Marine Sanctuaries, Silver Spring, MD. 170 pp.

## COMMERCIAL FISHING OPERATIONS

### IMPORTANT INFORMATION ABOUT THIS INFORMATION COLLECTION

#### 1. Authorizations to Collect the Information

The National Marine Sanctuaries Act (16 USC 1431, et seq.) authorizes the Flower Gardens Bank National Marine Sanctuary to establish regulations to protect sanctuary resources or resolve user conflicts. This act also authorizes the Sanctuary to do research and collect information necessary for evaluating new regulations.

#### 2. How the Information Will Be Used

The Flower Gardens Bank National Marine Sanctuary has developed a public process to evaluate and revise its current management plan and regulations. Through this public process and in consultation with the Sanctuary Advisory Council, the Flower Gardens Bank National Marine Sanctuary is evaluating several alternatives for expanding its boundaries to cover other banks in the Northwest Gulf of Mexico, establishing a research only area to test the impacts of fishing, and revise other regulations on use of dive flags by dive vessels, minimum distance and speeds for other vessels operating near dive vessels, and vessel discharges. All current and revised regulations would apply to boundary expansion areas. The Sanctuary Advisory Council or a Sanctuary Advisory Council Working Group, with members representing different user groups, will help evaluate and make recommendations to the FGBNMS on boundary expansion and research only area alternatives and revisions of other regulations.

The information collected here will be used by the Sanctuary Advisory Council or its working group and management of the Flower Gardens Bank National Marine Sanctuary in evaluating alternative boundaries for boundary expansion and research only areas alternatives. The objective will be to minimize the socioeconomic impacts of boundary expansion and research only area alternatives. The information will also be used by NOAA in completing socioeconomic impact analyses of any regulations resulting from any proposed boundary expansion, research only area or other new regulations.

#### 3. Statement of Burden

Public reporting burden for this collection of information is estimated to average about three hours per response, including 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 burden, to Dr. Vernon R. (Bob) Leeworthy, Chief Economist, National Ocean Service, office of National marine Sanctuaries, 1305 East West Highway, SSMC 4, 11<sup>th</sup> floor, Silver Spring, MD 20910.

#### 4. Your Participation and Protections of Proprietary Information

Your participation is voluntary. 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 the collection of information displays a currently valid OMB Control Number.

Any information that identifies you or your business (name, name of business, address and telephone number) will not be given to anyone, including the government agencies sponsoring this information collection. The information that identifies you or your business will be destroyed by the contractor collecting the information at the end of the information collection. All other information will be available for distribution.

Date of Interview \_\_\_\_\_ OMB No. 0648-0000 Exp. Date:  
Location of Interview: \_\_\_\_\_

Commercial Fishing in the Northwest Gulf of Mexico (Part 1)

**GENERAL INFORMATION**

Name \_\_\_\_\_

Telephone \_\_\_\_\_

E-mail: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

1. Which of the following includes your age?

18-30 31-40 41-50 51-60 over 60

2a. Are you Hispanic or Latino YES \_\_\_ NO \_\_\_

2b. What is your race? (Mark one or more)

\_\_\_ White \_\_\_ Black or African American \_\_\_ American Indian or Alaska Native

\_\_\_ Asian \_\_\_ Native Hawaiian or Other Pacific Islander

3. How many family members do you support (including yourself)?

Myself only 2 3 4 5 6 7 Greater and 7

4. Are you a member of any of the following groups?

Chamber of Commerce YES \_\_\_ NO \_\_\_

An Environmental Group YES \_\_\_ NO \_\_\_

Commercial Fishing Organization YES \_\_\_ NO \_\_\_

Other (specify) \_\_\_\_\_ YES \_\_\_ NO \_\_\_

5. Do you belong to a fish house? YES \_\_\_ NO \_\_\_

-if YES, then which one? \_\_\_\_\_

-if NO, to which fish houses do you usually sell your catch?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

6. What is your primary port? \_\_\_\_\_

Date of Interview \_\_\_\_\_ OMB No. 0648-0000 Exp. Date:  
Location of Interview: \_\_\_\_\_

7. Do you have a secondary port, from where you fish part of the year? YES \_\_\_ NO \_\_\_  
- If YES, then which one? \_\_\_\_\_

8. How many years have you been a commercial fisher? \_\_\_ (number of years)

9. How many years have you been a commercial fisher in the Gulf of Mexico? \_\_\_ (number of years)

10. Have you ever commercially fished in the Flower Gardens Bank National Marine Sanctuary? (Interviewer—Please show map) YES \_\_\_ NO \_\_\_

- If YES, how many years have you fished in the Flower Gardens Bank National Marine Sanctuary? \_\_\_ (number of years)

11. What approximate percentage of your personal income is derived from commercial fishing? \_\_\_\_\_%

12. What approximate percentage of your TOTAL household income is derived from commercial fishing? \_\_\_\_\_ %

13. How would you describe your fishing occupation? (Mark one or more)

\_\_\_ Full-time commercial fisher \_\_\_ Part-time commercial fisher \_\_\_ Charter Boat (sometimes sell catch)

### **ECONOMIC INFORMATION**

14. Please provide your best estimate of the replacement value of the following items that you used for commercial fishing last year (\_\_\_\_\_ fill in-in year).

___ Vessel(s) and electronic equipment:	\$ _____
Lobster traps: Number: _____	\$ _____
Crab traps: Number: _____	\$ _____
Nets: Number: _____	\$ _____
Longlines: Number: _____	\$ _____
Dive gear:	\$ _____
Rods/reels	\$ _____
Other gear (specify) _____	\$ _____
_____	\$ _____
_____	\$ _____

14a. Outstanding balance on loan amounts for vessels and equipment. \$ \_\_\_\_\_

Date of Interview \_\_\_\_\_ OMB No. 0648-0000 Exp. Date:  
Location of Interview: \_\_\_\_\_

15. Please provide your best estimate for the following expenses last year:

Snapper Quota fee (allocation lease fee):	\$ _____
Fishing Permits/Licenses:	\$ _____
Docking fees:	\$ _____
Interest payments on vessel:	\$ _____
P&I insurance on vessel, crew:	\$ _____
Maintenance/repair on vessel/electronic equipment:	\$ _____
Maintenance/repair on lobster traps:	\$ _____
Maintenance/repair on crab traps:	\$ _____
Maintenance/repair on nets:	\$ _____
Maintenance/repair on longlines:	\$ _____
Maintenance/repair on Dive gear:	\$ _____
Maintenance/repair on rods/reels:	\$ _____
Maintenance/repair on other gear:	\$ _____
Office rent/mortgage:	\$ _____
Office utilities (electric, water, telephone, Internet):	\$ _____
Depreciation on vessel and equipment:	\$ _____
Business taxes:	\$ _____
Other: _____	\$ _____
_____	\$ _____
_____	\$ _____

16. Please provide your best estimate for the following annual trip related expenses last year:

Fuel/oil:	\$ _____
Ice:	\$ _____
Bait:	\$ _____
Food/Supplies:	\$ _____
Captain wages & salaries (if not owner-captain):	\$ _____
Crew wages & salaries Number: _____	\$ _____
Other (specify) _____	\$ _____
_____	\$ _____
_____	\$ _____

17. Please provide your best estimate of your total revenues from fishing last year:  
\$ \_\_\_\_\_

Date of Interview \_\_\_\_\_ OMB No. 0648-0000 Exp. Date:  
 Location of Interview: \_\_\_\_\_

18. Please provide your best estimate of your total revenues and/or percentage of total revenues (from Question 17) from fishing last year by each geographic area: (See map for definitions of each area)

Northwest Gulf of Mexico Study Area	\$ _____	% _____
Area 1	\$ _____	% _____
Area 2	\$ _____	% _____
Area 3	\$ _____	% _____
Area 4	\$ _____	% _____
Other Gulf of Mexico not included above	\$ _____	% _____

**FISHERY SPECIFIC CATCH, EFFORT AND TRIP COSTS**

19. Please provide your best estimate of the number of pounds and value of catch by species/species group for last season and the percentage of total catch by species/species group and area. (Interviewer – show map of areas).

<b>Fishery</b>	<b>Total Pounds</b>	<b>Total \$</b>	<b>NWGOM (%)</b>	<b>Area 1 (%)</b>	<b>Area 2 (%)</b>	<b>Area 3 (%)</b>	<b>Area 4 (%)</b>
Snappers							
Groupers							
Other Reef Fish							
Sharks							
Jacks/Mackerels/Tunas							
Menhaden							
Other Finfish							
Shrimp							
Lobster							
Crab							
Other invertebrates							

Date of Interview \_\_\_\_\_

OMB No. 0648-0000 Exp. Date:

Location of Interview: \_\_\_\_\_

20. Please provide your best estimate of the number of days of fishing by species/species group for the last year and the percentage of days of fishing by species/species group and area.

<b>Fishery</b>	<b>Total Days</b>	<b>NWGOM (%)</b>	<b>Area 1 (%)</b>	<b>Area 2 (%)</b>	<b>Area 3 (%)</b>	<b>Area 4 (%)</b>
Snappers/Groupers						
Other Reef Fish						
Sharks						
Jacks/Mackerels/Tunas						
Menhaden						
Other Finfish						
Shrimp						
Lobster						
Crab						
Other invertebrates						

21. Please provide your best estimate for:

- a. Months fished for each species/species group last year.
- b. Primary gear used for each species/species group.
- c. Cost per day for a typical day of fishing by species/species group.

	Snapper/ Groupers	Other Reef Fish	Sharks	Jacks/Mackerels/ Tunas	Menhaden
Months fished					
Primary Gear Used					
Fuel/Oil					
Ice					
Bait					
Food/Supplies					
Other					
Crew					
Captain (if not owner)					

	Other Finfish	Shrimp	Lobster	Crab	Other Invertebrates
Months fished					
Primary Gear Used					
Fuel/Oil					
Ice					
Bait					
Food/Supplies					
Other					
Crew					
Captain (if not owner)					

Date of Interview\_\_\_\_\_ OMB No. 0648-0000 Exp. Date:  
Location of Interview:\_\_\_\_\_

22. Please provide the percentage of your catch across each 1-minute by 1-minute grid cell for each species/species group. This is a forward looking rather than just your past catch patterns. We want to know where you expect you will make your catch in the future. This will be used to assess the possible impacts of expanding the boundaries of the Flower Gardens Bank National Marine Sanctuary or assessing a possible research only area. All hook-an-line fishing will be allowed in boundary expansion areas as in the current FGBNMS. All fishing will be eliminated from a research only area. (refer to detailed maps with grid overlays and nautical chart reference points).

Coding sheet attached.

**Commercial Fisheries in NWGOM Part 2.**

**SOURCES OF INFORMATION AND PERCEPTIONS**

1. Please list the sources of information that you have received in the past on the FGBNMS and rank the sources in terms of their usefulness. In terms of ranking, please rank only those sources that you used, and where 1 is the most important source, 2 the second most important source, and so on.

SOURCE	Sources Used	RANK Sources
a. FGBNMS website	_____	_____
b. FGBNMS Staff	_____	_____
c. Sanctuary Advisory Council	_____	_____
d. FGBNMS brochures/literature	_____	_____
e. FGBNMS signage	_____	_____
f. Information in newspapers	_____	_____
g. Radio	_____	_____
h. TV	_____	_____
i. Word of mouth	_____	_____

For the next set of questions, please provide your answer on a 1 to 5 scale, where 1 means **Strongly agree**, 2 means **Moderately agree**, 3 means **Neutral**, 4 means **Moderately disagree**, and 5 means **Strongly disagree**

2. The process that NOAA has used to develop rules and regulations for the FGBNMS was open and fair to all groups.

1      2      3      4      5      I don't know

3. The process has used by NOAA to develop boundaries and regulations for the FGBNMS zones was open and fair to all groups.

1      2      3      4      5      I don't know

4. It has not mattered whether the average person participated in the workshops and meeting on the FGBNMS because the average person could not influence the final decisions.

1      2      3      4      5      I don't know

5. NOAA has not addressed the concerns of other federal and state governments in developing rules and regulations for the FGBNMS.

1      2      3      4      5      I don't know

6. NOAA has not addressed the concerns of individual citizens in developing rules and regulations for the FGBNMS.

1      2      3      4      5      I don't know

7. Once that the FGBNMS regulations have been in effect, there has been no way that the average person to voice his/her opinion on the usefulness of the regulations.

1      2      3      4      5      I don't know

8. The procedures that NOAA has established to deal with violations of FGBNMS regulations have been fair and just.

1      2      3      4      5      I don't know

**NOTES**

**ATTITUDES ABOUT MANAGEMENT STRATEGIES AND REGULATION**

In this section, we want to know what you think about current and proposed management strategies in the FGBNMS, the effects of those management strategies and regulations, and how you think the FGBNMS management has performed.

In management plan review public scoping and Sanctuary Advisory Council meetings, FGBNMS is thinking about expanding its current boundaries and creating a research only area. For boundary expansion, there are a number of alternatives, but all would extend the current regulations in FGBNMS to the boundary expansion areas. Hook-and-line fishing is currently allowed in the FGBNMS. For the research only area, all activities would be prohibited. See map of areas proposed for potential boundary expansion.

For the next set of questions, please provide your answer on a 1 to 5 scale, where 1 means **Strongly agree**, 2 means **Moderately agree**, 3 means **Neutral**, 4 means **Moderately disagree**, and 5 means **Strongly disagree**

9. I support the FGBNMS as it is currently established.

1      2      3      4      5      I don't know

10. I support the establishment of a research only area in the FGBNMS.

1      2      3      4      5      I don't know

11. A research only area in the FGBNMS would have a positive impact on the marine environment.

1      2      3      4      5      I don't know

12. There should be more than one bank set aside as a research only area in the FGBNMS.

1      2      3      4      5      I don't know

13. I support establishment of boundary expansion of FGBNMS for the banks in AREA 1.

1      2      3      4      5      I don't know

14. I support establishment of boundary expansion of FGBNMS for the banks in AREA 2.

1      2      3      4      5      I don't know

15. I support establishment of boundary expansion of FGBNMS for the banks in AREA 3.

1      2      3      4      5      I don't know

16. I support establishment of boundary expansion of FGBNMS for the banks in AREA 4.

1      2      3      4      5      I don't know

17. I support establishment of a research only area on Stetson bank.

1      2      3      4      5      I don't know

18. I support establishment of a research only area on East Flower Garden Bank.

1      2      3      4      5      I don't know

19. I support establishment of a research only area on West Flower Garden Bank.

1      2      3      4      5      I don't know

20. Boundary expansion of the FGBNMS would have a positive impact on the marine environment.

1      2      3      4      5      I don't know

21. The Stetson, East & West Flower Garden Banks have benefited environmentally from management by the FGBNMS.

1      2      3      4      5      I don't know

22. There has been a net economic benefit to the coastal Texas economy from the establishment of the FGBNMS.

1      2      3      4      5      I don't know

**OMB No. 0648-0000. Expiration date: .**

23. Commercial fisheries have benefited from the establishment of the FGBNMS.

1      2      3      4      5      I don't know

24. FGBNMS regulations have had no effect on my business.

1      2      3      4      5      I don't know

25. I support the no anchoring regulations in the FGBNMS.

1      2      3      4      5      I don't know

26. I support the current no discharge regulations in the FGBNMS.

1      2      3      4      5      I don't know

27. I support the current no harvest of bottom formations or taking of invertebrates inside the FGBNMS.

1      2      3      4      5      I don't know

28. I support the hook-and-line only fishing regulation in the FGBNMS.

1      2      3      4      5      I don't know

29. I support the no taking of marine mammals and turtles in the FGBNMS.

1      2      3      4      5      I don't know

30. I support the requirement of using a mooring buoy instead of anchoring in the FGBNMS with the limit of vessel size for mooring use of 100 feet or less.

1      2      3      4      5      I don't know

31. I support stricter regulations on discharging of pollutants in the FGBNMS.

1      2      3      4      5      I don't know

32. I support regulations on minimum distance and speed from vessels flying a Blue and Alpha Dive Flag.

1      2      3      4      5      I don't know

33. I support the requirement that all Dive vessels fly a Blue and Alpha dive flag..

1      2      3      4      5      I don't know

34. Please rate the status/condition of the following resources at the East & West Flower Garden Banks and Stetson Bank by their status/condition since the implementation of the FGBNMS (1996 for East & West Flower Garden Banks and 2001 for Stetson Bank), where 1 is much better and 5 is much worse.

RESOURCE	Better ←-----→ Worse
a. Water quality	1 2 3 4 5 N/A
b. Sea-based pollution/marine debris	1 2 3 4 5 N/A
c. Coral reefs	1 2 3 4 5 N/A
d. Other bottom habitat	1 2 3 4 5 N/A
e. Fisheries	1 2 3 4 5 N/A
f. Mooring buoys	1 2 3 4 5 N/A
g. Fewer vessel groundings	1 2 3 4 5 N/A

35. The FGBNMS is mostly responsible for the status/condition of the resources that you rated in the previous question.

1      2      3      4      5      I don't know

36. In which area(s) has the FGBNMS been most successful?

---

37. In which area(s) has the FGBNMS been least successful?

---

## **FOR HIRE DIVE/SNORKEL OPERATIONS**

### **IMPORTANT INFORMATION ABOUT THIS INFORMATION COLLECTION**

#### **1. Authorizations to Collect the Information**

The National Marine Sanctuaries Act (16 USC 1431, et seq.) authorizes the Flower Gardens Bank National Marine Sanctuary to establish regulations to protect sanctuary resources or resolve user conflicts. This act also authorizes the Sanctuary to do research and collect information necessary for evaluating new regulations.

#### **2. How the Information Will Be Used**

The Flower Gardens Bank National Marine Sanctuary has developed a public process to evaluate and revise its current management plan and regulations. Through this public process and in consultation with the Sanctuary Advisory Council, the Flower Gardens Bank National Marine Sanctuary is evaluating several alternatives for expanding its boundaries to cover other banks in the Northwest Gulf of Mexico, establishing a research only area to test the impacts of fishing, and revise other regulations on use of dive flags by dive vessels, minimum distance and speeds for other vessels operating near dive vessels, and vessel discharges. All current and revised regulations would apply to boundary expansion areas. The Sanctuary Advisory Council or a Sanctuary Advisory Council Working Group, with members representing different user groups, will help evaluate and make recommendations to the FGBNMS on boundary expansion and research only area alternatives and revisions of other regulations.

The information collected here will be used by the Sanctuary Advisory Council or its working group and management of the Flower Gardens Bank National Marine Sanctuary in evaluating alternative boundaries for boundary expansion and research only areas alternatives. The objective will be to minimize the socioeconomic impacts of boundary expansion and research only area alternatives. The information will also be used by NOAA in completing socioeconomic impact analyses of any regulations resulting from any proposed boundary expansion, research only area or other new regulations.

#### **3. Statement of Burden**

Public reporting burden for this collection of information is estimated to average about three hours per response, including 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 burden, to Dr. Vernon R. (Bob) Leeworthy, Chief Economist, National Ocean Service, office of National marine Sanctuaries, 1305 East West Highway, SSMC 4, 11<sup>th</sup> floor, Silver Spring, MD 20910.

#### **4. Your Participation and Protections of Proprietary Information**

Your participation is voluntary. 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 the collection of information displays a currently valid OMB Control Number.

Any information that identifies you or your business (name, name of business, address and telephone number) will not be given to anyone, including the government agencies sponsoring this information collection. The information that identifies you or your business will be destroyed by the contractor collecting the information at the end of the information collection. All other information will be available for distribution.

Date of Interview \_\_\_\_\_ OMB No. 0648-0000 Exp. Date:  
Location of Interview: \_\_\_\_\_

Recreational For Hire Dive Operations in the Northwest Gulf of Mexico (Part 1)

**GENERAL INFORMATION**

Name \_\_\_\_\_

Telephone \_\_\_\_\_

E-mail: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

1. Which of the following includes your age?

18-30 31-40 41-50 51-60 over 60

2a. Are you Hispanic or Latino YES \_\_\_ NO \_\_\_

2b. What is your race? (Mark one or more)

\_\_\_ White \_\_\_ Black or African American \_\_\_ American Indian or Alaska Native

\_\_\_ Asian \_\_\_ Native Hawaiian or Other Pacific Islander

3. How many family members do you support (including yourself)?

Myself only 2 3 4 5 6 7 Greater and 7

4. Are you a member of any of the following groups?

a. NAUI YES \_\_\_ NO \_\_\_

b. PADI YES \_\_\_ NO \_\_\_

c. SSI YES \_\_\_ NO \_\_\_

d. Chamber of Commerce YES \_\_\_ NO \_\_\_

e. An Environmental Group YES \_\_\_ NO \_\_\_

f. Other (specify) \_\_\_\_\_ YES \_\_\_ NO \_\_\_

5. What is your primary port/marina? \_\_\_\_\_

6. Do you have a secondary port/marina, from where you dive part of the year? YES \_\_\_ NO \_\_\_

- If YES, then which one? \_\_\_\_\_

7. How many years have you been a dive/snorkel operator? \_\_\_ (number of years)

Date of Interview \_\_\_\_\_ OMB No. 0648-0000 Exp. Date:  
Location of Interview: \_\_\_\_\_

8. How many years have you been a dive/snorkel operator in the Gulf of Mexico? \_\_\_\_ (number of years)

9. Have you ever taken dive/snorkelers to the Flower Gardens Bank National Marine Sanctuary? (Interviewer—Please show map) YES \_\_\_ NO \_\_\_

- If YES, how many years have you taken dive/snorkelers to the Flower Gardens Bank National Marine Sanctuary? \_\_\_\_ (number of years)

10. What approximate percentage of your total business income is derived from the dive/snorkel operation? \_\_\_\_%

11. What approximate percentage of your TOTAL personal income is derived from the dive/snorkel operation? \_\_\_\_ %

12. What approximate percentage of your TOTAL household income is derived from the dive/snorkel operation? \_\_\_\_ %

13. How would you describe your dive/snorkel operation? (Mark one or more)

\_\_\_ Full-time dive/snorkel operation \_\_\_ Part-time dive/snorkel operation  
\_\_\_ Seasonal dive/snorkel operation If seasonal, what months

\_\_\_ Full-time Combination dive/snorkel, fishing, and wildlife observation operation  
\_\_\_ Part-time Combination dive/snorkel, fishing, and wildlife observation  
\_\_\_ Seasonal Combination dive/snorkel, fishing, and wildlife observation If seasonal, what  
Months for dive/snorkel \_\_\_\_\_  
Months for fishing \_\_\_\_\_  
Months for wildlife observation \_\_\_\_\_

### **ECONOMIC INFORMATION**

14. Number of boats/vessels at the operation: \_\_\_\_ (number of vessels)

15. Capacity of dive/snorkelers per vessel in operation:

Vessel 1: \_\_\_\_ divers/ \_\_\_\_ snorkelers Vessel 2: \_\_\_\_ divers/ \_\_\_\_ snorkelers  
Vessel 3: \_\_\_\_ divers/ \_\_\_\_ snorkelers Vessel 4: \_\_\_\_ divers/ \_\_\_\_ snorkelers

16. Capacity of fishers per vessel in operation:

Vessel 1: \_\_\_\_ fishers Vessel 2: \_\_\_\_ fishers  
Vessel 3: \_\_\_\_ fishers Vessel 4: \_\_\_\_ fishers

Date of Interview \_\_\_\_\_ OMB No. 0648-0000 Exp. Date:  
Location of Interview: \_\_\_\_\_

17. Capacity of wildlife observes per vessel in operation:

Vessel 1: \_\_\_\_\_wildlife observers Vessel 2: \_\_\_\_\_wildlife observers  
Vessel 3: \_\_\_\_\_wildlife observers Vessel 4: \_\_\_\_\_wildlife observers

18. Number of employees at the operation:

a. Full time \_\_\_\_\_ b. Part time \_\_\_\_\_ c. Seasonal \_\_\_\_\_

19. Please provide your best estimate of the replacement value of the following items that you used last year (fill in year \_\_\_\_\_).

a. Vessel(s) and electronic equipment:	\$ _____
b. Diving and snorkeling gear:	\$ _____
c. Compressors	\$ _____
d. Rods/Reels	\$ _____
e. Other gear (specify) _____	\$ _____
_____	\$ _____
_____	\$ _____

20. Outstanding balance on loan amounts for vessels and equipment \$ \_\_\_\_\_

21. Please provide your best estimate for the following expenses last year:

Permits/Licenses:	\$ _____
Docking fees:	\$ _____
Interest payments on vessel(s):	\$ _____
P&I insurance on vessel(s)	\$ _____
Maintenance/repair on vessel/electronic equipment:	\$ _____
Maintenance/repair on dive/snorkel gear:	\$ _____
Maintenance on rods/reels:	\$ _____
Maintenance/repair on compressors:	\$ _____
Maintenance/repair on other equipment:	\$ _____
Other Dive equipment costs:	\$ _____
Advertising:	\$ _____
Office rent/mortgage:	\$ _____
Office utilities (electric, water, telephone, Internet):	\$ _____
Depreciation of vessels and equipment:	\$ _____
Business Taxes:	\$ _____
Other: _____	\$ _____
_____	\$ _____
_____	\$ _____

Date of Interview \_\_\_\_\_ OMB No. 0648-0000 Exp. Date:  
 Location of Interview: \_\_\_\_\_

22. Please provide your best estimate for the following trip related expenses last year:

Dive equipment costs:		\$ _____
Fuel/oil:		\$ _____
Ice:		\$ _____
Food/Supplies:		\$ _____
Bait:		\$ _____
Captain wages & salaries (if not owner-captain):		\$ _____
Crew wages & salaries	Number: _____	\$ _____
Other (specify) _____		\$ _____
_____		\$ _____
_____		\$ _____

23. Please provide your best estimate of your total business revenues last year:  
 \$ \_\_\_\_\_

24. Please provide your best estimate of your total revenues and/or percent of total revenues (from Question 23) last year by each geographic area: (See map for definitions of each area)

Northwest Gulf of Mexico Study Area	\$ _____	% _____
Area 1	\$ _____	% _____
Area 2	\$ _____	% _____
Area 3	\$ _____	% _____
Area 4	\$ _____	% _____
Other Gulf of Mexico not included above	\$ _____	% _____

Date of Interview \_\_\_\_\_ OMB No. 0648-0000 Exp. Date:  
 Location of Interview: \_\_\_\_\_

**PERSON DAYS AND TRIP COSTS**

25. Please provide your best estimate of the number person days by type of activity for last year and the percentage of person days by activity and area. (Interviewer – show map of areas). A person day is one person for a whole day or any part of a day. 10 people on-board for an overnight trip would be 20 person days.

<b>Activity</b>	<b>Total Person-days</b>	<b>NWGOM (%)</b>	<b>Area 1 (%)</b>	<b>Area 2 (%)</b>	<b>Area 3 (%)</b>	<b>Area 4 (%)</b>
SCUBA diving						
Snorkelers						
Fishing						
Wildlife Observation						
All Activities						

26. Please provide your best estimate of last years’ number of person days by activity and bank for the three banks in the current Flower Gardens Bank National Marine Sanctuary.

<b>Activity</b>	<b>East Flower Gardens</b>	<b>West Flower Gardens</b>	<b>Stetson</b>
SCUBA diving			
Snorkelers			
Fishing			
Wildlife Observation			
All Activities			

27. Please provide your best estimate of the cost per day for a typical day of operation by activity.

<b>Activity</b>	<b>Fuel/Oil</b>	<b>Ice</b>	<b>Bait</b>	<b>Food/Supplies</b>	<b>Other</b>	<b>Crew</b>	<b>Captain (if not owner)</b>
SCUBA diving							
Snorkeling							
Fishing							
Wildlife Observation							

28. Please provide the percentage of your person days of operation across each 1-minute by 1-minute grid cell for each activity. This is a forward looking rather than just your past activity patterns. We want to know where you expect you will conduct your activities in the future. This will be used to assess the possible impacts of expanding the boundaries of the Flower Gardens Bank National Marine Sanctuary or assessing a possible research only area. All hook-an-line fishing will be allowed in boundary expansion areas as in the current FGBNMS. All activities will be eliminated from a research only area. (refer to detailed maps with grid overlays and nautical chart reference points).

Date of Interview\_\_\_\_\_

OMB No. 0648-0000 Exp. Date:

Location of Interview:\_\_\_\_\_

Coding sheet attached.

**For Hire Dive/Snorkel Operators in NWGOM Part 2.**  
**SOURCES OF INFORMATION AND PERCEPTIONS**

1. Please list the sources of information that you have received in the past on the FGBNMS and rank the sources in terms of their usefulness. In terms of ranking, please rank only those sources that you used, and where 1 is the most important source, 2 the second most important source, and so on.

SOURCE	Sources Used	RANK Sources
a. FGBNMS website	_____	_____
b. FGBNMS Staff	_____	_____
c. Sanctuary Advisory Council	_____	_____
d. FGBNMS brochures/literature	_____	_____
e. FGBNMS signage	_____	_____
f. Information in newspapers	_____	_____
g. Radio	_____	_____
h. TV	_____	_____
i. Word of mouth	_____	_____

For the next set of questions, please provide your answer on a 1 to 5 scale, where 1 means **Strongly agree**, 2 means **Moderately agree**, 3 means **Neutral**, 4 means **Moderately disagree**, and 5 means **Strongly disagree**

2. The process that NOAA has used to develop rules and regulations for the FGBNMS was open and fair to all groups.

1      2      3      4      5      I don't know

3. The process has used by NOAA to develop boundaries and regulations for the FGBNMS zones was open and fair to all groups.

1      2      3      4      5      I don't know

4. It has not mattered whether the average person participated in the workshops and meeting on the FGBNMS because the average person could not influence the final decisions.

1      2      3      4      5      I don't know

5. NOAA has not addressed the concerns of other federal and state governments in developing rules and regulations for the FGBNMS.

1      2      3      4      5      I don't know

6. NOAA has not addressed the concerns of individual citizens in developing rules and regulations for the FGBNMS.

1      2      3      4      5      I don't know

7. Once that the FGBNMS regulations have been in effect, there has been no way that the average person to voice his/her opinion on the usefulness of the regulations.

1      2      3      4      5      I don't know

8. The procedures that NOAA has established to deal with violations of FGBNMS regulations have been fair and just.

1      2      3      4      5      I don't know

**NOTES**

**ATTITUDES ABOUT MANAGEMENT STRATEGIES AND REGULATION**

In this section, we want to know what you think about current and proposed management strategies in the FGBNMS, the effects of those management strategies and regulations, and how you think the FGBNMS management has performed.

In management plan review public scoping and Sanctuary Advisory Council meetings, FGBNMS is thinking about expanding its current boundaries and creating a research only area. For boundary expansion, there are a number of alternatives, but all would extend the current regulations in FGBNMS to the boundary expansion areas. Hook-and-line fishing is currently allowed in the FGBNMS. For the research only area, all activities would be prohibited. See map of areas proposed for potential boundary expansion.

For the next set of questions, please provide your answer on a 1 to 5 scale, where 1 means **Strongly agree**, 2 means **Moderately agree**, 3 means **Neutral**, 4 means **Moderately disagree**, and 5 means **Strongly disagree**

9. I support the FGBNMS as it is currently established.

1    2    3    4    5    I don't know

10. I support the establishment of a research only area in the FGBNMS.

1    2    3    4    5    I don't know

11. A research only area in the FGBNMS would have a positive impact on the marine environment.

1    2    3    4    5    I don't know

12. There should be more than one bank set aside as a research only area in the FGBNMS.

1    2    3    4    5    I don't know

13. I support establishment of boundary expansion of FGBNMS for the banks in AREA 1.

1    2    3    4    5    I don't know

14. I support establishment of boundary expansion of FGBNMS for the banks in AREA 2.

1    2    3    4    5    I don't know

15. I support establishment of boundary expansion of FGBNMS for the banks in AREA 3.

1    2    3    4    5    I don't know

16. I support establishment of boundary expansion of FGBNMS for the banks in AREA 4.

1    2    3    4    5    I don't know

17. I support establishment of a research only area on Stetson bank.

1    2    3    4    5    I don't know

18. I support establishment of a research only area on East Flower Garden Bank.

1    2    3    4    5    I don't know

19. I support establishment of a research only area on West Flower Garden Bank.

1    2    3    4    5    I don't know

20. Boundary expansion of the FGBNMS would have a positive impact on the marine environment.

1    2    3    4    5    I don't know

21. The Stetson, East & West Flower Garden Banks have benefited environmentally from management by the FGBNMS.

1    2    3    4    5    I don't know

22. There has been a net economic benefit to the coastal Texas economy from the establishment of the FGBNMS.

1    2    3    4    5    I don't know

**OMB No. 0648-0000. Expiration date: .**

23. Dive Operators have benefited from the establishment of the FGBNMS.

1      2      3      4      5      I don't know

24. FGBNMS regulations have had no effect on my business.

1      2      3      4      5      I don't know

25. I support the no anchoring regulations in the FGBNMS.

1      2      3      4      5      I don't know

26. I support the current no discharge regulations in the FGBNMS.

1      2      3      4      5      I don't know

27. I support the current no harvest of bottom formations or taking of invertebrates inside the FGBNMS.

1      2      3      4      5      I don't know

28. I support the hook-and-line only fishing regulation in the FGBNMS.

1      2      3      4      5      I don't know

29. I support the no taking of marine mammals and turtles in the FGBNMS.

1      2      3      4      5      I don't know

30. I support the requirement of using a mooring buoy instead of anchoring in the FGBNMS with the limit of vessel size for mooring use of 100 feet or less.

1      2      3      4      5      I don't know

31. I support stricter regulations on discharging of pollutants in the FGBNMS.

1      2      3      4      5      I don't know

32. I support regulations on minimum distance and speed from vessels flying a Blue and Alpha Dive Flag.

1      2      3      4      5      I don't know

33. I support the requirement that all Dive vessels fly a Blue and Alpha dive flag.

1      2      3      4      5      I don't know

34. How much do you estimate it will cost your business per year to comply with this Dive Flag regulation? \$ \_\_\_\_\_

35. Please rate the status/condition of the following resources at the East & West Flower Garden Banks and Stetson Bank by their status/condition since the implementation of the FGBNMS (1996 for East & West flower Garden Banks and 2001 for Stetson Bank), where 1 is much better and 5 is much worse.

RESOURCE	Better ←-----→ Worse					
a. Water quality	1	2	3	4	5	N/A
b. Sea-based pollution/marine debris	1	2	3	4	5	N/A
c. Coral reefs	1	2	3	4	5	N/A
d. Other bottom habitat	1	2	3	4	5	N/A
e. Fisheries	1	2	3	4	5	N/A
f. Mooring buoys	1	2	3	4	5	N/A
g. Fewer vessel groundings	1	2	3	4	5	N/A

36. The FGBNMS is mostly responsible for the status/condition of the resources that you rated in the previous question.

1      2      3      4      5      I don't know

37. In which area(s) has the FGBNMS been most successful?

\_\_\_\_\_

38. In which area(s) has the FGBNMS been least successful?

\_\_\_\_\_

## **FOR HIRE CHARTER AND PARTY/HEAD BOATS**

### **IMPORTANT INFORMATION ABOUT THIS INFORMATION COLLECTION**

#### **1. Authorizations to Collect the Information**

The National Marine Sanctuaries Act (16 USC 1431, et seq.) authorizes the Flower Gardens Bank National Marine Sanctuary to establish regulations to protect sanctuary resources or resolve user conflicts. This act also authorizes the Sanctuary to do research and collect information necessary for evaluating new regulations.

#### **2. How the Information Will Be Used**

The Flower Gardens Bank National Marine Sanctuary has developed a public process to evaluate and revise its current management plan and regulations. Through this public process and in consultation with the Sanctuary Advisory Council, the Flower Gardens Bank National Marine Sanctuary is evaluating several alternatives for expanding its boundaries to cover other banks in the Northwest Gulf of Mexico, establishing a research only area to test the impacts of fishing, and revise other regulations on use of dive flags by dive vessels, minimum distance and speeds for other vessels operating near dive vessels, and vessel discharges. All current and revised regulations would apply to boundary expansion areas. The Sanctuary Advisory Council or a Sanctuary Advisory Council Working Group, with members representing different user groups, will help evaluate and make recommendations to the FGBNMS on boundary expansion and research only area alternatives and revisions of other regulations.

The information collected here will be used by the Sanctuary Advisory Council or its working group and management of the Flower Gardens Bank National Marine Sanctuary in evaluating alternative boundaries for boundary expansion and research only areas alternatives. The objective will be to minimize the socioeconomic impacts of boundary expansion and research only area alternatives. The information will also be used by NOAA in completing socioeconomic impact analyses of any regulations resulting from any proposed boundary expansion, research only area or other new regulations.

#### **3. Statement of Burden**

Public reporting burden for this collection of information is estimated to average about three hours per response, including 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 burden, to Dr. Vernon R. (Bob) Leeworthy, Chief Economist, National Ocean Service, office of National marine Sanctuaries, 1305 East West Highway, SSMC 4, 11<sup>th</sup> floor, Silver Spring, MD 20910.

#### **4. Your Participation and Protections of Proprietary Information**

Your participation is voluntary. 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 the collection of information displays a currently valid OMB Control Number.

Any information that identifies you or your business (name, name of business, address and telephone number) will not be given to anyone, including the government agencies sponsoring this information collection. The information that identifies you or your business will be destroyed by the contractor collecting the information at the end of the information collection. All other information will be available for distribution.

Date of Interview \_\_\_\_\_ OMB No. 0648-0000 Exp. Date:  
Location of Interview: \_\_\_\_\_

Recreational For Hire Fishing Operations in the Northwest Gulf of Mexico (Part 1)

**GENERAL INFORMATION**

Name \_\_\_\_\_

Telephone \_\_\_\_\_

E-mail: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

1. Which of the following includes your age?

18-30 31-40 41-50 51-60 over 60

2a. Are you Hispanic or Latino YES \_\_\_ NO \_\_\_

2b. What is your race? (Mark one or more)

\_\_\_ White \_\_\_ Black or African American \_\_\_ American Indian or Alaska Native

\_\_\_ Asian \_\_\_ Native Hawaiian or Other Pacific Islander

3. How many family members do you support (including yourself)?

Myself only 2 3 4 5 6 7 Greater and 7

4. Are you a member of any of the following groups?

a. Coastal Conservation Association (CCA) YES \_\_\_ NO \_\_\_

b. Recreational Fishing Alliance (RFA) YES \_\_\_ NO \_\_\_

c. American Sports Fishing Association (ASA) YES \_\_\_ NO \_\_\_

d. Chamber of Commerce YES \_\_\_ NO \_\_\_

e. An Environmental Group YES \_\_\_ NO \_\_\_

f. Other (specify) \_\_\_\_\_ YES \_\_\_ NO \_\_\_

5. What is your primary port/marina? \_\_\_\_\_

6. Do you have a secondary port/marina, from where you fish part of the year? YES \_\_\_ NO \_\_\_

- If YES, then which one? \_\_\_\_\_

7. How many years have you been a charter/party boat operator? \_\_\_ (number of years)

Date of Interview \_\_\_\_\_ OMB No. 0648-0000 Exp. Date:  
Location of Interview: \_\_\_\_\_

8. How many years have you been a charter/party operator in the Gulf of Mexico? \_\_\_\_ (number of years)

9. Have you ever taken fishermen to the Flower Gardens Bank National Marine Sanctuary? (Interviewer—Please show map) YES \_\_\_ NO \_\_\_

- If YES, how many years have you taken fishermen to the Flower Gardens Bank National Marine Sanctuary? \_\_\_\_ (number of years)

10. What approximate percentage of your total business income is derived from the charter/party boat operation? \_\_\_\_%

11. What approximate percentage of your TOTAL personal income is derived from the charter/party boat operation? \_\_\_\_ %

12. What approximate percentage of your TOTAL household income is derived from the charter/party boat operation? \_\_\_\_ %

13. How would you describe your fishing operation? (Mark one or more)

\_\_\_ Full-time Charter Boat operation \_\_\_ Part-time Charter Boat operation  
\_\_\_ Seasonal Charter Boat operation If seasonal, what months \_\_\_\_\_  
\_\_\_ Full-time Party/Head Boat operation \_\_\_ Part-time Party/Head boat operation  
\_\_\_ Seasonal Party/Head boat operation If seasonal, what months \_\_\_\_\_

**ECONOMIC INFORMATION**

14. Number of boats/vessels at the operation: \_\_\_\_ (number of vessels)

15. Capacity of fishermen per vessel in operation:

Vessel 1: \_\_\_\_fishermen Vessel 2: \_\_\_\_fishermen  
Vessel 3: \_\_\_\_fishermen Vessel 4: \_\_\_\_fishermen

16. Number of employees at the operation:

a. Full time \_\_\_\_ b. Part time \_\_\_\_ c. Seasonal \_\_\_\_

17. Please provide your best estimate of the replacement value of the following items that you used last year (fill in year \_\_\_\_).

a. Vessel(s) and electronic equipment: \$ \_\_\_\_\_  
b. Diving and snorkeling gear: \$ \_\_\_\_\_  
c. Compressors \$ \_\_\_\_\_  
d. Rods/Reels \$ \_\_\_\_\_  
e. Other gear (specify) \_\_\_\_\_ \$ \_\_\_\_\_

Date of Interview \_\_\_\_\_ OMB No. 0648-0000 Exp. Date:  
Location of Interview: \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ \$ \_\_\_\_\_

18. Outstanding balance on loan amounts for vessels and equipment \$ \_\_\_\_\_

19. Please provide your best estimate for the following expenses last year:

Permits/Licenses: \$ \_\_\_\_\_  
Docking fees: \$ \_\_\_\_\_  
Interest payments on vessel(s): \$ \_\_\_\_\_  
P&I insurance on vessel(s) \$ \_\_\_\_\_  
Maintenance/repair on vessel/electronic equipment: \$ \_\_\_\_\_  
Maintenance on rods/reels: \$ \_\_\_\_\_  
Maintenance/repair on other equipment: \$ \_\_\_\_\_  
Advertising: \$ \_\_\_\_\_  
Office rent/mortgage: \$ \_\_\_\_\_  
Office utilities (electric, water, telephone, Internet): \$ \_\_\_\_\_  
Depreciation on vessel and equipment: \$ \_\_\_\_\_  
Business taxes: \$ \_\_\_\_\_  
Other: \_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ \$ \_\_\_\_\_

20. Please provide your best estimate for the following trip related expenses last year:

Fuel/oil: \$ \_\_\_\_\_  
Ice: \$ \_\_\_\_\_  
Food/Supplies: \$ \_\_\_\_\_  
Bait: \$ \_\_\_\_\_  
Captain wages & salaries (if not owner-captain): \$ \_\_\_\_\_  
Crew wages & salaries Number: \_\_\_\_\_ \$ \_\_\_\_\_  
Other (specify) \_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ \$ \_\_\_\_\_

21. Please provide your best estimate of your total business revenues last year:  
\$ \_\_\_\_\_

22. Please provide your best estimate of your total revenues and/or percent of total revenues (from Question 21) last year by each geographic area: (See map for definitions of each area)

Northwest Gulf of Mexico Study Area	\$ _____	% _____
Area 1	\$ _____	% _____
Area 2	\$ _____	% _____
Area 3	\$ _____	% _____
Area 4	\$ _____	% _____
Other Gulf of Mexico not included above	\$ _____	% _____

Date of Interview \_\_\_\_\_ OMB No. 0648-0000 Exp. Date:  
 Location of Interview: \_\_\_\_\_

**PERSON DAYS AND TRIP COSTS**

23. Please provide your best estimate of the number person days by type of activity for last year and the percentage of person days by activity and area. (Interviewer – show map of areas). A person day is one person for a whole day or any part of a day. 10 people on-board for an overnight trip would be 20 person days.

<b>Activity</b>	<b>Total Person-days</b>	<b>NWGOM (%)</b>	<b>Area 1 (%)</b>	<b>Area 2 (%)</b>	<b>Area 3 (%)</b>	<b>Area 4 (%)</b>
Hook-and-line fishing						
Spear fishing						
All Activities						

24. Please provide your best estimate of last years’ number of person days by hook-and-line fishing and bank for the three banks in the current Flower Gardens Bank National Marine Sanctuary.

<b>Activity</b>	<b>East Flower Gardens</b>	<b>West Flower Gardens</b>	<b>Stetson</b>
Hook-and-line fishing			

25. Please provide your best estimate of the cost per day for a typical day of operation by activity.

<b>Activity</b>	<b>Fuel/Oil</b>	<b>Ice</b>	<b>Bait</b>	<b>Food/Supplies</b>	<b>Other</b>	<b>Crew</b>	<b>Captain (if not owner)</b>
Hook-and-line fishing							
Spear fishing							

26. Please provide the percentage of your person days of operation across each 1-minute by 1-minute grid cell for each activity. This is a forward looking rather than just your past activity patterns. We want to know where you expect you will conduct your activities in the future. This will be used to assess the possible impacts of expanding the boundaries of the Flower Gardens Bank National Marine Sanctuary or assessing a possible research only area. All hook-an-line fishing will be allowed in boundary expansion areas as in the current FGBNMS. All activities will be eliminated from a research only area. (refer to detailed maps with grid overlays and nautical chart reference points).

Coding sheet attached.

**For Hire Fishing Operators in NWGOM Part 2.**  
**SOURCES OF INFORMATION AND PERCEPTIONS**

1. Please list the sources of information that you have received in the past on the FGBNMS and rank the sources in terms of their usefulness. In terms of ranking, please rank only those sources that you used, and where 1 is the most important source, 2 the second most important source, and so on.

SOURCE	Sources Used	RANK Sources
a. FGBNMS website	_____	_____
b. FGBNMS Staff	_____	_____
c. Sanctuary Advisory Council	_____	_____
d. FGBNMS brochures/literature	_____	_____
e. FGBNMS signage	_____	_____
f. Information in newspapers	_____	_____
g. Radio	_____	_____
h. TV	_____	_____
i. Word of mouth	_____	_____

For the next set of questions, please provide your answer on a 1 to 5 scale, where 1 means **Strongly agree**, 2 means **Moderately agree**, 3 means **Neutral**, 4 means **Moderately disagree**, and 5 means **Strongly disagree**

2. The process that NOAA has used to develop rules and regulations for the FGBNMS was open and fair to all groups.

1      2      3      4      5      I don't know

3. The process has used by NOAA to develop boundaries and regulations for the FGBNMS zones was open and fair to all groups.

1      2      3      4      5      I don't know

4. It has not mattered whether the average person participated in the workshops and meeting on the FGBNMS because the average person could not influence the final decisions.

1      2      3      4      5      I don't know

5. NOAA has not addressed the concerns of other federal and state governments in developing rules and regulations for the FGBNMS.

1      2      3      4      5      I don't know

6. NOAA has not addressed the concerns of individual citizens in developing rules and regulations for the FGBNMS.

1      2      3      4      5      I don't know

7. Once that the FGBNMS regulations have been in effect, there has been no way that the average person to voice his/her opinion on the usefulness of the regulations.

1      2      3      4      5      I don't know

8. The procedures that NOAA has established to deal with violations of FGBNMS regulations have been fair and just.

1      2      3      4      5      I don't know

**NOTES**

**ATTITUDES ABOUT MANAGEMENT STRATEGIES AND REGULATION**

In this section, we want to know what you think about current and proposed management strategies in the FGBNMS, the effects of those management strategies and regulations, and how you think the FGBNMS management has performed.

In management plan review public scoping and Sanctuary Advisory Council meetings, FGBNMS is thinking about expanding its current boundaries and creating a research only area. For boundary expansion, there are a number of alternatives, but all would extend the current regulations in FGBNMS to the boundary expansion areas. Hook-and-line fishing is currently allowed in the FGBNMS. For the research only area, all activities would be prohibited. See map of areas proposed for potential boundary expansion.

For the next set of questions, please provide your answer on a 1 to 5 scale, where 1 means **Strongly agree**, 2 means **Moderately agree**, 3 means **Neutral**, 4 means **Moderately disagree**, and 5 means **Strongly disagree**

9. I support the FGBNMS as it is currently established.

1    2    3    4    5    I don't know

10. I support the establishment of a research only area in the FGBNMS.

1    2    3    4    5    I don't know

11. A research only area in the FGBNMS would have a positive impact on the marine environment.

1    2    3    4    5    I don't know

12. There should be more than one bank set aside as a research only area in the FGBNMS.

1    2    3    4    5    I don't know

13. I support establishment of boundary expansion of FGBNMS for the banks in AREA 1.

1    2    3    4    5    I don't know

14. I support establishment of boundary expansion of FGBNMS for the banks in AREA 2.

1    2    3    4    5    I don't know

15. I support establishment of boundary expansion of FGBNMS for the banks in AREA 3.

1    2    3    4    5    I don't know

16. I support establishment of boundary expansion of FGBNMS for the banks in AREA 4.

1    2    3    4    5    I don't know

17. I support establishment of a research only area on Stetson bank.

1    2    3    4    5    I don't know

18. I support establishment of a research only area on East Flower Garden Bank.

1    2    3    4    5    I don't know

19. I support establishment of a research only area on West Flower Garden Bank.

1    2    3    4    5    I don't know

20. Boundary expansion of the FGBNMS would have a positive impact on the marine environment.

1    2    3    4    5    I don't know

21. The Stetson, East & West Flower Garden Banks have benefited environmentally from management by the FGBNMS.

1    2    3    4    5    I don't know

22. There has been a net economic benefit to the coastal Texas economy from the establishment of the FGBNMS.

1    2    3    4    5    I don't know

**OMB No. 0648-0000. Expiration date: .**

23. Charter/Party boat fishing operations have benefited from the establishment of the FGBNMS.

1      2      3      4      5      I don't know

24. FGBNMS regulations have had no effect on my business.

1      2      3      4      5      I don't know

25. I support the no anchoring regulations in the FGBNMS.

1      2      3      4      5      I don't know

26. I support the current no discharge regulations in the FGBNMS.

1      2      3      4      5      I don't know

27. I support the current no harvest of bottom formations or taking of invertebrates inside the FGBNMS.

1      2      3      4      5      I don't know

28. I support the hook-and-line only fishing regulation in the FGBNMS.

1      2      3      4      5      I don't know

29. I support the no taking of marine mammals and turtles in the FGBNMS.

1      2      3      4      5      I don't know

30. I support the requirement of using a mooring buoy instead of anchoring in the FGBNMS with the limit of vessel size for mooring use of 100 feet or less.

1      2      3      4      5      I don't know

31. I support stricter regulations on discharging of pollutants in the FGBNMS.

1      2      3      4      5      I don't know

32. I support regulations on minimum distance and speed from vessels flying a Blue and Alpha Dive Flag.

1      2      3      4      5      I don't know

33. I support the requirement that all Dive vessels fly a Blue and Alpha dive flag..

1      2      3      4      5      I don't know

34. How much do you estimate it will cost your business per year to comply with this Dive Flag regulation? \$ \_\_\_\_\_

35. Please rate the status/condition of the following resources at East & West Flower Garden Banks and Stetson Bank by their status/condition since the implementation of the FGBNMS (1996 for East & West flower Gardens Bank and 2001 for Stetson Bank), where 1 is much better and 5 is much worse.

RESOURCE	Better ←-----→ Worse					
a. Water quality	1	2	3	4	5	N/A
b. Sea-based pollution/marine debris	1	2	3	4	5	N/A
c. Coral reefs	1	2	3	4	5	N/A
d. Other bottom habitat	1	2	3	4	5	N/A
e. Fisheries	1	2	3	4	5	N/A
f. Mooring buoys	1	2	3	4	5	N/A
g. Fewer vessel groundings	1	2	3	4	5	N/A

36. The FGBNMS is mostly responsible for the status/condition of the resources that you rated in the previous question.

1      2      3      4      5      I don't know

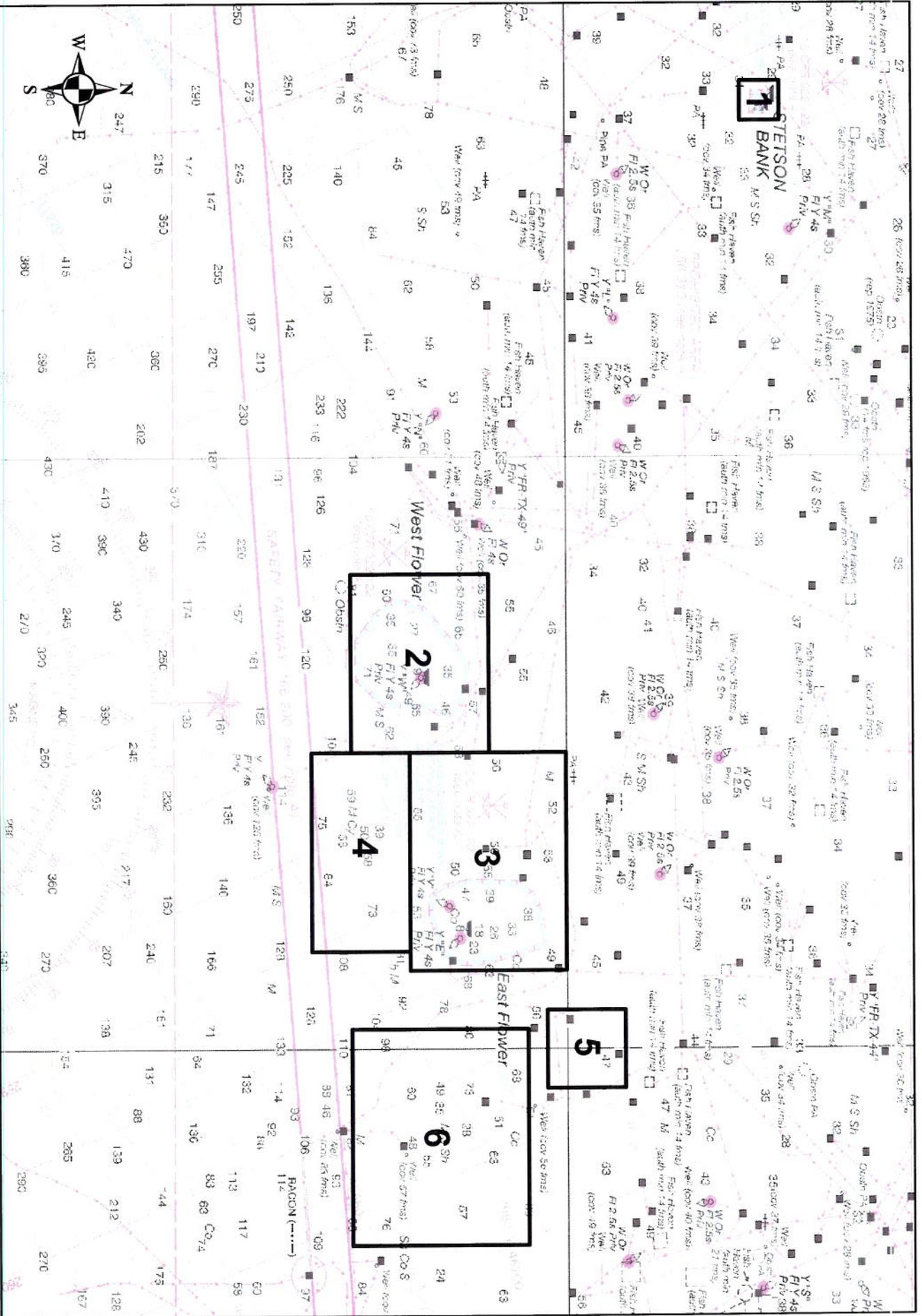
37. In which area(s) has the FGBNMS been most successful?

\_\_\_\_\_

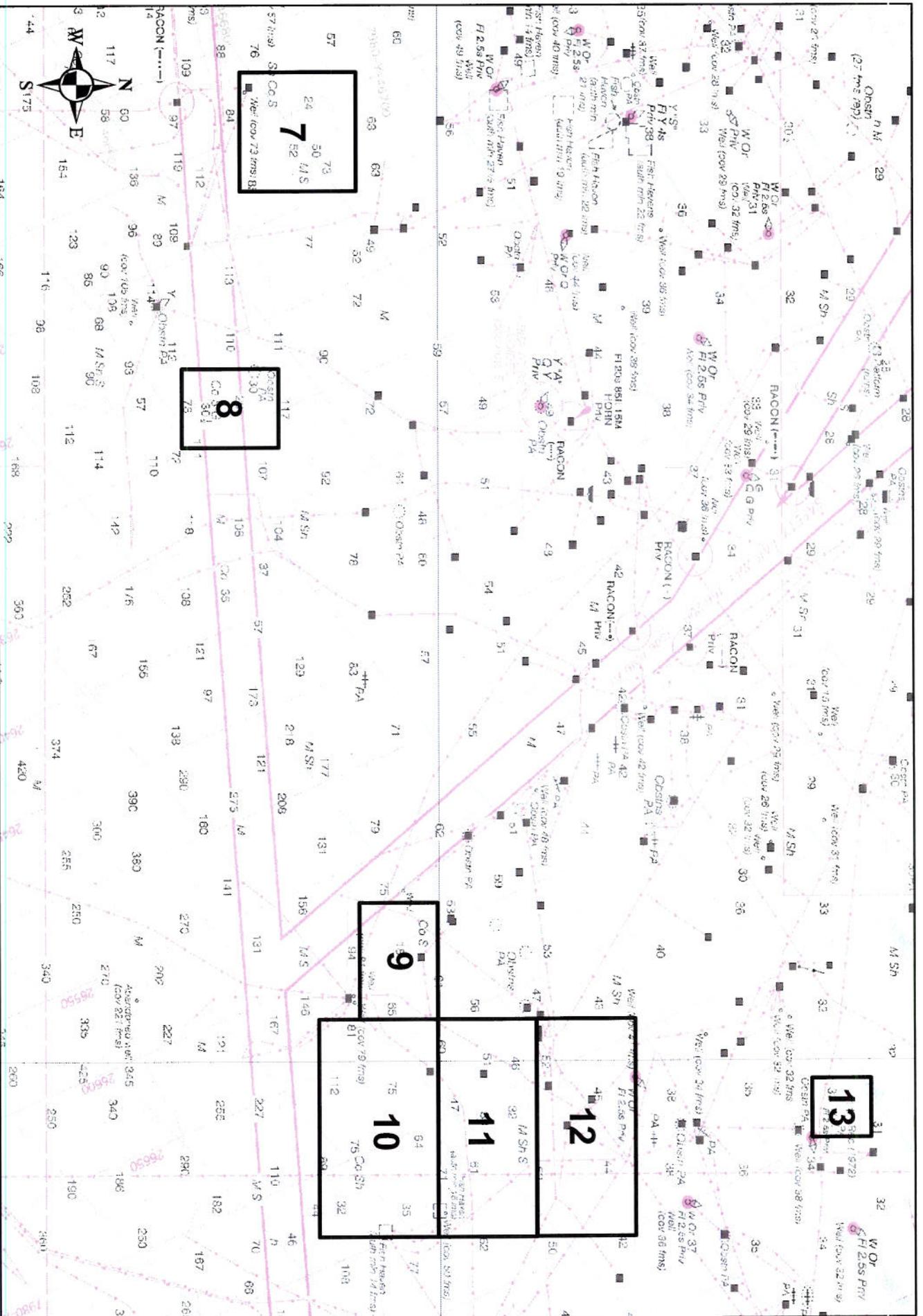
38. In which area(s) has the FGBNMS been least successful?

\_\_\_\_\_

# Gulf of Mexico Study Area - West



# Gulf of Mexico Study Area - Middle





**Latitude and Longitude Coordinates for the boxes (banks) in Northwest Gulf Of Mexico Study Area**

Box #	W	E	N	S
AREA 1				
1	94° 19' W	94° 17' W	28° 11' N	28° 09' N
2	93° 54' W	93° 45' W	27° 56' N	27° 49' N
3	93° 45' W	93° 34' W	28° 00' N	27° 52' N
AREA 2				
7	93° 20' W	93° 14' W	27° 56' N	27° 50' N
8	93° 05' W	93° 01' W	27° 52' N	27° 47' N
9	92° 38' W	92° 32' W	28° 00' N	27° 56' N
13	92° 29' W	92° 26' W	28° 22' N	28° 19' N
14	92° 02' W	91° 58' W	28° 06' N	28° 04' N
AREA 3				
4	93° 45' W	93° 35' W	27° 52' N	27° 47' N
5	93° 32' W	93° 28' W	28° 03' N	27° 59' N
6	93° 31' W	93° 20' W	27° 58' N	27° 49' N
AREA 4				
10	92° 32' W	92° 21' W	28° 00' N	27° 54' N
11	92° 32' W	92° 21' W	28° 05' N	28° 00' N
12	92° 32' W	92° 21' W	28° 10' N	28° 05' N
15	91° 44' W	91° 34' W	28° 01' N	27° 57' N

## THE NATIONAL MARINE SANCTUARIES ACT

16 U.S.C. 1431 ET. SEQ., as amended by Public Law 106-513

### Sec. 301. FINDINGS, PURPOSES, AND POLICIES; ESTABLISHMENT OF SYSTEM.

(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, scientific, educational, cultural, archeological, or esthetic qualities which give them special national, and in some instances, 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; and

(4) a Federal program which establishes areas of the marine environment which have special conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, or esthetic qualities as national marine sanctuaries managed as the National Marine Sanctuary System will--

(A) improve the conservation, understanding, management, and wise and sustainable use of marine resources;

(B) enhance public awareness, understanding, and appreciation of the marine environment; and

(C) maintain for future generations the habitat, and ecological services, of the natural assemblage of living resources that inhabit these areas.

(b) PURPOSES AND POLICIES.--The purposes and policies of this title are--

(1) to identify and designate as national marine sanctuaries areas of the marine environment which are of special national significance and to manage these areas as the National Marine Sanctuary System;

(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 maintain the natural biological communities in the national marine sanctuaries, and to protect, and, where appropriate, restore and enhance natural habitats, populations, and ecological processes;

(4) to enhance public awareness, understanding, appreciation, and wise and sustainable use of the marine environment, and the natural, historical, cultural, and archeological resources of the National Marine Sanctuary System;

(5) to support, promote, and coordinate scientific research on, and long-term monitoring of, the resources of these marine areas;

(6) 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;

(7) 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;

(8) to create models of, and incentives for, ways to conserve and manage these areas, including the application of innovative management techniques; and

(9) to cooperate with global programs encouraging conservation of marine resources.

(c) ESTABLISHMENT OF SYSTEM.-There is established the National Marine Sanctuary System, which shall consist of national marine sanctuaries designated by the Secretary in accordance with this title.

### **Sec. 302. DEFINITIONS**

As used in this title, the term--

(1) "Draft management plan" means the plan described in section 304(a)(1)(C)(v);

(2) "Magnuson-Stevens 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 312(b)(2);**

**(C) the reasonable cost of monitoring appropriate to the injured, restored, or replaced resources;**

**(D) the cost of curation and conservation of archeological, historical, and cultural sanctuary resources; and**

**(E) the cost of enforcement actions undertaken by the Secretary in response to the destruction or loss of, or injury to, a sanctuary resource;**

**(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, including costs related to seizure forfeiture, storage, or disposal arising from liability under section 312;**

**(8) "sanctuary resource" means any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, educational, cultural, archeological, scientific, or aesthetic value of the sanctuary;**

**(9) "exclusive economic zone" means the exclusive economic zone as defined in the Magnuson-Stevens Act; and**

**(10) 'System' means the National Marine Sanctuary System established by section 301.**

### **Sec. 303. 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 determines that--**

**(1) the designation will fulfill the purposes and policies of this title;**

**(2) the area is of special national significance due to--**

**(A) its conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities;**

(B) the communities of living marine resources it harbors; or

(C) its resource or human-use values;

(3) 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;

(4) designation of the area as a national marine sanctuary will facilitate the objectives in subparagraph (3); and

(5) 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), 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), (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 title;**

**(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;**

**(I) the socioeconomic effects of sanctuary designation;**

**(J) the area's scientific value and value for monitoring the resources and natural processes that occur there;**

**(K) the feasibility, where appropriate, of employing innovative management approaches to protect sanctuary resources or to manage compatible uses; and**

**(L) the value of the area as an addition to the System.**

**(2) Consultation.--In making determinations and findings, the Secretary shall consult with--**

**(A) the Committee on Resources 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-Stevens Act (16 U.S.C. 1852) that may be affected by the proposed designation; and**

**(E) other interested persons.**

## **Sec. 304. 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) no later than the day on which the notice required under subparagraph (A) is submitted to Office of the Federal Register, submit a copy of that notice and the draft sanctuary designation**

documents prepared pursuant to section 304(a)(2), including an executive summary, to the Committee on Resources of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Governor of each State in which any part of the proposed sanctuary would be located.

(2) Sanctuary Designation Documents.- The Secretary shall prepare and make available to the public sanctuary designation documents on the proposal that include the following:

**(A) A draft environmental impact statement pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).**

(B) A resource assessment that documents-

(i) 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;

(ii) after consultation with the Secretary of the Interior, any commercial, governmental, or recreational resource uses in the areas that are subject to the primary jurisdiction of the Department of the Interior; and

(iii) information prepared in consultation with the Secretary of Defense, the Secretary of Energy, and the Administrator of the Environmental Protection Agency, 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.

(C) A draft management plan for the proposed national marine sanctuary that includes the following:

(i) The terms of the proposed designation.

(ii) Proposed mechanisms to coordinate existing regulatory and management authorities within the area.

(iii) The proposed goals and objectives, management responsibilities, resource studies, and appropriate strategies for managing sanctuary resources of the proposed sanctuary, including interpretation and education, innovative management strategies, research, monitoring and assessment, resource protection, restoration, enforcement, and surveillance activities.

(iv) An evaluation of the advantages of cooperative State and Federal management if all or part of the proposed 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.).

(v) An estimate of the annual cost to the Federal Government of the proposed designation, including costs of personnel, equipment and facilities, enforcement, research, and public education.

(vi) The proposed regulations referred to in paragraph (1)(A).

(D) Maps depicting the boundaries of the proposed sanctuary.

(E) The basis for the determinations made under section 303(a) with respect to the area.

(F) An assessment of the considerations under section 303(b)(1).

**(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 title 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-Stevens 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), the Committee on Resources 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). 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 natural [sic] 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 or System cannot be fulfilled, the Secretary may withdraw the entire designation. If the Secretary does not withdraw the designation, only those terms of the designation or 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) 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 title 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.

**(4) FAILURE TO FOLLOW ALTERNATIVE.-** If the head of a Federal agency takes an action other than an alternative recommended by the Secretary and such action results in the destruction of, loss of, or injury to a sanctuary resource, the head of the agency shall promptly prevent and mitigate further damage and restore or replace the sanctuary resource in a manner approved by the Secretary.

**(e) REVIEW OF MANAGEMENT PLANS.--**Not more than 5 years after the date of designation of any national marine sanctuary, and thereafter at intervals not exceeding 5 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 strategies, and shall revise the management plan and regulations as necessary to fulfill the purposes and policies of this title. This review shall include a prioritization of management objectives.

**(f) LIMITATION ON DESIGNATION OF NEW SANCTUARIES.-**

**(1) FINDING REQUIRED.-** The Secretary may not publish in the Federal Register any sanctuary designation notice or regulations proposing to designate a new sanctuary, unless the Secretary has published a finding that--

- (A) the addition of a new sanctuary will not have a negative impact on the System; and
- (B) sufficient resources were available in the fiscal year in which the finding is made to--
  - (i) effectively implement sanctuary management plans for each sanctuary in the System; and
  - (ii) complete site characterization studies and inventory known sanctuary resources, including cultural resources, for each sanctuary in the System within 10 years after the date that the finding is made if the resources available for those activities are maintained at the same level for each fiscal year in that 10 year period.

(2) DEADLINE- If the Secretary does not submit the findings required by paragraph (1) before February 1, 2004, the Secretary shall submit to the Congress before October 1, 2004, a finding with respect to whether the requirements of subparagraphs (A) and (B) of paragraph 1 have been met by all existing sanctuaries.

(3) LIMITATION ON APPLICATION- Paragraph (1) does not apply to any sanctuary designation documents for--

- (A) a Thunder Bay National Marine Sanctuary; or
- (B) a Northwestern Hawaiian Islands National Marine Sanctuary.

#### Sec. 305. APPLICATION OF REGULATIONS AND INTERNATIONAL NEGOTIATIONS

(a) REGULATIONS.--This title and the regulations issued under section 304 shall be applied in accordance with generally recognized principles of international law, and in accordance with the 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 the furtherance of the purposes and policies of this title and consistent with applicable regional and multilateral arrangements for the protection and management of special marine areas.**

#### **Sec. 306. PROHIBITED ACTIVITIES**

**It is unlawful for any person to--**

**(1) destroy, cause the loss of, or injure any sanctuary resource managed under law or regulations for that sanctuary;**

**(2) possess, sell, offer for sale, purchase, import, export, deliver, carry, transport, or ship by any means any sanctuary resource taken in violation of this section;**

**(3) interfere with the enforcement of this title by--**

**(A) refusing to permit any officer authorized to enforce this title to board a vessel, other than a vessel operated by the Department of Defense or United States Coast Guard, subject to such person's control for the purposes of conducting any search or inspection in connection with the enforcement of this title;**

**(B) resisting, opposing, impeding, intimidating, harassing, bribing, interfering with, or forcibly assaulting any person authorized by the Secretary to implement this title or any such authorized officer in the conduct of any search or inspection performed under this title; or**

**(C) knowingly and willfully submitting false information to the Secretary or any officer authorized to enforce this title in connection with any search or inspection conducted under this title; or**

**(4) violate any provision of this title or any regulation or permit issued pursuant to this title.**

#### **Sec. 307. ENFORCEMENT**

**(a) IN GENERAL.--The Secretary shall conduct such enforcement activities as are necessary and reasonable to carry out this title.**

**(b) POWERS OF AUTHORIZED OFFICERS.--Any person who is authorized to enforce this title may--**

**(1) board, search, inspect, and seize any vessel suspected of being used to violate this title or any regulation or permit issued under this title and any equipment, stores, and cargo of such vessel;**

**(2) seize wherever found any sanctuary resource taken or retained in violation of this title or any regulation or permit issued under this title;**

(3) seize any evidence of a violation of this title or of any regulation or permit issued under this title;

(4) execute any warrant or other process issued by any court of competent jurisdiction;

(5) exercise any other lawful authority; and

(6) arrest any person, if there is reasonable cause to believe that such a person has committed an act prohibited by section 306(3).

**(c) CRIMINAL OFFENSES-**

(1) **OFFENSES.-** A person is guilty of an offense under this subsection if the person commits any act prohibited by section 306(3).

(2) **PUNISHMENT.-** Any person that is guilty of an offense under this subsection--

(A) except as provided in subparagraph (B), shall be fined under title 18, United States Code, imprisoned for not more than 6 months, or both; or

(B) in the case of a person who in the commission of such an offense uses a dangerous weapon, engages in conduct that causes bodily injury to any person authorized to enforce this title or any person authorized to implement the provisions of this title, or places any such person in fear of imminent bodily injury, shall be fined under title 18, United States Code, imprisoned for not more than 10 years, or both.

**(d) CIVIL PENALTIES.--**

(1) **Civil penalty.--**Any person subject to the jurisdiction of the United States who violates this title or any regulation or permit issued under this title 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 title or any regulation or permit issued under this title 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.

**(e) 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 title or of any regulation or permit issued under this title 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 312. 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 title.

(3) **Disposal of Sanctuary Resources.**--Any sanctuary resource seized pursuant to this title 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 title or of any regulation or permit issued under this title were taken or retained in violation of this title or of a regulation or permit issued under this title.

**(f) 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 107(f)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

(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 title or any regulation or permit issued under this title.

(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 title or any regulation or permit issued under this title; 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 title or of any regulation or permit issued under this title, 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.

(g) **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, United States Code, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, electronic files, and documents, and may administer oaths.

(h) **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.

(i) **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, United States Code.

(j) **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 312, 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.

**(k) AREA OF APPLICATION AND ENFORCEABILITY.--The area of application and enforceability of this title 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.**

**(l) NATIONWIDE SERVICE OF PROCESS.- In any action by the United States under this title, process may be served in any district where the defendant is found, resides, transacts business, or has appointed an agent for the service of process.**

#### **SEC. 308. REGULATIONS.**

**The Secretary may issue such regulations as may be necessary to carry out this title.**

#### **Sec. 309. RESEARCH, MONITORING, AND EDUCATION.**

**(a) IN GENERAL- The Secretary shall conduct, support, or coordinate research, monitoring, evaluation, and education programs consistent with subsections (b) and (c) and the purposes and policies of this title.**

**(b) RESEARCH AND MONITORING.-**

**(1) IN GENERAL.- The Secretary may--**

**(A) support, promote, and coordinate research on, and long-term monitoring of, sanctuary resources and natural processes that occur in national marine sanctuaries, including exploration, mapping, and environmental and socioeconomic assessment;**

**(B) develop and test methods to enhance degraded habitats or restore damaged, injured, or lost sanctuary resources; and**

**(C) support, promote, and coordinate research on, and the conservation, curation, and public display of, the cultural, archeological, and historical resources of national marine sanctuaries.**

**(2) AVAILABILITY OF RESULTS.- The results of research and monitoring conducted, supported, or permitted by the Secretary under this subsection shall be made available to the public.**

**(c) EDUCATION-**

**(1) IN GENERAL.- The Secretary may support, promote, and coordinate efforts to enhance public awareness, understanding, and appreciation of national marine sanctuaries and the System. Efforts supported, promoted, or coordinated under this subsection must emphasize the conservation goals and sustainable public uses of national marine sanctuaries and the System.**

(2) **EDUCATIONAL ACTIVITIES.**- Activities under this subsection may include education of the general public, teachers, students, national marine sanctuary users, and ocean and coastal resource managers.

(d) **INTERPRETIVE FACILITIES.**-

(1) **IN GENERAL.**- The Secretary may develop interpretive facilities near any national marine sanctuary.

(2) **FACILITY REQUIREMENT.**- Any facility developed under this subsection must emphasize the conservation goals and sustainable public uses of national marine sanctuaries by providing the public with information about the conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, or esthetic qualities of the national marine sanctuary.

(e) **CONSULTATION AND COORDINATION.**- In conducting, supporting, and coordinating research, monitoring, evaluation, and education programs under subsection (a) and developing interpretive facilities under subsection (d), the Secretary may consult or coordinate with Federal, interstate, or regional agencies, States or local governments.

#### **Sec. 310. 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) **PUBLIC NOTICE REQUIRED.**- The Secretary shall provide appropriate public notice before identifying any category of activity subject to a special use permit under subsection (a).

(c) **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, 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.

**(d) 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.

**(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 managing national marine sanctuaries.

**(4) WAIVER OR REDUCTION OF FEES.-** The Secretary may accept in-kind contributions in lieu of a fee under paragraph (2)(C), or waive or reduce any fee assessed under this subsection for any activity that does not derive a profit from the access to or use of sanctuary resources.

**(e) 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 307; or

**(3)** both.

**(f) 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.

**(g) 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.

**Sec. 311. COOPERATIVE AGREEMENTS, DONATIONS, AND ACQUISITIONS**

(a) **AGREEMENTS AND GRANTS-** The Secretary may enter into cooperative agreements, contracts, or other agreements with, or make grants to, States, local governments, regional agencies, interstate agencies, or other persons to carry out the purposes and policies of this title.

(b) **AUTHORIZATION TO SOLICIT DONATIONS.--**The Secretary may enter into such agreements with any nonprofit organization authorizing the organization to solicit private donations to carry out the purposes and policies of this title.

(c) **DONATIONS.--**The Secretary may accept donations of funds, property, and services for use in designating and administering national marine sanctuaries under this title. Donations accepted under this section shall be considered as a gift or bequest to or for the use of the United States.

(d) **ACQUISITIONS.--**The Secretary may acquire by purchase, lease, or exchange, any land, facilities, or other property necessary and appropriate to carry out the purposes and policies of this title

(e) **USE OF RESOURCES OF OTHER GOVERNMENT AGENCIES.-** The Secretary may, whenever appropriate, enter into an agreement with a State or other Federal agency to use the personnel, services, or facilities of such agency on a reimbursable or nonreimbursable basis, to assist in carrying out the purposes and policies of this title.

(f) **AUTHORITY TO OBTAIN GRANTS.-** Notwithstanding any other provision of law that prohibits a Federal agency from receiving assistance, the Secretary may apply for, accept, and use grants from other Federal agencies, States, local governments, regional agencies, interstate agencies, foundations, or other persons, to carry out the purposes and policies of this title.

#### **Sec. 312. DESTRUCTION OR LOSS OF, OR INJURY TO, SANCTUARY RESOURCES**

(a) **LIABILITY FOR INTEREST.--**

(1) **Liability to UNITED STATES.--**Any person who destroys, causes the loss of, or injures any sanctuary resource is liable to the United States for an amount equal to the sum of--

(A) the amount of response costs and damages resulting from the destruction, loss, or injury; and

(B) interests on that amount calculated in the manner described under section 1005 of the Oil Pollution Act of 1990.

(2) **Liability In Rem.--**Any vessel used to destroy, cause the loss of, or injure any sanctuary resource shall be liable in rem to the United States for response costs and damages resulting from such destruction, loss, or injury. The amount of that liability 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.

(3) **Defenses.--**A person is not liable under this subsection if that person establishes that--

(A) the destruction or loss of, or injury to, the sanctuary resource was caused solely by an act of God, an act of war, or an act or omission of a third party, and the person acted with due care;

(B) the destruction, loss, or injury was caused by an activity authorized by Federal or State law;  
or

(C) the destruction, loss, or injury was negligible.

(4) **Limits to Liability.**-- Nothing in sections 4281-4289 of the Revised Statutes of the United States or section 3 of the Act of February 13, 1893, shall limit the liability of any person under this title.

**(b) RESPONSE ACTIONS AND DAMAGE ASSESSMENT. -**

(1) **Response Actions.**--The Secretary may undertake or authorize all necessary actions to prevent or minimize the destruction or loss of, or injury to, sanctuary resources, or to minimize the imminent risk of such destruction, loss, or injury.

(2) **Damage Assessment.**--The Secretary shall assess damages to sanctuary resources in accordance with section 302(6).

**(c) CIVIL ACTIONS FOR RESPONSE COSTS AND DAMAGES.—**

(1) The Attorney General, upon request of the Secretary, may commence a civil action against any person or vessel who may be liable under subsection (a) for response costs and damages. The Secretary, acting as trustee for sanctuary resources for the United States, shall submit a request for such an action to the Attorney General whenever a person may be liable for such costs or damages.

(2) An action under this subsection may be brought in the United States district court for any district in which-

(A) the defendant is located, resides, or is doing business, in the case of an action against a person;

(B) the vessel is located, in the case of an action against a vessel; or

(C) the destruction of, loss of, or injury to a sanctuary resource occurred.

(d) **USE OF RECOVERED AMOUNTS.**--Response costs and damages recovered by the Secretary under this section shall be retained by the Secretary in the manner provided for in section 107(f)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9607(f)(1)), and used as follows:

(1) **RESPONSE COSTS.**- Amounts recovered by the United States for costs of response actions and damage assessments under this section shall be used, as the Secretary considers appropriate--

(A) to reimburse the Secretary or any other Federal or State agency that conducted those activities; and

(B) after reimbursement of such costs, to restore, replace, or acquire the equivalent of any sanctuary resource.

(2) OTHER AMOUNTS.- All other amounts recovered shall be used, in order of priority--

(A) to restore, replace, or acquire the equivalent of the sanctuary resources that were the subject of the action, including for costs of monitoring and the costs of curation and conservation of archeological, historical, and cultural sanctuary resources;

(B) to restore degraded sanctuary resources of the national marine sanctuary that was the subject of the action, giving priority to sanctuary resources and habitats that are comparable to the sanctuary resources that were the subject of the action; and

(C) to restore degraded sanctuary resources of other national marine sanctuaries.

(3) Federal-State Coordination.--Amounts recovered under this section with respect to sanctuary resources lying within the jurisdiction of a State shall be used under paragraphs (2)(A) and (B) in accordance with the court decree or settlement agreement and an agreement entered into by the Secretary and the Governor of that State.

(e) STATUTE OF LIMITATIONS- An action for response costs or damages under subsection (c) shall be barred unless the complaint is filed within 3 years after the date on which the Secretary completes a damage assessment and restoration plan for the sanctuary resources to which the action relates.

### SEC. 313. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary--

(1) to carry out this title--

(A) \$32,000,000 for fiscal year 2001;

(B) \$34,000,000 for fiscal year 2002;

(C) \$36,000,000 for fiscal year 2003;

(D) \$38,000,000 for fiscal year 2004;

(E) \$40,000,000 for fiscal year 2005; and

(2) for construction projects at national marine sanctuaries, \$6,000,000 for each of fiscal years 2001, 2002, 2003, 2004, and 2005.

#### **Sec. 314. U.S.S. MONITOR ARTIFACTS AND MATERIALS**

(a) **CONGRESSIONAL POLICY.** -- In recognition of the historical significance of the wreck of the United States ship Monitor to coastal North Carolina and to the area off the coast of North Carolina known as the Graveyard of the Atlantic, the Congress directs that a suitable display of artifacts and materials from the United States ship Monitor be maintained permanently at an appropriate site in coastal North Carolina. [P.L. 102-587 authorized a grant for the acquisition of space in Hatteras Village, NC, for display of artifacts and administration and operations of the Monitor National Marine Sanctuary.

(b) **DISCLAIMER.** --This section shall not affect the following:

(1) **Responsibilities Of Secretary.**--The responsibilities of the Secretary to provide for the protection, conservation, and display of artifacts and materials from the United States ship Monitor.

(2) **Authority Of Secretary.**--The authority of the Secretary to designate the Mariner's Museum, located at Newport News, Virginia, as the principal museum for coordination of activities referred to in paragraph (1).

#### **Sec. 315. ADVISORY COUNCILS**

(a) **ESTABLISHMENT.**--The Secretary may establish one or more advisory councils (in this section referred to as an 'Advisory Council') to advise and make recommendations to the Secretary regarding the designation and management of national marine sanctuaries. The Advisory Councils shall be exempt from the Federal Advisory Committee Act.

(b) **MEMBERSHIP.**--Members of the Advisory Councils may be appointed from among--

(1) persons employed by Federal or State agencies with expertise in management of natural resources;

(2) members of relevant Regional Fishery Management Councils established under section 302 of the Magnuson-Stevens Act; and

(3) representatives of local user groups, conservation and other public interest organizations, scientific organizations, educational organizations, or others interested in the protection and multiple use management of sanctuary resources.

(c) **LIMITS ON MEMBERSHIP.**--For sanctuaries designated after the date of enactment of the National Marine Sanctuaries Program Amendments Act of 1992, the membership of Advisory Councils shall be limited to no more than 15 members.

(d) **STAFFING AND ASSISTANCE.**--The Secretary may make available to an Advisory Council any staff, information, administrative services, or assistance the Secretary determines are reasonably required to enable the Advisory Council to carry out its functions.

(e) **PUBLIC PARTICIPATION AND PROCEDURAL MATTERS.**--The following guidelines apply with respect to the conduct of business meetings of an Advisory Council:

(1) Each meeting shall be open to the public, and interested persons shall be permitted to present oral or written statements on items on the agenda.

(2) Emergency meetings may be held at the call of the chairman or presiding officer.

(3) Timely notice of each meeting, including the time, place, and agenda of the meeting, shall be published locally and in the Federal Register, except that in the case of a meeting of an Advisory Council established to provide assistance regarding any individual national marine sanctuary the notice is not required to be published in the Federal Register.

(4) Minutes of each meeting shall be kept and contain a summary of the attendees and matters discussed.

#### **Sec. 316. ENHANCING SUPPORT FOR NATIONAL MARINE SANCTUARIES**

(a) **AUTHORITY.**- The Secretary may establish a program consisting of--

(1) the creation, adoption, and publication in the Federal Register by the Secretary of a symbol for the national marine sanctuary program, or for individual national marine sanctuaries or the System;

(2) the solicitation of persons to be designated as official sponsors of the national marine sanctuary program or of individual national marine sanctuaries;

(3) the designation of persons by the Secretary as official sponsors of the national marine sanctuary program or of individual sanctuaries;

(4) the authorization by the Secretary of the manufacture, reproduction, or other use of any symbol published under paragraph (1), including the sale of items bearing such a symbol, by official sponsors of the national marine sanctuary program or of individual national marine sanctuaries;

(5) the creation, marketing, and selling of products to promote the national marine sanctuary program, and entering into exclusive or nonexclusive agreements authorizing entities to create, market or sell on the Secretary's behalf;

(6) the solicitation and collection by the Secretary of monetary or in-kind contributions from official sponsors for the manufacture, reproduction or use of the symbols published under paragraph (1);

**(7) the retention of any monetary or in-kind contributions collected under paragraphs (5) and (6) by the Secretary; and**

**(8) the expenditure and use of any monetary and in-kind contributions, without appropriation, by the Secretary to designate and manage national marine sanctuaries.**

**Monetary and in-kind contributions raised through the sale, marketing, or use of symbols and products related to an individual national marine sanctuary shall be used to support that sanctuary.**

**(b) CONTRACT AUTHORITY.-- The Secretary may contract with any person for the creation of symbols or the solicitation of official sponsors under subsection (a).**

**(c) RESTRICTIONS.-- The Secretary may restrict the use of the symbols published under subsection (a), and the designation of official sponsors of the national marine sanctuary program or of individual national marine sanctuaries to ensure compatibility with the goals of the national marine sanctuary program.**

**(d) PROPERTY OF UNITED STATES.-- Any symbol which is adopted by the Secretary and published in the Federal Register under subsection (a) is deemed to be the property of the United States.**

**(e) PROHIBITED ACTIVITIES.-- It is unlawful for any person--**

**(1) designated as an official sponsor to influence or seek to influence any decision by the Secretary or any other Federal official related to the designation or management of a national marine sanctuary, except to the extent that a person who is not so designated may do so;**

**(2) to represent himself or herself to be an official sponsor absent a designation by the Secretary;**

**(3) to manufacture, reproduce, or otherwise use any symbol adopted by the Secretary under subsection (a)(1), including to sell any item bearing such a symbol, unless authorized by the Secretary under subsection (a)(4) or subsection (f); or**

**(4) to violate any regulation promulgated by the Secretary under this section.**

**(f) COLLABORATIONS- The Secretary may authorize the use of a symbol adopted by the Secretary under subsection (a)(1) by any person engaged in a collaborative effort with the Secretary to carry out the purposes and policies of this title and to benefit a national marine sanctuary or the System.**

**(g) AUTHORIZATION FOR NON-PROFIT PARTNER ORGANIZATION TO SOLICIT SPONSORS.-**

**(1) IN GENERAL.- The Secretary may enter into an agreement with a non-profit partner organization authorizing it to assist in the administration of the sponsorship program established**

under this section. Under an agreement entered into under this paragraph, the Secretary may authorize the non-profit partner organization to solicit persons to be official sponsors of the national marine sanctuary system or of individual national marine sanctuaries, upon such terms as the Secretary deems reasonable and will contribute to the successful administration of the sanctuary system. The Secretary may also authorize the non-profit partner organization to collect the statutory contribution from the sponsor, and, subject to paragraph (2), transfer the contribution to the Secretary.

**(2) REIMBURSEMENT FOR ADMINISTRATIVE COSTS.-** Under the agreement entered into under paragraph (1), the Secretary may authorize the non-profit partner organization to retain not more than 5 percent of the amount of monetary contributions it receives from official sponsors under the agreement to offset the administrative costs of the organization in soliciting sponsors.

**(3) PARTNER ORGANIZATION DEFINED.-** In this subsection, the term `partner organization' means an organization that--

**(A)** draws its membership from individuals, private organizations, corporation, academic institutions, or State and local governments; and

**(B)** is established to promote the understanding of, education relating to, and the conservation of the resources of a particular sanctuary or 2 or more related sanctuaries.

#### **SEC. 318. DR. NANCY FOSTER SCHOLARSHIP PROGRAM.**

**(a) ESTABLISHMENT.-** The Secretary shall establish and administer through the National Ocean Service the Dr. Nancy Foster Scholarship Program. Under the program, the Secretary shall award graduate education scholarships in oceanography, marine biology or maritime archeology, to be known as Dr. Nancy Foster Scholarships.

**(b) PURPOSES-** The purposes of the Dr. Nancy Foster Scholarship Program are--

**(1)** to recognize outstanding scholarship in oceanography, marine biology, or maritime archeology, particularly by women and members of minority groups ; and

**(2)** to encourage independent graduate level research in oceanography, marine biology, or maritime archeology.

**(c) AWARD.-** Each Dr. Nancy Foster Scholarship--

**(1)** shall be used to support graduate studies in oceanography, marine biology, or maritime archeology at a graduate level institution of higher education; and

**(2)** shall be awarded in accordance with guidelines issued by the Secretary.

**(d) DISTRIBUTION OF FUNDS.-** The amount of each Dr. Nancy Foster Scholarship shall be provided directly to a recipient selected by the Secretary upon receipt of certification that the

recipient will adhere to a specific and detailed plan of study and research approved by a graduate level institution of higher education.

(e) **FUNDING-** Of the amount available each fiscal year to carry out this title, the Secretary shall award 1 percent as Dr. Nancy Foster Scholarships.

(f) **SCHOLARSHIP REPAYMENT REQUIREMENT-** The Secretary shall require an individual receiving a scholarship under this section to repay the full amount of the scholarship to the Secretary if the Secretary determines that the individual, in obtaining or using the scholarship, engaged in fraudulent conduct or failed to comply with any term or condition of the scholarship.

(g) **MARITIME ARCHEOLOGY DEFINED-** In this section the term 'maritime archeology' includes the curation, preservation, and display of maritime artifacts.

**Pt. 922**

**15 CFR Ch. IX (1–1–07 Edition)**

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.

**Subpart D—Management Plan Development and Implementation**

922.30 General.

922.31 Promotion and coordination of Sanctuary use.

**Subpart E—Regulations of General Applicability**

922.40 Purpose.

922.41 Boundaries.

922.42 Allowed activities.

922.43 Prohibited or otherwise regulated activities.

922.44 Emergency regulations.

922.45 Penalties.

922.46 Response costs and damages.

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

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

- 922.49 Notification and review of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity.
- 922.50 Appeals of administrative action.

**Subpart F—Monitor National Marine Sanctuary**

- 922.60 Boundary.
- 922.61 Prohibited or otherwise regulated activities.
- 922.62 Permit procedures and criteria.

**Subpart G—Channel Islands National Marine Sanctuary**

- 922.70 Boundary.
- 922.71 Prohibited or otherwise regulated activities.
- 922.72 Permit procedures and criteria.
- APPENDIX A TO SUBPART G OF PART 922—CHANNEL ISLANDS NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

**Subpart H—Gulf of the Farallones National Marine Sanctuary**

- 922.80 Boundary.
- 922.81 Definitions.
- 922.82 Prohibited or otherwise regulated activities.
- 922.83 Permit procedures and criteria.
- 922.84 Certification of other permits.
- APPENDIX A TO SUBPART H OF PART 922—GULF OF THE FARALLONES NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

**Subpart I—Gray's Reef National Marine Sanctuary**

- 922.90 Boundary.
- 922.91 Prohibited or otherwise regulated activities.
- 922.92 Permit procedures and criteria.

**Subpart J—Fagatele Bay National Marine Sanctuary**

- 922.100 Scope of regulations.
- 922.101 Boundary.
- 922.102 Prohibited or otherwise regulated activities.
- 922.103 Management and enforcement.
- 922.104 Permit procedures and criteria.

**Subpart K—Cordell Bank National Marine Sanctuary**

- 922.110 Boundary.
- 922.111 Prohibited or otherwise regulated activities.
- 922.112 Permit procedures and criteria.
- APPENDIX A TO SUBPART K OF PART 922—CORDELL BANK NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

**Subpart L—Flower Garden Banks National Marine Sanctuary**

- 922.120 Boundary.
- 922.121 Definitions.
- 922.122 Prohibited or otherwise regulated activities.
- 922.123 Permit procedures and criteria.
- APPENDIX A TO SUBPART L OF PART 922—FLOWER GARDEN BANKS NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES
- APPENDIX B TO SUBPART L OF PART 922—COORDINATES FOR THE DEPARTMENT OF THE INTERIOR TOPOGRAPHIC LEASE STIPULATIONS FOR OCS LEASE SALE 171

**Subpart M—Monterey Bay National Marine Sanctuary**

- 922.130 Boundary.
- 922.131 Definitions.
- 922.132 Prohibited or otherwise regulated activities.
- 922.133 Permit procedures and criteria.
- 922.134 Notification and review.
- APPENDIX A TO SUBPART M OF PART 922—MONTEREY BAY NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES
- APPENDIX B TO SUBPART M OF PART 922—DREDGED MATERIAL DISPOSAL SITES ADJACENT TO THE MONTEREY BAY NATIONAL MARINE SANCTUARY
- APPENDIX C TO SUBPART M OF PART 922—ZONES WITHIN THE SANCTUARY WHERE OVERFLIGHTS BELOW 1000 FEET ARE PROHIBITED
- APPENDIX D TO SUBPART M OF PART 922—ZONES AND ACCESS ROUTES WITHIN THE SANCTUARY WHERE THE OPERATION OF MOTORIZED PERSONAL WATERCRAFT IS ALLOWED

**Subpart N—Stellwagen Bank National Marine Sanctuary**

- 922.140 Boundary.
- 922.141 Definitions.
- 922.142 Prohibited or otherwise regulated activities.
- 922.143 Permit procedures and criteria.
- APPENDIX A TO SUBPART N OF PART 922—STELLWAGEN BANK NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

**Subpart O—Olympic Coast National Marine Sanctuary**

- 922.150 Boundary.
- 922.151 Definitions.
- 922.152 Prohibited or otherwise regulated activities.
- 922.153 Permit procedures and criteria.
- 922.154 Consultation with the State of Washington, affected Indian tribes, and adjacent county governments.

**§ 922.1**

APPENDIX A TO SUBPART O OF PART 922—  
OLYMPIC COAST NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

**Subpart P—Florida Keys National Marine Sanctuary**

- 922.160 Purpose.
  - 922.161 Boundary.
  - 922.162 Definitions.
  - 922.163 Prohibited activities—Sanctuary-wide.
  - 922.164 Additional activity regulations by Sanctuary area.
  - 922.165 Emergency regulations.
  - 922.166 Permits other than for access to the Tortugas Ecological Reserve—application procedures and issuance criteria.
  - 922.167 Permits for access to the Tortugas Ecological Reserve.
  - 922.168 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.
- APPENDIX I TO SUBPART P OF PART 922—  
FLORIDA KEYS NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES
- APPENDIX II TO SUBPART P OF PART 922—  
EXISTING MANAGEMENT AREAS BOUNDARY COORDINATES
- APPENDIX III TO SUBPART P OF PART 922—  
WILDLIFE MANAGEMENT AREAS ACCESS RESTRICTIONS
- APPENDIX IV TO SUBPART P OF PART 922—  
ECOLOGICAL RESERVES BOUNDARY COORDINATES
- APPENDIX V TO SUBPART P OF PART 922—  
SANCTUARY PRESERVATION AREAS BOUNDARY COORDINATES
- APPENDIX VI TO SUBPART P OF PART 922—  
SPECIAL-USE AREAS BOUNDARY COORDINATES AND USE DESIGNATIONS
- APPENDIX VII TO SUBPART P OF PART 922—  
AREAS TO BE AVOIDED BOUNDARY COORDINATES
- APPENDIX VIII TO SUBPART P OF PART 922—  
MARINE LIFE RULE AS EXCERPTED FROM CHAPTER 46-42 OF THE FLORIDA ADMINISTRATIVE CODE

**Subpart Q—Hawaiian Islands Humpback Whale National Marine Sanctuary**

- 922.180 Purpose.
  - 922.181 Boundary.
  - 922.182 Definitions.
  - 922.183 Allowed activities.
  - 922.184 Prohibited activities.
  - 922.185 Emergency regulations.
  - 922.186 Penalties; appeals.
  - 922.187 Interagency cooperation.
- APPENDIX A TO SUBPART Q TO PART 922—  
HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY BOUNDARY DESCRIPTION AND COORDINATES OF THE LATERAL BOUNDARY CLOSURES AND EXCLUDED AREAS

**15 CFR Ch. IX (1-1-07 Edition)**

**Subpart R—Thunder Bay National Marine Sanctuary and Underwater Preserve**

- 922.190 Boundary.
- 922.191 Definitions.
- 922.192 Joint Management Committee.
- 922.193 Prohibited or otherwise regulated activities.
- 922.194 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.
- 922.195 Permit procedures and criteria.
- 922.196 Emergency regulations.
- 922.197 Consultation with affected federally-recognized Indian tribes.
- 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.

APPENDIX A TO SUBPART R OF PART 922—  
THUNDER BAY NATIONAL MARINE SANCTUARY AND UNDERWATER PRESERVE BOUNDARY COORDINATES

APPENDIX B TO SUBPART R OF PART 922—  
MINOR PROJECTS FOR PURPOSES OF § 922.193(A)(2)(III)

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 and at 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,

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 hand- 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.C. 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

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

**§922.10**

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

**15 CFR Ch. IX (1–1–07 Edition)**

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

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

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

### § 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]

## 15 CFR Ch. IX (1-1-07 Edition)

### § 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

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

**§ 922.50**

**15 CFR Ch. IX (1–1–07 Edition)**

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 he 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;

**§922.62**

(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

**15 CFR Ch. IX (1-1-07 Edition)**

(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

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:

Pt. 922, Subpt. G, App. A

15 CFR Ch. IX (1-1-07 Edition)

(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
<b>Northern Channel Islands Section</b>		
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"
<b>Santa Barbara Island Section</b>		
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"

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.

*Motorized personal watercraft* means a vessel which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than the conventional manner of sitting or standing inside the vessel.

[60 FR 66877, Dec. 27, 1995, as amended at 66 FR 46951, Sept. 10, 2001]

**§ 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

**§ 922.83**

**15 CFR Ch. IX (1-1-07 Edition)**

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.

(7) Operation of motorized personal watercraft, except for the operation of motorized personal watercraft for emergency search and rescue mission or law enforcement operations (other than routine training activities) carried out by National Park Service, U.S. Coast Guard, Fire or Police Departments or other Federal, State or local jurisdictions.

(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.

[60 FR 66877, Dec. 27, 1995, as amended at 66 FR 46951, Sept. 10, 2001]

**§ 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"
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**

EFFECTIVE DATE NOTE: At 71 FR 60063, Oct. 12, 2006, subpart I was revised, effective after the close of a review period of 45 days of continuous session of Congress beginning on Oct. 12, 2006. Announcement of the effective date will be published in the FEDERAL REGISTER. For the convenience of the user, the revised text is set forth following the text currently in effect.

**§ 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

## §922.92, Note

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, Note 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.

EFFECTIVE DATE NOTE: At 71 FR 60063, Oct. 12, 2006, subpart I was revised, effective after

## 15 CFR Ch. IX (1–1–07 Edition)

the close of a review period of 45 days of continuous session of Congress beginning on Oct. 12, 2006. Announcement of the effective date will be published in the FEDERAL REGISTER. For the convenience of the user, the revised text is set forth as follows:

### Subpart I—Gray's Reef National Marine Sanctuary

#### §922.90 Boundary.

The Gray's Reef National Marine Sanctuary (Sanctuary) consists of approximately 16.68 square nautical miles of ocean waters and the submerged lands thereunder, off the coast of Georgia. The Sanctuary boundary includes all waters and submerged lands within the geodetic lines connecting the following coordinates:

Datum: NAD83

Geographic Coordinate System

(1) N 31.362732 degrees W 80.921200 degrees

(2) N 31.421064 degrees W 80.921201 degrees

(3) N 31.421064 degrees W 80.828145 degrees

(4) N 31.362732 degrees W 80.828145 degrees

(5) N 31.362732 degrees W 80.921200 degrees

#### §922.91 Definitions.

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

*Handline* means fishing gear that is set and pulled by hand and consists of one vertical line to which may be attached leader lines with hooks.

*Rod and reel* means a rod and reel unit that is not attached to a vessel, or, if attached, is readily removable, from which a line and attached hook(s) are deployed. The line is payed out from and retrieved on the reel manually or electrically.

*Stowed and not available for immediate use* means not readily accessible for immediate use, e.g., by being securely covered and lashed to a deck or bulkhead, tied down, unbaited, unloaded, partially disassembled, or stowed for transit.

#### §922.92 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 §922.93, the following activities are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(1) Dredging, drilling into, or otherwise altering in any way the submerged lands of the Sanctuary (including bottom formations).

(2) Constructing any structure other than a navigation aid, or constructing, placing, or abandoning any structure, material, or other

matter on the submerged lands of the Sanctuary.

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

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

(ii) Effluent from marine sanitation devices; and

(iii) Vessel cooling water.

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

(5)(i) Injuring, catching, harvesting, or collecting, or attempting to injure, catch, harvest, or collect, any marine organism, or any part thereof, living or dead, within the Sanctuary by any means except by use of rod and reel, handline, or spearfishing gear without powerheads. (ii) There shall be a rebuttable presumption that any marine organism or part thereof referenced in this paragraph found in the possession of a person within the Sanctuary has been collected from the Sanctuary.

(6) Except for possessing fishing gear stowed and not available for immediate use, possessing or using within the Sanctuary any fishing gear or means except rod and reel, handline, or spearfishing gear without powerheads.

(7) Using underwater any explosives, or devices that produce electric charges underwater.

(8) Breaking, cutting, damaging, taking, or removing any bottom formation.

(9) Moving, removing, damaging, or possessing, or attempting to move, remove, damage, or possess, any Sanctuary historical resource.

(10) Anchoring any vessel in the Sanctuary, except as provided in § 922.92 when responding to an emergency threatening life, property, or the environment.

(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.

#### § 922.93 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by § 922.92(a)(1) through (10) if conducted in accordance within the 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, National Marine Sanctuary Program, ATTN: Manager, Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, GA 31411.

(c) The Director, at his or her discretion may issue a permit, subject to such terms and conditions as he or she deems appro-

priate, to conduct an activity prohibited by § 922.92(a)(1) through (10). The Director must also find that the activity will:

(1) Further research related to the resources and qualities of the Sanctuary;

(2) Further the educational, natural, or historical resource value of the Sanctuary;

(3) Further salvage or recovery operations in connection with a recent air or marine casualty; or

(4) Assist in managing the Sanctuary.

(d) The Director shall not issue a permit unless the Director also finds that:

(1) The applicant is professionally qualified to conduct and complete the proposed activity;

(2) The applicant has adequate financial resources available to conduct and complete the proposed activity;

(3) The duration of the proposed activity is no longer than necessary to achieve its stated purpose;

(4) 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;

(5) 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;

(6) The proposed activity will be conducted in a manner compatible with the value of the Sanctuary as a source of recreation, or as a source of educational or scientific information considering the extent to which the conduct of the activity may result in conflicts between different users of the Sanctuary, and the duration of such effects;

(7) It is necessary to conduct the proposed activity within the Sanctuary to achieve its purposes;

(8) 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; and

(9) There are no other factors that make the issuance of a permit for the activity inappropriate.

(e) 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.

(f) The Director shall, 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.

(g) The Director may, inter alia, make it a condition of any permit issued to require the

**§922.100**

submission of one or more reports of the status and progress of such activity.

(h) 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.

**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:

**15 CFR Ch. IX (1–1–07 Edition)**

(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.

(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 between 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;

**§922.110**

(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 exclu-

**15 CFR Ch. IX (1–1–07 Edition)**

sions 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"
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"

Point No.	Latitude	Longitude
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 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.

[65 FR 81178, Dec. 22, 2000]

**§ 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

§922.122

15 CFR Ch. IX (1-1-07 Edition)

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.

[65 FR 81178, Dec. 22, 2000]

**§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 any vessel within the Sanctuary.

(ii) Mooring any vessel within the Sanctuary, except that vessels 100 feet (30.48 meters) or less in registered length may moor on a Sanctuary mooring buoy.

(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-

**§ 922.123**

activity zone and issued after the January 18, 1994 shall be invalid.

[60 FR 66877, Dec. 27, 1995, as amended at 66 FR 58371, Nov. 21, 2001]

**§ 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, 216 West 26th Street, Suite 104, Bryan, TX 77803.

(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.

[60 FR 66877, Dec. 27, 1995, as amended at 65 FR 81178, Dec. 22, 2000]

**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)
<b>East Flower Garden Bank: (NAD 27)</b>		
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"
<b>West Flower Garden Bank: (NAD 27)</b>		
W-1 .....	27 deg. 49' 10.16324"	93 deg. 50' 45.27154"
W-2 .....	27 deg. 50' 12.35976"	93 deg. 52' 10.47158"

Nat'l Oceanic and Atmospheric Adm., Commerce Pt. 922, Subpt. L, App. A

Point	Latitude (N)	Longitude (W)
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"
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"
<b>Stetson Bank: (NAD 27)</b>		
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"
<b>East Flower Garden Bank: (NAD 83)</b>		
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"
<b>West Flower Garden Bank: (NAD 83)</b>		
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"
<b>Stetson Bank: (NAD 83)</b>		
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"

[65 FR 81178, Dec. 22, 2000]

**Pt. 922, Subpt. L, App. B**

**15 CFR Ch. IX (1-1-07 Edition)**

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)*

SE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; S<sup>1</sup>/<sub>2</sub>, NE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>; SE<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>; S<sup>1</sup>/<sub>2</sub>, SE<sup>1</sup>/<sub>4</sub>.

*Block A-376*

W<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; SW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>.

*Block A-374*

W<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; W<sup>1</sup>/<sub>2</sub>, SW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; SE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; SW<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; NE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, W<sup>1</sup>/<sub>2</sub>, SW<sup>1</sup>/<sub>4</sub>; W<sup>1</sup>/<sub>2</sub>, SE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; SE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>.

*Block A-375*

E<sup>1</sup>/<sub>2</sub>; E<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; SW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>, SW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; SW<sup>1</sup>/<sub>4</sub>.

*Block A-388*

NE<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; NE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>, NE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; NW<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; NE<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; NE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>; W<sup>1</sup>/<sub>2</sub>, NE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>; NW<sup>1</sup>/<sub>4</sub>.

*Block A-389*

NE<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; NW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; SW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; NE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; W<sup>1</sup>/<sub>2</sub>, SE<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; N<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>.

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)*

E<sup>1</sup>/<sub>2</sub>, SE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>; SW<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>.

*Block A-384*

W<sup>1</sup>/<sub>2</sub>, SW<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>; SE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>; S<sup>1</sup>/<sub>2</sub>, SE<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>; SE<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>, SW<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; SW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; SE<sup>1</sup>/<sub>4</sub>.

*Block A-385*

SW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>.

*Block A-397*

W<sup>1</sup>/<sub>2</sub>, W<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>; W<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>.

*Block A-398*

Entire block.

*Block A-399*

E<sup>1</sup>/<sub>2</sub>, SE<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>, SE<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>, NE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; SW<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; NE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>.

*Block A-401*

NE<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>; N<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>; NE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>.

*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.

[65 FR 81180, Dec. 22, 2000]

**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 Sanctuary (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 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.

**§ 922.134**

(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.

**15 CFR Ch. IX (1–1–07 Edition)**

(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 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"

[Appendix based on North American datum of 1983.]

Point	Latitude	Longitude
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] NM<sup>2</sup> 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 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] NM<sup>2</sup> 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] NM<sup>2</sup> 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] NM<sup>2</sup> 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

§922.141

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.

15 CFR Ch. IX (1-1-07 Edition)

§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

**Pt. 922, Subpt. N, App. A**

**15 CFR Ch. IX (1–1–07 Edition)**

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 and/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
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,

**§922.154**

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

**15 CFR Ch. IX (1-1-07 Edition)**

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"
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 an area of approximately 2900 square nautical miles (9,800 square kilometers) of coastal and ocean waters, and the submerged lands thereunder, surrounding the Florida Keys in Florida. Appendix I to this subpart sets forth the precise Sanctuary boundary.

[66 FR 4369, Jan. 17, 2001]

#### § 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.

*Length overall (LOA) or length* means, as used in §922.167 with respect to a vessel, the horizontal distance, rounded to the nearest foot (with 0.5 ft and above rounded upward), between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments.

*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.), coralline 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 re-

sources 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 the geographic coordinates of these areas.

*Stem* means the foremost part of a vessel, consisting of a section of timber or fiberglass, or cast, forged, or rolled metal, to which the sides of the vessel are united at the fore end, with the lower end united to the keel, and with the bowsprit, if one is present, resting on the upper end.

*Stern* means the aftermost part of the vessel.

*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.*

[62 FR 32161, June 12, 1997, as amended at 66 FR 4369, Jan. 17, 2001]

**§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 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 releasing 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 preserva-

tion 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, Sombrero 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) *Anchoring in the Tortugas Ecological Reserve.* In all other Ecological Reserves and Sanctuary Preservation Areas, 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 living 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 organism. No further diving shall take place until the anchor is placed in accordance with these requirements.

(vi) Except in the Tortugas Ecological Reserve where mooring buoys must be used, 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.

(viii) 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: entering the Tortugas South area of the Tortugas Ecological Reserve; or entering the Tortugas North area of the Tortugas Ecological Reserve without a valid access permit issued pursuant to §922.167 or entering or leaving the Tortugas North area with a valid access permit issued pursuant to §922.167 without notifying FKNMS staff at the Dry Tortugas National Park office by telephone or radio no less than 30 minutes and no more than 6 hours, before enter-

ing and upon leaving the Tortugas Ecological Reserve.

(ix) Tying a vessel greater than 100 feet (30.48 meters) LOA, or tying more than one vessel (other than vessels carried on board a vessel) if the combined lengths would exceed 100 feet (30.48 meters) LOA, to a mooring buoy or to a vessel tied to a mooring buoy in the Tortugas Ecological Reserve.

(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.

(ii) 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 portion of Tortugas Bank within the Florida Keys National Marine Sanctuary west of the Dry Tortugas National Park that is outside of the Tortugas Ecological Reserve. The boundary of the area closed to anchoring by vessels 50 meters or greater in

registered length is formed by connecting in succession the points at the following coordinates (based on the North American Datum of 1983):

- (1) 24 deg. 32.00' N 83 deg. 00.05' W
- (2) 24 deg. 37.00' N 83 deg. 06.00' W
- (3) 24 deg. 39.00' N 83 deg. 06.00' W
- (4) 24 deg. 39.00' N 83 deg. 00.05' W
- (5) 24 deg. 32.00' N 83 deg. 00.05' W

[62 FR 32161, June 12, 1997, as amended at 63 FR 43873, Aug. 17, 1998; 66 FR 4369, Jan. 17, 2001]

**§ 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 other than for access to the Tortugas Ecological Reserve—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

§922.166

15 CFR Ch. IX (1-1-07 Edition)

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 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 quali-

ties, 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 proc-

essing 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.

(l) 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 Permits for access to the Tortugas Ecological Reserve.**

(a) A person may enter the Tortugas North area of the Tortugas Ecological Reserve other than for passage without interruption through the reserve, for law enforcement purposes, or for purposes of monitoring pursuant to paragraph (d)(2) of § 922.164 , if authorized by a valid access permit issued pursuant to § 922.167.

(b)(1) Access permits must be requested at least 72 hours but no longer than one month before the date the permit is desired to be effective. Access permits do not require written applications or the payment of any fee. Permits may be requested via telephone or radio by contacting FKNMS at any of the following numbers:

Key West office: telephone: (305) 292-0311  
Marathon office: telephone: (305) 743-2437

(2) The following information must be provided, as applicable:

- (i) Vessel name.
- (ii) Name, address, and telephone number of owner and operator.
- (iii) Name, address, and telephone number of applicant.
- (iv) USCG documentation, state license, or registration number.
- (v) Home port.
- (vi) Length of vessel and propulsion type (*i.e.*, motor or sail).
- (vii) Number of divers.

**§ 922.168**

**15 CFR Ch. IX (1-1-07 Edition)**

(viii) Requested effective date and duration of permit (2 weeks, maximum).

(c) The Sanctuary Superintendent will issue a permit to the owner or to the owner's representative for the vessel when all applicable information has been provided. The Sanctuary Superintendent will provide a permit number to the applicant and confirm the effective date and duration period of the permit. Written confirmation of permit issuance will be provided upon request.

[66 FR 4370, Jan. 17, 2001]

**§ 922.168 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; for the area added to the Sanctuary by the boundary expansion for the Tortugas Ecological Reserve, the holder of such authorization or right notifies the Director, in writing, within 90 days of the effective date of the boundary expansion, 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 § 922.168; 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 Secs. 922.163 or 922.164 may conduct the activity without being in violation of applicable provisions of Secs. 922.163 or 922.164, pending final agency action on his or her certification re-

quest, provided the holder is in compliance with this § 922.168.

(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 Secs. 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 § 922.168 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 § 922.168, 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 § 922.168 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.

[66 FR 4369, Jan. 17, 2001]

APPENDIX I TO SUBPART P OF PART 922—  
FLORIDA KEYS NATIONAL MARINE  
SANCTUARY BOUNDARY COORDI-  
NATES

(APPENDIX BASED ON NORTH AMERICAN DATUM  
OF 1983)

(1) The boundary of the Florida Keys National Marine Sanctuary—

(a) Begins at the northeasternmost point of Biscayne National Park located at approximately 25 degrees 39 minutes north latitude, 80 degrees 05 minutes west longitude, then runs eastward to the point at 25 degrees 39 minutes north latitude, 80 degrees 04 minutes west longitude; and

(b) Then runs southward and connects in succession the points at the following coordinates:

(i) 25 degrees 34 minutes north latitude, 80 degrees 04 minutes west longitude,

(ii) 25 degrees 28 minutes north latitude, 80 degrees 05 minutes west longitude, and

(iii) 25 degrees 21 minutes north latitude, 80 degrees 07 minutes west longitude;

(iv) 25 degrees 16 minutes north latitude, 80 degrees 08 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 07 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 06 minutes west longitude,

(viii) 24 degrees 46 minutes north latitude, 83 degrees 06 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).

(2) The shoreward boundary of the Florida Keys National Marine Sanctuary is the mean high-water mark except around the Dry Tortugas where the boundary is coterminous with that of the Dry Tortugas National Park, formed by connecting in succession the points at the following coordinates:

(a) 24 degrees 34 minutes 0 seconds north latitude, 82 degrees 54 minutes 0 seconds west longitude;

(b) 24 degrees 34 minutes 0 seconds north latitude, 82 degrees 58 minutes 0 second west longitude;

(c) 24 degrees 39 minutes 0 seconds north latitude, 82 degrees 58 minutes 0 seconds west longitude;

(d) 24 degrees 43 minutes 0 seconds north latitude, 82 degrees 54 minutes 0 seconds west longitude;

(e) 24 degrees 43 minutes 32 seconds north latitude, 82 degrees 52 minutes 0 seconds west longitude;

(f) 24 degrees 43 minutes 32 seconds north latitude, 82 degrees 48 minutes 0 seconds west longitude;

(g) 24 degrees 42 minutes 0 seconds north latitude, 82 degrees 46 minutes, 0 seconds west longitude;

(h) 24 degrees 40 minutes 0 seconds north latitude, 82 degrees 46 minutes 0 seconds west longitude;

(i) 24 degrees 37 minutes 0 seconds north latitude, 82 degrees 48 minutes 0 seconds west longitude; and

(j) 24 degrees 34 minutes 0 seconds north latitude, 82 degrees 54 minutes 0 seconds west longitude.

(3) The Florida Keys National Marine Sanctuary also includes the area located within the boundary formed by connecting in succession the points at the following coordinates:

(a) 24 degrees 33 minutes north latitude, 83 degrees 09 minutes west longitude,

(b) 24 degrees 33 minutes north latitude, 83 degrees 05 minutes west longitude, and

(c) 24 degrees 18 minutes north latitude, 83 degrees 05 minutes west longitude;

(d) 24 degrees 18 minutes north latitude, 83 degrees 09 minutes west longitude; and

**Pt. 922, Subpt. P, App. II**

**15 CFR Ch. IX (1-1-07 Edition)**

(e) 24 degrees 33 minutes north latitude, 83 degrees 09 minutes west longitude.

[66 FR 4370, Jan. 17, 2001]

**APPENDIX II TO SUBPART P OF PART 922—EXISTING MANAGEMENT AREAS BOUNDARY COORDINATES**

(1) The boundary of each of the Existing Management Areas is formed by connecting in succession the points at the following coordinates:

**NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

**KEY LARGO-MANAGEMENT AREA**

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1 .....	25 deg.19'45" N	80 deg.12'00" W.
2 .....	25 deg.16'02" N	80 deg.08'07" W.
3 .....	25 deg.07'05" N	80 deg.12'05" W.
4 .....	24 deg.58'03" N	80 deg.19'08" W.
5 .....	25 deg.02'02" N	80 deg.25'25" W.
6 .....	25 deg.19'45" N	80 deg.12'00" W.

**LOOE KEY MANAGEMENT AREA**

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1 .....	24 deg.31'62" N	81 deg.26'00" W.
2 .....	24 deg.33'57" N	81 deg.26'00" W.
3 .....	24 deg.34'15" N	81 deg.23'00" W.
4 .....	24 deg.32'20" N	81 deg.23'00" W.
5 .....	24 deg.31'62" N	81 deg.26'00" W.

**UNITED STATES FISH AND WILDLIFE SERVICE**

**GREAT WHITE HERON NATIONAL WILDLIFE REFUGE**

[Based on the North American Datum of 1983]

Point	Latitude	Longitude
1 .....	24 deg.43.8' N	81 deg.48.6' W.
2 .....	24 deg.43.8' N	81 deg.37.2' W.
3 .....	24 deg.49.2' N	81 deg.37.2' W.
4 .....	24 deg.49.2' N	81 deg.19.8' W.
5 .....	24 deg.48.0' N	81 deg.19.8' W.
6 .....	24 deg.48.0' N	81 deg.14.4' W.
7 .....	24 deg.49.2' N	81 deg.14.4' W.
8 .....	24 deg.49.2' N	81 deg.08.4' W.
9 .....	24 deg.43.8' N	81 deg.08.4' W.
10 .....	24 deg.43.8' N	81 deg.14.4' W.
11 .....	24 deg.43.2' N	81 deg.14.4' W.
12 .....	24 deg.43.2' N	81 deg.16.2' W.
13 .....	24 deg.42.6' N	81 deg.16.2' W.
14 .....	24 deg.42.6' N	81 deg.21.0' W.

**GREAT WHITE HERON NATIONAL WILDLIFE REFUGE—Continued**

[Based on the North American Datum of 1983]

Point	Latitude	Longitude
15 .....	24 deg.41.4' N	81 deg.21.0' W.
16 .....	24 deg.41.4' N	81 deg.22.2' W.
17 .....	24 deg.43.2' N	81 deg.22.2' W.
18 .....	24 deg.43.2' N	81 deg.22.8' W.
19 .....	24 deg.43.8' N	81 deg.22.8' W.
20 .....	24 deg.43.8' N	81 deg.24.0' W.
21 .....	24 deg.43.2' N	81 deg.24.0' W.
22 .....	24 deg.43.2' N	81 deg.26.4' W.
23 .....	24 deg.43.8' N	81 deg.26.4' W.
24 .....	24 deg.43.8' N	81 deg.27.0' W.
25 .....	24 deg.43.2' N	81 deg.27.0' W.
26 .....	24 deg.43.2' N	81 deg.29.4' W.
27 .....	24 deg.42.6' N	81 deg.29.4' W.
28 .....	24 deg.42.6' N	81 deg.30.6' W.
29 .....	24 deg.41.4' N	81 deg.30.6' W.
30 .....	24 deg.41.4' N	81 deg.31.2' W.
31 .....	24 deg.40.8' N	81 deg.31.2' W.
32 .....	24 deg.40.8' N	81 deg.32.4' W.
33 .....	24 deg.41.4' N	81 deg.32.4' W.
34 .....	24 deg.41.4' N	81 deg.34.2' W.
35 .....	24 deg.40.8' N	81 deg.34.2' W.
36 .....	24 deg.48.0' N	81 deg.35.4' W.
37 .....	24 deg.39.6' N	81 deg.35.4' W.
38 .....	24 deg.39.6' N	81 deg.36.0' W.
39 .....	24 deg.39.0' N	81 deg.36.0' W.
40 .....	24 deg.39.0' N	81 deg.37.2' W.
41 .....	24 deg.37.8' N	81 deg.37.2' W.
42 .....	24 deg.37.8' N	81 deg.37.8' W.
43 .....	24 deg.37.2' N	81 deg.37.8' W.
44 .....	24 deg.37.2' N	81 deg.40.2' W.
45 .....	24 deg.36.0' N	81 deg.40.2' W.
46 .....	24 deg.36.0' N	81 deg.40.8' W.
47 .....	24 deg.35.4' N	81 deg.40.8' W.
48 .....	24 deg.35.4' N	81 deg.42.0' W.
49 .....	24 deg.36.0' N	81 deg.42.0' W.
50 .....	24 deg.36.0' N	81 deg.48.6' W.
51 .....	24 deg.43.8' N	81 deg.48.6' W.

**KEY WEST NATIONAL WILDLIFE REFUGE**

[Based on the North American Datum of 1983]

Point	Latitude	Longitude
1 .....	24 deg.40.0' N	81 deg.49.0' W.
2 .....	24 deg.40.0' N	82 deg.10.0' W.
3 .....	24 deg.27.0' N	82 deg.10.0' W.
4 .....	24 deg.27.0' N	81 deg.49.0' W.
5 .....	24 deg.40.0' N	81 deg.49.0' W.

(2) When differential Global Positioning Systems data becomes available, these coordinates may be publication in the FEDERAL REGISTER to reflect the increased accuracy of such data.

[66 FR 4371, Jan. 17, 2001]

**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.

Nat'l Oceanic and Atmospheric Adm., Commerce Pt. 922, Subpt. P, App. IV

Area	Access restrictions
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.
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

(1) The boundary of the Western Sambo Ecological Reserve is formed by connecting in succession the points at the following coordinates:

WESTERN SAMBO

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1 .....	24 deg.33.70' N .....	81 deg.40.80' W.
2 .....	24 deg.28.85' N .....	81 deg.41.90' W.
3 .....	24 deg.28.50' N .....	81 deg.43.70' W.
4 .....	24 deg.33.50' N .....	81 deg.43.10' W.
5 .....	24 deg.33.70' N .....	81 deg.40.80' W.

(2) The Tortugas Ecological Reserve consists of two discrete areas, Tortugas North and Tortugas South.

(3) The boundary of Tortugas North is formed by connecting in succession the points at the following coordinates:

TORTUGAS NORTH

Point	Latitude	Longitude
1 .....	24 deg.46.00' N .....	83 deg.06.00' W.

TORTUGAS NORTH—Continued

Point	Latitude	Longitude
2 .....	24 deg.46.00' N .....	82 deg.54.00' W.
3 .....	24 deg.45.80' N .....	82 deg.48.00' W.
4 .....	24 deg.43.53' N .....	82 deg.48.00' W.
5 .....	24 deg.43.53' N .....	82 deg.52.00' W.
6 .....	24 deg.43.00' N .....	82 deg.54.00' W.
7 .....	24 deg.39.00' N .....	82 deg.58.00' W.
8 .....	24 deg.39.00' N .....	83 deg.06.00' W.
9 .....	24 deg.46.00' N .....	83 deg.06.00' W.

(4) The boundary of Tortugas South is formed by connecting in succession the points at the following coordinates:

TORTUGAS SOUTH

Point	Latitude	Longitude
1 .....	24 deg.33.00' N .....	83 deg.09.00' W.
2 .....	24 deg.33.00' N .....	83 deg.05.00' W.
3 .....	24 deg.18.00' N .....	83 deg.05.00' W.
4 .....	24 deg.18.00' N .....	83 deg.09.00' W.
5 .....	24 deg.33.00' N .....	83 deg.09.00' W.

[66 FR 4372, Jan. 17, 2001]

**Pt. 922, Subpt. P, App. V**

**15 CFR Ch. IX (1–1–07 Edition)**

**APPENDIX V TO SUBPART P OF PART 922—SANCTUARY PRESERVATION AREAS BOUNDARY COORDINATES**

The boundary of each of the Sanctuary Preservation Areas (SPAs) is formed by connecting in succession the points at the following coordinates:

**ALLIGATOR REEF**

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1 .....	24 deg.50.98' N	80 deg.36.84' W.
2 .....	24 deg.50.51' N	80 deg.37.35' W.
3 .....	24 deg.50.81' N	80 deg.37.63' W.
4 .....	24 deg.51.23' N	80 deg.37.17' W.
5 .....	24 deg.50.98' N	80 deg.36.84' W.

Catch and release fishing by trolling only is allowed in this SPA.

**CARYSFORT/SOUTH CARYSFORT REEF**

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1 .....	25 deg.13.78' N	80 deg.12.00' W.
2 .....	25 deg.12.03' N	80 deg.12.98' W.
3 .....	25 deg.12.24' N	80 deg.13.77' W.
4 .....	25 deg.14.13' N	80 deg.12.78' W.
5 .....	25 deg.13.78' N	80 deg.12.00' W.

**CHEECA ROCKS**

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1 .....	24 deg.54.42' N	80 deg.36.91' W.
2 .....	24 deg.54.25' N	80 deg.36.77' W.
3 .....	24 deg.54.10' N	80 deg.37.00' W.
4 .....	24 deg.54.22' N	80 deg.37.15' W.
5 .....	24 deg.54.42' N	80 deg.36.91' W.

**COFFINS PATCH**

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1 .....	24 deg.41.47' N	80 deg.57.68' W.
2 .....	24 deg.41.12' N	80 deg.57.53' W.
3 .....	24 deg.40.75' N	80 deg.58.33' W.
4 .....	24 deg.41.06' N	80 deg.58.48' W.
5 .....	24 deg.41.47' N	80 deg.57.68' W.

**CONCH REEF**

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1 .....	24 deg.57.48' N	80 deg.27.47' W.
2 .....	24 deg.57.34' N	80 deg.27.26' W.
3 .....	24 deg.56.78' N	80 deg.27.52' W.
4 .....	24 deg.56.96' N	80 deg.27.73' W.
5 .....	24 deg.57.48' N	80 deg.27.47' W.

Catch and release fishing by trolling only is allowed in this SPA.

**DAVIS REEF**

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1 .....	24 deg.55.61' N	80 deg.30.27' W.
2 .....	24 deg.55.41' N	80 deg.30.05' W.
3 .....	24 deg.55.11' N	80 deg.30.35' W.
4 .....	24 deg.55.34' N	80 deg.30.52' W.
5 .....	24 deg.55.61' N	80 deg.30.27' W.

**DRY ROCKS**

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1 .....	25 deg.07.59' N	80 deg.17.91' W.
2 .....	25 deg.07.41' N	80 deg.17.70' W.
3 .....	25 deg.07.25' N	80 deg.17.82' W.
4 .....	25 deg.07.41' N	80 deg.18.09' W.
5 .....	25 deg.07.59' N	80 deg.17.91' W.

**GRECIAN ROCKS**

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1 .....	25 deg.06.91' N	80 deg.18.20' W.
2 .....	25 deg.06.67' N	80 deg.18.06' W.
3 .....	25 deg.06.39' N	80 deg.18.32' W.
4 .....	25 deg.06.42' N	80 deg.18.48' W.
5 .....	25 deg.06.81' N	80 deg.18.44' W.
6 .....	25 deg.06.91' N	80 deg.18.20' W.

**EASTERN DRY ROCKS**

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1 .....	24 deg.27.92' N	81 deg.50.55' W.
2 .....	24 deg.27.73' N	81 deg.50.33' W.
3 .....	24 deg.27.47' N	81 deg.50.80' W.
4 .....	24 deg.27.72' N	81 deg.50.86' W.
5 .....	24 deg.27.92' N	81 deg.50.55' W.

**THE ELBOW**

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1 .....	25 deg.08.97' N	80 deg.15.63' W.
2 .....	25 deg.08.95' N	80 deg.15.22' W.
3 .....	25 deg.08.18' N	80 deg.15.64' W.
4 .....	25 deg.08.50' N	80 deg.16.07' W.
5 .....	25 deg.08.97' N	80 deg.15.63' W.

**FRENCH REEF**

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1 .....	25 deg.02.20' N	80 deg.20.63' W.
2 .....	25 deg.01.81' N	80 deg.21.02' W.
3 .....	25 deg.02.36' N	80 deg.21.27' W.
4 .....	25 deg.02.20' N	80 deg.20.63' W.

Nat'l Oceanic and Atmospheric Adm., Commerce Pt. 922, Subpt. P, App. VI

**HEN AND CHICKENS**

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1 .....	24 deg.56.38' N	80 deg.32.86' W.
2 .....	24 deg.56.21' N	80 deg.32.63' W.
3 .....	24 deg.55.86' N	80 deg.32.95' W.
4 .....	24 deg.56.04' N	80 deg.33.19' W.
5 .....	24 deg.56.38' N	80 deg.32.86' W.

**LOOE KEY**

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1 .....	24 deg.33.24' N	81 deg.24.03' W.
2 .....	24 deg.32.70' N	81 deg.23.85' W.
3 .....	24 deg.32.52' N	81 deg.24.70' W.
4 .....	24 deg.33.12' N	81 deg.24.81' W.
5 .....	24 deg.33.24' N	81 deg.24.03' W.

**MOLASSES REEF**

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1 .....	25 deg.01.00' N	80 deg.22.53' W.
2 .....	25 deg.01.06' N	80 deg.21.84' W.
3 .....	25 deg.00.29' N	80 deg.22.70' W.
4 .....	25 deg.00.72' N	80 deg.22.83' W.
5 .....	25 deg.01.00' N	80 deg.22.53' W.

**NEWFOUND HARBOR KEY**

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1 .....	24 deg.37.10' N	81 deg.23.34' W.
2 .....	24 deg.36.85' N	81 deg.23.28' W.
3 .....	24 deg.36.74' N	81 deg.23.80' W.
4 .....	24 deg.37.00' N	81 deg.23.86' W.
5 .....	24 deg.37.10' N	81 deg.23.34' W.

**ROCK KEY**

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1 .....	24 deg.27.48' N	81 deg.51.35' W.
2 .....	24 deg.27.30' N	81 deg.51.15' W.
3 .....	24 deg.27.21' N	81 deg.51.60' W.
4 .....	24 deg.27.45' N	81 deg.51.65' W.
5 .....	24 deg.27.48' N	81 deg.51.35' W.

**SAND KEY**

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1 .....	24 deg.27.58' N	81 deg.52.29' W.
2 .....	24 deg.27.01' N	81 deg.52.32' W.
3 .....	24 deg.27.02' N	81 deg.52.95' W.
4 .....	24 deg.27.61' N	81 deg.52.94' W.
5 .....	24 deg.27.58' N	81 deg.52.29' W.

Catch and release fishing by trolling only is allowed in this SPA.

**SOMBRERO KEY**

[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1 .....	24 deg.37.91' N	81 deg.06.78' W.
2 .....	24 deg.37.50' N	81 deg.06.19' W.
3 .....	24 deg.37.25' N	81 deg.06.89' W.
4 .....	24 deg.37.91' N	81 deg.06.78' W.

Catch and release fishing by trolling only is allowed in this SPA.

[66 FR 4373, Jan. 17, 2001]

**APPENDIX VI TO SUBPART P OF PART 922—SPECIAL-USE AREAS BOUNDARY COORDINATES AND USE DESIGNATIONS**

The boundary of each of the Special-Use is formed by connecting in succession the points at the following coordinates:

**CONCH REEF**

(Research Only)—[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1 .....	24 deg.56.83' N	80 deg.27.26' W.
2 .....	24 deg.57.10' N	80 deg.26.93' W.
3 .....	24 deg.56.99' N	80 deg.27.42' W.
4 .....	24 deg.57.34' N	80 deg.27.26' W.
5 .....	24 deg.56.83' N	80 deg.27.26' W.

**EASTERN SAMBO**

(Research Only)—[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1 .....	24 deg.29.84' N	81 deg.39.59' W.
2 .....	24 deg.29.55' N	81 deg.39.35' W.
3 .....	24 deg.29.37' N	81 deg.39.96' W.
4 .....	24 deg.29.77' N	81 deg.40.03' W.
5 .....	24 deg.29.84' N	81 deg.39.59' W.

**LOOE KEY**

(Research Only)—[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1 .....	24 deg.34.17' N	81 deg.23.01' W.
2 .....	24 deg.33.98' N	81 deg.22.96' W.
3 .....	24 deg.33.84' N	81 deg.23.60' W.
4 .....	24 deg.34.23' N	81 deg.23.68' W.
5 .....	24 deg.34.17' N	81 deg.23.01' W.

**TENNESSEE REEF**

(Research Only)—[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
1 .....	24 deg.44.77' N	80 deg.47.12' W.
2 .....	24 deg.44.57' N	80 deg.46.98' W.
3 .....	24 deg.44.68' N	80 deg.46.59' W.
4 .....	24 deg.44.95' N	80 deg.46.74' W.

**Pt. 922, Subpt. P, App. VII**

**15 CFR Ch. IX (1-1-07 Edition)**

**TENNESSEE REEF—Continued**

(Research Only)—[Based on differential Global Positioning Systems data]

Point	Latitude	Longitude
5 .....	24 deg.44.77' N	80 deg.47.12' W.

[66 FR 4376, Jan. 17, 2001]

**APPENDIX VII TO SUBPART P OF PART 922—AREAS TO BE AVOIDED BOUNDARY COORDINATES**

**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]

Point	Latitude	Longitude
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°06.38'N	80°10.48'W
5 .....	24°56.37'N	80°19.26'W
6 .....	24°37.90'N	80°47.30'W
7 .....	24°29.20'N	81°17.30'W
8 .....	24°22.30'N	81°43.17'W
9 .....	24°28.00'N	81°43.17'W
10 .....	24°28.70'N	81°43.50'W
11 .....	24°29.80'N	81°43.17'W
12 .....	24°33.10'N	81°35.15'W
13 .....	24°33.60'N	81°26.00'W
14 .....	24°38.20'N	81°07.00'W
15 .....	24°43.20'N	80°53.20'W
16 .....	24°46.10'N	80°46.15'W
17 .....	24°51.10'N	80°37.10'W
18 .....	24°57.50'N	80°27.50'W
19 .....	25°09.90'N	80°16.20'W
20 .....	25°24.00'N	80°09.10'W
21 .....	25°31.50'N	80°07.00'W
22 .....	25°39.70'N	80°06.85'W
23 .....	25°45.00'N	80°06.10'W

**IN THE VICINITY OF KEY WEST HARBOR**

[Reference Chart: United States 11434, 21st Edition—August 11, 1990]

Point	Latitude	Longitude
24 .....	24 deg.27.95' N	81 deg.48.65' W.
25 .....	24 deg.23.00' N	81 deg.53.50' W.
26 .....	24 deg.26.60' N	81 deg.58.50' W.
27 .....	24 deg.27.75' N	81 deg.55.70' W.
28 .....	24 deg.29.35' N	81 deg.53.40' W.
29 .....	24 deg.29.35' N	81 deg.50.00' W.
30 .....	24 deg.27.95' N	81 deg.48.65' W.

**AREA SURROUNDING THE MARQUESAS KEYS**

[Reference Chart: United States 11434, 21st Edition—August 11, 1990]

Point	Latitude	Longitude
31 .....	24 deg.26.60' N	81 deg.59.55' W.
32 .....	24 deg.23.00' N	82 deg.03.50' W.
33 .....	24 deg.23.60' N	82 deg.27.80' W.
34 .....	24 deg.34.50' N	82 deg.37.50' W.
35 .....	24 deg.43.00' N	82 deg.26.50' W.
36 .....	24 deg.38.31' N	81 deg.54.06' W.
37 .....	24 deg.37.91' N	81 deg.53.40' W.

**AREA SURROUNDING THE MARQUESAS KEYS—Continued**

[Reference Chart: United States 11434, 21st Edition—August 11, 1990]

Point	Latitude	Longitude
38 .....	24 deg.36.15' N	81 deg.51.78' W.
39 .....	24 deg.34.40' N	81 deg.50.60' W.
40 .....	24 deg.33.44' N	81 deg.49.73' W.
41 .....	24 deg.31.20' N	81 deg.52.10' W.
42 .....	24 deg.28.70' N	81 deg.56.80' W.
43 .....	24 deg.26.60' N	81 deg.59.55' W.

**AREA SURROUNDING THE DRY TORTUGAS ISLANDS**

[Reference Chart: United States 11434, 21st Edition—August 11, 1990]

Point	Latitude	Longitude
44 .....	24 deg.32.00' N	82 deg.53.50' W.
45 .....	24 deg.32.00' N	83 deg.00.05' W.
46 .....	24 deg.39.70' N	83 deg.00.05' W.
47 .....	24 deg.45.60' N	82 deg.54.40' W.
48 .....	24 deg.45.60' N	82 deg.47.02' W.
49 .....	24 deg.42.80' N	82 deg.43.90' W.
50 .....	24 deg.39.50' N	82 deg.43.90' W.
51 .....	24 deg.35.60' N	82 deg.46.40' W.
52 .....	24 deg.32.00' N	82 deg.53.50' W.

[66 FR 4377, Jan. 17, 2001, as amended at 66 FR 34534, June 29, 2001]

**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".—

Nat'l Oceanic and Atmospheric Adm., Commerce Pt. 922, Subpt. P, App. VIII

(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 Ogocephalidae.

(f) Clingfish—Any species of the Family Gobiessocidae.

(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 Sciaenidae.

(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.

(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 capricus*.

(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/hydrroids—Any species of the Class Hydrozoa, except fire corals, Order Milleporina.

(d) Soft corals—Any species of the Subclass Octocorallia, except sea fans *Gorgonia flabellum* 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, *Octopus 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*.

(l) 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 Asterozoa, except the Bahama starfish, *Oreaster reticulatus*.

(n) Brittlestars—Any species of the Class Ophiurozoa.

(o) Sea urchins—Any species of the Class Echinozoa, except longspine urchin, *Diadema antillarum*, and sand dollars and sea biscuits, Order Clypeasteroidea.

(p) Sea cucumbers—Any species of the Class Holothurozoa.

(q) Sea lillies—Any species of the Class Crinozoa.

(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.

Nat'l Oceanic and Atmospheric Adm., Commerce Pt. 922, Subpt. P, App. VIII

(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.

(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 goby (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 Depart-

ment 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 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,

§922.181

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 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

15 CFR Ch. IX (1-1-07 Edition)

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 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.

(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 external 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

**§922.184**

**15 CFR Ch. IX (1–1–07 Edition)**

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 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.

(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 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

**Pt. 922, Subpt. Q, App. A**

**15 CFR Ch. IX (1-1-07 Edition)**

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.

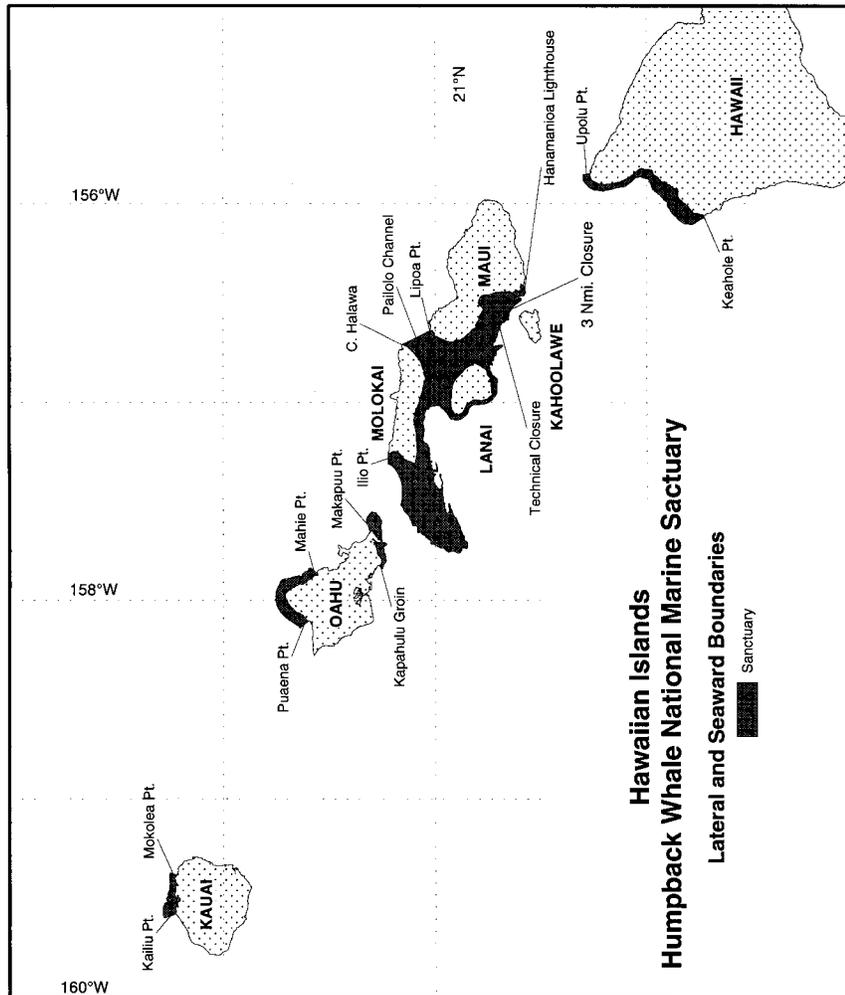


Figure 1

B. Lateral Closure Bounds for the Hawaiian Islands Humpback Whale National Marine Sanctuary Boundary (see Figure 2).

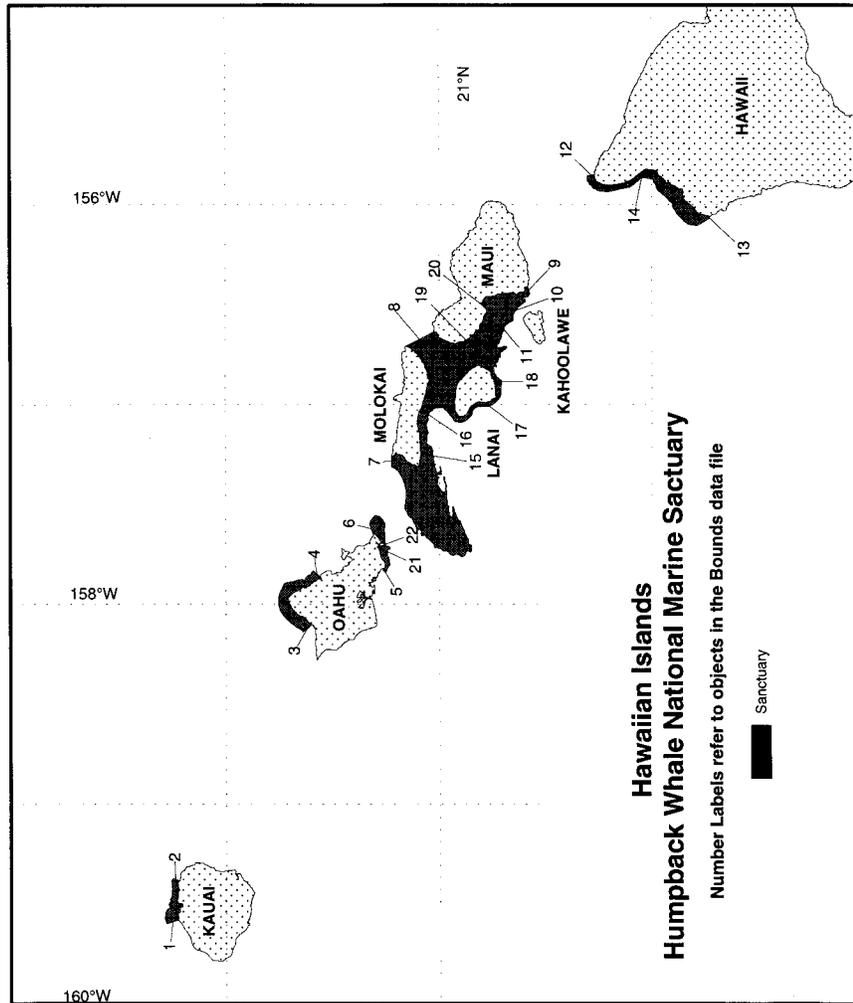


Figure 2

Bound No. (Fig. 2)	Geographic name	No. of points	Latitude	Longitude
1	Kailiu Pt., Kauai	2	22°13'24.7" 22°16'33.5"	-159°34'52.2" -159°35'59.4"
2	Mokolea Pt., Kauai	2	22°13'29.9" 22°14'55.4"	-159°22'55.8" -159°22'19.3"
3	Puaena Pt., N. Oahu	2	21°38'24.6" 21°36'8.4"	-158°8'26.0" -158°6'24.5"
4	Mahie Pt., N. Oahu	2	21°33'37.3" 21°35'32.2"	-157°51'51.9" -157°50'5.5"
5	Kapahulu Groin, S. Oahu	3	21°15'5.7" 21°16'6.1" 21°16'6.2"	-157°50'27.5" -157°49'25.7" -157°49'23.8"
6	Makapuu Pt., S. Oahu	2	21°18'39.6" 21°19'44.7"	-157°38'56.7" -157°35'46.1"
7	Ilio Pt, Molokai	2	21°13'25.7" 21°13'27.0"	-157°18'45.8" -157°15'14.4"
8	Pailolo Channel, C. Halawa to Lipoa Pt.	2	21°1'29.8" 21°9'29.5"	-156°38'22.0" -156°42'37.2"

Nat'l Oceanic and Atmospheric Adm., Commerce Pt. 922, Subpt. Q, App. A

Bound No. (Fig. 2)	Geographic name	No. of points	Latitude	Longitude
9 .....	Hanamaioia Lighthouse, Maui .....	2	20°34'21.8" 20°34'58.4"	-156°26'51.1" -156°24'45.2"
10 .....	3 Nmi. closure around Kahoolawe .....	51	20°35'58.1" 20°35'59.9" 20°36'3.9" 20°36'6.6" 20°36'16.3" 20°36'25.7" 20°36'34.6" 20°36'39.9" 20°36'43.8" 20°36'50.8" 20°36'59.0" 20°37'58.7" 20°37'18.1" 20°37'27.0" 20°37'35.5" 20°37'43.4" 20°37'50.9" 20°37'56.4" 20°37'59.0" 20°38'6.0" 20°38'8.6" 20°38'10.8" 20°38'17.2" 20°38'18.9" 20°38'23.4" 20°38'30.3" 20°38'36.6" 20°38'42.4" 20°38'43.4" 20°38'46.4" 20°38'51.5" 20°38'56.0" 20°38'59.8" 20°39'3.0" 20°39'4.0" 20°39'4.4" 20°39'5.3" 20°39'6.8" 20°39'8.6" 20°39'8.9" 20°39'9.7" 20°39'10.1" 20°39'11.0" 20°39'12.1" 20°39'12.5" 20°39'12.4" 20°39'12.6" 20°39'12.2" 20°39'11.8" 20°39'11.7" 20°39'11.3"	-156°29'32.0" -156°29'33.0" -156°29'35.5" -156°29'36.9" -156°29'43.1" -156°29'49.9" -156°29'57.3" -156°30'2.2" -156°30'5.5" -156°30'12.1" -156°30'16.5" -156°30'22.7" -156°30'29.5" -156°30'36.8" -156°30'44.8" -156°30'53.4" -156°31'2.4" -156°31'10.0" -156°31'13.2" -156°31'22.7" -156°31'26.8" -156°31'29.9" -156°31'39.9" -156°31'43.0" -156°31'48.4" -156°31'58.0" -156°32'7.9" -156°32'18.3" -156°32'20.5" -156°32'25.9" -156°32'36.7" -156°32'47.7" -156°32'59.1" -156°33'10.7" -156°33'15.7" -156°33'17.0" -156°33'21.1" -156°33'28.7" -156°33'40.7" -156°33'44.4" -156°33'49.6" -156°33'53.8" -156°34'0.3" -156°34'12.4" -156°34'24.4" -156°34'25.4" -156°34'30.5" -156°34'42.6" -156°34'47.7" -156°34'48.9" -156°34'55.8"
11 .....	Technical Cosure .....	2	20°41'39.2" 20°41'45.0"	-156°37'7.5" -156°38'3.6"
12 .....	North of Kahoolawe. Upolu Pt., Hawaii (Big Island) .....	2	20°16'5.3" 20°17'59.9"	-155°51'0.5" -155°51'17.2"
13 .....	Keahole Pt., Hawaii (Big Island) .....	2	19°43'39.6" 19°43'41.5"	-156°3'42.7" -156°4'14.5"

C. Excluded Ports and Harbors Bounds (see Figure 3).

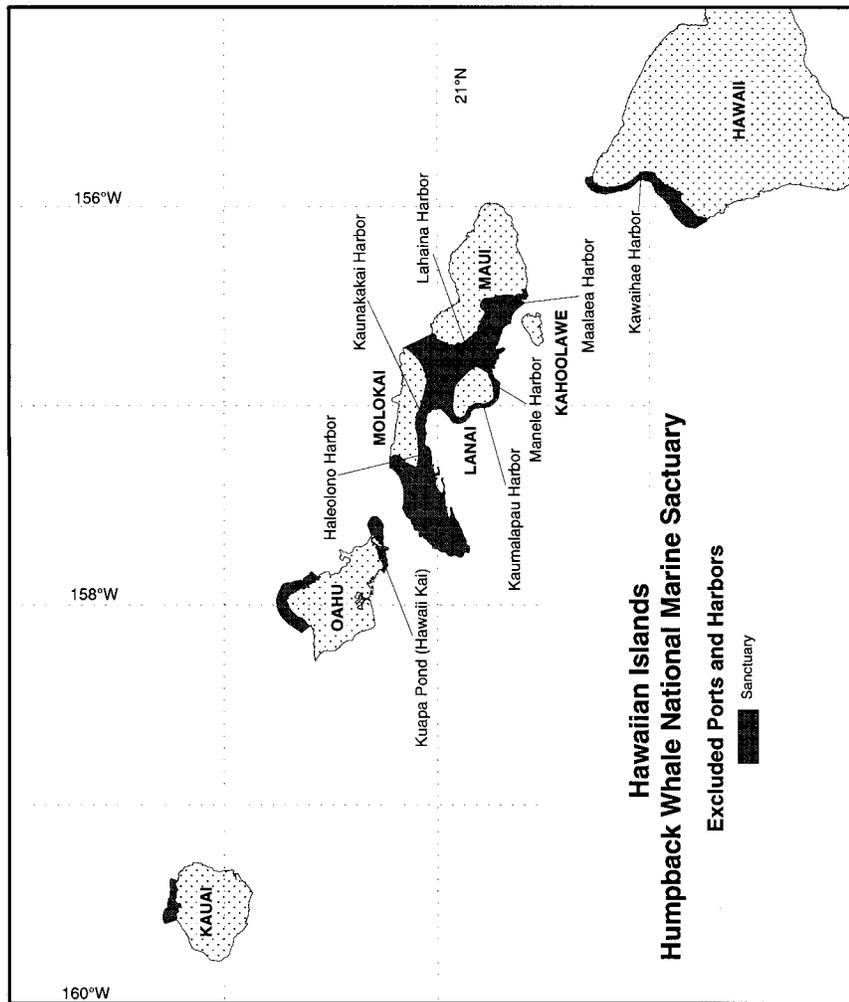


Figure 3

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	Maaleaea Harbor, Maui exclusion	2	20°47'32.1" 20°47'24.8"	-156°30'35.0" -156°30'39.6"

Bound No. (Fig.2)	Geographic Name	No. of Points	Latitude	Longitude
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.

**§ 922.192**

(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.

**15 CFR Ch. IX (1-1-07 Edition)**

(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 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.

**§ 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

**§ 922.195**

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.

**15 CFR Ch. IX (1-1-07 Edition)**

**§ 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"
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.

923.1 Purpose and scope.

923.2 Definitions.

923.3 General requirements.

**Subpart B—Uses Subject to Management**

923.10 General.

923.11 Uses subject to management.

923.12 Uses of regional benefit.

923.13 Energy facility planning process.

**Subpart C—Special Management Areas**

923.20 General.

923.21 Areas of particular concern.

923.22 Areas for preservation or restoration.

923.23 Other areas of particular concern.

923.24 Shorefront access and protection planning.

923.25 Shoreline erosion/mitigation planning.

**Subpart D—Boundaries**

923.30 General.

923.31 Inland boundary.

923.32 Lakeward or seaward boundary.

923.33 Excluded lands.

923.34 Interstate boundary.

**Subpart E—Authorities and Organization**

923.40 General.

923.41 Identification of authorities.

923.42 State establishment of criteria and standards for local implementation—Technique A.

923.43 Direct State land and water use planning and regulation—Technique B.

923.44 State review on a case-by-case basis of actions affecting land and water uses subject to the management program—Technique C.

923.45 Air and water pollution control requirements.

923.46 Organizational structure.

923.47 Designated State agency.

923.48 Documentation.

**Subpart F—Coordination, Public Involvement and National Interest**

923.50 General.

923.51 Federal-State consultation.

923.52 Consideration of the national interest in facilities.

923.53 Federal consistency procedures.

923.54 Mediation.

923.55 Full participation by State and local governments, interested parties, and the general public.

923.56 Plan coordination.

923.57 Continuing consultation.

923.58 Public hearings.

## **Title 15: Commerce and Foreign Trade**

### **PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS**

#### **Subpart L—Flower Garden Banks National Marine Sanctuary**

##### **§ 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 nmi<sup>2</sup>. The area designated at the West Bank is located approximately 110 nmi southeast of Galveston, Texas, and encompasses 22.50 nmi<sup>2</sup>. The area designated at Stetson Bank is located approximately 70 nmi southeast of Galveston, Texas, and encompasses 0.64 nmi<sup>2</sup>. The three areas encompass a total of 42.34 nmi<sup>2</sup> (145.09 square kilometers). The boundary coordinates for each area are listed in appendix A to this subpart.

[65 FR 81178, Dec. 22, 2000]

##### **§ 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 “1/41/41/4” 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.

[65 FR 81178, Dec. 22, 2000]

##### **§ 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 any vessel within the Sanctuary.

(ii) Mooring any vessel within the Sanctuary, except that vessels 100 feet (30.48 meters) or less in registered length may moor on a Sanctuary mooring buoy.

(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.

[60 FR 66877, Dec. 27, 1995, as amended at 66 FR 58371, Nov. 21, 2001]

**§ 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, 216 West 26th Street, Suite 104, Bryan, TX 77803.

(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.

[60 FR 66877, Dec. 27, 1995, as amended at 65 FR 81178, Dec. 22, 2000]

**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.

<b>Point</b>	<b>Latitude (N)</b>	<b>Longitude (W)</b>
<b>East Flower Garden Bank: (NAD 27)</b>		
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"
<b>West Flower Garden Bank: (NAD 27)</b>		
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"
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"
<b>Stetson Bank: (NAD 27)</b>		
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"
<b>East Flower Garden Bank: (NAD 83)</b>		
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"
<b>West Flower Garden Bank: (NAD 83)</b>		
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"
<b>Stetson Bank: (NAD 83)</b>		
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"

[65 FR 81178, Dec. 22, 2000]

**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, SW1/4, NE1/4; NE1/4, 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)*



# Federal Register

---

Friday,  
December 22, 2000

---

## Part V

## Department of Commerce

---

National Oceanic and Atmospheric  
Administration

---

15 CFR Part 922

Boundary Changes in the Flower Garden  
Banks National Marine Sanctuary;  
Addition of Stetson Bank and Technical  
Corrections; Final Rule

**DEPARTMENT OF COMMERCE****NATIONAL OCEANIC AND  
ATMOSPHERIC ADMINISTRATION****15 CFR Part 922**

[Docket No. 000328088-0088-01]

RIN 0648-XA50

**Boundary Changes in the Flower  
Garden Banks National Marine  
Sanctuary; Addition of Stetson Bank  
and Technical Corrections**

**AGENCY:** Marine Sanctuaries Division (MSD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Final rule.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) is amending the regulations implementing the designation of the Flower Garden Banks National Marine Sanctuary (FGBNMS or Sanctuary) and its Management Plan (MP) to apply to a new area, popularly known as known as Stetson Bank, which was added to the Sanctuary by Section 8 of the National Marine Sanctuaries Act (NMSA). NOAA is also slightly adjusting the boundary of the new area to improve administrative efficiency, correcting an error in a boundary coordinate in the West Flower Garden Bank area of the Sanctuary, and increasing the precision of all boundary coordinates based on new positioning technology.

**DATES:** This rule is effective January 22, 2001.

**ADDRESSES:** Questions concerning the regulations for the Flower Garden Banks National Marine Sanctuary may be addressed to G.P. Schmahl, Manager, Flower Garden Banks National Marine Sanctuary, 216 W. 26th Street, Suite 104, Bryan, Texas, 77803.

**FOR FURTHER INFORMATION CONTACT:** Chris Ostrom, (301)713-3137, Extension 129.

**SUPPLEMENTARY INFORMATION:****I. Background**

In response to requests from the sport diving industry and sport scuba divers from all over the United States to provide protection for a popular sport diving spot in the northwestern Gulf of Mexico Congress enacted Section 8 of the NMSA (P.L. 104-283), to include Stetson Bank in the boundaries of the FGBNMS.

The new area included within the Sanctuary boundaries is generally

defined in Section 8 as the area within the 52 meter isobath surrounding Stetson Bank. Section 8 authorizes the Secretary of Commerce to make minor adjustments to the statutory boundary as necessary to protect living coral resources or to simplify administration of the Flower Garden Banks National Marine Sanctuary, and to establish precisely the geographic boundaries of Stetson Bank. Section 8 states that such adjustments shall not significantly enlarge or otherwise alter the size of the new area, and shall not result in the restriction of oil and gas activities otherwise permitted outside of the no activity zone designated by the Minerals Management Service (MMS) of the Department of the Interior (DOI), for Stetson Bank (i.e., outside of the 52 meter isobath) as that zone is depicted on the MMS map entitled "Final Notice of Sale 161, Western Gulf Mexico, Biological Stipulation Map Package."

Section 8 also states that the new area shall be part of the FGBNMS and shall be managed and regulated as though it had been designated by the Secretary of Commerce under the National Marine Sanctuaries Act. Finally, Section 8 states that the regulations applicable to the Sanctuary prior to the incorporation of the new area within the Sanctuary boundary shall be applicable to the new area unless modified by the Secretary, and that the regulations shall apply to the area no later than November 25, 1996.

Section 8 further directed the Secretary of Commerce to prepare a chart depicting the boundaries of the Sanctuary as modified by the addition of the new area. In 1998, high resolution bathymetric data for the area around Stetson Bank was made available by the U.S. Geological Survey (USGS), of the Department of the Interior. The 52 meter isobath surrounding Stetson Bank has been determined using this USGS data. A chart depicting the 52 meter isobath, and the Sanctuary boundary around Stetson Bank, was provided to the House Resources Committee and the Senate Committee on Commerce, Science and Transportation in July of 1999.

A major activity in the area of Stetson Bank is offshore oil and gas leasing, development and production, which is regulated by the MMS of DOI. MMS has developed a grid system that subdivides the sea floor into 3 mile by 3 mile squares, called lease blocks, for the purpose of selling and managing oil and gas leases. For management purposes, the MMS subdivides lease blocks into 64 equal squares, known as "64ths", under a system known as the "1/4 1/4

1/4" system. "64ths" may be used, for example, to delineate no-activity zones around areas protected by biological stipulations imposed by MMS. The 52 meter isobath surrounding Stetson Bank, overlaid with the "64ths" grid system, is shown in Figure 1.

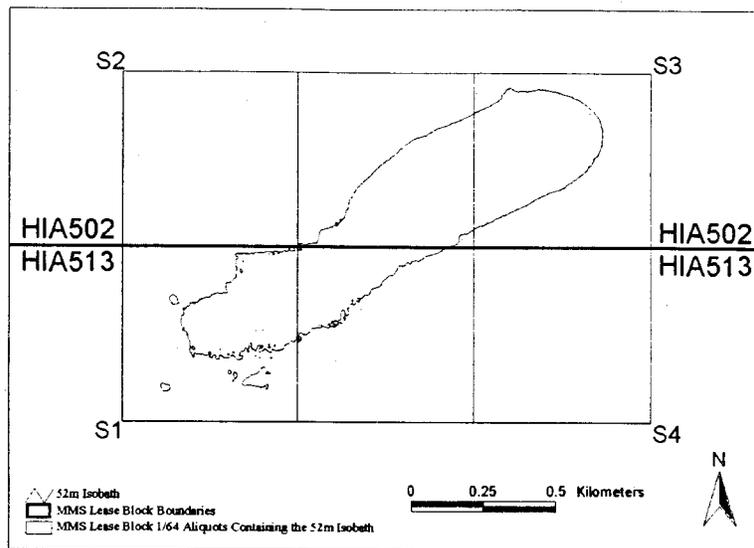
NOAA by this final rule is adjusting the area set forth in Section 8 of the NMSPA to consist of the six "64ths" squares that overlay the 52 meter isobath surrounding Stetson Bank (labeled as points S-1, S-2, S-3 and S-4 in Figure 1). Each of these "64ths" includes an area of 0.364 square kilometers, thus making the total area of the Stetson Bank addition 2.184 square kilometers. The exact coordinates of the boundary of this area are shown in Appendix A.

The use of "64ths" to determine the area and its corresponding boundary is convenient for MMS in managing oil and gas activities near the Sanctuary because the boundary lines of the Sanctuary correspond directly to lines used in MMS's grid system, and the area within the Sanctuary corresponds to a whole number of MMS grid units. The six "64ths" selected to be within the boundary create a rectangular shape which will be easier to distinguish than an irregular shape on the navigational charts produced by the NOS of NOAA. The rectangular shape, and the fact that the rectangle is closely aligned with the latitude and longitude lines on navigation charts, makes it easier for vessel navigators to know whether they are within the Sanctuary boundary.

Since the passage of the NMSPA, which references MMS maps and lease sale stipulations for OCS Lease Sale 161, MMS has conducted OCS Lease Sale 171 which has more accurate maps and lease stipulations for the Stetson Bank area. Therefore, the regulations refer to Lease Sale 171 (instead of Lease Sale 161 as directed in P.L. 104-283) for the geographic description of Stetson Bank and the lease stipulations that apply to Stetson Bank.

In reviewing the coordinates MMS used to delineate the boundaries of the East and West Flower Garden Banks, an error in one of the West Bank coordinates was discovered (at point W-10 in Appendix A). In addition, MMS has provided more accurate coordinate readings for each point in the boundary. This rule corrects and refines the boundaries of the East and West Flower Garden Banks using the more accurate coordinate readings, and sets forth the boundary coordinates for the Stetson Bank area of the Sanctuary.

Figure 1



Points S1, S2, S3, to S4 represent the area including Stetson Bank to be added to the Flower Garden Banks National Marine Sanctuary pursuant to P.L. 104-283.

Area Surrounding Stetson Bank To Be Added To The Flower Garden Banks National Marine Sanctuary

(NAD 27)

Point	Latitude (N)	Longitude (W)
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"

(NAD 83)

Point	Latitude (N)	Longitude (W)
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"

**II. Miscellaneous Rulemaking Requirements**

*National Marine Sanctuaries Act*

Section 304(a)(4) of the National Marine Sanctuaries Act, 16 U.S.C. 1434(a)(4), provides that the terms of a designation may be modified only by the same procedures by which the original designation was made.

Designations of National Marine Sanctuaries are governed by sections 303 and 304 of the NMSA, 16 U.S.C. 1433, 1434. Section 8 of the NMSPA waives these requirements.

*National Environmental Policy Act*

NOAA has concluded that this regulatory action will not have a significant effect, individually or

cumulatively, on the human environment. Further, the action is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement in accordance with Section 6.05b.2 of NOAA Administrative Order 216-6. Specifically, this action is not likely to

result in significant impacts as defined in 40 CFR 1508.27.

The Stetson Bank area is already incorporated into the FGBNMS by law; this action is only to adjust the boundary to simplify the administration of the Sanctuary, and to establish precise geographic boundaries of Stetson Bank.

The Stetson Bank area added to the Sanctuary by Section 8 of the NMSPA (*i.e.*, the 52 meter isobath surrounding Stetson Bank) is small, as is the area after the boundary adjustment. The simple rectangular shape of the adjusted boundary fits the MMS grid system for managing oil and gas leasing and production activities, and it is relatively easy for navigators to know when their vessel is within the boundary. All the boundary alternatives considered are very small, thus there is no environmentally significant difference between them.

The new boundary is acceptable to NOAA, MMS, representatives of the sport diving and oil and gas industries that were involved in the Stetson Bank addition to FGBNMS, and was submitted to the House Resources Committee and Senate Commerce Committee several months prior to publication here and has received no negative response prior to publication in the **Federal Register**.

*Executive Order 12866: Regulatory Impact*

This action has been determined to be not significant for the purpose of Executive Order 12866.

*Regulatory Flexibility Act*

Because prior notice and opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable.

*Administrative Procedures Act*

The Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA, has determined that under 5 U.S.C. 553(b)(B), there is good cause to waive the requirement for prior notice and public comment because public comment would serve no useful purpose and is therefore unnecessary. NOAA has held meetings with the MMS and reached agreement with MMS on the boundary of the Stetson Bank area of the FGBNMS. NOAA has also consulted affected stakeholders such as the oils and gas industry, commercial and sport fishing

industries, and sport diving industry, who also have no objection to the boundary adjustment.

*Paperwork Reduction Act*

This rule does not contain any collection of information requirements subject to the Paperwork Reduction Act.

**List of Subjects in 15 CFR Part 922**

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: December 15, 2000.

**Ted Lillestolen,**

*Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.*

Accordingly, for the reasons set forth above, 15 CFR Part 922 is amended as follows:

**PART 922—[AMENDED]**

1. The authority citation for Part 922 continues to read as follows:

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

**Subpart L—Flower Garden Banks National Marine Sanctuary**

2. Section 922.120, Boundary, is revised to read 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 nmi<sup>2</sup>. The area designated at the West Bank is located approximately 110 nmi southeast of Galveston, Texas, and encompasses 22.50 nmi<sup>2</sup>. The area designated at Stetson Bank is located approximately 70 nmi southeast of Galveston, Texas, and encompasses 0.64 nmi<sup>2</sup>. The three areas encompass a total of 42.34 nmi<sup>2</sup> (145.09 square kilometers). The boundary coordinates for each area are listed in appendix A to this subpart.

3. Section 922.121, Definitions, is revised to read 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 “ $\frac{1}{4}$   $\frac{1}{4}$ ” 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.

4. Section 922.123, Permit procedures and criteria, is amended by revising paragraph (b) 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.

5. Appendix A to subpart L of part 922, Flower Garden Banks National Marine Sanctuary Boundary Coordinates, is revised to read 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)
<b>East Flower Garden Bank: (NAD 27)</b>		
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"
<b>West Flower Garden Bank: (NAD 27)</b>		
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"
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"
<b>Stetson Bank: (NAD 27)</b>		
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"
<b>East Flower Garden Bank: (NAD 83)</b>		
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"
<b>West Flower Garden Bank: (NAD 83)</b>		
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"
<b>Stetson Bank: (NAD 83)</b>		
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"

Point	Latitude (N)	Longitude (W)
S-4 .....	28 deg. 09' 28.66320"	94 deg. 17' 25.67770"

6. Appendix B to subpart L of part 922, Coordinates for the Department of the Interior Topographic Lease Stipulations for OCS Lease Sale 171, is revised to read 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)*

SE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; S<sup>1</sup>/<sub>2</sub>, NE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>; SE<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>; S<sup>1</sup>/<sub>2</sub>, SE<sup>1</sup>/<sub>4</sub>.

*Block A-376*

W<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; SW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>.

*Block A-374*

W<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; W<sup>1</sup>/<sub>2</sub>, SW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; SE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; SW<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, W<sup>1</sup>/<sub>2</sub>, SW<sup>1</sup>/<sub>4</sub>; W<sup>1</sup>/<sub>2</sub>, SE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; SE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>.

*Block A-375*

E<sup>1</sup>/<sub>2</sub>; E<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; SW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>, SW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; SW<sup>1</sup>/<sub>4</sub>.

*Block A-388*

NE<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; NE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>, NE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; NW<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; NE<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; NE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>; NE<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>; W<sup>1</sup>/<sub>2</sub>, NE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>; NW<sup>1</sup>/<sub>4</sub>,

*Block A-389*

NE<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; NW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; SW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; NE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; W<sup>1</sup>/<sub>2</sub>, SE<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; N<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>.

**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)*

E<sup>1</sup>/<sub>2</sub>, SE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>; SW<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>.

*Block A-384*

W<sup>1</sup>/<sub>2</sub>, SW<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>; SE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>; S<sup>1</sup>/<sub>2</sub>, SE<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>; SE<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>, SW<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; SW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; SE<sup>1</sup>/<sub>4</sub>.

*Block A-385*

SW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>.

*Block A-397*

W<sup>1</sup>/<sub>2</sub>, W<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>; W<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>.

*Block A-398*

Entire block.

*Block A-399*

E<sup>1</sup>/<sub>2</sub>, SE<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>, SE<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>, NE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; SW<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>; NE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>.

*Block A-401*

NE<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>; N<sup>1</sup>/<sub>2</sub>, NW<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>; NE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>.

*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.

[FR Doc. 00-32390 Filed 12-18-00; 2:55 pm]

BILLING CODE 3510-08-P

limitations presented in the appendix to this AD.

(i) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Raytheon Mandatory Service Bulletin SB 27-3478, Issued: September 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201-0085; telephone: (800) 429-5372 or (316) 676-3140. You may view this information at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(j) *When does this amendment become effective?* This amendment becomes effective on December 13, 2001.

#### Appendix to Docket No. 2001-CE-35-AD

The following must be adhered to in order to obtain a special flight permit as specified in paragraph (h).

Limitations—Flaps must be retracted for all takeoffs.

#### Emergency Procedures

##### *Asymmetrical Flaps*

Attempt to retract the flaps. If flaps will not retract, the airplane will have a tendency to roll in the direction of the retracted flap. This roll tendency will increase with increasing speed. Use aileron trim and reduce speed as required to reduce roll forces.

##### *Flaps-Up or Asymmetrical-Flap Landing*

Follow all published Before Landing Procedures except for airspeed. Maintain the published Flaps-Up Approach Speed. If this speed is not published, use one of the following:

(a) Multiply the highest indicated flaps-up stall speed, found in the Performance Section, by 1.3.

or

(b) For Bonanza Series, T-34A, T-34B, and 45, add 10 knots to the published Flaps-Down Landing Approach Speed.

(c) For Baron Series, add 15 knots to the published Flaps-Down Landing Approach speed.

Plan on longer landing distance.

Issued in Kansas City, Missouri, on November 13, 2001.

**James E. Jackson,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 01-29019 Filed 11-20-01; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Part 922

[Docket No. 010416096-1265-02]

RIN 0648-AP22

#### Revisions to Anchoring Prohibitions in the Flower Garden Banks National Marine Sanctuary

**AGENCY:** Marine Sanctuaries Division (MSD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Final rule.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) is amending the regulations governing the anchoring and mooring of vessels in the Flower Garden Banks National Marine Sanctuary (FGBNMS or Sanctuary). NOAA is making this change to conform the regulations to anchoring prohibitions adopted by the International Maritime Organization (IMO), at its December 6, 2000 meeting. NOAA will prohibit all anchoring and mooring in the Sanctuary with the exception that vessels 100 feet (30.48 meters) and under in length are permitted to moor at existing Sanctuary mooring buoys. The intent of this rule is to prevent further injuries to corals in the Sanctuary from anchoring.

**EFFECTIVE DATE:** This rule will take effect on November 21, 2001.

**FOR FURTHER INFORMATION CONTACT:** G.P. Schmahl (979) 779-2705, or Lisa Symons (301) 713-3141, ext. 108.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Sanctuary consists of three separate areas of ocean waters over and surrounding the East and West Flower Garden Banks and Stetson Bank (the 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 (nmi) south-southwest of Cameron, Louisiana, and encompasses 19.20 nmi<sup>2</sup>. The area designated at the West Bank is located approximately 110 nmi southeast of Galveston, Texas, and encompasses 22.50 nmi<sup>2</sup>. The area designated at Stetson Bank is located approximately 70 nmi. southeast of Galveston, Texas, and encompasses 0.64 nmi<sup>2</sup>. The three areas encompass a total of 42.34 nmi<sup>2</sup>

(145.09 square kilometers). The area is unique among the world's coral reefs. The area contains the northernmost coral reefs on the North American continental shelf and supports the most highly developed offshore hard-bank communities in the region.

The Sanctuary is home to organisms unknown on the world's other continental shelves. These organisms are generally associated with the hypersaline, anoxic brine seep having a chemosynthetic energy base analogous to that found at deep-sea hydrothermal vents. The reefs in Flower Garden Banks crest at approximately 15 meters below the water surface and extend downward to 46 meters depth, where the hermatypic corals are replaced by reefal communities dominated by coralline algae and sponges. This deeper "algal terrace" covers most surfaces down to a depth of 90 meters. The area has at least 20 species of hermatypic (reef building) corals, 80 species of algae, 196 known macro-invertebrate species, and more than 200 fish species. The reef-building corals and coralline algae construct and maintain the substratum and, through a multitude of relationships, largely control the structure of benthic communities occupying the banks. As the primary building-blocks of the entire ecosystem of the Banks, the coral and algae are by far the most important organisms in the Flower Garden Banks.

Observations by Sanctuary staff, researchers and members of the diving public indicate that anchoring of large commercial ships, particularly internationally flagged vessels, has caused considerable damage to the corals and other resources of the Sanctuary despite existing domestic regulations prohibiting anchorage of vessels greater than 100 feet (30.48 meters). There is clear evidence of anchoring damage to Flower Garden Banks from large ships. Scars or tracks of pulverized coral have been documented by studies conducted by submersibles and divers. The largest scar from anchoring found to date extends for approximately 1.7 kilometers and resembles a continuous, "roadcut-like" gouge into the bank. Another crater-like scar measures approximately 50 meters in diameter. Scars from the swinging of ships on their anchor chains are evident on many corals. There are hundreds of coral colonies abraded, fractured or toppled, apparently by the dragging of anchors or anchor cables and chains. Loose coral pieces act as agents of further injury to the living coral, particularly during heavy seas and storms as the pieces are repeatedly driven into and around the living coral. The regeneration of the reef

from anchor damage may never occur. Even if optimal conditions for regeneration occur, it would still take hundreds and perhaps thousands of years for the reef to return to its pre-damage condition.

Safety considerations also support establishment of this measure. The area is transited by commercial ships, many of which are en route to and from the U.S. ports in Texas and Louisiana. The safety of a ship can depend on the ability of its anchor to hold. The character of the bottom is of prime importance in determining whether an anchor will hold. Coral provides an unstable anchoring bottom. The scars and damage to the coral in this area evidence that anchors tend to drag along the bottom when deployed in coral rather than hold in the coral.

In July of 2000, the United States delegation to the International Maritime Organization (IMO), submitted a proposal to ban anchoring in the FGBNMS for vessels greater than 100 feet (30.48 meters). The IMO, out of concern for impacts to corals, modified the United States' proposal to prohibit all anchoring, but vessels 100 feet (30.48 meters) and under would be allowed to moor using existing Sanctuary mooring buoys. Implementation of this regulation and the restrictions on anchoring adopted by IMO will prevent further injury to the coral and reef community. The new international measure will also ensure that no-anchoring zones are marked on all charts internationally. This rule will conform the Sanctuary regulations to the IMO action.

Recreational and commercial vessels 100 feet (30.48 meters) and under in length may continue to use existing mooring buoys. There are currently 12 buoys on East and West Flower Garden Banks and 3 buoys on Stetson Banks. Additional buoys will be provided within or adjacent to the Sanctuary if necessary.

The Animal Protection Institute was the only party submitting written comment on the proposed rule (66 FR 26822, May 15, 2001). The Animal Protection Institute stated: "We hope the proposed rule will improve compliance with this restriction by ensuring the Sanctuary is marked on all international charts that identify no-anchoring zone . . . This proposal is a step toward providing the Flower Garden Banks coral reef ecosystems the protection it needs and it reflects the values of a majority of Americans who support strong protections for our nation's protected wild areas."

## II. Miscellaneous Rulemaking Requirements

### *National Marine Sanctuaries Act*

Section 301(b) of the National Marine Sanctuaries Act, 16 U.S.C. 1434, provides authority for comprehensive and coordinated conservation and management of these areas in coordination with other resource management authorities.

### *National Environmental Policy Act*

NOAA has concluded that this regulatory action would not have a significant effect, individually or cumulatively, on the human environment. Further, the action is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement in accordance with Section 6.05b.2 of NOAA Administrative Order 216-6. Specifically, this action is not likely to result in significant impacts as defined in 40 CFR 1508.27.

### *Executive Order 12866*

This action has been determined to be not significant for the purpose of Executive Order 12866.

### *Regulatory Flexibility Act*

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. Vessels 100 meters and under in length, which are those most likely to belong to small entities, will be allowed to moor using Sanctuary mooring buoys. The majority of users in this area are divers either on their own vessels or vessels operated by dive charter organizations in the area. The dive charter operations use the existing Sanctuary moorings and since their vessels are less than 100 feet in length, they are not likely to be effected by this rule. Most of the vessels subject to this rule are foreign flagged vessels that are owned or chartered by large corporations. There is no reason to expect that this regulation will have a measurable impact on the small business community. Accordingly, an initial regulatory flexibility analysis was not prepared. No comments on this certification were received.

### *Paperwork Reduction Act*

This rule does not contain any collection of information requirements subject to the Paperwork Reduction Act. (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

## List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Historic preservation, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife.

Dated: November 9, 2001.

**Jamison S. Hawkins,**

*Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.*

Accordingly, for the reasons stated above, 50 CFR part 922 is amended as follows:

### **PART 922—[AMENDED]**

1. The authority citation for part 922 continues to read as follows:

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

### **Subpart L—Flower Garden Banks National Marine Sanctuary**

2. Section 922.122 (a)(2) is revised to read as follows:

#### **§ 922.122 Prohibited or otherwise regulated activities.**

(a) \* \* \*

(2)(i) Anchoring any vessel within the Sanctuary.

(ii) Mooring any vessel within the Sanctuary, except that vessels 100 feet (30.48 meters) or less in registered length may moor on a Sanctuary mooring buoy.

\* \* \* \* \*

[FR Doc. 01-28907 Filed 11-20-01; 8:45 am]

**BILLING CODE 3510-08-M**

## **DEPARTMENT OF THE INTERIOR**

### **Office of Surface Mining Reclamation and Enforcement**

#### **30 CFR Part 913**

**[SPATS No. IL-100-FOR]**

#### **Illinois Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is approving an amendment to the Illinois regulatory program (Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Illinois proposed revisions to and additions of statutory provisions concerning lands eligible for remining, the Illinois Interagency Committee on Surface Mining Control and

# Regulations:

## The Following is a List of Prohibited or Otherwise Regulated Activities Within the Flower Garden Banks National Marine Sanctuary, Which Includes Stetson Bank

### Anchoring and Mooring

The following activities are prohibited:

- Anchoring any vessel within the sanctuary
- Mooring a vessel over 100 feet in registered length on a sanctuary mooring buoy

### Discharges

Sanctuary regulations prohibit discharging or depositing any material or other matter with a few exceptions, including:

- Fish, fish parts, chumming materials or bait used in or resulting from fishing with conventional hook and line gear in the sanctuary
- Biodegradable effluents incidental to vessel use and generated by an approved marine sanitation device
- Water generated by routine vessel operations (e.g., cooling water, deck wash down, and graywater) excluding oily wastes from bilge pumping
- Engine exhaust

### Marine Mammals and Sea Turtles

Regulations prohibit taking any marine mammal or turtle within the sanctuary.

*Take or taking* includes, but is not limited to: to harass (e.g. to touch, ride, or shine bright lights into an animal's eyes), harm, pursue, hunt, shoot, wound, kill, trap, capture, collect or injure, or to attempt to engage in any such conduct. This includes, but is not limited to, the collection of any dead or injured marine mammal, sea turtle or seabird, or any part thereof, no matter how temporarily; 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.

The Flower Garden Banks National Marine Sanctuary, located roughly 115 miles south of the Texas/Louisiana coast, harbors the northernmost coral reefs in the continental United States and protects Stetson Bank and the East and West Flower Garden Banks.



NOAA's National Ocean Service

## Flower Garden Banks National Marine Sanctuary, including Stetson Bank

### Injury to or Possession of Sanctuary Resources

The following activities are generally prohibited:

- Injuring or removing, or attempting to injure or remove, any coral or other bottom formation, coralline algae or other plant, marine invertebrate (e.g., spiny lobster, queen conch, shell, sea urchin), brine-seep biota or carbonate rock within the sanctuary.
- Possessing within the sanctuary (regardless of where collected, caught, harvested or removed), any carbonate rock, coral or other bottom formation, coralline algae or other plant, or fish (except for fish caught by use of conventional hook and line gear).
- 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.

*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.

### Fishing and Related Activities

The following activities are generally prohibited:

- Injuring, catching, harvesting, collecting or feeding, or attempting to injure, catch, harvest, collect or feed, any fish within the sanctuary by use of any gear, device, equipment or means (e.g. spear guns, nets) except by use of conventional hook and line gear.
- Possessing (except while passing through the sanctuary without interruption) any fishing gear, device, equipment or means except conventional hook and line gear.
- Possessing, or using explosives or releasing electrical charges within the sanctuary.

*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 hand or electrically operated, hand-held or mounted.

For full text of the regulations contact the sanctuary or see: 15 CFR, Subpart L, 922.122(a); 15 CFR, Subpart A, 922.3

### Contact Information

Flower Garden Banks  
National Marine Sanctuary  
4700 Avenue U, Bldg. 216  
Galveston, TX 77551  
(409) 621-5151 phone;  
(409) 621-1316 fax  
flowergarden@noaa.gov  
<http://flowergarden.noaa.gov>



Updated 10/13/06

*Taiwan: Final Results of Antidumping Duty Administrative Review*, 73 FR 62477 (October 21, 2008) (*Final Results*). In the *Final Results*, the Department stated incorrectly that the weighted-average percentage margin it found for Far Eastern Textile Limited (FET) is 1.72 percent. In fact, the margin we determined for FET is 1.74 percent. See the final results analysis memorandum for FET dated October 14, 2008. The Department has instructed U.S. Customs and Border Protection to collect a cash deposit of 1.74 percent for entries from FET, effective October 21, 2008.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: December 16, 2008.

**Edward C. Yang,**

*Senior Enforcement Coordinator, China/NME Group for Import Administration.*

[FR Doc. E8-30558 Filed 12-22-08; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; Socioeconomic Impacts of Proposed Boundary Expansion and Research Only Area Alternatives in the Flower Gardens Bank National Marine Sanctuary

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**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.

**DATES:** Written comments must be submitted on or before February 23, 2009.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be

Dr. Vernon Leeworthy, 301-713-7261 or [Bob.Leeworthy@noaa.gov](mailto:Bob.Leeworthy@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The purpose of this information collection is to obtain socioeconomic information in the Flower Gardens Bank National Marine Sanctuary (FGBNMS). The FGBNMS is in the process of revising its management plan, and two issues have emerged as top priorities: (1) boundary expansion and (2) research only area. Information is required to assess the potential socioeconomic impacts of boundary expansion and research only area alternatives. The study involves surveys of seven different user group/stakeholders: commercial fishing operations, recreational charter/party boat operations, private households that participate in recreational fishing, dive charter/guide operations, private households that participate in SCUBA diving, and oil and gas operations. Information will be collected on spatial use for all user groups to assess the extent of potential displacement of activity from either a proposed boundary expansion alternative or a research only area alternative.

For business operations, costs and earnings will be obtained to assess the impact of regulatory alternatives on business profits. Socioeconomic/demographic information on owners/operators and number of employees and family members of owners/operators will also be obtained.

For members of households that participate in recreational fishing or recreational SCUBA diving, information will be collected on socioeconomic/demographic profiles, spending associated with their activity, economic user value associated with their activity, and knowledge, attitudes and perceptions about FGBNMS management strategies and regulations.

##### II. Method of Collection

Interviews will generally be used. For business operations, a team will go to the business establishment and work with the business owner/staff to compile the information requested. Questionnaire forms and maps will be used to guide the information collection. For members of private households engaging in recreational activities, combinations of face-to-face, mail and Internet surveys will be conducted.

##### III. Data

*OMB Control Number:* None.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Individuals or households; business or other for-profit organizations.

*Estimated Number of Respondents:* 360.

*Estimated Time per Response:* Commercial fishing operations, 2 hours; recreational fishing charter/party boat operations, 2 hours; members of private households participating in recreational activities, 30 minutes; dive charter/guide operations, 2 hours; and oil and gas operations, 2 hours.

*Estimated Total Annual Burden Hours:* 270.

*Estimated Total Annual Cost to Public:* \$0.

#### 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: December 18, 2008.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E8-30472 Filed 12-22-08; 8:45 am]

**BILLING CODE 3510-NK-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; Marine Recreational Fisheries Statistics Survey

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**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.

**DATES:** Written comments must be submitted on or before February 23, 2009.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Erik Zlokovitz, Phone: (301) 713-2328 or [Erik.Zlokovitz@noaa.gov](mailto:Erik.Zlokovitz@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

Marine recreational anglers are surveyed for catch and effort data, fish biology data, and angler socioeconomic characteristics. These data are required to carry out provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C. 1801 *et seq.*), as amended, regarding conservation and management of fishery resources.

Marine recreational fishing catch and effort data are collected through a combination of telephone surveys and on-site intercept surveys with recreational anglers. The recent amendments to MSA require the development of an improved data collection program for recreational fisheries. To meet the requirements of MSA, NOAA, National Marine Fisheries Service is developing pilot studies to test alternative approaches for surveying recreational anglers. Studies will test the effectiveness of mail surveys and panel surveys for contacting anglers and collecting recreational fishing data. The goal of these studies is to develop an efficient means of collecting fishing catch and effort data while maintaining complete coverage of the angling population.

**II. Method of Collection**

Information will be collected through telephone and mail interviews.

**III. Data**

*OMB Control Number:* 0648-0052.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Individuals or households, business or other for-profit organizations.

*Estimated Number of Respondents:* 893,321.

*Estimated Time Per Response:* 9 minutes for mail interviews, and 35 minutes for panel survey phone interviews.

*Estimated Total Annual Burden Hours:* 46,459.

*Estimated Total Annual Cost to Public:* \$0.

**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: December 18, 2008.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E8-30457 Filed 12-22-08; 8:45 am]

**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XM31**

**Marine Mammals; File Nos. 13583 and 13599**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; issuance of permits.

**SUMMARY:** Notice is hereby given that following two entities have been issued permits to collect/receive/import/export protected species parts for scientific research purposes:

National Marine Mammal Laboratory (NMML, Dr. John Bengtson, Responsible Party), 7600 Sand Point Way NE, Seattle, WA 98115 (File No. 13583) and

National Ocean Service Marine Forensic Lab (NOS Lab, Julie Carter,

Responsible Party), 219 Fort Johnson Road, Charleston, SC 29412 (File No. 13599).

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713-2289; fax (301)427-2521 (File Nos. 13583 and 13599);

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668; phone (907)586-7221; fax (907)586-7249 (File No. 13583); and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727)824-5312; fax (727)824-5309 (File No. 13599).

**FOR FURTHER INFORMATION CONTACT:** Jennifer Skidmore or Kate Swails, (301)713-2289.

**SUPPLEMENTARY INFORMATION:** On September 11, 2008, notice was published in the **Federal Register** (73 FR 52829) that a request for scientific research permits had been submitted by the above-named organizations. The requested permits have been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

*File No. 13583:* NMML has been issued a permit continuing the activities previously authorized under Permit No. 782-1694. This permit authorizes collection of cetacean and pinniped (except for walrus) specimens from dead animals, and for import, export, and possession of specimens taken legally worldwide. These samples may be archived, transported, shared, and analyzed by researchers in order to optimize the amount of biological information gained from each animal. No takes of live animals is authorized under this permit. There will be no non-target species taken incidentally under this permit because the permit would only cover collection, importation, exportation, and possession of samples from dead animals or live animals taken legally under other permits. This permit is valid for five years.