

Document	ADAMS accession No./ web link/ <b>Federal Register</b> citation
Proposed Certificate of Compliance No. 1032 Amendment No. 6 Approved Contents and Design Features, Appendix B.	ML22145A410.
User Need Memorandum for Rulemaking for the HI-STORM Flood/Wind Multipurpose Canister Storage System, Amendment No. 6.	ML22145A407.

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#### List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Indians, Intergovernmental relations, Nuclear energy, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72:

#### PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 2. In § 72.214, revise Certificate of Compliance No. 1032 to read as follows:

#### § 72.214 List of approved spent fuel storage casks.

\* \* \* \* \*

*Certificate Number:* 1032.

*Initial Certificate Effective Date:* June 13, 2011, superseded by Amendment Number 0, Revision 1, on April 25, 2016.

*Amendment Number 0, Revision 1, Effective Date:* April 25, 2016.

*Amendment Number 1 Effective Date:* December 17, 2014, superseded by Amendment Number 1, Revision 1, on June 2, 2015.

*Amendment Number 1, Revision 1, Effective Date:* June 2, 2015.

*Amendment Number 2 Effective Date:* November 7, 2016.

*Amendment Number 3 Effective Date:* September 11, 2017.

*Amendment Number 4 Effective Date:* July 14, 2020.

*Amendment Number 5 Effective Date:* July 27, 2020.

*Amendment Number 6 Effective Date:* March 22, 2023.

*Amendment Number 7 [Reserved]*

*Amendment Number 8 Effective Date:* October 11, 2022.

*SAR Submitted by:* Holtec International.

*SAR Title:* Final Safety Analysis Report for the HI-STORM FW System.

*Docket Number:* 72–1032.

*Certificate Expiration Date:* June 12, 2031.

*Model Number:* HI-STORM FW MPC–37, MPC–89.

\* \* \* \* \*

Dated: December 21, 2022.

For the Nuclear Regulatory Commission.

**Daniel H. Dorman,**

*Executive Director for Operations.*

[FR Doc. 2022–28633 Filed 1–5–23; 8:45 am]

**BILLING CODE 7590–01–P**

#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 15 CFR Part 922

[Docket No. 221215–0274]

RIN 0648–AV85

#### National Marine Sanctuary Regulations

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Final rule; interim final rule; administrative withdrawal.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) published in the **Federal Register** on May 13, 2022 an interim final rule amending the National Marine Sanctuaries program regulations, which has not yet gone into effect. With this final rule, NOAA administratively withdraws the amendatory instructions and associated regulatory text of the interim final rule, and, in response to public comment replaces it with slightly revised amendatory instructions and regulatory text for a few—but not all—provisions that were in that interim final rule. NOAA, however, retains the preamble and the responses to public comments provided in the interim final rule. Even with these revisions, this final rule is largely similar to the interim final rule, except that NOAA retains the existing regulatory language on the definition of “commercial fishing” and retains the opportunity for third party appeals of sanctuary permitting decisions by interested parties in those sanctuaries that currently recognize such appeals. In addition, this final rule removes amendatory instructions for updating the boundary description and boundary coordinates for the Flower Garden Banks National Marine Sanctuary (NMS), which were inadvertently included in the interim final rule and did not reflect a boundary expansion that went into effect on March 22, 2021. This document provides responses to additional comments received on the interim final rule.

**DATES:** This rule is effective on February 6, 2023. As of January 6, 2023, the interim final rule published May 13, 2022, at 87 FR 29606, delayed on June 24, 2022, at 87 FR 37228, and further delayed on September 14, 2022 (87 FR 56268), is withdrawn.

**ADDRESSES:** Vicki Wedell, NOAA Office of National Marine Sanctuaries, (240) 533-0650, [Vicki.Wedell@noaa.gov](mailto:Vicki.Wedell@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Vicki Wedell, NOAA Office of National Marine Sanctuaries, (240) 533-0650, [Vicki.Wedell@noaa.gov](mailto:Vicki.Wedell@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The National Marine Sanctuaries Act (NMSA) authorizes the Secretary of Commerce (Secretary) to designate, manage, and protect as a national marine sanctuary (NMS) any area of the marine environment that is of special national significance due to its conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities (16 U.S.C. 1431 *et seq.*). Since the NMSA was enacted, fifteen (15) NMSs have been designated. Day-to-day management of the National Marine Sanctuaries System (System) is delegated from the Secretary to NOAA's Office of National Marine Sanctuaries (ONMS). Regulations implementing the NMSA are codified in Title 15, part 922 of the Code of Federal Regulations (CFR). Part 922 includes general regulations applicable to all sanctuaries (subparts A through E) and site-specific regulations that relate to each individual sanctuary (subparts F through T).

As the System evolved and new sanctuaries were designated, corresponding changes were made to the general and site-specific regulations. In certain instances, these changes produced redundant, inconsistent, outdated, or conflicting regulatory provisions. NOAA published a proposed rule on January 18, 2011 (78 FR 5998) to update and streamline the regulations, and subsequently published an interim final rule on May 13, 2022 adopting the proposed changes, establishing a delayed effective date, and providing an opportunity for additional public comment (87 FR 29606). This final rule withdraws the amendatory instructions and associated regulatory text of that interim final rule, but retains the preamble and responses to comments provided in that interim final rule. The effect of this final rule is to affirm much of that interim final rule, as this final rule is largely similar to the interim final rule. As such, this final rule updates both the general and site-

specific regulations as contemplated in the original proposed rule, making the regulations more consistent, uniform, concise, organized, and understandable by:

- Reorganizing and consolidating existing general regulations published in subparts A (General), B (Sanctuary Nomination Process), C (Designation of National Marine Sanctuaries), D (Management Plan Development and Implementation, and E (Regulations of General Applicability) into a new subpart A (Regulations of General Applicability);
- Updating and consolidating sanctuary permitting procedures and requirements into a new subpart D (National Marine Sanctuary Permitting), which applies to all sanctuaries unless expressly stated in subpart D or the site-specific regulations;
- Reserving subparts B, C, and E; and
- Making non-substantive, administrative changes to the site-specific sanctuary regulations set forth in subparts F through T of 15 CFR part 922.

**II. Changes to the Interim Final Rule**

This final rule administratively withdraws the amendatory instructions and associated text from the interim final rule published on May 13, 2022, at 87 FR 29606,<sup>1</sup> and replaces them with the amendatory instructions and associated regulatory text herein, while retaining the interim final rule's preamble discussion and the interim final rule's responses to comments. The effect of this final rule is to largely affirm the interim final rule, while making minor amendments in certain provisions to respond to comments and make technical corrections to boundary coordinates.

As noted below in "III. Response to Comments on the interim final rule", NOAA retains the existing regulatory language for the definition of the term "commercial fishing" and for third party appeals of sanctuary permitting decisions by interested persons in those sanctuaries that currently recognize such appeals (*i.e.*, Monitor, Channel Islands, Greater Farallones, Gray's Reef, Cordell Bank, Mallows Bay—Potomac River, Wisconsin Shipwreck Coast national marine sanctuaries, and National Marine Sanctuary of American Samoa). In addition, this final rule removes amendatory instructions for updating the boundary description and boundary coordinates for the Flower

Garden Banks National Marine Sanctuary (NMS), which were inadvertently included in the interim final rule and did not reflect the boundary expansion that went into effect on March 22, 2021 (86 FR 15404). These changes from the interim final rule are discussed below in more detail.

In FR Doc. 2022-09626 appearing on page 29606 in the **Federal Register** of Friday, May 13, 2022, the following corrections are made:

A. Instruction 19 in the regulatory text of the interim final rule, appearing at 87 FR 29633, directed the **Federal Register** to revise paragraph (a) in 15 CFR 922.92. However, only the introductory text of the paragraph was set out and the remaining subparagraphs in the section were inadvertently omitted. The instruction should have said to revise the introductory text of paragraph (a), keeping the subparagraphs unchanged. In order to retain the subparagraphs to (a), NOAA publishes this final rule with this technical correction and makes the corresponding changes to the amendatory instructions below.

B. Instructions 29 and 33 in the regulatory text are removed. The boundary description for Flower Garden Banks NMS is set forth in 15 CFR 922.120, and Appendix A of 15 CFR 922 subpart L, includes the boundary coordinates for the Flower Garden Banks NMS. The sanctuary was expanded in 2021 to include several additional banks in the northwestern Gulf of Mexico (86 FR 4937; January 19, 2021). The amendatory instructions to revise the boundary description in 15 CFR 922.120 and the table of boundary coordinates are removed so the areas added to the sanctuary in 2021 will be retained.

In response to a public comment requesting that NOAA conduct additional analysis before modifying the definition of the term "commercial fishing," NOAA has decided not to move forward with changing the definition. NOAA will further evaluate the issues before proposing to modify the definition of the term "commercial fishing."

Based on the input we received through public comments, NOAA has decided not to finalize the proposal to limit third party appeals to only applicants and permittees in sites that allow any interested person to appeal. Instead, NOAA is retaining the existing language in the regulations that provides the opportunity for third party administrative appeals at Monitor NMS, Channel Islands NMS, Greater Farallones NMS, Gray's Reef, NMS of American Samoa, Cordell Bank NMS, Mallows Bay Potomac River NMS, and

<sup>1</sup>Note, the effective date of Interim Final Rule was delayed on June 24, 2022, at 87 FR 37228, and again delayed on September 14, 2022 at 87 FR 56268.

Wisconsin Shipwreck Coast NMS (see subparts F through K and S and T). NOAA intends to continue evaluating the process for engaging with interested parties in sanctuary permitting decisions and may revisit this issue in a subsequent rulemaking process.

### III. Response to Comments on the Interim Final Rule

NOAA received eight public comments on the interim final rule, which are divided into ten topics. Each topic is summarized below and NOAA's responses follow.

1. *Comment:* NOAA received several comments that expressed general support for the housekeeping rulemaking effort, in which NOAA seeks to streamline and clarify important elements of ONMS regulations. There was also support for specific provisions, including the decision not to consolidate the definition of "traditional fishing" and the decision to extend the deadline from 120 days to 180 days for a Regional Fishery Management Council to respond to a request for draft fishing regulations pursuant to NMSA section 304(a)(5).

*Response:* NOAA appreciates the public support for those provisions.

2. *Comment:* NOAA received a comment that identified a correction that needs to be made regarding a web page on the ONMS website that should be updated to include the new expanded Flower Garden Banks NMS boundaries. The commenter also identified that Appendix A to subpart L of 15 CFR part 922 should be updated to include the new expanded Flower Garden Banks NMS boundaries.

*Response:* NOAA will update the web page accordingly and, as discussed above, this final rule corrects the interim final rule to accurately describe the Flower Garden Banks NMS boundaries in subpart L of 15 CFR part 922.

3. *Comment:* NOAA received a comment requesting that it reissue the rulemaking as a proposed rule to solicit additional public comment.

*Response:* NOAA declines to reissue the rulemaking as a proposed rule. Although several years have passed since the 2013 proposed rule was published, NOAA believes the organizational and clarifying changes contained in that proposed rule remain relevant and useful, and will make it easier for stakeholders and the public to understand and navigate the NMSA regulations. NOAA accepted public comment on the proposed rule for a period of sixty days from January 28, 2013 through March 28, 2013, and NOAA received 28 comments on the

proposed rule. Recognizing the time that elapsed since the publication of the 2013 proposed rule, NOAA issued an interim final rule with a delayed effective date that provided an additional thirty-day public comment period, which opened on May 13, 2022 and closed on June 13, 2022. The purpose of this additional public comment period was to provide NOAA with further opportunity to consider the potential impact of this action, including any relevant new issues or concerns that may have arisen in the years since the rule was proposed. NOAA received only eight public comments on the interim final rule. In total, ninety days of public comment have been afforded for this Action. Given this, NOAA believes there has been sufficient opportunity for public engagement to identify the relevant views of the public related to this rulemaking.

4. *Comment:* One commenter questioned the proposed modification to the definition of the term "commercial fishing" and recommended that additional analysis be completed before the definition is changed. The commenter noted that commercial fishing includes specific permitting, reporting and operational requirements and that simply trying to sell fish does not make that person a commercial fisher. The commenter asked how the definition considers charter or for-hire captains that are permitted to sell their catch. Lastly, the commenter questioned how attempts to fish commercially would be enforced.

*Response:* NOAA reviewed the proposed modification to the definition of the term "commercial fishing" in light of the concerns raised by the commenter and has decided not to finalize the proposed modification to the definition. NOAA will continue to evaluate the proposed modification and may revisit this issue in a subsequent rulemaking.

5. *Comment:* One commenter questioned the modification of the term "conventional hook and line gear" and recommended that additional analysis be completed before the definition is changed. They indicated that the implications of removing the term "bottom" in the term "bottom longline" are uncertain and it is unclear why "bottom longline" is not considered "conventional hook and line gear." The commenter also asked about the implications of the change for pelagic longline and buoy gear. The commenter further asked whether the length of the gear (e.g., the mainline) or number of hooks deployed or the material of the

mainline impact the applicability of the term "conventional hook and line gear."

*Response:* In Flower Garden Banks NMS, "conventional hook and line gear" is an exception to various regulatory prohibitions relating to the discharge or deposit of material within the sanctuary, injuring fish, whale shark and other sanctuary resources identified in the site-specific regulations at 922.122(a)(3)(i)(A) and (a)(7)–(10). Related to this sanctuary's regulations, "conventional hook and line gear" is inclusive of any fishing gear composed of a single line terminated by a combination of sinkers and hooks or lures. The definition of "conventional hook and line gear" was first introduced with the designation Flower Garden Banks NMS, which is the only site that uses the term. Historically, longline, particularly bottom longline, has been excluded from the definition of "conventional hook and line gear" (56 FR 64634; Dec. 5, 1991). According to the 1991 Flower Garden Banks NMS Final Environmental Impact Statement (FGBNMS FMP/FEIS), handlines were the only commercial fishing method documented at Flower Garden Banks NMS at the time of the designation and were particularly used for reef fish (see p. 40, FGBNMS FMP/FEIS). The use of bottom longlines and similar gear (such as buoy gear) was and still remains prohibited at Flower Garden Banks NMS pursuant to regulations implementing the Gulf of Mexico Fishery Management Plan for Coral and Coral Reefs (see p. 40, FGBNMS FMP/FEIS; see e.g., 50 CFR 622.74(p), (q), and (r)). Sport fishermen also used handlines to fish for snappers and groupers (see p. 40–41, FGBNMS FMP/FEIS). Since longline (including pelagic and buoy gear) is a single line fitted with a series of offshoot lines (ganglions) and baited hooks along its entire length, it does not fit within the definition of "conventional hook and line gear," which is a single line terminated by a combination of sinkers and hooks or lures. The purpose of this rulemaking is not to make substantive changes to the definition; rather, the purpose, as noted in the 2013 proposed rule, is to clarify that the fishing gear prohibition applies to all types of longlines in Flower Garden Banks NMS, and not just bottom longlines (78 FR 5998, 6001; Jan. 28, 2013). The length of the longline mainline, numbers of hooks along the offshoot lines, and material of the mainline does not impact the applicability of the term "conventional hook and line" as this term applies to the site-specific regulations for Flower Garden Banks NMS.

6. *Comment:* One commenter expressed concerns that the changes between the proposed rule and the interim final rule regarding the definition of the term “take (taking or taken)” limits its applicability to marine mammals, sea turtles and birds with protections under those laws identified (the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), and the Migratory Bird Treaty Act (MBTA)), and asserted that the final definition excludes animals that were proposed to be included. The commenter asked that NOAA provide additional information about the impacts of this rulemaking on ESA-listed species and suggested that the changes to the definition of “take (taking or taken)” may affect listed species and therefore may require consultation under Section 7 of the Endangered Species Act.

*Response:* The proposed rule sought to reformat and update the existing definition of “take or taking.” The proposed definition of “take or taking” also included a fourth provision intended to clarify that the definition did not only apply to marine mammals, sea turtles, or birds, but also applied to other sanctuary resources. In response to public comments concerned that the proposed definition of “take or taking” inadvertently expanded the scope of the existing regulatory prohibitions (*see* interim final rule Comment 24 in Section IV. Responses to Comments), NOAA revised the proposed definition by eliminating the fourth provision. For site-specific regulations that prohibit take of other living or non-living sanctuary resources (*e.g.*, 15 CFR 922.112(a); 922.132(11)(i); 922.163(a)(2), (5); 922.164(d)(ii)), the plain language reading of the term “take (taking or taken)” continues to apply. In this final rule (as in the interim final rule), NOAA neither expands nor narrows the scope of the term “take” which applies to species listed under the ESA, MMPA, or MBTA. This action makes no change to the current definition of the term “take” as it applies to ESA-listed marine mammals, sea turtles, and seabirds. Therefore, ONMS does not believe there is a substantive impact on ESA-listed species, or that the Section 7 ESA consultation requirement is triggered.

7. *Comment:* NOAA received comments that raised concerns regarding limiting administrative permit appeals to applicants and holders of permits. These comments asserted that all sanctuaries should allow third parties to have an opportunity for an administrative appeal of ONMS permit decisions. The commenters also noted that, eliminating third party permit

appeals, would force third parties to litigate sanctuary permitting concerns in federal court.

*Response:* NOAA declines to extend third party appeals to all sites. However, in response to public comment on the interim final rule, NOAA will retain the existing opportunity for third party sanctuary permit appeals in sites in the System that currently afford such appeals. If NOAA chooses to propose changes to the appellant pool at some point in the future, NOAA would do so through a separate rulemaking. NOAA notes that interested third parties may also provide meaningful input to the permit process and the underlying sanctuary regulations, through a variety of other mechanisms, including public review and comment of associated environmental analyses as part of the National Environmental Policy Act (NEPA) process or other statutory processes, as applicable.

8. *Comment:* NOAA received comments that raised concerns about an existing ONMS permit approval authority referred to as ONMS authorization (found in the interim final rule and this final rule at new section 15 CFR 922.36), which allows the ONMS Director to allow an applicant to conduct an otherwise prohibited activity if the proposed activity is permitted by another valid federal, state, or local agency. Commenters asserted that another agency’s permit authority should not override ONMS regulatory prohibitions that were established during sanctuary designation or subsequent regulatory revisions. They also asserted that a public review and comment process should be required before an ONMS authorization for the prohibited activity is issued.

*Response:* The ONMS authorization authority is an existing type of permit approval authority that the Director may rely upon to allow otherwise prohibited activities within certain National Marine Sanctuaries (*i.e.*, Flower Garden Banks, Monterey Bay, Stellwagen Bank, Olympic Coast, Florida Keys, Thunder Bay, Mallow Bay-Potomac River, and Wisconsin Shipwreck Coast), where such activities are permitted by another valid Federal, State, or local agency. The Director must consider a suite of review criteria to decide whether to issue an ONMS authorization and what terms and conditions should be applied to an ONMS authorization. Utilization of this long-standing ONMS authorization authority can function to minimize administrative burdens on the regulated community while retaining the Director’s ability to safeguard sanctuary resources and effectively manage those sanctuaries. NOAA’s revisions to the

regulatory provisions on ONMS authorization (as found in new section 15 CFR 922.36) are intended to clarify—not substantively alter—the existing ONMS authorization authority, which was previously codified at 15 CFR 922.49. Through this action, NOAA is not expanding the existing ONMS authorization authority or creating a new authority. Therefore, this comment is beyond the scope of this action. We also note that, as with other ONMS permit approvals, the public may provide input to the permit process through other mechanisms, including public review and comment of associated environmental analyses as part of the NEPA process or other statutory processes, as applicable.

9. *Comment:* One commenter asked NOAA to further regulate primary threats to ESA-listed species in NMSs, including those threats that result from fishing activities. The commenter specifically raised concerns about language in 15 CFR 922.5 that states, “[t]he Director may only directly regulate fishing activities pursuant to the procedure set forth in section 304(a)(5) of the NMSA.” The commenter asserted that it is inconsistent with a provision in Section 2(c) of the ESA that establishes that it is “the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.” They further stated that the ESA defines “conservation” to mean “the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the [ESA] are no longer necessary.”

*Response:* This action is intended to promulgate administrative updates to the existing sanctuary regulations (15 CFR part 922) to make them more consistent, uniform, concise, organized, and understandable. The commenter’s request for NOAA to promulgate additional regulatory protections to address primary threats to ESA-listed species in NMSs is a substantive change that is beyond the scope of this action. Thus, the commenter’s request to promulgate additional regulatory protections is declined.

10. *Comment:* One commenter recommended that NOAA update 15 CFR 922.122(h) to include renewable energy leases. These regulations relate to the limitation on the ability of ONMS to issue permits for the exploration for, development of, or production of oil,

gas, or minerals in a no-activity zone in the Flower Garden Banks NMS.

*Response:* This action is intended to promulgate administrative updates to the existing sanctuary regulations (15 CFR part 922) to make them more consistent, uniform, concise, organized, and understandable. Adding a new restriction on ONMS permitting authority for renewable energy leases would be a substantive revision to the regulations that is beyond the scope of this rulemaking. Accordingly, the commenter's request to update 15 CFR 922.122(h) to include renewable energy leases is declined.

## V. Classification

### A. National Environmental Policy Act<sup>2</sup>

NOAA Administrative Order (NAO) 216–6A and the Companion Manual for NAO 216–6A (<https://www.nepa.noaa.gov/docs/NOAA-NAO-216-6A-Companion-Manual-01132017.pdf>) establish NOAA's policy and procedures for compliance with NEPA and the associated Council on Environmental Quality's regulations. NAO 216–6A, Environmental Review Procedures, requires all proposed actions to be reviewed with respect to environmental consequences on the human environment.

In the proposed rule (78 FR 5998; January 28, 2013), NOAA stated that it was preparing a draft environmental assessment (EA) to analyze the potential environmental impacts of the proposed rulemaking and that the draft EA would be released for public comment. The analysis in the draft EA would have focused on analyzing the potential environmental impacts of the consolidated definition of motorized personal watercraft (MPWC). Based on public comment received on the proposed rule, NOAA decided to withdraw the proposal to consolidate the MPWC definition and it was not included in the interim final rule. As a result, NOAA determined that preparation of a draft EA was not necessary for this rule. NOAA determined that, because the interim final rule included only technical and administrative changes to regulatory

text, it fell within the criteria of a categorical exclusion in Appendix E of the NOAA NEPA Companion Manual, specifically categorical exclusion reference number G7 (“Preparation of policy directives, rules, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature, or for which the environmental effects are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or on a case-by-case basis.”) NOAA considered the list of extraordinary circumstances and determined that none would be triggered by this final rule. Therefore, NOAA determined that this final rule would not result in significant effects to the human environment and is categorically excluded from the need to prepare an EA.

### B. Executive Orders 12866 and 13563

This rule has been determined to be not significant within the meaning of Executive Order 12866. The rule is part of NOAA's effort to carry out the directive under Executive Order 13563 for retrospective regulatory review.

### C. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Pursuant to Executive Order 13175, NOAA consults with federally-recognized tribes on actions that may have tribal implications. NOAA determined that the amendments to the Olympic Coast NMS permitting regulations in the consolidation of permit procedures and review criteria into the new subpart D, although not resulting in a substantive change to permitting requirements, could be perceived as having tribal implications because some of the regulatory text is specific to the federally-recognized tribes along the Washington Coast (Coastal Treaty Tribes). Therefore, we have determined that this regulation has tribal implications as defined in Executive Order 13175. NOAA certifies that this final rule was developed after meaningful consultation and collaboration with tribal representatives in accordance with Executive Order 13175. NOAA engaged in government-to-government consultation with tribal representatives from the Makah, Hoh and Quileute Indian Tribes and the Quinault Indian Nation of the Olympic Coast Intergovernmental Policy Council (IPC). NOAA determined that this regulatory action did not have implications for any other federally-recognized tribes at other sites.

In January 2012, NOAA initiated a dialogue with the Coastal Treaty Tribes for a potential rulemaking action that would revise and consolidate program-wide and site-specific regulations. ONMS staff presented initial items for consideration by the IPC and its members at a February 8, 2012, meeting. In May 2012, NOAA addressed initial concerns that were raised at the February meeting, provided a summary of the proposed regulatory changes, and invited the IPC members to consult if there were concerns about the general proposals. In October 2012, NOAA provided more detailed information, including pre-release draft regulatory language for program-wide regulations and Olympic Coast NMS site-specific regulations that could be of interest to the tribes. After the proposed rule was published in the **Federal Register**, NOAA forwarded the notice to the Washington Coast treaty tribes on February 15, 2013.

The Makah Tribe provided comments on the proposed rule that raised three priority issues. In addition to the matter noted in the “IV Responses to Comments” section of the interim final rule, the Makah Tribe reiterated its longstanding position about the role of the Regional Fishery Management Councils (RFMCs) in fisheries management, which did not require action in this rulemaking. The Makah Tribe also expressed interest in improved tribal involvement in the consideration of Olympic Coast NMS permit applications. Since the publication of the 2013 proposed rule, Olympic Coast NMS and the Makah Tribe engaged in government-to-government consultation in the development of a joint “Protocol for Permit Consultation” (dated April 10, 2015) that specifies the procedures by which consultation and coordinated communication will occur between the Makah Tribe and Olympic Coast NMS staff. The sanctuary staff and tribal representatives meet periodically to engage in permit consultations on ONMS permit applications, and the results of these meetings are included in ONMS permit decision documents. In addition, the Makah Tribe and ONMS have developed a protocol to engage in consultation as part of the NMSA section 304(d) interagency consultation process and have implemented the protocol in two recent sanctuary consultations. Olympic Coast NMS staff regularly engages with the Washington Coast treaty tribes on various initiatives of mutual interest.

<sup>2</sup> In 1978, the White House Council on Environmental Quality (CEQ) issued regulations, codified at 40 CFR parts 1500–1508, to implement NEPA. 43 FR 55977 (Nov. 29, 1978). Most recently, the CEQ updated the NEPA regulations. 85 FR 43304 (Jul. 16, 2020) (codified at 40 CFR parts 1500–1508, 1515–1518). Pursuant to those updated NEPA regulations, NEPA reviews initiated prior to September 14, 2020 may be conducted using the 1978 version of the regulations. The effective date of the 2020 CEQ NEPA Regulations was September 14, 2020. This review began before January 13, 2013, and NOAA has decided to proceed under the 1978 regulations.

#### D. Executive Order 13132: Federalism Assessment

NOAA has concluded this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

#### E. Paperwork Reduction Act

This rule does not create any new information collection requirements, nor does it change existing information collection requirements approved by the Office of Management and Budget (OMB Control Number 0648–0141) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* (PRA). There are no changes to the reporting burden as a result of these regulatory changes. 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 PRA, unless that collection of information displays a currently valid OMB Control Number.

#### F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires Federal agencies to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a rule, unless the head of the agency can certify, pursuant to 5 U.S.C. 605(b), that the action will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 605(b), the Chief Counsel for Regulations for the Department of Commerce, certified to the Office of Advocacy of the Small Business Administration during the 2013 proposed rule stage and the 2022 interim rule stage that the regulations would not have a significant economic impact on a substantial number of small entities. The factual basis for certification was published in the proposed rule (78 FR 5998, 6009; January 18, 2011) and in the interim final rule (87 FR 29606, 29625; May 13, 2022). No public comments were received regarding this certification. Therefore, a regulatory flexibility analysis was not required and none was prepared.

#### List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Amendments, Appeals, Appellant, Application requirements, Authorizations, Definitions, Designation, Environmental protection, Marine resources, Natural resources, Permitting, Permit procedures, Prohibited activities, Special use permit, Stowed and not available for immediate

use, Resources, Research, Traditional fishing, Water resources.

#### Nicole R. LeBoeuf,

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Accordingly, for the reasons set forth above, 15 CFR part 922 is amended as follows:

#### PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

- 1. The authority citation for part 922 continues to read as follows:

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

#### Subpart B [Removed and Reserved]

- 2. Remove and reserve subpart B, consisting of §§ 922.910 and 922.911.
- 3. Revise subpart A to read as follows:

#### Subpart A—Regulations of General Applicability

Sec.

- 922.1 Purposes and applicability of the regulations.
- 922.2 Mission, goals, and special policies.
- 922.3 Issuance of regulations for fishing.
- 922.4 Boundaries.
- 922.5 Allowed activities.
- 922.6 Prohibited or otherwise regulated activities.
- 922.7 Emergency regulations.
- 922.8 Penalties.
- 922.9 Response costs and damages.
- 922.10 Pre-existing authorizations or rights and certifications of pre-existing authorizations or rights.
- 922.11 Definitions.
- 922.12 Sanctuary nomination process.
- 922.13 Selection of nominated areas for national marine sanctuary designation.

#### § 922.1 Purposes and applicability of the regulations.

- (a) The purposes of this part are:
  - (1) To implement 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 (NMSA or Act)), the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA) (Pub. L. 101–605) and the Hawaiian Islands National Marine Sanctuary Act (sections 2301–2307 of Pub. L. 102–587); and
  - (2) To implement the designations of the national marine sanctuaries, for which site specific regulations appear in subparts F through T of this part, by regulating activities affecting them, consistent with their respective terms of designation, in order to protect, restore, preserve, manage, and thereby ensure the health, integrity and continued

availability of the conservation, recreational, ecological, historical, scientific, educational, cultural, archeological and aesthetic resources and qualities of these areas.

(b) The regulations of this part are binding on any person subject to the jurisdiction of the United States. Designation of a national marine sanctuary beyond the U.S. territorial sea does not constitute any claim to territorial jurisdiction on the part of the United States. The regulations of this part shall be applied in accordance with generally recognized principles of international law,<sup>1</sup> and in accordance with treaties, conventions, and other agreements to which the United States is a party. No regulation of this part shall apply to 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 the foreign vessel, if the person is a crew member of the vessel.

(c) Unless noted otherwise, the regulations in this subpart and subpart D of this part apply to all national marine sanctuaries immediately upon designation.

#### § 922.2 Mission, goals, and special policies.

(a) In accordance with the standards set forth in the Act, the mission of the Office of National Marine Sanctuaries (Office) is to identify, designate, protect, restore, and manage areas of the marine environment of special national, and in some cases international, significance due to their conservation, recreational, ecological, historical, scientific, educational, cultural, archeological, or aesthetic resources and qualities.

(b) The goal of the Office is to carry out the mission of the Act in a manner consistent with the purposes and policies of the Act (16 U.S.C. 1431(b)); the Florida Keys National Marine Sanctuary and Protection Act (Pub. L. 101–605) which designated Florida Keys National Marine Sanctuary; the Hawaiian Islands National Marine Sanctuary and Protection Act (Pub. L. 102–587), which designated Hawaiian Islands Humpback Whale National Marine Sanctuary; the Oceans Act of 1992 (Pub. L. 102–587), which

<sup>1</sup> Based on the legislative history of the NMSA, NOAA has long interpreted the text of 16 U.S.C. 1435(a) as encompassing international law, including customary international law.

designated Stellwagen Bank National Marine Sanctuary; and the National Marine Sanctuaries Preservation Act of 1996 (Pub. L. 104–283), which added Stetson Bank to Flower Garden Banks National Marine Sanctuary.

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

(d) Program regulations, policies, standards, guidelines, and procedures developed pursuant to 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, 54 U.S.C. 300101 *et seq.*, the Archeological and Historical Preservation Act of 1974, 54 U.S.C. 312501 *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.

#### § 922.3 Issuance of regulations for fishing.

If a proposed Sanctuary includes waters within the exclusive economic zone, the Secretary shall notify the appropriate Regional Fishery Management Council(s). The appropriate Council(s) shall have one hundred and eighty (180) days from the date of such notification to make recommendations and, if appropriate, prepare draft fishing regulations for the area within the exclusive economic zone and 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-Stevens Fishery Conservation and Management 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. Any fishing activities not proposed for regulation under section 304(a)(5) of the

NMSA may be listed in the draft Sanctuary designation document as being subject to regulation, without following the procedures specified in section 304(a)(5) of the NMSA. If the Secretary subsequently determines that regulation of fishing is necessary, then NOAA will follow the procedures specified in section 304(a)(5) of the NMSA.

#### § 922.4 Boundaries.

The boundaries for each of the fifteen National Marine Sanctuaries covered by this part are described in subparts F through T, respectively.

#### § 922.5 Allowed activities.

All activities (e.g., fishing, boating, diving, research, education) may be conducted unless prohibited or otherwise regulated in subparts F through T of this part, subject to any emergency regulations promulgated pursuant to § 922.7, § 922.112(b), § 922.165, § 922.185, § 922.196, § 922.204, or § 922.214 subject to all prohibitions, regulations, restrictions, and conditions validly imposed by any Federal, State, tribal, or local authority of competent jurisdiction, including, but not limited to, Federal, Tribal, and State fishery management authorities, and subject to the provisions of section 312 of the NMSA. The Director may only directly regulate fishing activities pursuant to the procedure set forth in section 304(a)(5) of the NMSA.

#### § 922.6 Prohibited or otherwise regulated activities.

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

#### § 922.7 Emergency regulations.

(a) 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.

(b) This section does not apply to the following national marine sanctuaries with site-specific regulations that establish procedures for issuing emergency regulations:

(1) Cordell Bank National Marine Sanctuary, § 922.112(e).

(2) Florida Keys National Marine Sanctuary, § 922.165.

(3) Hawaiian Islands Humpback Whale National Marine Sanctuary, § 922.185.

(4) Thunder Bay National Marine Sanctuary, § 922.196.

(5) Mallows Bay—Potomac River National Marine Sanctuary, § 922.204.

(6) Wisconsin Shipwreck Coast National Marine Sanctuary, § 922.214.

#### § 922.8 Penalties.

(a) Each violation of the NMSA or the other statutes designating national marine sanctuaries listed in § 922.2(b), any regulation in this part or any permit issued pursuant thereto, is subject to a civil penalty. 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.

#### § 922.9 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. 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.

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

Any valid lease, permit, license, or right of subsistence use or of access that is in existence on the effective date of final regulations for a designation or revised terms of designation of any National Marine Sanctuary may 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.

#### § 922.11 Definitions.

The following definitions shall apply to this part, unless modified by the definitions for a specific subpart or regulation:

*Abandoning* means leaving without intent to remove any structure, material, or other matter on or in the seabed or submerged lands of a Sanctuary. For Thunder Bay National Marine Sanctuary and Underwater Preserve, abandoning means leaving without intent to remove any structure, material or other matter on the lake bottom associated with underwater cultural resources.

*Act or NMSA* 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.

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

*Attract or attracting* means the conduct of any activity that lures or may lure any animal by using food, bait, chum, dyes, decoys (e.g., surfboards or body boards used as decoys), acoustics or any other means, except the mere presence of human beings (e.g., swimmers, divers, boaters, kayakers, surfers).

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

*Clean* means not containing detectable levels of harmful matter.

*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 gear composed of a single line terminated by a combination of sinkers and hooks or lures and spooled upon a reel that may be hand, electrically, or hydraulically operated, regardless of whether mounted. This term does not include longlines.

*Cruise ship* means any vessel with 250 or more passenger berths for hire.

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

*Deserting* means leaving a vessel aground, adrift, wrecked, junked, or in a substantially dismantled condition without notification to the Director of the vessel going aground or becoming adrift, wrecked, junked, or substantially dismantled within 12 hours of its discovery and developing and presenting to the Director a preliminary salvage plan within 24 hours of such notification; after expressing or otherwise manifesting intention not to undertake or to cease salvage efforts, or when the owner/operator cannot after reasonable efforts by the Director be reached within 12 hours of the vessel's condition being reported to authorities; or leaving a vessel at anchor when its condition creates potential for a grounding, discharge, or deposit and the owner/operator fails to secure the vessel in a timely manner.

*Director* means, except where otherwise specified, the Director of the Office of National Marine Sanctuaries or designee.

*Effective date* means the date of final regulations described and published in the **Federal Register**. For regulations

governing the designation of a new sanctuary or revising terms of designation, effective date means the date after the close of the review period of the 45th day of continuous session of Congress following submission of the **Federal Register** document of the designation together with final regulations to implement the designation and any other matters required by law, unless the Governor of any state in which the sanctuary is completely or partially located certifies that the designation or any of its terms is unacceptable pursuant to section 304(b) of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1434(b)).

*Exclusive economic zone* means the zone established by Proclamation 5030, dated March 10, 1983, and as defined in the Magnuson-Stevens Fishery Conservation and Management Act, as amended 16 U.S.C. 1801 *et seq.*

*Fish* means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds, as defined in the Magnuson-Stevens Fishery Conservation and Management Act, as amended (16 U.S.C. 1802(12)).

*Graywater* means graywater as defined by section 312 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1322.

*Harmful matter* means any substance, or combination of substances, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose a present or potential threat of injury to Sanctuary resources or qualities. Such substances or combination of substances may include, but is not limited to: fishing nets, fishing line, hooks, fuel, oil, and hazardous substances as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601(14) and designated at 40 CFR 302.4.

*Historical resource* means any resource possessing historical, cultural, archaeological or paleontological significance, including a site, contextual information, structure, district, and object significantly associated with or representative of earlier people, culture, maritime heritage, and human activities and events. Historical resource includes "cultural resource," "submerged cultural resource," and "historical property" as that term is used in the National Historic Preservation Act, as amended, 54 U.S.C. 300101 *et seq.* and its implementing regulations, as amended.

*Indian tribe* means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the

Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 5130.

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

*Introduced species* means any species (including, but not limited to, any of its biological matter capable of propagation) that is non-native to the ecosystems of the Sanctuary; or any organism into which altered genetic matter, or genetic matter from another species, has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

*Inventory* 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.

*Lawful fishing* means fishing authorized by a tribal, State or Federal entity with jurisdiction over the activity.

*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 or Sanctuary* means an area of the marine environment of special national significance designated as such by the National Oceanic and Atmospheric Administration (NOAA) pursuant to the Act or by Congress pursuant to legislation.

*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 the Magnuson-

Stevens 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 a national marine 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, or the parts or products thereof, that contributes to the conservation, recreational, ecological, historical, educational, cultural, archeological, scientific, or aesthetic value of the national marine sanctuary, including, but not limited to, waters of the sanctuary, the seabed or submerged lands 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, birds, sea turtles and other marine reptiles, marine mammals, and maritime heritage, cultural, archeological, and historical resources. For Thunder Bay National Marine Sanctuary and Underwater Preserve, Sanctuary resource is defined at § 922.191. For Hawaiian Islands Humpback Whale, Sanctuary resource is defined at § 922.182. For Mallovs Bay—Potomac River National Marine Sanctuary, Sanctuary resource is defined at § 922.201(a). For Wisconsin Shipwreck Coast National Marine Sanctuary, sanctuary resource is defined at § 922.211.

*Seagrass* means any species of marine angiosperms (flowering plants) that inhabits a portion of the seabed in a national marine sanctuary. Those species include, but are not limited to: *Zostera asiatica* (Asian eelgrass), *Zostera marina* (eelgrass/common eelgrass); *Thalassia testudinum* (turtle grass); *Syringodium filiforme* (manatee grass); *Halodule wrightii* (shoal grass); *Halophila decipiens* (paddle grass), *H. engelmannii* (Engelmann's seagrass), *H. johnsonii* (Johnson's seagrass); and *Ruppia maritima* (widgeon grass).

*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.

*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 (taking or taken) of a marine mammal, sea turtle, or bird* means:

(1) Take as that term is defined in section 3(19) of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1532(19) (ESA);

(2) Take as that term is defined in section 3(13) of the Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. 1362(13) (MMPA); or

(3) Conducting an activity prohibited by section 703 of the Migratory Bird Treaty Act of 1918, as amended, 16 U.S.C. 703 (MBTA).

(4) For purposes of paragraphs (1), (2), and (3) of this definition, take also includes, but is not limited to, collection of any dead or injured marine mammal, sea turtle, or bird, or any part thereof; or restraint or detainment of any marine mammal, sea turtle, or bird, no matter how temporarily; tagging any marine mammal, sea turtle, or bird, or operating a vessel or aircraft or conducting any other act that results in the disturbance or molestation of any marine mammal, sea turtle, or bird.

*Vessel* means a watercraft of any description capable of being used as a means of transportation in or on the waters of a sanctuary. The term includes but is not limited to, motorized and non-motorized watercraft, personal watercraft, airboats, and float planes while maneuvering on the water. For purposes of this part, the terms "vessel," "watercraft," and "boat" have the same meaning.

*Washington Coast treaty tribe* means the Hoh, Makah, or Quileute Indian Tribes or the Quinault Indian Nation.

#### § 922.12 Sanctuary nomination process.

(a) The sanctuary nomination process (see National Marine Sanctuaries website [www.sanctuaries.noaa.gov](http://www.sanctuaries.noaa.gov)) is the means by which the public can submit areas of the marine and Great Lakes environments for consideration by NOAA as a national marine sanctuary.

(b) The Director will consider the following national significance criteria in determining if a nominated area is of special national significance:

(1) The area's natural resources and ecological qualities are of special significance and contribute to: biological productivity or diversity; maintenance or enhancement of ecosystem structure and function; maintenance of ecologically or commercially important species or species assemblages; maintenance or enhancement of critical habitat, representative biogeographic assemblages, or both; or maintenance or enhancement of connectivity to other ecologically significant resources.

(2) The area contains submerged maritime heritage resources of special historical, cultural, or archaeological significance, that: individually or collectively are consistent with the criteria of eligibility or listing on the National Register of Historic Places; have met or which would meet the criteria for designation as a National Historic Landmark; or have special or sacred meaning to the indigenous people of the region or nation.

(3) The area supports present and potential economic uses, such as: tourism; commercial and recreational fishing; subsistence and traditional uses; diving; and other recreational uses that depend on conservation and management of the area's resources.

(4) The publicly-derived benefits of the area, such as aesthetic value, public recreation, and access to places depend on conservation and management of the area's resources.

(c) The Director will consider the following management considerations in determining the manageability of a nominated area:

(1) The area provides or enhances opportunities for research in marine science, including marine archaeology.

(2) The area provides or enhances opportunities for education, including the understanding and appreciation of the marine and Great Lakes environments.

(3) Adverse impacts from current or future uses and activities threaten the area's significance, values, qualities, and resources.

(4) A national marine sanctuary would provide unique conservation and management value for this area that also have beneficial values for adjacent areas.

(5) The existing regulatory and management authorities for the area could be supplemented or complemented to meet the conservation and management goals for the area.

(6) There are commitments or possible commitments for partnerships opportunities such as cost sharing, office space or exhibit space, vessel time, or other collaborations to aid

conservation or management programs for the area.

(7) There is community-based support for the nomination expressed by a broad range of interests, such as: individuals or locally-based groups (e.g., friends of group, chamber of commerce); local, tribal, state, or national agencies; elected officials; or topic-based stakeholder groups, at the local, regional or national level (e.g., a local chapter of an environmental organization, a regionally-based fishing group, a national-level recreation or tourism organization, academia or science-based group, or an industry association).

(d) Following evaluation of a nomination against the national significance criteria and management considerations, the Director may place nominated areas in a publicly available inventory for future consideration of designation as a national marine sanctuary.

(e) A determination that a site is eligible for national marine sanctuary designation, by itself shall not subject the site to any regulatory control under the Act. Such controls may only be imposed after designation.

#### **§ 922.13 Selection of nominated areas for national marine sanctuary designation.**

(a) The Director may select a nominated area from the inventory for future consideration as a national marine sanctuary.

(b) Selection of a nominated area from the inventory shall begin the formal sanctuary designation process. A notice of intent to prepare a draft environmental impact statement shall be published in the **Federal Register** and posted on the Office of National Marine Sanctuaries website. Any designation process will follow the procedures for designation and implementation set forth in section 304 of the Act.

#### **Subpart C [Removed and Reserved]**

■ 4. Remove and reserve part 922 subpart C, consisting of §§ 922.20 through 922.25.

■ 5. Revise subpart D to read as follows:

#### **Subpart D—National Marine Sanctuary Permitting**

Sec.

922.30 National Marine Sanctuary general permits.

922.31 National Marine Sanctuary special use permits.

922.32 Application requirements and procedures.

922.33 Review procedures and evaluation.

922.34 Permit amendments.

922.35 Special use permit fees.

922.36 National Marine Sanctuary authorizations.

922.37 Appeals of permitting decisions.

#### **§ 922.30 National Marine Sanctuary general permits.**

(a) *Authority to issue general permits.* The Director may allow a person to conduct an activity that would otherwise be prohibited by this part through issuance of a general permit, provided the applicant complies with:

(1) The provisions of this subpart; and

(2) The permit procedures and criteria for all national marine sanctuaries in which the proposed activity is to take place in accordance with relevant site specific regulations appearing in subparts F through T of this part.

(b) *Sanctuary general permit categories.* The Director may issue a sanctuary general permit under this subpart and the relevant site-specific subpart, subject to such terms and conditions as he or she deems appropriate, if the Director finds that the proposed activity falls within one of the following categories or a category in the relevant site-specific subpart:

(1) *Research*—activities that constitute scientific research or scientific monitoring of a national marine sanctuary resource or quality;

(2) *Education*—activities that enhance public awareness, understanding, or appreciation of a national marine sanctuary or national marine sanctuary resource or quality;

(3) *Management*—activities that assist in managing a national marine sanctuary;

(4) *Jade removal*—the removal of loose jade from the Jade Cove area, without the use of pneumatic, mechanical, electrical, hydraulic or explosive tools, within Monterey Bay National Marine Sanctuary that cannot be collected under 15 CFR

922.132(a)(1)(ii) and (iii). Preference will be given for applications proposing to collect loose pieces of jade for research or educational purposes;

(5) *Tribal self-determination*—activities conducted by a Washington Coast treaty tribe and/or its designee as certified by the governing body of the tribe to promote or enhance tribal self-determination, tribal government functions, the exercise of treaty rights, the economic development of the tribe, subsistence, ceremonial and spiritual activities, or the education or training of tribal members; and

(6) *Further FKNMS purposes*—activities that further the purposes of Florida Keys National Marine Sanctuary, including those that facilitate multiple use of the sanctuary, to the extent compatible with the primary objective of resource protection.

#### **§ 922.31 National Marine Sanctuary special use permits.**

(a) *In general.* A person may conduct a specified special use permit activity, if such activity is specifically authorized by, and is conducted in accordance with the scope, purpose, manner, terms and conditions of, a special use permit issued under this section.

(b) *Authority to issue.* The Director, at his or her discretion, may issue a special use permit in accordance with this subpart and section 310 of the Act (16 U.S.C. 1441).

(c) *Public notice.* The Director will not issue a special use permit for any category of activity unless the Director has published a notice in the **Federal Register** that such category of activity is subject to the requirements of section 310 of the Act.

(d) *Fees.* The Director may assess and collect fees for the conduct of any activity authorized by a special use permit issued pursuant to this section. The fee will be assessed in accordance with § 922.35.

#### **§ 922.32 Application requirements and procedures.**

(a) *Submitting applications.* Permit applications must be submitted by mail to the address listed in the subpart for the relevant national marine sanctuary or by electronic means as defined in the instructions for the ONMS permit application. Applicants proposing to conduct an activity in more than one national marine sanctuary should send the application to each NOAA office for the relevant national marine sanctuaries in which the activity is proposed.

(b) *Application requirements.* All applications for a permit under this section must include the following information:

(1) A detailed description of the proposed activity including:

(i) A timetable for completion of the activity;

(ii) A detailed description of the proposed location for the activity; and

(iii) The equipment, personnel and methodology to be employed;

(2) The qualifications and experience of all personnel;

(3) The financial resources available to the applicant to conduct and complete the proposed activity and comply with any terms and conditions deemed necessary;

(4) A statement as to why it is necessary to conduct the activity within a national marine sanctuary;

(5) A description of the potential impacts of the activity, if any, on sanctuary resources and qualities;

(6) A description of the benefits the conduct of the activity would have for

the national marine sanctuary or national marine sanctuary system;

(7) Copies of all other required licenses, permits, approvals, or other authorizations; and

(8) Such other information as the Director may request or is specified in the relevant subpart.

(c) *Additional information.* Upon receipt of an application, and as part of the evaluation of the permit application, the Director may:

(1) Request such additional information as he or she deems necessary to act on the application;

(2) Require a site visit; and

(3) Seek the views of any persons.

(d) *Time limit for submitting additional information.* Unless otherwise specified in writing by the Director, any information requested by the Director under paragraph (c) of this section must be received by the Director within 30 days of the postmark date of the request or, if email, the date of the email. Failure to provide such additional information may be deemed by the Director to constitute withdrawal of the permit application.

(e) *Incomplete applications.* The Director may consider an application incomplete, and therefore may refuse to further consider the application, if the applicant:

(1) Has failed to submit any of the information required under paragraph (b) of this section;

(2) Has failed to submit any of the information requested by the Director under paragraph (c) of this section;

(3) Has failed to pay any outstanding penalties that resulted from a violation of this part; or

(4) Has failed to fully comply with a permit issued pursuant to this subpart.

#### § 922.33 Review procedures and evaluation.

(a) *Review criteria.* In addition to any relevant site-specific permit review criteria, the Director shall not issue a permit under this subpart or the relevant subpart, unless he or she also finds that:

(1) The proposed activity will be conducted in a manner compatible with the primary objective of protection of national marine sanctuary resources and qualities, taking into account the following factors: the extent to which the conduct of the activity may diminish or enhance national marine sanctuary resources and qualities; and any indirect or cumulative effects of the activity;

(2) It is necessary to conduct the proposed activity within the national marine sanctuary to achieve its stated purpose;

(3) The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's stated purpose and avoid, minimize, or otherwise mitigate adverse effects on sanctuary resources and qualities as much as possible;

(4) The duration of the proposed activity and its effects are no longer than necessary to achieve the activity's stated purpose;

(5) The expected end value of the activity to the furtherance of national marine sanctuary goals and purposes outweighs any potential adverse impacts on sanctuary resources and qualities from the conduct of the activity;

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

(7) The applicant has adequate financial resources available to conduct and complete the proposed activity and terms and conditions of the permit;

(8) There are no other factors that would make the issuance of a permit for the activity inappropriate; and

(9) For Olympic Coast National Marine Sanctuary, the activity as proposed does not adversely affect any Washington Coast treaty tribe.

(b) *Permit terms and conditions.* The Director, at his or her discretion, may subject a permit issued under this subpart or other relevant subpart to such terms and conditions as he or she deems appropriate. A permit granted pursuant to this subpart is nontransferable.

(c) *Permit actions.* The Director may amend, suspend, or revoke a permit issued pursuant to this part or other relevant subpart for good cause. Procedures governing permit sanctions and denials for enforcement reasons are set forth in subpart D of 15 CFR part 904.

(d) *Denial of permit application.* The Director may deny a permit application, in whole or in part, if it is determined that:

(1) The proposed activity does not meet the review criteria specified in this subpart or the relevant subpart of any national marine sanctuary in which the proposed activity is to take place;

(2) The permittee or applicant has acted in violation of the terms and conditions of a permit issued under this subpart or the relevant subpart of any national marine sanctuary in which the proposed activity is to take place;

(3) The permittee or applicant has acted in violation of any regulation set forth in this subpart, the NMSA, or the FKNMSPA;

(4) The proposed activity has resulted in unforeseen adverse impacts to Sanctuary resources or qualities; or

(5) For other good cause.

(e) *Communication of actions and denials.* Any action taken by the Director under paragraphs (c) and (d) of this section shall be communicated in writing to the permittee or applicant and shall set forth the reason(s) for the action taken.

#### § 922.34 Permit amendments.

(a) *Request for amendments.* Any person who has been issued a permit under this part (a permittee) may request to amend the permit at any time while that permit is valid. For purposes of this section, a permit time extension is treated as a permit amendment. A request for permit amendment must be submitted to the same NOAA office(s) as the original permit and include sufficient information to describe the requested amendment and any additional supporting information.

(b) *Review of amendment requests.* After receiving the permittee's request for amendment, the Director will:

(1) Review all reports submitted by the permittee as required by the permit terms and conditions; and

(2) Request such additional information as may be necessary to evaluate the request.

(c) *Denial of amendment request.* The Director may deny a permit amendment request, in whole or in part, if it is determined that:

(1) The proposed activity does not meet the review criteria specified in this subpart or the relevant subpart of any national marine sanctuary in which the proposed activity is to take place;

(2) The permittee or applicant has acted in violation of the terms or conditions of a permit issued under this subpart or the relevant subpart of any national marine sanctuary in which the proposed activity is to take place;

(3) The permittee or applicant has acted in violation of any regulation set forth in this subpart, the NMSA, or the FKNMSPA;

(4) The proposed activity has resulted in unforeseen adverse impacts to Sanctuary resources or qualities; or

(5) For other good cause.

#### § 922.35 Special use permit fees.

(a) *Authority to assess fees.* The Director may assess a fee for the conduct of any activity authorized under a special use permit issued under § 922.31. The Director may collect assessed fees through agreement with the permit applicant. No special use permit may be effective until all assessed fees are received unless otherwise provided by the Director by a fee schedule set forth as a permit condition.

(b) *Components of permit fees.* A fee assessed under this section may include:

(1) All costs incurred, or expected to be incurred, in reviewing and processing the permit application, including, but not limited to, costs for:

- (i) Personnel;
- (ii) Personnel hours;
- (iii) Equipment;
- (iv) Environmental analysis, assessment or consultation;
- (v) Copying; and
- (vi) Overhead costs directly related to reviewing and processing the permit application;

(2) All costs incurred, or expected to be incurred, as a direct result of the conduct of the activity for which the permit is being issued, including, but not limited to:

(i) 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;

(ii) The use of an official NOAA observer, including travel and expenses and personnel hours; and

(iii) Overhead costs directly related to the permitted activity; and

(3) An amount which represents the fair market value of the use of the sanctuary resource.

#### **§ 922.36 National Marine Sanctuary authorizations.**

(a) *Authority to issue authorizations.* The Director may authorize a person to conduct an activity otherwise prohibited by subparts L through P or subpart R of this part, if such activity is specifically allowed by any valid federal, state, or local lease, permit, license, approval, or other authorization (hereafter called “agency approval”) issued after the effective date of sanctuary designation or expansion, provided the applicant complies with the provisions of this section. Such an authorization by ONMS is hereafter referred to as an “ONMS authorization.”

(b) *Authorization notification to the Director—(1) Notification requirement.* An applicant must notify the Director in writing of the request for an ONMS authorization of an agency approval. The Director may treat an amendment or extension of such an agency approval as constituting a new agency approval for purposes of this section.

(i) Notification must occur within fifteen days after the date the applicant files of filing of the application for the agency approval.

(ii) Notification must be sent to the Director, Office of National Marine Sanctuaries, to the attention of the relevant Sanctuary Superintendent(s) at

the address specified in subparts L through P, or subpart R through S, as appropriate.

(iii) A copy of the application for the agency approval must accompany the notification.

(2) *Director’s response to notification.* The Director shall respond in writing to the applicant and provide periodic updates on pending ONMS authorization request.

(c) *Authorization review procedures and evaluation—(1) Additional information.* The Director may request additional information from the applicant as the Director deems reasonably necessary to determine whether to issue an ONMS authorization and what terms and conditions are reasonably necessary to protect sanctuary resources and qualities.

(i) The information requested must be received by the Director within 45 days of the postmark date of the Director’s request.

(ii) The Director may seek the views of any persons on the application.

(2) *Review criteria.* The Director shall consider the review criteria in § 922.33(a)(1) through (9) when deciding whether to issue an ONMS authorization.

(3) *Director’s response.* The Director shall respond in writing to the applicant to inform the applicant of the Director’s decision regarding the authorization request.

(i) The Director may deny a request for an ONMS authorization and shall provide the reason(s) therefore. If the Director denies a request for an ONMS authorization, the applicant remains prohibited from conducting the activity in the sanctuary.

(ii) The Director may issue an ONMS authorization containing terms and conditions deemed reasonably necessary to protect sanctuary resources and qualities. Failure to comply with an ONMS authorization constitutes a violation of the NMSA and these regulations, which may result in an enforcement action and assessment of penalties.

(d) *Authorization actions.* The Director may amend, suspend, or revoke an ONMS authorization issued pursuant to this part for good cause. Procedures governing ONMS sanctions and denials for enforcement reasons are set forth in subpart D of 15 CFR part 904.

(e) *Communication of actions and denials.* Any action taken by the Director under paragraphs (c) and (d) of this section to deny, amend, suspend, or revoke an ONMS authorization shall be communicated in writing to the

permittee or applicant and shall set forth the reason(s) for the action taken.

(f) *Time limits.* Any time limit prescribed in or established under this section may be extended by the Director for good cause.

#### **§ 922.37 Appeals of permitting decisions.**

(a) *Potential appellant.* The following person may appeal an action listed in paragraph (b) of this section (hereinafter referred to as “appellant”):

(1) An applicant or holder of a certification of any existing lease, permit, license, or right of subsistence use or of access pursuant to § 922.10;

(2) An applicant or a holder of a National Marine Sanctuary permit issued pursuant to § 922.30 or pursuant to site-specific regulations appearing in subparts F through T of this part;

(3) An applicant or a holder of a special use permit issued pursuant to section 310 of the Act and § 922.31; and

(4) An applicant or a holder of an ONMS authorization of an agency approval issued by any Federal, State, or local authority of competent jurisdiction pursuant to § 922.36.

(5) For those National Marine Sanctuaries described in subparts F through K and S and T of this part, any interested person may also appeal the same actions described in paragraph (b)(1) of this section.

(b) *Actions that may be appealed.* An appellant may appeal the following actions to the Assistant Administrator:

(1) The denial, conditioning, amendment, suspension, or revocation by the Director of a general permit pursuant to § 922.30 or other relevant subpart, special use permit pursuant to section 310 of the Act and § 922.31, or an ONMS authorization issued pursuant to § 922.36; or a certification under § 922.10.

(2) Reserved.

(c) *Appeal requirements.* Appeals must be made in writing to the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA, 1305 East-West Highway, 13th Floor, Silver Spring, MD 20910 and must:

(1) State the action(s) by the Director being appealed;

(2) State the reason(s) for the appeal; and

(3) Be received within 30 days of the appellant’s receipt of notice of the action by the Director.

(d) *Appeal procedures.* (1) The Assistant Administrator may request the appellant submit such information as the Assistant Administrator deems necessary in order to render a decision on the appeal. The information requested must be received by the Assistant Administrator within 45 days of the postmark date of the request.

(2) The Assistant Administrator may seek the views of any other persons when deciding an appeal.

(3) The Assistant Administrator may hold an informal hearing. If an informal hearing is held:

(i) The Assistant Administrator may designate an officer before whom the hearing shall be held;

(ii) The hearing officer shall give notice in the **Federal Register** of the time, place and subject matter of the hearing;

(iii) The appellant and Director may appear personally or by counsel at the hearing and submit such material and present such arguments as deemed appropriate by the hearing officer; and

(iv) The hearing officer shall recommend a decision in writing to the Assistant Administrator within 60 days after the record for the hearing closes.

(e) *Deciding an appeal.* (1) 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 at the Assistant Administrator's request pursuant to paragraph (d)(1) or (2) of this section, regarding the appeal, and, if a hearing has been held, on the record before the hearing officer and the hearing officer's recommended decision.

(2) The Assistant Administrator shall notify the appellant of the final decision and the reason(s) therefore in writing.

(3) The Assistant Administrator's decision shall constitute final agency action for purposes of the Administrative Procedure Act.

(f) *Authority to extend time limits.* Any time limit prescribed in or established under this section other than the 30-day limit for filing an appeal pursuant to paragraph (c)(3) of this section may be extended by the Assistant Administrator for good cause.

#### Subpart E [Removed and Reserved]

■ 6. Remove and reserve subpart E, consisting of §§ 922.40 through 922.50.

#### Subpart F—Monitor National Marine Sanctuary

■ 7. Revise § 922.60 to read as follows:

##### § 922.60 Boundary.

The Monitor National Marine Sanctuary (Sanctuary) consists of a vertical water column in the Atlantic Ocean one mile in diameter (0.593 square nautical miles (nmi<sup>2</sup>) or (0.785 sq. mi.)) extending from the surface to the seabed, the center of which is at the following coordinates 35.00639, -75.40889.

■ 8. Revise § 922.62 to read as follows:

##### § 922.62 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.61 if such activity is specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Monitor National Marine Sanctuary, c/o The Mariners' Museum, 100 Museum Drive, Newport News, VA 23606.

(c) In addition to the requirements of subpart D of this part, the Director may not issue a permit under this section unless the Director also finds that the extent to which the conduct of the proposed activity may diminish the value of the Monitor as a source of historic, cultural, aesthetic and/or maritime information is appropriate in relation to goals of the proposed activity.

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

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

■ 9. Amend § 922.70 by revising the first sentence to read as follows:

##### § 922.70 Boundary.

The Channel Islands National Marine Sanctuary (Sanctuary) consists of an area of approximately 1,110 square nautical miles (nmi<sup>2</sup>) (1,470 sq. mi.) of coastal and ocean waters, and the submerged lands thereunder, off the southern coast of California. \* \* \*

■ 10. Amend § 922.71 by:

■ a. Revising the introductory text; and  
■ b. Removing the definitions of "Cruise ship", "Graywater", and "Introduced species".

The revision reads as follows:

##### § 922.71 Definitions.

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

\* \* \* \* \*

■ 11. Amend § 922.72 by revising paragraph (c) to read as follows:

##### § 922.72 Prohibited or otherwise regulated activities—Sanctuary wide.

\* \* \* \* \*

(c) The prohibitions in paragraphs (a)(3) through (10) and (12) and (13) of this section and in § 922.73 do not apply

to any activity specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to subpart D of this part and § 922.74.

\* \* \* \* \*

■ 12. Revise § 922.74 to read as follows:

##### § 922.74 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.72 or § 922.73 if the activity is specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a permit issued under this section and subpart D of this part.

(b) Permit applications should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Channel Islands National Marine Sanctuary, University of California Santa Barbara, Ocean Science Education Building 514, MC 6155, Santa Barbara, CA 93106-6155.

#### Subpart H—Greater Farallones National Marine Sanctuary

■ 13. Amend § 922.80 by revising the first sentence in paragraph (a) to read as follows:

##### § 922.80 Boundary.

(a) Greater Farallones National Marine Sanctuary (Sanctuary) encompasses an area of approximately 2,488 square nautical miles (nmi<sup>2</sup>) (3,295 sq. mi.) of coastal and ocean waters, and submerged lands thereunder, surrounding the Farallon Islands and Noonday Rock along the northern coast of California. \* \* \*

\* \* \* \* \*

■ 14. Amend § 922.81 by —

■ a. Revising the introductory text; and  
■ b. Removing the definitions of "Attract or attracting", "Clean", "Deserting", "Harmful matter", "Introduced species", and "Seagrass".  
The revision reads as follows:

##### § 922.81 Definitions.

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

\* \* \* \* \*

■ 15. Amend § 922.82 by revising paragraphs (c) and (d) to read as follows:

##### § 922.82 Prohibited or otherwise regulated activities.

\* \* \* \* \*

(c) The prohibitions in paragraph (a) of this section do not apply to activities necessary to respond to an emergency threatening life, property or the environment, or except as may be

permitted by the Director in accordance with subpart D of this part.

(d) The prohibitions in paragraphs (a)(2) through (9) and (11) through (16) 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 in accordance with subpart D of this part and § 922.83, or a special use permit issued pursuant to subpart D of this part.

- 16. Revise § 922.83 to read as follows:

§ 922.83 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.82(a)(2) through (9) and (11) through (16) if such activity is specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Greater Farallones National Marine Sanctuary, 991 Marine Dr., The Presidio, San Francisco, CA 94129.

Subpart I—Gray’s Reef National Marine Sanctuary

- 17. Revise § 922.90 to read as follows:

§ 922.90 Boundary.

The Gray’s Reef National Marine Sanctuary (Sanctuary) consists of approximately 16.68 square nautical miles (nmi²) (22 sq. mi.) 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 beginning at Point 1 and continuing to each subsequent point in numerical order ending at Point 5. (Coordinates listed are unprojected (geographic) and based on the North American Datum of 1983.):

TABLE 1 TO § 922.90

Table with 3 columns: Point, Latitude, Longitude. Rows 1-5 with coordinates.

- 18. Amend § 922.91 by revising the introductory text to read as follows:

§ 922.91 Definitions.

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

\* \* \* \* \*

- 19. Amend § 92.92 by revising paragraph (a) introductory text and paragraph (c) to read as follows:

§ 922.92 Prohibited or otherwise regulated activities—Sanctuary-wide.

(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 subpart D of this part and § 922.93 and § 922.94, the following activities are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

\* \* \* \* \*

(c) The prohibitions in this section and in § 922.94 do not apply to any activity conducted under and in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to subpart D of this part and § 922.93.

\* \* \* \* \*

- 20. Revise § 922.93 to read as follows:

§ 922.93 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.92(a)(1) through (11) and § 922.94 if the activity is specifically authorized by and conducted in accordance within the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Gray’s Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, GA 31411.

Subpart J—National Marine Sanctuary of American Samoa

- 21. Amend § 922.101 by revising the introductory text and paragraph (a) to read as follows:

§ 922.101 Boundary.

The Sanctuary is comprised of six distinct units, forming a network of marine protected areas around the islands of the Territory of American Samoa. Tables containing the exact coordinates of each point described below can be found in Appendix to Subpart J—National Marine Sanctuary of American Samoa Boundary Coordinates. The total areal estimate of

the six units combined is 10,255 nmi² (13,581 sq. mi.).

(a) Fagatele Bay Unit. The Fagatele Bay unit is a 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 line of Fagatele Bay until the point at which it intersects the seaward boundary of the Sanctuary as defined by a straight line between Fagatele Point (– 14.36527, – 170.76932) and Steps Point (– 14.37291, – 170.76056) from the point at which it intersects the mean high high water line seaward.

\* \* \* \* \*

- 22. Amend § 922.102 by—
■ a. Revising the introductory text; and
■ b. Removing the definitions of “Clean”, “Fishing”, “Harmful matter”, and “Introduced species”.

The revision reads as follows:

§ 922.102 Definitions.

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

\* \* \* \* \*

- 23. Amend § 922.103 by revising paragraph (e) to read as follows:

§ 922.103 Prohibited or otherwise regulated activities—Sanctuary-wide.

\* \* \* \* \*

(e) The prohibitions in paragraphs (a)(2) through (15) of this section and §§ 922.104 and 922.105 do not apply to any activity conducted under and in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to subpart D of this part and § 922.107.

- 24. Revise § 922.107 to read as follows:

§ 922.107 Permit procedures.

(a) Any person in possession of a valid permit issued by the Director, in consultation with the ASDOC, in accordance with this section and subpart D of the part may conduct an activity otherwise prohibited by §§ 922.103, 922.104, and 922.105 in the Sanctuary.

(b) Permit applications shall be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Sanctuary Superintendent, American Samoa National Marine Sanctuary, P.O. Box 4318, Pago Pago, AS 96799.

Subpart K—Cordell Bank National Marine Sanctuary

- 25. Amend § 922.110 by revising the first sentence to read as follows:

**§ 922.110 Boundary.**

The Cordell Bank National Marine Sanctuary (Sanctuary) boundary encompasses a total area of approximately 971 square nautical miles (nmi<sup>2</sup>) (1,286 sq. mi.) of offshore ocean waters, and submerged lands thereunder, surrounding the submarine plateau known as Cordell Bank along the northern coast of California, approximately 45 nautical miles west-northwest of San Francisco, California.  
\* \* \*

**§ 922.111 [Removed and Reserved]**

- 26. Remove and reserve § 922.111.
- 27. Amend § 922.112 by revising paragraphs (b) and (d) as follows:

**§ 922.112 Prohibited or otherwise regulated activities.**

\* \* \* \*

(b) The prohibitions in paragraph (a) of this section do not apply to activities necessary to respond to an emergency threatening life, property or the environment, or except as may be permitted by the Director in accordance with subpart D of this part and § 922.113.

\* \* \* \*

(d) 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 subpart D of this part and § 922.113, or a special use permit issued pursuant to subpart D of this part.

\* \* \* \*

- 28. Revise § 922.113 to read as follows:

**§ 922.113 Permit procedures.**

(a) A person may conduct an activity otherwise prohibited by § 922.112(a)(2) through (7) if the activity is specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Cordell Bank National Marine Sanctuary, P.O. Box 159, Olema, CA 94950.

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

- 29. Amend § 922.121 by—
  - a. Revising the introductory text; and
  - b. Removing the definitions of “Attract or attracting” and “Clean”.
- The revision reads as follows:

**§ 922.121 Definitions.**

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

\* \* \* \*

- 30. Amend § 922.122 by revising paragraphs (a)(7), (f) and (h) to read as follows:

**§ 922.122 Prohibited or otherwise regulated activities.**

(a) \* \* \*

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

\* \* \* \*

(f) The prohibitions in paragraphs (a)(2) through (10) of this section do not apply to any activity specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit or ONMS authorization issued pursuant to subpart D of this part and § 922.123 or a special use permit issued pursuant to subpart D of this part.

\* \* \* \*

(h) Notwithstanding paragraphs (f) and (g) of this section, in no event may the Director issue a National Marine Sanctuary permit under subpart D of this part and § 922.123 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 January 18, 1994 shall be invalid.

- 31. Revise § 922.123 to read as follows:

**§ 922.123 Permit procedures.**

(a) A person may conduct an activity otherwise prohibited by § 922.122(a)(2) through (10) if such activity is specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Flower Garden Banks National Marine Sanctuary, 4700 Avenue U, Building 216, Galveston, TX 77551.

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

- 32. Amend § 922.130 by revising the introductory text, paragraph (a), and the first sentence of paragraph (b) to read as follows:

**§ 922.130 Boundary.**

The Monterey Bay National Marine Sanctuary (Sanctuary) consists of two separate areas. The combined area of both parts is approximately 4,601 square nautical miles (nmi<sup>2</sup>) (6,093 sq. mi.).

(a) The first area consists of an area of approximately 4,016 square nautical miles (nmi<sup>2</sup>) (5,318 sq. mi.) of coastal and ocean waters, and submerged lands thereunder, in and surrounding Monterey Bay off the central coast of California.

\* \* \* \*

(b) The Davidson Seamount Management Zone is also part of the Sanctuary. This area, bounded by geodetic lines connecting a rectangle centered on the top of the Davidson Seamount, consists of approximately 585 square nmi (nmi<sup>2</sup>) (774 sq. mi.) of ocean waters and the submerged lands thereunder. \* \* \*

- 33. Amend § 922.131 by—
- a. Revising the introductory text; and
- b. Removing the definitions of “Attract or attracting”, “Clean”, “Cruise ship”, “Deserting”, “Harmful matter”, and “Introduced species”.

The revision reads as follows:

**§ 922.131 Definitions.**

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

\* \* \* \*

- 34. Amend § 922.132 by revising paragraphs (c)(1) and (d) through (f) to read as follows:

**§ 922.132 Prohibited or otherwise regulated activities.**

\* \* \* \*

(c)(1) All Department of Defense activities must 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 (11) and (13) 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, 99 Pacific Street, Bldg. 455A, Monterey, California 93940.) For

purposes of the Davidson Seamount Management Zone, these activities are listed in the 2008 Final Environmental Impact Statement. New activities may be exempted from the prohibitions in paragraphs (a)(2) through (11) and (13) of this section by the Director after consultation between the Director and the Department of Defense.

\* \* \* \* \*

(d) The prohibitions in paragraph (a)(1) of this section as it pertains to jade collection in the Sanctuary, and paragraphs (a)(2) through (11) and (13) of this section, do not apply to any activity specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to subpart D of this part and § 922.133 or a special use permit issued pursuant to subpart D of this part.

(e) The prohibitions in paragraphs (a)(2) through (13) of this section do not apply to any activity authorized by any lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation (January 1, 1993) and issued by any Federal, State, or local authority of competent jurisdiction, provided that the applicant complies with § 922.36, 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 and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date of Sanctuary designation.

(f) Notwithstanding paragraphs (d) and (e) of this section, in no event may the Director issue a National Marine Sanctuary permit or ONMS authorization under subpart D of this part 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 § 922.10, 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) before January 1, 1993. Any purported authorizations issued by other authorities within the Sanctuary shall be invalid.

■ 35. Revise § 922.133 to read as follows:

**§ 922.133 Permit procedures.**

(a) A person may conduct an activity otherwise prohibited by § 922.132(a)(1) as it pertains to jade collection in the Sanctuary, § 922.132(a)(2) through (11) and (13) if conducted under and in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Monterey Bay National Marine Sanctuary, 99 Pacific Street, Bldg. 455A, Monterey, California 93940.

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

■ 36. Amend § 922.140 by revising the first sentence in paragraph (a) and revising paragraph (b) to read as follows:

**§ 922.140 Boundary.**

(a) The Stellwagen Bank National Marine Sanctuary (Sanctuary) consists of an area of approximately 639 square nautical miles (nmi<sup>2</sup>) (846 sq. mi.) of Federal marine waters and the submerged lands thereunder, over and around Stellwagen Bank and other submerged features off the coast of Massachusetts. \* \* \*

(b) The Sanctuary boundary is identified by the following coordinates, indicating the most northeast, southeast, southwest, west-northwest, and north-northwest points: 42.76672 – 70.21664 (NE); 42.09330 – 70.03506 (SE); 42.12924 – 70.47043 (SW); 42.54830 – 70.59737 (WNW); and 42.65123 – 70.50262 (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 42.11526 – 70.27800. 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.

■ 37. Amend § 922.141 by revising the introductory text and the definition of “Industrial material” to read as follows:

**§ 922.141 Definitions.**

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

*Industrial material* means mineral, as defined in § 922.11.

\* \* \* \* \*

■ 38. Amend § 922.142 by revising paragraphs (d) and (f) to read as follows:

**§ 922.142 Prohibited or otherwise regulated activities:**

\* \* \* \* \*

(d) The prohibitions in paragraphs (a)(1) and (3) through (7) of this section do not apply to any activity specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to subpart D of this part and § 922.143 or a special use permit issued pursuant to subpart D of this part.

\* \* \* \* \*

(f) Notwithstanding paragraphs (d) and (e) of this section, in no event may the Director issue a permit under subpart D of this part 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 § 922.10, 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.

■ 39. Revise § 922.143 to read as follows:

**§ 922.143 Permit procedures.**

(a) A person may conduct an activity otherwise prohibited by § 922.142(a)(1) and (3) through (7) if conducted under and in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Stellwagen Bank National Marine Sanctuary, 175 Edward Foster Road, Scituate, MA 02066.

■ 40. Revise appendix A to subpart N to read as follows:

**Appendix A to Subpart N of Part 922—Stellwagen Bank National Marine Sanctuary Boundary Coordinates**

Coordinates listed in this appendix are unprojected (geographic) and based on the North American Datum of 1983.

Pt.	Latitude	Longitude
E1 .....	42.76672	-70.21664
E2 .....	42.09330	-70.03506
E3 .....	42.10239	-70.05434
E4 .....	42.10081	-70.06707
E5 .....	42.11752	-70.08658
E6 .....	42.12038	-70.10607
E7 .....	42.12675	-70.12388
E8 .....	42.12853	-70.14005
E9 .....	42.13342	-70.15497
E10 .....	42.13481	-70.17292
E11 .....	42.13210	-70.19605
E12 .....	42.13339	-70.21707
E13 .....	42.12970	-70.23889
E14 .....	42.12435	-70.25585
E15 .....	42.11526	-70.27800
E16 .....	42.12924	-70.47043
E17 .....	42.54830	-70.59737
E18 .....	42.55850	-70.58697
E19 .....	42.56347	-70.58388
E20 .....	42.57522	-70.57254
E21 .....	42.58075	-70.55558
E22 .....	42.58790	-70.54179
E23 .....	42.59504	-70.52843
E24 .....	42.60651	-70.51587
E25 .....	42.62107	-70.50588
E26 .....	42.63312	-70.50132
E27 .....	42.64245	-70.50130
E28 .....	42.65123	-70.50262

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

■ 41. Amend § 922.150 by revising paragraph (a) to read as follows:

**§ 922.150 Boundary.**

(a) The Olympic Coast National Marine Sanctuary (Sanctuary) consists of an area of approximately 2,408 square nautical miles (nmi<sup>2</sup>) (3,188 sq. mi.) of coastal and ocean waters, and the submerged lands thereunder, off the central and northern coast of the State of Washington.

\* \* \* \* \*

■ 42. Amend § 922.151 by—

- a. Revising the introductory text; and
- b. Removing the definitions of “Clean”, “Cruise ship”, and “Harmful matter”.

The revision reads as follows:

**§ 922.151 Definitions.**

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

\* \* \* \* \*

■ 43. Amend § 922.152 by revising paragraphs (a)(5) introductory text, (e), and (h) to read as follows:

**§ 922.152 Prohibited or otherwise regulated activities.**

(a) \* \* \*

(5) Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the submerged lands of the Sanctuary, except as an incidental result of:

\* \* \* \* \*

(e) The prohibitions in paragraphs (a)(2) through (8) of this section do not apply to any activity specifically authorized by and conducted under and in accordance with the scope, purpose, terms and conditions of a National Marine Sanctuary permit or an ONMS authorization issued pursuant to subpart D of this part and § 922.153 or a special use permit issued pursuant to subpart D of this part.

\* \* \* \* \*

(h) Notwithstanding paragraphs (e) and (g) of this section, in no event may the Director issue a National Marine Sanctuary permit or ONMS authorization under subpart D of this part 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 § 922.10, 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 the Quillayute River Navigation Project; 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.

■ 44. Revise § 922.153 to read as follows:

**§ 922.153 Permit procedures.**

(a) A person may conduct an activity prohibited by § 922.152(a)(2) through (8) if conducted in accordance with the scope, purpose, terms and conditions of a permit or ONMS authorization issued under this section and subpart D of this part.

(b) Applications for such permits or ONMS authorizations should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Olympic Coast National Marine Sanctuary, 115 E Railroad Ave., Suite 301, Port Angeles, WA 98362.

(c) 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.

(d) 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.

(e) Where the issuance or denial of a permit is requested by the governing body of a Washington Coast treaty 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.

■ 45. Revise appendix A to subpart O to read as follows:

**Appendix A to Subpart O of Part 922—Olympic Coast National Marine Sanctuary Boundary Coordinates**

Coordinates listed in this appendix are unprojected (geographic) and based on the North American Datum of 1983.

Point	Latitude	Longitude
1 .....	47.12917	-124.18389
2 .....	47.12917	-124.97000
3 .....	47.58472	-125.00000
4 .....	47.66806	-125.07889
5 .....	47.83361	-125.09500
6 .....	47.95361	-125.48694
7 .....	48.12583	-125.63889
8 .....	48.25000	-125.68167
9 .....	48.30589	-125.50081
10 .....	48.33756	-125.38136
11 .....	48.44617	-125.15469
12 .....	48.45256	-125.14164
13 .....	48.46894	-125.09775
14 .....	48.49533	-125.00303
15 .....	48.49894	-124.98886
16 .....	48.50367	-124.91581
17 .....	48.50589	-124.84053
18 .....	48.50283	-124.78831
19 .....	48.49344	-124.72725
20 .....	48.46889	-124.63694
21 .....	48.38806	-124.63694

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

■ 46. Revise § 922.161 to read as follows:

§ 922.161 Boundary.

The sanctuary consists of an area of approximately 2,872 square nautical miles (nmi<sup>2</sup>) (3,803 sq. mi.) 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.

■ 47. Amend § 922.162 by

■ a. Revising paragraphs (a) introductory text; b, Removing the definition of “Fish” in paragraph (a); and

■ b. Revising paragraph (b).

The revisions read as follows:

§ 922.162 Definitions.

(a) The following definitions apply to the Florida Keys National Marine Sanctuary regulations. To the extent that a term appears in § 922.11 and this section, the definition in this section governs.

\* \* \* \* \*

(b) Other terms appearing in the regulations in this part are defined at § 922.11, 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.*

■ 48. Amend § 922.163 by revising paragraphs (b), (c), and (f) to read as follows:

§ 922.163 Prohibited activities—Sanctuary-wide.

\* \* \* \* \*

(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 and subpart D of this part.

(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 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 § 922.36, 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 of authorizations in existence on the effective date of these regulations constitute authorizations issued after the effective date of these regulations.

\* \* \* \* \*

(f) In no event may the Director issue a certification, authorization, or permit under §§ 922.10, 922.163(c), and 922.166 and subpart D of this part, respectively, authorizing, or otherwise approving, 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, and any purported authorizations issued by other authorities for any of these activities within the Sanctuary shall be invalid.

\* \* \* \* \*

■ 49. Amend § 922.166 by revising paragraph (a) and removing and reserving paragraphs (e), (g), and (h).

The revision reads as follows:

§ 922.166 Permits other than for access to the Tortugas Ecological Reserve—application procedures and issuance criteria.

(a) A person may conduct an activity otherwise prohibited by § 922.163 or § 922.164 if the activity is specifically allowed by and conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(1) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Florida Keys National Marine Sanctuary, 33 East Quay Road, Key West, FL 33040.

(2) For activities proposed to be conducted within any of the areas described in § 922.164 (b) through (e), the Director shall not issue a permit unless he or she further finds that such activities will further and are consistent with the purposes for which such area was established, as described in §§ 922.162 and 922.164 and in the management plan for the Sanctuary.

(3) A person may conduct an activity otherwise prohibited by § 922.163 or § 922.164, if such activity is specifically allowed by and conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part, and any additional permit issuance criteria and requirements in paragraphs (b), (c), (f), and (i) through (m) of this section.

\* \* \* \* \*

Subpart Q—Hawaiian Islands Humpback Whale National Marine Sanctuary

■ 50. Amend § 922.181 by revising paragraph (a) introductory text to read as follows:

§ 922.181 Boundary.

(a) Except for excluded areas described in paragraph (b) of this section, the Hawaiian Islands Humpback Whale National Marine Sanctuary encompasses approximately 1,032 square nautical miles (nmi<sup>2</sup>) (1,366 sq. mi.), and 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:

\* \* \* \* \*

■ 51. Amend § 922.182 by revising paragraph (b) to read as follows:

§ 922.182 Definitions.

\* \* \* \* \*

(b) Other terms appearing in the regulations in this subpart are defined at 15 CFR 922.11, 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.*

■ 52. In appendix A to subpart Q, under the heading “Sanctuary Boundary” amend section B by revising the table and amend section C by revising the table to read as follows:

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

\* \* \* \* \*

B. \* \* \*

\* \* \* \* \*

Bound No. (fig. 2)	Geographic name	Number of points	Latitude	Longitude
1a	Kailiu Pt., Kauai	2	22.22353	− 159.58117
1b	Kailiu Pt., Kauai		22.27597	− 159.59983
2a	Mokolea Pt., Kauai	2	22.22497	− 159.38217
2b	Mokolea Pt., Kauai		22.24872	− 159.37203

Bound No. (fig. 2)	Geographic name	Number of points	Latitude	Longitude
3a	Puaena Pt., N Oahu	2	21.64017	-158.14056
3b	Puaena Pt., N Oahu		21.60233	-158.10681
4a	Mahie Pt., N Oahu	2	21.56036	-157.86442
4b	Mahie Pt., N Oahu		21.59228	-157.83486
5a	Kapahulu Groin, S Oahu	3	21.25158	-157.84097
5b	Kapahulu Groin, S Oahu		21.26836	-157.82381
5c	Kapahulu Groin, S Oahu		21.26839	-157.82328
6a	Makapuu Pt., S Oahu	2	21.31100	-157.64908
6b	Makapuu Pt., S Oahu		21.32908	-157.59614
7a	Ilio Pt., Molokai	2	21.22381	-157.31272
7b	Ilio Pt., Molokai		21.22417	-157.25400
8a	Pailolo Channel, C. Halawa to Lipoa Pt	2	21.02494	-156.63944
8b	Pailolo Channel, C. Halawa to Lipoa Pt		21.15819	-156.71033
9a	Hanamanoia Lighthouse, Maui	2	20.57272	-156.44753
9b	Hanamanoia Lighthouse, Maui		20.58289	-156.41256
10a	3 Nmi. closure around Kahoolawe	51	20.59947	-156.49222
10b	3 Nmi. closure around Kahoolawe		20.59997	-156.49250
10c	3 Nmi. closure around Kahoolawe		20.60108	-156.49319
10d	3 Nmi. closure around Kahoolawe		20.60183	-156.49358
10e	3 Nmi. closure around Kahoolawe		20.60453	-156.49531
10f	3 Nmi. closure around Kahoolawe		20.60714	-156.49719
10g	3 Nmi. closure around Kahoolawe		20.60961	-156.49925
10h	3 Nmi. closure around Kahoolawe		20.61108	-156.50061
10i	3 Nmi. closure around Kahoolawe		20.61217	-156.50153
10j	3 Nmi. closure around Kahoolawe		20.61411	-156.50336
10k	3 Nmi. closure around Kahoolawe		20.61639	-156.50458
10l	3 Nmi. closure around Kahoolawe		20.63297	-156.50631
10m	3 Nmi. closure around Kahoolawe		20.62169	-156.50819
10n	3 Nmi. closure around Kahoolawe		20.62417	-156.51022
10o	3 Nmi. closure around Kahoolawe		20.62653	-156.51244
10p	3 Nmi. closure around Kahoolawe		20.62872	-156.51483
10q	3 Nmi. closure around Kahoolawe		20.63081	-156.51733
10r	3 Nmi. closure around Kahoolawe		20.63233	-156.51944
10s	3 Nmi. closure around Kahoolawe		20.63306	-156.52033
10t	3 Nmi. closure around Kahoolawe		20.63500	-156.52297
10u	3 Nmi. closure around Kahoolawe		20.63572	-156.52411
10v	3 Nmi. closure around Kahoolawe		20.63633	-156.52497
10w	3 Nmi. closure around Kahoolawe		20.63811	-156.52775
10x	3 Nmi. closure around Kahoolawe		20.63858	-156.52861
10y	3 Nmi. closure around Kahoolawe		20.63983	-156.53011
10z	3 Nmi. closure around Kahoolawe		20.64175	-156.53278
10aa	3 Nmi. closure around Kahoolawe		20.64350	-156.53553
10bb	3 Nmi. closure around Kahoolawe		20.64511	-156.53842
10cc	3 Nmi. closure around Kahoolawe		20.64539	-156.53903
10dd	3 Nmi. closure around Kahoolawe		20.64622	-156.54053
10ee	3 Nmi. closure around Kahoolawe		20.64764	-156.54353
10ff	3 Nmi. closure around Kahoolawe		20.64889	-156.54658
10gg	3 Nmi. closure around Kahoolawe		20.64994	-156.54975
10hh	3 Nmi. closure around Kahoolawe		20.65083	-156.55297
10ii	3 Nmi. closure around Kahoolawe		20.65111	-156.55436
10jj	3 Nmi. closure around Kahoolawe		20.65122	-156.55472
10kk	3 Nmi. closure around Kahoolawe		20.65147	-156.55586
10ll	3 Nmi. closure around Kahoolawe		20.65189	-156.55797
10mm	3 Nmi. closure around Kahoolawe		20.65239	-156.56131
10nn	3 Nmi. closure around Kahoolawe		20.65247	-156.56233
10oo	3 Nmi. closure around Kahoolawe		20.65269	-156.56378
10pp	3 Nmi. closure around Kahoolawe		20.65281	-156.56494
10qq	3 Nmi. closure around Kahoolawe		20.65306	-156.56675
10rr	3 Nmi. closure around Kahoolawe		20.65336	-156.57011
10ss	3 Nmi. closure around Kahoolawe		20.65347	-156.57344
10tt	3 Nmi. closure around Kahoolawe		20.65344	-156.57372
10uu	3 Nmi. closure around Kahoolawe		20.65350	-156.57514
10vv	3 Nmi. closure around Kahoolawe		20.65339	-156.57850
10ww	3 Nmi. closure around Kahoolawe		20.65328	-156.57992
10xx	3 Nmi. closure around Kahoolawe		20.65325	-156.58025
10yy	3 Nmi. closure around Kahoolawe		20.65314	-156.58217
11a	Technical Closure	2	20.69422	-156.61875
11b	Technical Closure		20.69583	-156.63433
12a	Upolu Pt., Hawaii (Big Island)	2	20.26814	-155.85014
12b	Upolu Pt., Hawaii (Big Island)		20.29997	-155.85478
13a	Keahole Pt., Hawaii (Big Island)	2	19.72767	-156.06186
13b	Keahole Pt., Hawaii (Big Island)		19.72819	-156.07069

C. \* \* \*  
\* \* \* \* \*

Bound No. (fig.2)	Geographic name	Number of points	Latitude	Longitude
14a	Kawaihae Harbor, Big Island exclusion	2	20.03731	- 155.83403
14b	Kawaihae Harbor, Big Island exclusion		20.04036	- 155.83269
15a	Haleolono Harbor, Molokai exclusion	2	21.08431	- 157.24961
15b	Haleolono Harbor, Molokai exclusion		21.08467	- 157.24867
16a	Kaunakakai Harbor, Molokai exclusion	4	21.08719	- 157.02658
16b	Kaunakakai Harbor, Molokai exclusion		21.08033	- 157.03286
16c	Kaunakakai Harbor, Molokai exclusion		21.07736	- 157.02811
16d	Kaunakakai Harbor, Molokai exclusion		21.08539	- 157.02083
17a	Kaumalapau Harbor, Lanai exclusion	2	20.78589	- 156.99228
17b	Kaumalapau Harbor, Lanai exclusion		20.78364	- 156.99203
18a	Manele Harbor, Lanai exclusion	2	20.74256	- 156.88692
18b	Manele Harbor, Lanai exclusion		20.74311	- 156.88725
19a	Lahaina Harbor, Maui exclusion	2	20.87175	- 156.67917
19b	Lahaina Harbor, Maui exclusion		20.87189	- 156.67889
20a	Maalaea Harbor, Maui exclusion	2	20.79225	- 156.50972
20b	Maalaea Harbor, Maui exclusion		20.79022	- 156.51100
21a	Western closure Kuapa Pond (Hawaii Kai), Oahu	2	21.28528	- 157.71881
21b	Western closure Kuapa Pond (Hawaii Kai), Oahu		21.28514	- 157.71861
22a	Eastern closure Kuapa Pond (Hawaii Kai), Oahu	2	21.28147	- 157.71186
22b	Eastern closure Kuapa Pond (Hawaii Kai), Oahu		21.28108	- 157.71119

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

■ 53. Amend § 922.190 by revising paragraph (a) to read as follows:

**§ 922.190 Boundary.**

(a) Except as provided in paragraph (b) of this section, the Thunder Bay National Marine Sanctuary and Underwater Preserve (Sanctuary) consists of an area of approximately 3,247 square nautical miles (nmi<sup>2</sup>) (4,300 sq. mi.) of waters of Lake Huron and the submerged lands thereunder, over, around, and under the underwater cultural resources in Thunder Bay. The eastern boundary of the sanctuary begins at the intersection of the southern Alcona County boundary and the U.S./Canada international boundary (Point 1). The eastern boundary of the sanctuary approximates the international boundary passing through Points 2–5. The boundary continues west through Point 6 and then back to the northeast until it intersects with the 45.83333° N line of latitude at Point 7. The northern boundary follows the line of latitude 45.83333° N westward until it intersects the -84.33333° W line of longitude at Point 8. The western boundary extends south along the -84.33333° W line of longitude towards Point 9 until it intersects the ordinary high water mark at Cordwood Point. From there, the western boundary follows the ordinary high water mark as defined by Part 325, Great Lakes Submerged Lands, of P.A. 451 (1994), as amended, cutting across the mouths of

rivers and streams until it intersects the line formed between Point 10 and Point 11 south of Rogers City, MI. From there the boundary moves offshore through Points 11–15 in order until it intersects the ordinary high water mark along the line formed between Point 15 and Point 16. At this intersection the boundary continues to follow the ordinary high water mark south until it intersects with the line formed between Point 17 and Point 18 near Stoneport Harbor Light in Presque Isle, MI.

\* \* \* \* \*

**§ 922.194 [Removed and Reserved].**

■ 54. Remove and reserve § 922.194.

■ 55. Revise § 922.195 to read as follows:

**§ 922.195 Permit procedures.**

(a) A person may conduct an activity otherwise prohibited by § 922.193(a)(1) through (3), if the activity is specifically authorized by and 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 subpart D of this part; 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 subpart D of this part.

(b) In instances where the conduct of an activity is prohibited by § 922.193(a)(1) through (3) is not addressed under a State or other Federal lease, license, permit or other authorization, a person may conduct such activity if it is specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a permit issued pursuant to subpart D of this part and the Programmatic Agreement.

(c) 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) and (b) of this section and section 922.33;

(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.

(d) 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 paragraph (d)(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.

■ 56. Revise appendix A to subpart R to read as follows:

**Appendix A to Subpart R of Part 922—Thunder Bay National Marine Sanctuary and Underwater Preserve Boundary Coordinates**

Coordinates listed in this appendix are unprojected (geographic) and based on the North American Datum of 1983.

Point	Latitude	Longitude
1 .....	45.20708	– 83.38850
2 .....	45.20708	– 83.00000
3 .....	44.85847	– 83.00000
4 .....	44.85847	– 83.32147

**Subpart S—Mallows Bay-Potomac River National Marine Sanctuary**

■ 57. Revise § 922.205 to read as follows:

**§ 922.205 Permit procedures.**

(a) A person may conduct an activity otherwise prohibited by § 922.203(a)(1) and (2) if conducted under and in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Mallows Bay–Potomac River National Marine Sanctuary, 1305 East-West Highway, Silver Spring, MD 20910.

■ 58. Amend § 922.206 by revising paragraphs (a) and (j) to read as follows:

**§ 922.206 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 § 922.203(a)(1) through (3) if such activity is specifically authorized by a valid Federal, state, or local lease, permit, license, approval, or other authorization, or tribal right of subsistence use or access in existence prior to the effective date of sanctuary designation and within the sanctuary designated area and complies with § 922.10 and provided that the holder of the lease, permit, license, approval, or other authorization complies with the requirements of paragraph (e) of this section.

\* \* \* \* \*

(j) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 922.37.

\* \* \* \* \*

**Subpart T—Wisconsin Shipwreck Coast National Marine Sanctuary**

■ 59. Revise § 922.215 to read as follows:

**§ 922.215 Permit procedures.**

(a) A person may conduct an activity otherwise prohibited by § 922.213(a)(1) and (2) if conducted under and in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Wisconsin Shipwreck Coast National Marine Sanctuary, 1305 East-West Highway, Silver Spring, MD 20910.

■ 60. Amend § 922.216 by revising paragraphs (a) and (j) to read as follows:

**§ 922.216 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 § 922.213(a)(1) through (3) if such activity is specifically authorized by a valid Federal, state, or local lease, permit, license, approval, or other authorization, or tribal right of subsistence use or access in existence prior to the effective date of sanctuary designation and within the sanctuary designated area and complies with § 922.10 and provided that the holder of the lease, permit, license, approval, or other authorization complies with the requirements of paragraph (e) of this section.

\* \* \* \* \*

(j) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 922.37.

\* \* \* \* \*

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