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National Oceanic and Atmospheric Administration

15 CFR Part 922

Amendments to National Marine Sanctuary Regulations; Proposed Rule

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 922**

[Docket No. 070726416–2682–02]

RIN 0648–AV85

**Amendments to National Marine Sanctuary Regulations**

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

**ACTION:** Proposed rule; request for public comments.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) proposes to amend the program regulations of the national marine sanctuaries. This rule would update and reorganize the existing regulations, eliminate redundancies across sanctuaries, eliminate outmoded regulations, adopt standard boundary descriptions, and consolidate general and permitting procedures.

**DATES:** Comments on this proposed rule must be received no later than March 29, 2013.

**ADDRESSES:** You may submit comments, identified by NOAA–NOS–2011–0120, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NOS-2011-0120](http://www.regulations.gov/#!docketDetail;D=NOAA-NOS-2011-0120), click the “Comment Now!” icon, complete the required fields and enter or attach your comments.
- *Mail:* Meredith Walz, Office of National Marine Sanctuaries, 1305 East-West Highway, 11th floor, Silver Spring, MD 20910.

Comments sent by any other method, to any other address or individual, or received after the end of the comment period, will not be considered by NOAA. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NOAA will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft

Word, Excel, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:**

Meredith Walz, NOAA Office of National Marine Sanctuaries, 1305 East-West Highway, 11th floor, Silver Spring, MD 20910, (301) 713–3125.

**SUPPLEMENTARY INFORMATION:****Electronic Access**

This **Federal Register** document is also accessible via the Internet at <http://www.access.gpo.gov/su-docs/aces/aces140.html>.

**I. Background**

In 1972, Congress passed the Marine Protection, Research, and Sanctuaries Act, which, among other things, establishes the National Marine Sanctuary System (System). Title III of that Act—now also called the National Marine Sanctuaries Act (NMSA)—provides a mechanism for the Secretary of Commerce (Secretary) to designate and manage, as national marine sanctuaries, areas of the marine environment that are of special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities (16 U.S.C. 1431 *et seq.*). Since the NMSA was passed, thirteen national marine sanctuaries have been designated. Day-to-day management of the System has been delegated by the Secretary to NOAA’s Office of National Marine Sanctuaries (ONMS). Regulations implementing the NMSA and each sanctuary are codified in Title 15 Part 922 of the Code of Federal Regulations (CFR). Part 922 includes “general” regulations applicable to all sanctuaries and “site-specific” regulations that relate to each individual sanctuary.

As these sanctuaries have evolved and additional sanctuaries were included in the System, both the general and site-specific regulations have understandably changed and expanded. In certain instances, however, the evolution and expansion of the System has resulted in regulations that are redundant, inconsistent, outdated or conflicting. This rule would update both the general and site-specific regulations, making them more uniform, concise, organized, and understandable. By doing so, it is not the intent of the ONMS to alter the regulations in such a manner that would substantively change existing uses of the sanctuaries or prohibit otherwise permitted activities in the sanctuaries.

In addition, on January 18, 2011, the President issued Executive Order 13563, “Improving Regulation and Regulatory

Review.” Under this executive order, the President directed all agencies to, among other things, conduct retrospective analysis of existing significant regulations and modify, repeal, or streamline (as deemed appropriate) any regulations that may be outmoded, ineffective, insufficient or excessively burdensome. This rulemaking is part of NOAA’s effort to carry out the President’s directive.

**II. Summary of the Proposed Amendments**

This rulemaking proposes to take the following six actions:

- Consolidate regulations applicable to all sanctuaries into appropriate subparts.
- Eliminate general requirements that are either outmoded or merely duplicative of existing statutory requirements.
- Amend procedures for identifying and evaluating marine sites for possible national marine sanctuaries designation.
- Adopt standard boundary descriptions.
- Harmonize and consolidate definitions that are common to all sanctuaries. Similar definitions now found in site-specific regulations would be moved into the general requirements subpart. Where necessary, definitions will be revised to result in a single, uniform definition.
- Reorganize, update, and consolidate the permitting regulations into a single subpart.
- Make other conforming and administrative changes.

Because the proposed changes are numerous and nuanced, NOAA is re-printing the majority of part 922 as it would read if adopted as proposed (excluding appendices and tables).

NOAA is also concurrently in the scoping process to amend the regulations for several national marine sanctuaries (Florida Keys NMS, Thunder Bay NMS, Hawaiian Islands Humpback Whale NMS, and *Monitor* NMS) as part of separate rulemaking processes. Those proposals may be undertaken as part of the sanctuaries’ management plan review processes and are independent of the action described in this proposed rule. If necessary, NOAA will later harmonize the regulations for those national marine sanctuaries with any final rule associated with this action.

NOAA proposes to revise the following sections of the regulations of subparts A through R of 15 CFR part 922 with this proposed action.

### A. General Regulations

#### B. 1. Reorganize and Amend Subparts A Through E

NOAA proposes to consolidate existing subparts A (General), B (Site Evaluation List) and sections 922.40 through 922.47 of subpart E (Regulations of General Applicability) into a new subpart A (General and Regulations of General Applicability). Consistent with the purpose of this rule, moving these subparts organizes provisions applicable to all sanctuaries into a single subpart.

#### 2. Amend National Marine Sanctuaries Identification, Evaluation, and Designation Regulations

NOAA proposes to modify the existing subpart B, section 922.10, pertaining to the Site Evaluation List (SEL), and move it to section 922.12. The SEL was established to be a list of marine sites of special national significance from which future national marine sanctuaries can be chosen. NOAA deactivated the SEL in 1995 to focus limited resources on improving management of existing sanctuaries (a decision based in part on the rapid expansion of the National Marine Sanctuary System from 1989–1994). Since 1995, only one sanctuary, Thunder Bay National Marine Sanctuary, has been added to the National Marine Sanctuary System. The ability to review new sites is necessary for NOAA to fulfill its statutory mandate to identify, designate and protect our Nation's special marine areas. In this rulemaking, NOAA proposes to provide an additional method in which sites would be identified and considered active candidates. NOAA does not intend to reactivate the SEL through this rulemaking. Rather, NOAA would continue to work with the National Ocean Council and other stakeholders to further identify ways to better improve the effectiveness of the SEL. Specifically, the SEL would no longer be the exclusive method for NOAA to evaluate potential new sanctuaries. NOAA proposes to delete paragraph 922.10(c) to remove the requirement for sites to be selected from the SEL in order to be identified as an activate candidate. The proposed change would enhance the opportunity for public involvement in nominating sites for consideration as a national marine sanctuary. Rather than solely selecting potential sites from a periodically updated list, the public would be able to petition NOAA as the need arises or as more and better scientific information is known about a particular area. This proposed action is consistent with a

history of NOAA making the designation of sanctuaries (and the revisions to their management plans and regulations) an increasingly open and transparent process. This regulatory change also establishes a system of public participation and open exchange of information and ideas.

NOAA also proposes to modify subparagraph (d) which would become subparagraph (c), by removing references to sites being selected from the SEL and section 922.21. This is necessary as existing section 922.21 would be eliminated by this action. The existing section 922.21, subpart C (Designation of National Marine Sanctuaries) reiterates the process for selecting and designating new national marine sanctuaries already spelled out in the NMSA. NOAA believes there is no need for this redundancy in regulations and thus proposes to remove section 922.21.

NOAA also proposes to eliminate the remaining sections and reserve most of subpart C (Designation of National Marine Sanctuaries). The existing subpart C simply restate provisions contained in the NMSA, which establish guidelines, standards, and procedures that must be followed to designate a national marine sanctuary. The existing section 922.22(b) would be the only regulation retained from the existing subpart C. Section 922.22(b) currently governs issuance of fishing regulations. NOAA proposes to amend and move the existing 922.22(b) to the newly amended section 922.3. Under that regulation, the Regional Fishery Management Councils would be provided additional time to respond to the Secretary's request for draft sanctuary fishing regulations. Specifically, the deadline would be extended from the current 120 days to a proposed 180 days. This extension would allow for at least two council meetings to convene before a response is due to the Secretary. NOAA believes this provides a more realistic timeframe for Regional Fishery Management Councils to meet, vote, and develop regulations on proposed actions. NOAA requests comments on the proposed fishing regulations.

NOAA also proposes to eliminate subpart D (Management Plan Development and Implementation) because it is redundant with the NMSA. The NMSA generally provides the instruction and authority to develop management plans, conduct and promote research, monitoring, education, enforcement, and emergency contingencies. As discussed later in this preamble, rather than reserving the subpart, subpart D would be renamed and refocused on permitting procedures.

#### 3. Use of the Term "Submerged Lands"

NOAA proposes to revise references in the site-specific regulations from "seabed" to "submerged lands", where appropriate. This proposed change is a technical amendment, made solely for the purpose of updating the language to align with the terms of designation for many of the sanctuaries that now use the term "submerged lands" (Channel Islands NMS, Gulf of the Farallones NMS, Gray's Reef NMS, Cordell Bank NMS, and Monterey Bay NMS). This change in terminology results from a change in the term of art used more commonly today than when the original sanctuary regulations were written. In addition, in converting site descriptions in the past, NOAA has stated that these technical changes to the regulations (i.e. replacing the term "seabed" with "submerged lands") was justified in order to be consistent with the NMSA. NOAA continues to believe this is the case, and doing so in this action is consistent with the purposes of this regulatory action.

However, there are four sites (Flower Garden Banks NMS, Stellwagen Bank NMS, Hawaiian Islands Humpback Whale NMS, and Florida Keys NMS), whose terms of designation do not yet provide authority to regulate activities that would affect "submerged lands" of sanctuaries. NOAA plans to update the terms of designation in the future in a separate rulemaking action. In the interim, for those four sites, NOAA proposes to update the regulatory language to "seabed or submerged lands" so that the language can evolve with the updating of the terms of designation. This technical change should not result in any impacts, as NOAA has consistently interpreted its authority under the NMSA as extending to submerged lands, and amendments to the NMSA in 1984 (Pub. L. 98–498) clarified that submerged lands may be designated by the Secretary of Commerce as part of a national marine sanctuary (16 U.S.C. 1432(3)).

#### C. Boundary Descriptions

NOAA proposes to adopt a uniform standard for describing the overall area of each sanctuary. The area for each individual sanctuary was originally calculated using varying spatial techniques. As a result, there are inconsistencies among the sanctuaries in the description of the areal estimate. Currently, six sanctuaries (Channel Islands NMS, Gulf of Farallones NMS, Gray's Reef NMS, Cordell Bank NMS, Monterey Bay NMS, and Stellwagen Bank NMS) describe their sanctuary areas in square nautical miles; three

sanctuaries (Flower Garden Banks NMS, Olympic Coast NMS, and the Florida Keys NMS) provide the areal estimate in a combination of square nautical miles and square kilometers; Thunder Bay NMS provides the estimate in square miles and square kilometers; *Monitor* NMS provides the estimate in miles; National Marine Sanctuary of American Samoa provides it in acres and square miles; and no areal estimate is given for Hawaiian Islands Humpback Whale NMS. To address these inconsistencies, NOAA proposes to describe the area of each sanctuary in square nautical miles, abbreviated as “nmi<sup>2</sup>”. This means that the areal estimate for Gulf of the Farallones NMS, Gray’s Reef NMS, Cordell Bank NMS, Monterey Bay NMS, and Olympic Coast NMS, would not be changed, but the descriptor will change from nmi to nmi<sup>2</sup>.

In addition, NOAA has recalculated the areal estimates for each sanctuary using consistent, system-wide areal estimation techniques and technology, resulting in an improved estimate of the size of the sanctuaries. There is no change to the boundaries of the sanctuaries. This technical correction does not affect physical, biological, or socioeconomic resources because it does not alter the sanctuary’s original size or boundaries. Sanctuary area was originally calculated at the time of designation using widely varying spatial techniques. The sanctuaries whose areal estimates are revised are: *Monitor* NMS, Channel Islands NMS, National Marine Sanctuary of American Samoa, Florida Keys NMS, Flower Garden Banks NMS, Stellwagen Bank NMS, and Thunder Bay NMS. Additionally, the Hawaiian Islands Humpback Whale NMS boundary size is estimated for the first time. This proposal would make the areal estimates uniform throughout the System. The proposed change is a technical amendment, made solely for the purpose eliminating inconsistencies and adopting a uniform standard.

The geographic coordinates associated with the boundaries of each sanctuary would also be updated. Currently, three sanctuaries list the geographic coordinates in degrees, minutes, and seconds (e.g., “35°00’23” N latitude and 75°24’32” W longitude”), five sanctuaries list the geographic coordinates in degrees and decimal minutes (e.g., “35°14.50” N latitude and “75°32.45” W” longitude), and another five sanctuaries list the geographic coordinates as decimal degrees (e.g., “31.362732; -80.921200”). NOAA proposes to convert the geographic coordinates to decimal degrees as calculated using the North American Datum of 1983. The conversion would

also include updates to geographic coordinates for special zones of sanctuaries. NOAA believes standardizing the horizontal datum for all sites would lessen confusion arising from the current use of different datum among the various sites, reduce the risk of human error resulting from self-calculations performed by visitors to or those traversing the sanctuary, and it would make the geographic coordinates easier for navigators to write, plot, and read. The shape, size, and location of the actual boundaries would not change.

The proposed changes to the geographic coordinates will not appear in the regulatory text of this proposed rule. Rather, corresponding tables containing the proposed updated geographic coordinates can be viewed and downloaded from <http://sanctuaries.noaa.gov/library/aslldocs.html>. Copies of the tables are also available upon request at the address listed in the **ADDRESSES** section of this proposed rule. NOAA encourages all interested persons to review and submit public comments regarding the proposed conversion. The final rule would contain the actual conversion tables.

#### D. Definitions

##### 1. Definitions for Terms That Apply System-Wide

NOAA proposes to revise the section that contains definitions of system-wide terms by: (1) Eliminating a term; (2) adding new terms; (3) updating some existing definitions, (4) consolidating redundant terms from the site-specific regulations; and (5) moving some site-specific terms to the general regulations. Section 922.3 (which would be renumbered as 922.11) would be expanded to include seventeen (17) additional terms and corresponding definitions. While many existing site-specific sanctuary regulations (subparts F through R) have distinct terms and corresponding definitions, several terms have identical or nearly identical definitions, and other terms have disparate definitions. To ensure consistent interpretation of like terms throughout the System, NOAA proposes to make several updates to definitions, as described below.

##### a. Eliminated Term

NOAA proposes to delete the term “fish wastes” from the general definitions because it is not used in any of the program regulations.

##### b. New Terms

NOAA proposes to define the terms “abandoning” and “effective date” in

the general definitions section because those terms are used throughout the program regulations but are not defined.

In addition, NOAA proposes to add the term “Washington Coast treaty tribe” to the general definitions in section 922.11. The term was suggested as a result of consultation with the Olympic Coast NMS management plan review process. The new definition would specifically refer to any of the four tribes currently identified in the existing Olympic Coast NMS regulations and would be defined as “the Hoh, Makah, or Quileute Indian Tribes or the Quinault Indian Nation.”

##### c. Terms Moved Without Change

The following terms and corresponding definitions would be moved to section 922.11 without change: “clean”, “cruise ship”, “federal project”, “lawful fishing”, “lightering”, “marine”, “mineral”, “National historic landmark”, “oceangoing ship”, “shunt”, “State”, and “subsistence use”.

##### d. Amended Definitions of Existing Terms

NOAA proposes to amend the definitions of some existing terms in the general definitions section 922.11.

The office reference would be updated for the definition of “Director”, and the definitions, including statutory references, are clarified for the terms “exclusive economic zone”, “national marine sanctuary”, and “regional fishery management council”.

NOAA also proposes to modify the following terms to address issues and limitations identified since NOAA first promulgated the regulations: “benthic community”, “conventional hook and line gear”, “cultural resource”, “historical resource”, “Indian tribe”, “injure”, “person”, “sanctuary quality”, “sanctuary resource”, “take or taking,” “tropical fish,” and “vessel.”

“Benthic community” would be updated by adding “sea/ocean/lake” before “bottom” to reflect the appropriate descriptive term, depending on the sanctuary.

“Conventional hook and line gear” would be updated by removing the phrase “from aboard a vessel or” from the definition, and replacing the descriptor “hind- or electrically operated, hand-held or mounted” with “hand, electrically, or hydraulically operated, regardless of whether mounted”, and replacing the descriptor “fishing apparatus” with “fishing gear”. These proposed changes would make the definition conform to common fishing practices (e.g., conventional hook and line fishing may occur from shore, from a bridge, etc.), and simplify

language describing the various fishing gear and methods. The spelling error would also be corrected. In addition, the definition would be revised to replace the term “bottom longline” with “longline”. This proposed change would eliminate the word “bottom” from the definition. Currently the term “conventional hook and line gear” is used only in prohibitions of the Flower Garden Banks NMS (section 922.122(a)(7)–(10)) as an exception to the take of certain sanctuary resources. This change would clarify that the prohibition applies to all types of longlines in Flower Garden Banks NMS, and not just bottom longlines. NOAA notes that the existing definition of “conventional hook and line gear” applies only to “fishing gear \* \* \* composed of a single line terminated by a combination of sinkers and hooks or lures \* \* \*”. Since longline is a single line fitted with a series of offshoot lines along its entire length, it does not fit within the definition of “conventional hook and line gear”. By removing the word “bottom” from the definition, NOAA hopes to eliminate confusion. This proposed change would impact only the prohibitions of Flower Garden Banks NMS and make it consistent with current fishing practices at that site.

“Commercial fishing” would be modified to include the phrase “including any attempt to engage in such activity.” The proposed modification is intended to clarify that the term “commercial fishing” does not only apply to activity that results in the sale or trade of fish, shellfish, algae or corals, but also applies to “any attempt” to sell or trade fish, shellfish, algae or corals for profit. NOAA strongly believes the proposed modification would make the definition of “commercial fishing” consistent with current interpretation under other statutes.

The terms “cultural resources” and “historical resource” would be modified by including the phrase, “but not limited to”. In addition, for “historical resource”, the term “cultural resources” is added to the list of examples. This update is intended to clarify that the examples of various resources listed in the regulations are not exhaustive, nor are they exclusive. The statutory citation for the National Historic Preservation Act is incorporated by reference in order to prevent delays associated with updating NOAA regulations should changes occur to the statute in the future.

The term “fish” would be updated with the current language used in the Florida Keys NMS regulations at 922.162, which is consistent with the

definition of “fish” contained in the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). The applicable statutory reference is also inserted so that the source of the regulatory definition may be easily identified.

The term “harmful matter” would be modified by adding a period at the end of “Sanctuary resources or qualities.” The phrase “including but not limited to” is replaced with “Such substances or combination of substances may include, but is not limited to”. The purposes of the two above mentioned changes are to improve readability and promote greater understanding.

The term “Indian tribe” found in the Olympic Coast NMS and Thunder Bay NMS regulations would be moved to the system-wide regulation, and would mirror the definition currently used in Executive Order 13175. Updating this definition does not result in any change from a management perspective with regard to either existing sanctuary. The purpose is to bring the definition in line with the updated language as required by Presidential directive.

NOAA proposes to update the definition of “injure” and clarify that the term encompasses short or long term adverse changes to any chemical, biological, or physical attribute, or viability of a “sanctuary resource”; it would not be limited to acts that cause the loss or destruction of sanctuary resources. The proposed revision would also clarify that injury may be caused either directly or indirectly and that injury includes “the impairment of a sanctuary resource service”. A resource service is a function performed by a sanctuary resource for the benefit of another sanctuary resource or the public (e.g., seagrass providing habitat and food for fish or a coral reef providing recreational opportunities for members of the public who enjoy snorkeling). This is consistent with current and past practices in handling cases where resources have been damaged, destroyed, or impaired. Adding the phrase, “or the impairment of a sanctuary resource” therefore does not change the types of cases or expand the pool of potential violations that are likely to be issued using this definition, because these damages typically do both; cause damage and impact the viability of the sanctuary resource and law enforcement officers already treat these cases consistently. Thus, the change reflects common practice in determining and assessing injuries under the NMSA and is, therefore, intended only as clarification.

NOAA proposes to update “sanctuary quality” and “sanctuary resource” by

adding clarifying text (e.g. “national marine” inserted before “sanctuary”), and in the case of sanctuary resource, the definition would complement that found in the NMSA and would include “maritime heritage, cultural, archeological, and scientific” resources. NOAA would also update the definitions by replacing “the substratum of the area of the Sanctuary” with “waters of the sanctuary, the submerged lands of the sanctuary”. The term “seabirds” would be replaced with “birds”. This is to account for the fact that, as with most migratory creatures, birds may transit through the sanctuary during the course of their life span. When birds—seabirds, migratory birds, or water fowl—transit through the sanctuary they become part of the sanctuary resources that fall under the protection of NOAA consistent with the NMSA. NOAA also proposes to incorporate the phrase, “or parts or products thereof” after “any living or non-living resource of a national marine sanctuary \* \* \*”. This was added to ensure that protected resources are not dismembered and removed. It does not change the intent of the original protections, but when the original regulations were written, it was not common to include the term of art “or parts thereof” in protective language, as is commonly the case today.

“Tropical fish” would be updated by replacing the phrase “for aquaria purposes” with “in the aquarium trade”. The proposed change makes grammatical correction and updates the terminology to “aquarium trade”, which is currently used.

This revised definition of “tropical fish”, however, would not apply to the Florida Keys NMS. NOAA intends to continue to maintain a site-specific definition of “tropical fish” in the Florida Keys NMS. The state has managed a fishery for marine life species, including “tropical fish” for many years. NOAA has recognized this in Florida Keys NMS site-specific regulations and has historically maintained a separate definition of “tropical fish” for the Florida Keys NMS. Section 922.162 incorporates the Florida Administrative Code, and would be modified consistent with the Florida Marine Life rule. The proposed definition would read: “*Tropical fish* means any species included in 68B–42 of the Florida Administrative Code, or any part thereof.”

“Vessel” would be modified to add at the end of the definition additional non-exhaustive list of examples taken from the Florida Keys NMS definition (e.g. “the term would include, but would not be limited to \* \* \*”). This clarification

would be useful for law enforcement purposes by providing additional guidance, but does not substantively change the original meaning of the term, which lacked additional examples.

#### e. Consolidated Terms for Definitions That Varied

NOAA proposes to adopt a single definition for the following three terms, and consolidate them into section 922.11: “[stowed and] not available for immediate use”, “motorized personal watercraft (MPWC)”, and “traditional fishing”. Currently, there are two definitions for the term “stowed and not available for immediate use” and a separate definition for “not available for immediate use”. There are also four different definitions, each, for the terms “motorized personal watercraft” and “traditional fishing”.

#### Stowed and Not Available for Immediate Use

There are two nearly identical definitions of the term, “stowed and not available for immediate use” and a separate definition for “not available for immediate use” that apply to three sites (Channel Islands NMS, Florida Keys NMS, and Gray’s Reef NMS). The operational part of each definition is identical, but the illustrations of what constitutes fishing gear being stowed and not available for immediate use differ among the various sites. The definition for Channel Islands NMS is the most comprehensive and is being proposed for all three sites with a slight clarification that the term applies to fishing gear. This proposed action would not change in meaning or application of the term for law enforcement purposes. The term, “stowed and not available for immediate use” would be defined as follows:

*Stowed and not available for immediate use* means fishing gear not readily accessible for immediate use, e.g., by being fishing gear securely covered and lashed to a deck or bulkhead, tied down, unbaited, unloaded, or partially disassembled (such as spear shafts being kept separate from spear guns).

#### Motorized Personal Watercraft (MPWC)

NOAA proposes to adopt a definition for MPWC very similar to the current Monterey Bay NMS definition. The proposed definition slightly differs from Monterey Bay regulatory definition in two respects. First, the proposed definition has been enumerated in order to clearly show that NOAA has adopted an integrated three-part definition. Second, the design characteristics have been clarified in part 1 of the definition in order to better identify the vessels of

concern to NOAA. The proposed definition would read as follows:

*Motorized personal watercraft (MPWC)* means (1) any vessel, propelled by machinery, that is designed to be operated by standing, sitting, or kneeling on, astride, or behind the motor of the vessel, in contrast to the conventional manner, where the operator stands or sits inside the vessel hull; (2) any vessel less than 20 feet in length overall as manufactured and propelled by machinery and that has been exempted from compliance with the U.S. Coast Guard’s Maximum Capacities Marking for Load Capacity regulation found at 33 CFR Parts 181 and 183, except submarines; or (3) any other vessel that is less than 20 feet in length overall as manufactured, and is propelled by a water jet pump or drive.

NOAA proposes to adopt this definition of MPWC for all sanctuaries because it is the most comprehensive and rigorous of the various definitions used for other sanctuaries. This definition captures key elements of the operational definition adopted by Channel Islands NMS, Gulf of the Farallones NMS, and the Florida Keys NMS. However, it differs from those other sanctuary definitions by omitting reference to particular hull design, length, or propulsion system which could be rendered obsolete and ineffective over time due to the rapidly evolving MPWC design changes. Rather, the definition is progressive and is intended to cover a full range of existing (e.g., Kawasaki Corporation’s Jet Ski line, jet bikes, hovercraft, air boats, and race boats) and future motorized personal watercraft that could create conflicts with other sanctuary users and pose a threat to sanctuary resources and qualities. The threat arises because the design features of MPWC (e.g., small size, shallow draft, instant thrust, and “quick reflex”) increase the craft’s maneuverability and allow riders to operate nearshore and access shallow water areas and water areas adjacent to rocky shores, reefs, and remote beaches that would commonly pose a hazard to conventional craft operating at comparable speeds. These areas are also often used by marine mammals and sea birds as breeding, nursing, or resting areas. The marine mammals and sea birds are often either unable to avoid these craft or are frequently alarmed enough to significantly modify their behavior such as cessation of feeding or abandonment of young. MPWC also tend to operate in traditional surfing locations and have historically created conflicts with other users. Of the various definitions, the Monterey Bay NMS regulatory definition best identifies the various vessels of concern to NOAA while avoiding an excessively complicated and lengthy definition for

MPWC. NOAA’s rationale and authority for adopting the Monterey Bay National Marine Sanctuary’s is further explained in 73 FR 70488, 70499–70501, Nov. 20, 2008 and is hereby incorporated in this notice.

NOAA believes the proposed definition contains an element of flexibility so that should one prong become obsolete by design innovation, the remaining two prongs would still apply and preserve the protection intended by the regulations. Additionally, because the proposed definition is consistent with the definition applied in national parks, NOAA does not foresee enforcement problems in sanctuaries located adjacent to areas managed by the National Park Service. NOAA also believes the proposed definition would allow for improved enforcement at other sites throughout the System, as it has in Monterey Bay NMS. NOAA has prepared an environmental assessment in conjunction with this proposed change.

#### Traditional Fishing

There are three different definitions of the term “traditional fishing,” adopted by Florida Keys NMS, Stellwagen Bank NMS, and Thunder Bay NMS. The only difference among these regulations is the historical reference point. Some definitions refer to the effective date of Sanctuary designation, whereas others refer to fishing activities specifically identified in the environmental impact statement and management plan for the sanctuary. To avoid confusion, NOAA proposes to consolidate the existing definitions.

In formulating a single definition of “traditional fishing”, NOAA recognizes that Florida Keys NMS coordinates with the State of Florida in the enforcement of prohibited activities and must also implement the Florida Administrative Code among other competing interests. Therefore, it is important to distinguish activities that were customarily conducted prior to the designation of any sanctuary, and those that were contemplated in the original designation and environmental documents of the designation. NOAA believes this distinction would be important for all sanctuaries, and not just Florida Keys NMS. Thus, NOAA proposes to adopt the Florida Keys NMS definition for “traditional fishing” for all sanctuaries using this term, modified as follows:

*Traditional fishing* means those commercial or recreational activities that were customarily conducted within the Sanctuary before its designation, as identified in the Sanctuary’s original final environmental impact statement and

management plan. For Thunder Bay National Marine Sanctuary and Underwater Preserve, traditional fishing means those commercial, recreational, and subsistence fishing activities that were customarily conducted within the sanctuary prior to its designation.

NOAA also recognizes that subsistence fishing may occur at other sites such as Olympic Coast NMS and National Marine Sanctuary of American Samoa, however, we believe that these activities are already covered by the existing definition of subsistence use. Thus, we do not believe the proposed changes alter any previously held rights in these areas or alter fishing regulations in any manner.

#### f. Consolidated Terms With Identical or Nearly Identical Definitions

In addition to the consolidated definitions above, NOAA has identified other minor differences in a few other definitions that we propose to consolidate in the system-wide regulations. NOAA proposes minor changes to the following four definitions:

##### Deserting

The term “deserting” would be moved from Monterey Bay and Gulf of the Farallones national marine sanctuaries regulations to the new definition section at 922.11, and amended to include the following descriptors, “wrecked, junked, or in a substantially dismantled condition.” These descriptors are intended to provide guidance to law enforcement in applying the regulations, and assist the public in better understanding the regulations. The term is currently used only in the prohibition for these two sites. While adding the descriptors “wrecked, junked, or in a substantially dismantled condition” could be interpreted to expand the universe of activities that constitute deserting a vessel, NOAA’s intent is to provide additional guidance to persons that may identify with these terms in addition to the existing examples of “aground or adrift.”

##### Graywater

NOAA proposes to incorporate into the sanctuary program regulations the definition of “graywater” established under section 312 of the Federal Water Pollution Control Act (FWPCA, 33 U.S.C. 1322 *et seq.*). Section 312 (a)(11) of the FWPCA defines “graywater” to include galley, bath and shower water. Many site specific regulations already prohibit the discharge of galley, bath and shower water. Therefore, NOAA believes it improves the definition to

explicitly refer to the FWPCA, which is the statutory source of the definition.

##### Seagrass

“Seagrass” would be modified only by consolidating all the examples, without change, from the sanctuaries that list them following the definition.

##### Take or Taking

The definition of “Take or taking” would be reformatted and updated. NOAA proposes to keep the second half of the existing definition intact with some modifications. Specifically, the types of resources protected would not be limited by the regulations. Currently, the definition of “take or taking” refers to the protection of marine mammals, sea turtles, and seabirds. The regulations were never intended to only protect these three classes of sanctuary resources. The three classes of sanctuary resources have been replaced with the broader term “sanctuary resources”. This proposed change is intended to clarify that any living or non-living resource of a national marine sanctuary is protected as contemplated by the NMSA. The proposed definition would also incorporate by reference the Endangered Species Act (16 U.S.C. 1531 *et seq.* (ESA)), the Marine Mammal Protection Act, as amended (16 U.S.C. 1361 *et seq.* (MMPA)) and the Migratory Bird Treaty Act, as amended (16 U.S.C. 703 *et seq.* (MBTA)). Eight sanctuaries (Channel Islands NMS, Gulf of the Farallones NMS, Cordell Bank NMS, Monterey Bay NMS, Stellwagen Bank NMS, Olympic Coast NMS, Florida Keys NMS, and Hawaiian islands humpback Whale NMS) currently incorporate these statutes in their site-specific regulations. As such, the proposed change serves as a consolidation of those regulations. Instead of crafting a separate definition of “take or taking” with respect to the sanctuary System, NOAA believes it would be most helpful for enforcement personnel to apply a consistent interpretation of the three statutes. Law enforcement would be the best and most well versed on any changes that occur to these definitions over time. By incorporating these statutes into the national definition by reference, NOAA would avoid unnecessary delays in making the statutory updates to ONMS regulations.

##### g. Other Terms That Would Remain in Site-Specific Regulations

There are several sites that will retain some site-specific terms, such as the Florida Keys NMS and Olympic Coast NMS, as mentioned above. NOAA also notes that the newly adopted definition of “live rock” in the NMS of American

Samoa will also be separate and distinct from a long-standing definition of “live rock” in the Florida Keys NMS. NOAA intends to continue to maintain a site-specific definition of “live rock” in the NMS of American Samoa. This is because the definition used in that site incorporates both the American Samoan code (which specifically includes basalt rock under Title 24, Chapter 9), and also adopts the term from the Western Pacific Regional Fisheries Management Council’s Coral reef Ecosystems Fishery Management Plan (69 FR 8336, Feb. 24, 2004). Similarly, the Florida Keys NMS definition is derived from the FNMSPA. For these reasons, NOAA will recognize and maintain a separate definition for this term in both the NMS of American Samoa and in the Florida Keys NMS.

#### D. Permitting Regulations

##### 1. Background

NOAA proposes to update and consolidate its sanctuary permitting procedures and requirements, which would be set forth in a new section named “Subpart D—National Marine Sanctuary Permitting.” Currently, ONMS permit review criteria and procedures are located in several different parts of the regulations: 922.48 National Marine Sanctuary permits—application procedures and issuance criteria; 922.49 Notification and review of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity; 922.50 Appeals of administrative action; and in subparts F through R in sanctuary-specific regulations.

In general, the proposed rule would consolidate permitting regulations, and update and clarify ONMS permitting authority. Specifically, the proposed action would:

- a. Consolidate and amend general permit types (922.30);
- b. Add a new section on the issuance of special use permits (922.31);
- c. Clarify application requirements and procedures (922.32);
- d. Consolidate and amend permit review criteria (922.33);
- e. Clarify permit amendment procedures (922.34);
- f. Add a new section on the imposition of special use permit fees (922.35);
- g. Clarify authorizations authority (922.36); and
- h. Update and amend the appeals processes (922.37).

The proposed rule would: eliminate redundancy, thereby significantly shortening site-specific permitting regulations; make permitting criteria

and procedures uniform across sites, to the extent appropriate; resolve unnecessary inconsistencies; and update and clarify regulations.

## 2. General Permit Categories

ONMS has three ways by which it may authorize otherwise prohibited activities: general permits, special use permits, and authorizations. General permits are divided into several categories that correspond with the primary purpose of the proposed activity. NOAA proposes to consolidate all general permit categories into one section (922.30) and provide a single description of each permit category. NOAA proposes to eliminate some site-specific general permit categories that can adequately be addressed in one or more of the general permit categories. NOAA also proposes to move some site-specific general permit categories into this consolidated section.

Most sanctuary regulations have at least three categories of general permits: (1) Management; (2) education; and (3) research. However, the language describing these categories is not consistent among the sites. NOAA proposes to make these three general permit categories applicable to all sanctuaries, consolidate these categories into a single section, and provide a single description of each permit category. System-wide, this change will slightly expand the activities eligible for a permit. All sanctuary regulations currently allow the issuance of a general permit for research. *Monitor* National Marine Sanctuary (*Monitor* NMS) does not currently allow the issuance of general permits for education and management, so these would be new activities for *Monitor* NMS.

Other categories of general permits at some sanctuaries include: salvage associated with an air or marine casualty or of a historic shipwreck; restoration of natural habitats, populations, or ecological processes; and response to the imminent risk of a sanctuary resource injury. These activities will be considered under a category determined appropriate for the proposed action (e.g., management or research). Sanctuary general permits for management are commonly used for activities that further the management or resource protection objectives identified at a particular site. Thus, proposed restoration and incident response activities would typically qualify for a general permit for management. Historic shipwreck salvage may qualify for a general permit for research or management depending on the specific proposed action. Salvage associated with an air or marine

casualty would likely qualify for a general permit for management. Thus, the activity of salvage would continue to qualify for a general permit, although it would no longer be a separate category of general permit.

In addition, some sanctuaries have site-specific categories of general permits. Four site-specific categories of general permits would be moved to this section, but would only apply to the specified sanctuary. The four site-specific general permit categories which will be moved into the general permit section are: jade removal in Monterey Bay NMS; tribal self-determination in Olympic Coast NMS; maritime heritage in Florida Keys NMS; and otherwise furthering the purposes of the Florida Keys NMS. It should be noted that the tribal self-determination permit category for Olympic Coast NMS is specific to activities that promote or enhance treaty right activities. Activities necessary for the exercise of treaty rights are exempt from Olympic Coast NMS regulatory prohibitions, and thus do not require a permit.

## 3. Review Criteria

NOAA proposes to consolidate and amend permit review factors or criteria. All sanctuaries with permitting authority currently have a list of factors or criteria that the Director must consider in determining whether to issue a permit. The list of factors or criteria considered by the Director is not consistent across all sites, nor is the regulatory text for the same factor consistent. Additionally, when determining eligibility for a permit, sanctuaries vary as to whether site-specific factors or criteria must be met or simply considered.

To achieve greater consistency, NOAA proposes a single list of nine review criteria. Eight criteria would be applicable to all sanctuaries, while one would be unique to Olympic Coast NMS (the activity as proposed shall not adversely affect Washington Coast treaty tribes). NOAA would make the review criteria affirmative findings that must be met before the Director may issue a permit. This approach is consistent with the approach taken under the existing regulations for Florida Keys and Gray's Reef NMS. This approach is also consistent with the common practice employed by the Director at the other sites within the system.

The Olympic Coast NMS site-specific permitting regulations presently include a permit review criterion that the Director must consider the impacts on tribes in the evaluation of permit applications. In order to retain the intent while changing the criterion into

an affirmative finding consistent with the other general permit criteria, NOAA proposes to modify the criterion to require that proposed permit activities shall not adversely affect Washington Coast treaty tribes.

NOAA also proposes to eliminate site-specific impact thresholds for permit issuance. In addition to review factors or criteria, four sites (National Marine Sanctuary of American Samoa, Monterey Bay, Stellwagen Bank and Olympic Coast national marine sanctuaries) have a regulatory impact threshold that must be satisfied for a permit to be issued. Of these sanctuaries, only Monterey Bay and Stellwagen Bank have the same impact threshold. The three different types of impact thresholds do not provide clear and well-defined limits, as was originally intended. Without clear limits, the determination as to whether an action meets or exceeds a threshold can be murky. NOAA believes that this defeats the purpose for which thresholds were originally established. These site-specific impact thresholds would be eliminated in favor of the new review criteria stated as affirmative findings. The review criteria specific to the acceptable level of impact to sanctuary resources and qualities would be: "the expected end value of the activity to the furtherance of the national marine sanctuary goals and purposes must outweigh any potential adverse impacts on sanctuary resources and qualities."

NOAA believes that establishing a consistent set of regulatory review criteria written as affirmative findings and eliminating site-specific impact caps would enable better management practices across the System. In theory, permit reviewers for nine sites would now be required to make affirmative findings, rather than being allowed merely to consider the review criteria. However, in practice, this would not be new. The four sites with impact thresholds are among the nine that will now have affirmative findings included as part of their permit issuance procedures.

## 4. Appeals

NOAA proposes to amend the administrative process for appealing sanctuary permit decisions. First, NOAA proposes that only permit applicants and permittees would be allowed to file an administrative appeal of a permit decision. Currently, "any interested party" can appeal permitting decisions for *Monitor*, Channel Islands, Gulf of the Farallones, Gray's Reef, National Marine Sanctuary of American Samoa, and Cordell Bank national



marine sanctuaries. For the six other sanctuaries with permitting authority, only permit applicants and permittees can appeal. NOAA has researched the history of the regulations governing administrative appeal of permitting decisions and there appears to be no identifiable reason for this inconsistency. Moreover, NOAA is unaware of any appeal that has ever been filed by a person other than a permittee or applicant. The lack of a broader appeal base has never been contested in the other six sanctuaries that limit the appeal pool only to applicants and permittees. For all the reasons set forth above, to eliminate inconsistencies, and to make this regulation apply more uniformly, NOAA proposes to restrict the potential appellants to permittees and permit applicants under a new section 922.37 and make the regulations applicable to all sites.

NOAA also proposes to eliminate the requirement that the Assistant Administrator (AA) hold an informal hearing for administrative appeals for the *Monitor* NMS. All other sanctuary regulations provide the AA with discretion to determine whether an informal hearing is necessary. This level of discretion would now be extended to the AA with regard to the *Monitor* NMS.

#### 5. Special Use Permits and Fees

NOAA proposes to add a new section to the system-wide permit regulations that addresses the authority of the Secretary of Commerce (delegated to the ONMS Director) to issue special use permits (SUPs) as established by Section 310 of the NMSA. Although all sanctuaries currently have authority to issue SUPs, the only sanctuary that currently has regulations that specifically provide for them is the Florida Keys NMS. NOAA proposes to use the existing Florida Keys NMS regulations (922.166(d)) as a basis for the new system-wide regulation.

SUPs can be used to authorize the conduct of specific activities in a sanctuary if such authorization is necessary (1) to establish conditions of access to and use of any sanctuary resource or (2) to promote public use and understanding of a sanctuary resource. Examples of activities that qualify for a SUP include continued presence of submarine cables beneath or on the seabed of a sanctuary, disposal of cremated human remains in a sanctuary, and commercial operation of aircraft below the minimum altitude in restricted zones of a sanctuary. Other

activities that qualify for a SUP are set forth in the **Federal Register** (71 FR 4898; Jan 30, 2006). Categories of SUPs may also be changed through public notice.

The NMSA allows the assessment and collection of fees for the conduct of any activity under a SUP. Fees would be addressed in the new section 922.35 of these regulations. The fees collected could be used to recover the administrative costs of issuing the permit, the cost of implementing the permit, and the fair market value of the use of sanctuary resources.

#### 6. Application Requirements and Amendment Procedures

NOAA proposes to make minor clarifications to the section on application requirements and procedures. These requirements are for the most part unchanged, with the exception of revising the section to read more clearly. The proposed changes would clarify that the Director may refuse to further consider an incomplete application. Applications are deemed incomplete if an applicant fails to submit required or requested information, pay outstanding penalties, or comply with any permit previously issued to the applicant. In addition, the language in new section 922.34 governing permit amendments has been revised to clarify that NOAA does not issue “renewal” permits, but has a longstanding practice of “amending” the expiration dates of existing permits. While NOAA is not proposing to set a deadline for submission of amendments before permit expiration, we generally recognize that a reasonable time frame to conduct adequate review would be 30 days prior to the date of expiration, with some exceptions, such as when an environmental assessment or environmental impact statement would be required or when the scope of the proposed action or its impacts are significantly different from the original proposal.

#### 7. Authorizations

ONMS regulations currently at 922.49 provide the Director with authority to allow an otherwise prohibited activity “if such activity is specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization.” This form of approval has become known as an “authorization” and is used by six sanctuaries: Flower Garden Banks, Monterey Bay, Stellwagen Bank, Olympic Coast, Florida Keys, and

Thunder Bay. For the most part, these are sites that significantly overlap state waters or other federal agencies’ jurisdictions, or that have a significant amount of coastline adjacent to the site. Given this, these sites frequently host activities that require multiple state or federal permits. The authorization process was intended to streamline regulatory requirements by reducing the need for multiple permits.

NOAA proposes to remove unclear and outdated language from section 922.49, revise the language, and renumber the regulation as section 922.36. NOAA is also proposing to require that the Director consider the review criteria at 922.33(a)(1)–(7) in evaluating authorization requests. It is already common practice to use the permit review criteria as guidance in deciding whether to issue authorizations. The regulations at 922.36(c)(2) would make the consideration of the permit review criteria by the Director mandatory. In addition, section 922.36(c)(3)(iii) would clarify that the Director has authority to issue an authorization containing mandatory terms and conditions.

#### E. Other Conforming and Administrative Changes

- Under 922.163(f), outdated references would be removed
- Under 922.166, references are proposed to be updated from “historical” to “maritime heritage” resources, and a correction is made to appropriately update the state of Florida and Florida Keys NMS “Submerged Cultural Resource (SCR)” programmatic agreement to simply, Programmatic Agreement, or “PA”
- Address corrections are made for several permitting sections, as sanctuary offices have changed or moved (for Stellwagen Banks NMS, Olympic Coast NMS, and Florida Keys NMS).
- 922.194 is no longer applicable, and therefore NOAA proposes to remove the text and reserve the section.

As an aid to the reader in understanding the proposed changes, we include the following table of specific changes:

**Note:** The revised geographic coordinates discussed in this notice can be viewed and downloaded from <http://sanctuaries.noaa.gov/library/alldocs.html>, or obtained upon request at the address listed in the **ADDRESSES** section of this proposed rule.

Current regulations	Proposed change
Subpart A ..... Sec. 922.1 .....	Revised to include amended text from consolidated from the existing Subparts A, D and E–R. Revised to include amended text consolidated from the existing sections 922.1, 922.4; and subpart E, section 922.40.
Sec. 922.2 ..... Sec. 922.3 .....	Revised. Renumbered 922.11 and revised to add some terms from the site-specific regulations (F–R), delete some outmoded terms, rename some terms, and amend the definition of some terms.
Sec. 922.4 ..... Subpart B .....	Consolidated into newly amended subpart A. Renumbered Sec. 922.1 and revised. Reserved.
Sec. 922.10 ..... Subpart C .....	Consolidated into newly amended subpart A. Renumbered Sec. 922.12 and revised. Reserved.
Sec. 922.20, 922.21, 922.23, 922.24, and 922.25. .... Sec. 922.22 .....	Removed. Removed paragraph (a). Paragraph (b) consolidated into newly amended subpart A. Renumbered Sec. 922.3 and revised.
Subpart D ..... Sec. 922.30 and 922.31 .....	Revised and Renamed “Subpart D—National Marine Sanctuary Permits”. Removed.
Subpart E ..... Sec. 922.40 ..... Sec. 922.41 .....	Reserved. Consolidated into newly amended subpart A. Renumbered Sec. 922.1 and revised. Consolidated into newly amended subpart A. Renumbered Sec. 922.4. No other changes made to text.
Sec. 922.42 ..... Sec. 922.43 .....	Consolidated into newly amended subpart A. Renumbered Sec. 922.5 and revised. Consolidated into newly amended subpart A. Renumbered Sec. 922.6. No other changes made.
Sec. 922.44 ..... Sec. 922.45 .....	Consolidated into newly amended subpart A. Renumbered Sec. 922.7 and internal cross references updated. No other changes made. Consolidated into newly amended subpart A. Renumbered Sec. 922.8 and revised.
Sec. 922.46 ..... Sec. 922.47 .....	Consolidated into newly amended subpart A. Renumbered Sec. 922.9. Paragraph (a) consolidated into newly amended subpart A. Renumbered Sec. 922.10. Paragraph B removed.
Sec. 922.48 through 922.50 .....	Consolidated into newly amended subpart D. Renumbered Sec. 922.30 through 922.37 and revised.
Subpart F ..... Sec. 922.60 ..... Sec. 922.62 .....	Retained. Revised areal estimate and geographic coordinates. Revised and consolidated into newly amended subpart D. The remaining language updated to conform to proposed changes.
Subpart G ..... Sec. 922.70 ..... Sec. 922.71 .....	Retained. Updated abbreviation of areal estimate. Reserved. Entire section revised and consolidated into newly amended subpart A, Sec. 922.11.
Sec. 922.74 .....	Revised and consolidated into newly amended subpart D. The remaining language updated to conform to proposed changes.
Subpart H ..... Sec. 922.80 ..... Sec. 922.81 .....	Retained. Updated abbreviation of areal estimate. Revised and consolidated terms into newly amended subpart A, Sec. 922.11 consistent with proposed changes. No changes made to terms retained in this section.
Sec. 922.82 ..... Sec. 922.83 .....	Updated internal cross reference in paragraph (c). Revised and consolidated into newly amended subpart D. The remaining language updated to conform to proposed changes.
Subpart I ..... Sec. 922.90 ..... Sec. 922.91 .....	Retained. Updated abbreviation of areal estimate. Revised and consolidated terms into newly amended subpart A, Sec. 922.11 consistent with proposed changes. No changes made to terms retained in this section.
Sec. 922.92 ..... Sec. 922.93 .....	Updated internal cross reference in paragraph (a). Revised and consolidated into newly amended subpart D. The remaining language updated to conform to proposed changes.
Subpart J ..... Sec. 922.101 ..... Sec. 922.102 .....	Retained. Revised areal estimate and geographic coordinates. Revised and consolidated terms into newly amended subpart A, Sec. 922.11 consistent with proposed changes. No changes made to terms retained in this section.
Sec. 922.103 ..... Sec. 922.107 .....	Update internal cross reference in paragraph (e) Revised and consolidated into newly amended subpart D. The remaining language updated to conform to proposed changes.
Subpart K ..... Sec. 922.110 ..... Sec. 922.111 ..... Sec. 922.112 ..... Sec. 922.113 .....	Retained. Updated abbreviation of areal estimate. Reserved. Entire section consolidated into newly amended subpart A, Sec. 922.11. Updated internal cross reference in paragraph (b). Revised and consolidated into newly amended subpart D. The remaining language updated to conform to proposed changes.
Subpart L ..... Sec. 922.120 ..... Sec. 922.121 ..... Sec. 922.122 .....	Retained. Revised areal estimate. Revised consistent with proposed changes. Paragraph (a)(4) updated by adding “seabed or submerged lands”. Paragraph (a)(7) revised by replacing “bottom longlines” with “longlines”. Updated internal cross reference in paragraphs (f), (g) and (h) to conform to proposed changes.

Current regulations	Proposed change
Sec. 922.123 .....	Revised and consolidated into newly amended subpart D. The remaining language updated to conform to proposed changes. Address updated.
Appendix A .....	Revised geographic coordinates.
Subpart M .....	Retained.
Sec. 922.130 .....	Updated abbreviation of areal estimate.
Sec. 922.131 .....	Revised and consolidated terms into newly amended subpart A, Sec. 922.11 consistent with proposed changes. The abbreviation of the areal estimate for Davidson Seamount Management Zone has been updated to conform to proposed changes. No changes made to terms retained in this section.
Sec. 922.132 .....	Updated internal cross reference in paragraphs (d), (e) and (f) to conform to proposed changes.
Sec. 922.133 .....	Revised and consolidated into newly amended subpart D. The remaining language updated to conform to proposed changes.
Subpart N .....	Retained.
Sec. 922.140 .....	Updated abbreviation of areal estimate, and revised geographic coordinates.
Sec. 922.141 .....	Revised and consolidated terms into newly amended subpart A, Sec. 922.11 consistent with proposed changes. Updated cross reference in term retained in this section.
Sec. 922.142 .....	Paragraph (a)(3) updated by adding "seabed or submerged lands". Updated internal cross reference in paragraphs (d), (e) and (f) to conform to proposed changes.
Sec. 922.143 .....	Revised and consolidated into newly amended subpart D. The remaining language updated to conform to proposed changes. Address updated.
Appendix A .....	Revised geographic coordinates.
Subpart O .....	Retained.
Sec. 922.150 .....	Revised areal estimate.
Sec. 922.151 .....	Revised and consolidated terms into newly amended subpart A, Sec. 922.11 consistent with proposed changes. No changes made to terms retained in this section.
Sec. 922.152 .....	Paragraph (a)(3) updated by adding "seabed or submerged lands". Updated internal cross reference in paragraphs (e), (g) and (h) to conform to proposed changes.
Sec. 922.153 .....	Revised and consolidated into newly amended subpart D. The remaining language updated to conform to proposed changes. Address updated.
Appendix A .....	Revised geographic coordinates.
Subpart P .....	Retained.
Sec. 922.161 .....	Revised areal estimate.
Sec. 922.162 .....	Revised and consolidated into Subpart A, Sec. 922.11 to conform to proposed changes. One administrative change is made to a single term retained in this section.
Sec. 922.163 .....	Paragraph (a)(3) updated by adding "seabed or submerged lands". Updated internal cross reference in paragraphs (b), (c) and (f) to conform to proposed changes. Removed outdated reference in paragraph (f) which provided an exception for discharge of sewage.
Sec. 922.164 .....	Updated internal cross reference in paragraph (e)(1)(iii).
Sec. 922.166 .....	Revised and consolidated into newly amended subpart D. The remaining language updated by replacing "historical" with "maritime heritage" resources and "Submerged Cultural Resource (SCR) programmatic agreement is replaced with "Programmatic Agreement" or "PA".
Sec. 922.167 .....	Updated contact phone number.
Appendix I, II, IV through VII .....	Revised geographic coordinates.
Subpart Q .....	Areal estimate provided.
Sec. 922.181 .....	Revised definition of "Alteration of the seabed". Updated internal cross reference in paragraphs (b).
Sec. 922.182 .....	Revised geographic coordinates.
Appendix A .....	Revised areal estimate.
Subpart R .....	Definition of "traditional fishing" removed and consolidated into Subpart A, Sec. 922.11 to conform to proposed changes. No changes made to terms retained in this section.
Sec. 922.190 .....	Removed/Reserved.
Sec. 922.191 .....	Revised and consolidated into newly amended subpart D. The remaining language updated to conform to proposed changes.
Sec. 922.194 .....	Revised and consolidated into newly amended subpart D. The remaining language updated to conform to proposed changes.
Sec. 922.195 .....	Revised and consolidated into newly amended subpart D. The remaining language updated to conform to proposed changes.

### III. Request for Comments

NOAA requests comments on this proposed rule. In particular, NOAA seeks to determine whether the proposed changes effectively streamline or otherwise improve the regulations and requests input on the preliminary questions listed below. These questions are not intended to be exhaustive. You may raise other issues or make suggestions unrelated to these questions if you believe it would help NOAA develop better regulations. In addition,

NOAA invites you to provide comments on how to make the regulations easier to understand.

(1) Has NOAA identified those sections of the regulations that can and should be changed, streamlined, consolidated, or removed?

(2) Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulations easier to understand?

(3) Are there additional regulations beyond those that NOAA proposes to

change in this action that have become unnecessary and could be amended or withdrawn without impairing NOAA's sanctuary regulatory program?

(4) Are there additional regulations within the sanctuary program regulations that NOAA has not identified in this document as proposed changes, and that have become outdated? If so, how can they be modernized to better accomplish their regulatory objectives?

(5) Has NOAA efficaciously identified and made proposed amendments to the regulations to improve effectiveness? Are there additional regulations that are still necessary, but that have not operated as well as expected such that a modified, stronger, or slightly different approach is justified?

(6) Are there regulations that are working well that can be expanded or used as a model to fill gaps in sanctuary regulatory programs?

(7) Are the requirements in the regulations clearly stated? Do the regulations contain technical language or jargon that is not clear?

#### IV. Classification

##### A. National Environmental Policy Act

This proposed rule contains both technical and substantive changes to ONMS regulations. None of the proposed changes are expected to have significant environmental impacts as defined in the regulations implementing the National Environmental Policy Act. However, NOAA is preparing a draft environmental assessment to analyze the potential environmental impacts of this proposed rulemaking and will make that analysis available for public comment. Copies will be made available at the address and Web site listed in the **ADDRESSES** section of this proposed rule. Responses to comments received on this proposed rule will be published in the final environmental assessment and preamble to the final rule.

##### B. Executive Orders 12866 and 13563

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

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

This proposed rule was developed after consultation and collaboration with representatives from the Makah, Hoh, and Quileute Indian Tribes and the Quinault Indian Nation through their membership on the Olympic Coast Intergovernmental Policy Council (IPC) and the Olympic Coast NMS Advisory Council. NOAA has represented to the IPC that this regulatory action will not significantly change existing regulations, and may actually improve tribal input on permitting actions conducted in or adjacent to the Olympic Coast NMS. The IPC and tribal government representatives on the Olympic Coast NMS Advisory Council

were active participants in a more significant rulemaking conducted in association with the management plan review and regulatory update to the Olympic Coast NMS regulations. The language that NOAA adopted, through extensive public participation and government to government consultation with the tribes, has been fully incorporated without change in the regulatory language reflected within this rule.

The new changes proposed include adding a defined term "Washington Coast treaty tribe", moving the tribal self-determination permit category to the national permitting regulations, modifying a permit review criterion to require that permitted activities shall not have an adverse effect on Washington Coast treaty tribes, and adding the consideration of all permit review criteria (including the effect of the activity on tribes) to the authorizations procedures.

NOAA proposes to add the term "Washington Coast treaty tribe" to the general definitions in section 922.11. The term was suggested as a result of consultation with the Olympic Coast NMS management plan review process, and therefore it is not anticipated there will be any objection to this new term. The new definition would specifically refer to any of the four tribes currently identified in the existing Olympic Coast NMS regulations and would be defined as "the Hoh, Makah, or Quileute Indian Tribes or the Quinault Indian Nation."

For Olympic Coast NMS specifically, permits that further tribal self-determination are retained, without change from the recent regulatory process. NOAA proposes, however, to move them to the new permitting section under subpart D, without change. The permit category would continue to read: "promote or enhance tribal self-determination, tribal government functions, the exercise of treaty rights or the economic development of the tribe, subsistence, ceremonial and spiritual activities, or the education or training of a tribal member."

The permit review consideration of the impacts of permitted activities on tribes would now require permit reviewers to report an affirmative finding that permitted activities would not adversely affect Washington Coast treaty tribes. This increases protection of the Washington Coast treaty tribes when compared to existing regulations that requires permit reviewers to only "consider" impacts to tribes.

NOAA also proposes to eliminate the Olympic Coast NMS site-specific impact threshold, which establishes that

permitted activities must not "substantially injure" sanctuary resources and qualities. The impact threshold is replaced by nine (9) affirmative findings as discussed in the preamble to this proposed rule (section II.D.3., above). Among the proposed affirmative findings, however, ONMS finds that the Olympic Coast NMS unique finding of "will not substantially injure" would be adequately captured in the findings that the activity must be (1) conducted in manner compatible with the primary objective of resource protection, (4) the end value to the goals and objectives of the sanctuary outweighs potential adverse impacts, and (9) the activity does not adversely affect Washington Coast treaty tribes. As stated above, NOAA believes the removal of the Olympic Coast NMS "substantial injury" affirmative finding has a negligible overall impact to permit reviews as the threshold is rendered unnecessary by the list of nine review criteria written as affirmative findings. NOAA believes that this change should pose no overall impact to tribal interests with regard to permitting activities.

NOAA believes the proposed changes to the authorization review criteria increase protections for tribal interests. Currently the regulations do not require a permit reviewer to consider tribal interests when issuing an authorization. With the proposed change, tribal protections are increased to a mandatory consideration of whether activity adversely affects Washington Coast treaty tribes. Therefore, the proposed action would further increase protections for tribal consideration and protection for authorizations.

Last, and unrelated to the Olympic Coast NMS or Washington Coast treaty tribes, NOAA proposes to consolidate the definitions for the term "traditional fishing". While the definition should not impact Olympic Coast tribes, we note in the preamble discussion that the revised definition incorporates the terms "subsistence fishing" that is currently used in the Thunder Bay NMS regulations. We also note that we recognize subsistence fishing may occur at other sites such as Olympic Coast NMS and National Marine Sanctuary of American Samoa. However, we believe that these activities are already covered by the existing definition of subsistence use. Therefore we do not believe the proposed changes alter any previous rights held in these areas or alter fishing regulations in any manner.

##### 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 proposed rule does not create any new or revisions to the existing information collection requirement that was approved by OMB (OMB Control Number 0648–0141) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* (PRA).

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 Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is that the proposed changes are predominantly administrative in nature and generally would not alter substantive legal obligations for the regulated community. Specifically:

- Moving current sections of the regulations to different subparts and revising text as proposed by this rule would not substantively change the effect or impact of the regulations;
- Making the technical corrections to citations and obsolete sections of the regulations as proposed by this rule would not substantively change the effect or impact of the regulations;
- Amending the definitions of “stowed and not available for immediate use” and “traditional fishing” to be uniform among the sanctuaries does not impact small entities because the proposed definitions are identical or substantially similar to the definitions currently used for managing sanctuary resources under ONMS regulations. Clarifying and codifying these definitions does not change the obligations of small business operators significantly because in sanctuaries where these activities occur regularly, the current definitions are identical or substantially similar to the proposed definitions. Thus, amending the definitions to standardize them among the various sanctuaries is not expected to substantially alter the legal obligations of small businesses;
- Amending the term “motorized personal watercraft” would reconcile

several definitions to create one uniform definition for all sanctuaries. The revision is intended make the term more clearly understood and reduce ambiguity for law enforcement purposes. This regulatory change is not expected to affect small businesses because they are already complying with existing restrictions on MPWC use, and the proposed definition does not impose new or substantially alter restrictions in any sanctuary where motorized personal watercraft activity is currently regulated;

- Amending and consolidating the permitting regulations from many site-specific regulations to a single subpart does not substantively change the requirements to apply for permits, nor does it change the burden on applicants who wish to apply for permits. Therefore, these changes should not alter the current operations of small businesses, and may actually improve ease of applying for permits by removing inconsistencies between the sanctuaries. The only substantive change in the permitting sections is the proposal to change the appeal section to limit the pool of appellants of a permit decision, as discussed in section II.D.4 of the preamble to this proposed rule. NOAA has researched the history of this regulation and to date it has remained unutilized in the six sanctuaries that have a broad appellant pool of “any interested party.” NOAA does not anticipate that limiting the appellant pool would impact small businesses, and NOAA believes the change would provide consistency within the regulations across all sanctuaries. Small businesses that apply for permits may actually benefit from this proposed change because it improves transparency and predictability for applicants. Therefore, these changes should not impact the current operations of small business operators, and may improve ease of applying for permits by removing inconsistencies and confusion that might otherwise occur.

Because the proposed changes are predominantly administrative in nature, they do not generally alter the rights and responsibilities of the regulated community. The one proposed substantive change is not expected to have a significant impact on a substantial number of small business entities because it is eliminating a provision that has never been used previously. As a result, an initial regulatory flexibility analysis is not required and none has been 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, Motorized personal watercraft, Natural resources, Permitting, Permit procedures, Prohibited activities, Special use permit, Stowed and not available for immediate use, Resources, Research, Traditional fishing, Water resources.

#### **David M. Kennedy,**

*Assistant Administrator for Ocean Services and Coastal Zone Management.*

Accordingly, for the reasons set forth above, NOAA proposes to amend 15 CFR part 922 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.*

- 2. Revise part 922 Subpart A to read as follows:

#### **Subpart A—General and Regulations of General Applicability**

Sec.

- 922.1 Purposes and applicability of the regulations.
- 922.2 Mission, goal, 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 Site Evaluation List (SEL).

#### **Subpart A—General and Regulations of General Applicability**

##### **§ 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)); and
  - (2) To implement the designations of the national marine sanctuaries, for which site specific regulations appear in subparts F through R, by regulating activities affecting them, consistent with their respective terms of designation, in order to protect, restore, preserve and 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, 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 Subparts A and D apply to all national marine sanctuaries immediately upon designation.

#### **§ 922.2 Mission, goal, 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 in a manner consistent with the purposes and policies of the Act (16 U.S.C. 1431(b));

(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 under the Act concerning the identification, evaluation, registration, and treatment of historical resources shall be consistent, to the extent practicable, with the declared national policy for the protection and preservation of these resources as stated in the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, the

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

#### **§ 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 Regional Fishery Management Council, 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 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 Act 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 Act. 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 Act.

#### **§ 922.4 Boundaries.**

The boundary for each of the thirteen National Marine Sanctuaries covered by this part is described in subparts F through R, 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 R, subject to any emergency regulations promulgated pursuant to §§ 922.6, 922.112(d), 922.165, 922.186, or 922.196, 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 R set forth site-specific regulations applicable to the activities specified therein.

#### **§ 922.7 Emergency regulations.**

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all such activities are subject to immediate temporary regulation, including prohibition. The provisions of this section do not apply to the Cordell Bank, Florida Keys, Hawaiian Islands Humpback Whale, and Thunder Bay National Marine Sanctuaries. See §§ 922.112(d), 922.165, 922.185, and 922.196, respectively, for the authority to issue emergency regulations with respect to those sanctuaries.

#### **§ 922.8 Penalties.**

(a) Each violation of the NMSA or Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA), 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, and any vessel used to destroy, cause the loss of, or injure any Sanctuary resource is liable *in rem* to the United States for response costs and damages resulting from such destruction, loss, or injury.

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

Leases, permits, licenses, or rights of subsistence use or access in existence on the date 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.

*Active Candidate* means a site selected by the Secretary for further consideration for possible designation as a National Marine Sanctuary.

*Assistant Administrator* means the Assistant Administrator for Ocean Services and Coastal 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, including any attempt to engage in such activity.

*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 resources* means any historical or cultural feature, including, but not limited to, archaeological sites, historic structures, shipwrecks, and artifacts.

*Deserting* means leaving a vessel aground, adrift, wrecked, junked, or in 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 proposed designation of a new sanctuary or revising terms of designation, effective date means the 45th day of continuous session of Congress following submission of the sanctuary designation documents.

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

*Federal project* means any water resources development project conducted by the United States Army Corps of Engineers, or operating under a permit or other authorization issued by the Corps of Engineers and authorized by Federal law.

*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 Act, as amended, 16 U.S.C. 1801 *et seq.*

*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 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 those contaminants (regardless of quantity) listed pursuant to 42 U.S.C. 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act at 40 CFR 302.4.

*Historical resource* means any resource possessing historical, cultural, archaeological or paleontological significance, including sites, contextual information, structures, districts, and objects significantly associated with or representative of earlier people, cultures, maritime heritage, and human activities and events. Historical resources include, but are not limited to, "cultural resources," "submerged cultural resources," and also include "historical properties," as defined in the National Historic Preservation Act, as amended, 16 U.S.C. 470 *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. 479a.

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

*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.

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

*Lightering* means at-sea transfer of a 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.

*Motorized personal watercraft* (MPWC) means (1) any vessel, propelled by machinery that is designed to be operated by standing, sitting, or kneeling on, astride, or behind the motor of the vessel, in contrast to the conventional manner, where the operator stands or sits inside the vessel hull; (2) any vessel less than 20 feet in length overall as manufactured and propelled by machinery and that has been exempted from compliance with the U.S. Coast Guard's Maximum Capacities Marking for Load Capacity regulation found at 33 CFR Parts 181 and 183, except submarines; or (3) any other vessel that is less than 20 feet in length overall as manufactured, and is propelled by a water jet pump or drive.

*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.

*Oceangoing ship* means any private, commercial, government, or military vessel of 300 gross registered tons or more, not including cruise ships.

*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 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 means an underwater cultural resource as defined at § 922.191.

*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*, *Zostera marina*; *Thalassia testudinum* (turtle grass); *Syringodium filiforme* (manatee grass); *Halodule wrightii* (shoal grass); *Halophila decipiens*, *H. engelmannii*, *H. johnsonii*; and *Ruppia maritima*.

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

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

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

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

*Stowed and not available for immediate use* means fishing gear not readily accessible for immediate use, e.g., by being fishing gear securely covered and lashed to a deck or bulkhead, tied down, unbaited, unloaded, or partially disassembled (such as spear shafts being kept separate from spear guns).

*Subsistence use* means the customary and traditional use by rural residents of areas near or in the marine environment for direct personal or family

consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles; and for barter, if for food or non-edible items other than money, if the exchange is of a limited and non-commercial nature.

*Take or taking* means:

(1) Take or taking 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), for any sanctuary resource listed as either endangered or threatened under the ESA;

(2) Take or taking 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), for any sanctuary resource defined as a marine mammal by the (MMPA, 16 U.S.C. 1362(6));

(3) To conduct an activity prohibited by section 703 of the Migratory Bird Treaty Act of 1918, as amended, 16 U.S.C. 703 (MBTA), for any sanctuary resource that is in some manner protected by the MBTA, as amended; or

(4) To harass, harm, disturb, pursue, hunt, shoot, wound, kill, trap, capture, injure, or collect, or attempt to harass, harm, disturb, pursue, hunt, shoot, wound, kill, trap, capture, injure, or collect any other sanctuary resources not subject to paragraphs (1), (2), or (3) of this definition. This includes, but is not limited to, collection of any dead or injured sanctuary resource, or any part thereof; or restraint or detainment of any sanctuary resource, no matter how temporarily; or to operate a vessel or aircraft or conduct any other act that results in the disturbance or molestation of any sanctuary resource.

*Traditional fishing* means those commercial, recreational, or subsistence fishing activities that were customarily conducted within the Sanctuary before its designation, as identified in the original final environmental impact statement and management plan for the Sanctuary.

*Tropical fish* means any fish of minimal sport and food value, usually brightly colored, often used in the aquarium trade, and that lives in a direct relationship with live bottom communities.

*Vessel* means a watercraft of any description capable of being used as a means of transportation in 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, capable of being used as a means of transportation in or on the waters of the Sanctuary. For purposes of this part, the



terms “vessel,” “watercraft,” and “boat” have the same meaning.

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

#### § 922.12 Site Evaluation List (SEL)

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

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

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

■ 3. Remove and reserve part 922 subpart B:

#### Subpart B—[RESERVED]

■ 4. Remove and reserve part 922 subpart C.

#### Subpart C—[RESERVED]

■ 5. Revise part 922 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, including renewals.

922.35 Special Use permit fees.

922.36 National Marine Sanctuary authorizations.

922.37 Appeals of permitting decisions.

#### Subpart D—National Marine Sanctuary Permitting

##### § 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 R.

(b) Sanctuary general permit categories. The Director may issue a sanctuary general permit under this 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:

(1) Research—activities that constitute scientific research on or scientific monitoring of national marine sanctuary resources or qualities;

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

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

(4) Jade removal—the removal of loose jade from the Jade Cove area within the Monterey Bay National Marine Sanctuary that cannot be collected under paragraphs (a)(1)(ii) and (iii) of 15 CFR § 922.132;

(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;

(6) Maritime heritage—survey and inventory, research and recovery, or deaccession/transfer of Florida Keys National Marine Sanctuary maritime heritage resources performed in accordance with all requirements of the Programmatic Agreement for management of historical resources in the Florida Keys National Marine Sanctuary and section 922.166 of this part; and

(7) Further FKNMS purposes—activities that further the purposes of the 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 any commercial or concession-type 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 section 922.35. No special use permit may be effective until all assessed fees are paid, unless otherwise provided by the Director by a fee schedule set forth as a permit condition.

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

(a) *Submitting applications.* Permit applications must be submitted by mail or electronic mail to the address listed in the subpart for the relevant national marine sanctuary. 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, within or outside the Federal government.

(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);
- (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.* The Director shall not issue a permit under this 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:

(i) The extent to which the conduct of the activity may diminish or enhance national marine sanctuary resources and qualities; and

(ii) Any indirect, secondary 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 eliminate, minimize, or 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; and

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

(9) For the 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 to such terms and conditions as he or she deems appropriate.

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

(d) *Application denials.* 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;

(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 for the national marine sanctuary;

(3) The permittee or applicant has acted in violation of the regulations set forth in this subpart; or

(4) 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, including renewals.**

(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 (renewal) is treated as a permit amendment. A request for permit amendment must be submitted to the

same NOAA offices 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 requests.* The Director may deny a permit amendment request upon finding:

(1) The amendment does not meet the review criteria under this subpart and the relevant subpart for all national marine sanctuaries in which the proposed activity is to take place;

(2) The permittee has been found to have violated the permit or these regulations;

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

(4) 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.

(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) Number of personnel;

(ii) Personnel hours;

(iii) Equipment;

(iv) Environmental analyses or assessments;

(v) Copying; and

(vi) Overhead 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, if such activity is specifically allowed by any valid federal, state, or local lease, permit, license, approval, or other authorization (hereafter called "agency approval"), 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, renewal, 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 of the date 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, 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 of his or her pending review of the request for an ONMS authorization.

**(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 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)–(9) when deciding whether to issue an ONMS authorization.

(3) *Director's response.* The Director shall respond in writing to the applicant of his or her decision as to whether to authorize the agency approval.

(i) The Director may decline to issue an ONMS authorization and shall

provide the reason(s) therefor. If the Director declines to issue an ONMS authorization, the activity remains prohibited in the sanctuary.

(ii) The Director may issue an ONMS authorization with no additional terms and conditions.

(iii) The Director may issue an ONMS authorization containing terms and conditions deemed reasonably necessary to protect sanctuary resources and qualities. The ONMS authorization terms and conditions are enforceable by NOAA. If the applicant does not comply with the ONMS authorization terms and conditions, the ONMS authorization is invalid, and the failure to comply constitutes a violation of the NMSA and these regulations, which may result in 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 § 922.36 may be extended by the Director for good cause.

(g) *Authorization appeals.* In accordance with the provisions of § 922.37, the applicant may appeal to the Assistant Administrator:

- (1) Any denial, amendment, suspension, or revocation by the Director of the issuance of an ONMS authorization; or
- (2) Any term or condition imposed by the Director.

**§ 922.37 Appeals of permitting decisions.**

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

- (1) An applicant for, or a holder of, a National Marine Sanctuary permit issued pursuant to section 922.30;
- (2) An applicant for, or a holder of, a special use permit issued pursuant to section 310 of the Act and section 922.31;
- (3) An applicant for, or a holder of, an ONMS authorization of an agency approval issued by any Federal, State, or local authority of competent jurisdiction pursuant to section 922.36; and
- (4) A person requesting certification of an existing lease, permit, license, or

right of subsistence use or access under section 922.9.

(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 section 922.30, special use permit pursuant to section 310 of the Act and section 922.31, or an ONMS authorization issued pursuant to section 922.36; or

(2) The conditioning, amendment, suspension, or revocation of a certification under section 922.9.

(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 paragraphs (d)(1) or (d)(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) therefor 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 subsection (c)(4) of this section may be extended by the Assistant Administrator for good cause.

■ 6. Remove and reserve part 922 Subpart E.

**Subpart E— [RESERVED]**

**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 an estimated 0.593 square nautical miles (nmi<sup>2</sup>) extending from the surface to the seabed, the center of which is at N 35.00639 degrees W 75.40889 degrees.

\* \* \* \* \*

■ 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. Revise § 922.70 to read as follows:

**§ 922.70 Boundary.**

The Channel Islands National Marine Sanctuary (Sanctuary) consists of an area of approximately 1,128 square nautical miles (nmi<sup>2</sup>) of coastal and ocean waters, and the submerged lands thereunder, off the southern coast of California. The Sanctuary boundary begins at the Mean High Water Line of and extends seaward to a distance of approximately six nmi from the following islands and offshore rocks: San Miguel Island, Santa Cruz Island, Santa Rosa Island, Anacapa Island, Santa Barbara Island, Richardson Rock, and Castle Rock (the Islands). The seaward boundary coordinates are listed in appendix A to this subpart.

■ 10. Remove and reserve § 922.71.

**§ 922.71 [Reserved]**

■ 11. Revise § 922.72(c) to read as follows:

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

\* \* \* \* \*

(c) The prohibitions in paragraphs (a)(3) through (a)(10), (a)(12), and (a)(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, 113 Harbor Way, Santa Barbara, CA 93109.

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

■ 13. Revise § 922.80 to read as follows:

**§ 922.80 Boundary.**

The Gulf of the Farallones National Marine Sanctuary (Sanctuary) boundary encompasses a total area of approximately 966 square nautical miles (nmi<sup>2</sup>) of coastal and ocean waters, and submerged lands thereunder, surrounding the Farallon Islands (and Noonday Rock) off the northern coast of California. The northernmost extent of the Sanctuary boundary is a geodetic line extending westward from Bodega Head approximately 6 nmi to the northern boundary of the Cordell Bank National Marine Sanctuary (CBNMS). The Sanctuary boundary then turns southward to a point approximately 6 nmi off Point Reyes, California, where it then turns westward again out towards the 1,000-fathom isobath. The Sanctuary boundary then extends in a southerly direction adjacent to the 1,000-fathom isobath until it intersects the northern extent of the Monterey Bay National Marine Sanctuary (MBNMS). The Sanctuary boundary then follows the MBNMS boundary eastward and northward until it intersects the Mean High Water Line at Rocky Point, California. The Sanctuary boundary then follows the MHWL north until it intersects the Point Reyes National Seashore (PRNS) boundary. The Sanctuary boundary then approximates the PRNS boundary, as established at the time of designation of the Sanctuary, to the intersection of the PRNS boundary and the MHWL in Tomales Bay. The Sanctuary boundary then follows the MHWL up Tomales Bay and Lagunitas Creek to the Route 1 Bridge where the Sanctuary boundary crosses the Lagunitas Creek and follows the MHWL until it intersects its northernmost extent near Bodega Head. The Sanctuary boundary includes Bolinas Lagoon, Estero de San Antonio (to the tide gate at Valley Ford Franklin School Road) and Estero Americano (to the bridge at Valley Ford Estero Road), as well as Bodega Bay, but not Bodega Harbor. Where the Sanctuary boundary crosses a waterway, the Sanctuary boundary excludes these waterways shoreward of the Sanctuary boundary line delineated by the coordinates provided. The precise seaward boundary coordinates are listed in appendix A to this subpart.

■ 14. Revise § 922.81 to read as follows:

**§ 922.81 Definitions.**

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

*Areas of Special Biological Significance* (ASBS) are those areas designated by California's State Water Resources Control Board as requiring

protection of species or biological communities to the extent that alteration of natural water quality is undesirable. ASBS are a subset of State Water Quality Protection Areas established pursuant to California Public Resources Code section 36700 *et seq.*

*Routine maintenance* means customary and standard procedures for maintaining docks or piers.

- 15. Revise § 922.82 paragraph (c) 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 and § 922.83.

\* \* \* \* \*

- 16. Revise § 922.83 to read as follows:

**§ 922.83 Permit procedures.**

(a) A person may conduct an activity otherwise prohibited by § 922.82 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, Gulf of the 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 (nmi<sup>2</sup>) of ocean waters and the submerged lands thereunder, off the coast of Georgia. The Sanctuary boundary includes all waters and submerged lands within the geodetic lines connecting the following coordinates:

Datum: NAD83

Geographic Coordinate System

- (1) N 31.362732 degrees W 80.921200 degrees
- (2) N 31.421064 degrees W 80.921201 degrees
- (3) N 31.421064 degrees W 80.828145 degrees
- (4) N 31.362732 degrees W 80.828145 degrees

- (5) N 31.362732 degrees W 80.921200 degrees

- 18. Revise § 922.91 to read as follows:

**§ 922.91 Definitions.**

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

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

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

- 19. Amend § 922.92 by revising paragraph (a) as follows:

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

(a) Except as may be necessary for national defense (subject to the terms and conditions of Article 5, Section 2 of the Designation Document) or to respond to an emergency threatening life, property, or the environment, or except as may be permitted by the Director in accordance with subpart D of this part and § 922.93, the following activities are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

\* \* \* \* \*

- 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) 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. Revise § 922.101 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.

(a) Fagatele Bay Unit. The Fagatele Bay unit is approximately a 0.189 square nautical miles (nmi<sup>2</sup>) coastal embayment formed by a collapsed volcanic crater on the island of Tutuila, Territory of American Samoa and includes Fagatele Bay in its entirety. The landward boundary is defined by the mean high high water (MHHW) line 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 (S 14.36527 degrees, W 170.76932 degrees) and Steps Point (S 14.37291 degrees, W 170.76056 degrees) from the point at which it intersects the mean high high water line seaward.

\* \* \* \* \*

- 22. Revise § 922.102 to read as follows:

**§ 922.102 Definitions.**

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

*Live rock* means any Coral, basalt rock, or other natural structure with any living organisms growing in or on the Coral, basalt rock, or structure.

- 23. Revise § 922.103 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, § 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:

(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. Revise § 922.110 to read as follows:

**§ 922.110 Boundary.**

The Cordell Bank National Marine Sanctuary (Sanctuary) boundary encompasses a total area of approximately 399 square nautical miles (nmi<sup>2</sup>) of ocean waters, and submerged lands thereunder, off the northern coast of California approximately 50 miles west-northwest of San Francisco, California. The Sanctuary boundary extends westward (approximately 250 degrees) from the northwestern most point of the Gulf of the Farallones National Marine Sanctuary (GFNMS) to the 1,000 fathom isobath northwest of Cordell Bank. The Sanctuary boundary then generally follows this isobath in a southerly direction to the western-most point of the GFNMS boundary. The Sanctuary boundary then follows the GFNMS boundary again to the northwestern corner of the GFNMS. The exact boundary coordinates are listed in appendix A to this subpart.

■ 26. Remove and reserve § 922.111.

**§ 922.111 [Reserved]**

■ 27. Amend § 922.112 by revising paragraph (b) 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.

\* \* \* \* \*

■ 28. Revise § 922.113 to read as follows:

**§ 922.113 Permit procedures.**

(a) A person may conduct an activity otherwise prohibited by § 922.112 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. Revise § 922.120 to read as follows:

**§ 922.120 Boundary.**

The Flower Garden Banks National Marine Sanctuary (the Sanctuary) consists of three separate areas of ocean

waters over and surrounding the East and West Flower Garden Banks and Stetson Bank, and the submerged lands thereunder including the Banks, in the northwestern Gulf of Mexico. The area designated at the East Bank is located approximately 120 nautical miles (nmi) south-southwest of Cameron, Louisiana, and encompasses 19.20 square nautical miles (nmi<sup>2</sup>). The area designated at the West Bank is located approximately 110 nmi southeast of Galveston, Texas, and encompasses 22.61 nmi<sup>2</sup>. The area designated at Stetson Bank is located approximately 70 nmi southeast of Galveston, Texas, and encompasses 0.64 nmi<sup>2</sup>. The three areas encompass a total of 42.45 nmi<sup>2</sup>. The boundary coordinates for each area are listed in appendix A to this subpart.

■ 30. Revise § 922.121 to read as follows:

**§ 922.121 Definitions.**

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

*No-activity zone* means the geographic areas delineated by the Department of the Interior in stipulations described in Notice to Lessees No. 2009–G39, “Biologically-Sensitive Underwater Features and Areas” for topographic features of the Central and Western Gulf of Mexico. The precise description of these areas around the East and West Flower Garden Banks are provided in appendix B of this subpart; the no-activity zone around Stetson Bank is defined as the 52 meter isobath. These particular aliquot part descriptions for the East and West Flower Garden Banks, and the 52 meter isobath around Stetson Bank, define the geographic scope of the “no-activity zones” for purposes of the regulations in this subpart.

■ 31. Amend § 922.122 by revising paragraphs (a)(4), (a)(7), (f) and (h) to read as follows:

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

(a) \* \* \*

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

\* \* \* \* \*

(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 section 310 of the Act.

\* \* \* \* \*

(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 or a Special Use permit under section 10 of the Act authorizing, or otherwise approve, the exploration for, development of, or production of oil, gas, or minerals in a no-activity zone. Any leases, permits, approvals, or other authorizations authorizing the exploration for, development of, or production of oil, gas, or minerals in a no-activity zone and issued after the January 18, 1994 shall be invalid.

■ 32. 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**

■ 33. Revise § 922.130 to read as follows:

**§ 922.130 Boundary.**

The Monterey Bay National Marine Sanctuary (Sanctuary) consists of two separate areas. (a) The first area consists of an area of approximately 4016 square nautical miles (nmi<sup>2</sup>) of coastal and ocean waters, and submerged lands thereunder, in and surrounding Monterey Bay off the central coast of California. The northern terminus of the Sanctuary boundary is located along the southern boundary of the Gulf of the

Farallones National Marine Sanctuary (GFNMS) beginning at Rocky Point just south of Stinson Beach in Marin County. The Sanctuary boundary follows the GFNMS boundary westward to a point approximately 29 nmi offshore from Moss Beach in San Mateo County. The Sanctuary boundary then extends southward in a series of arcs, which generally follow the 500 fathom isobath, to a point approximately 27 nmi offshore of Cambria, in San Luis Obispo County. The Sanctuary boundary then extends eastward towards shore until it intersects the Mean High Water Line (MHWL) along the coast near Cambria. The Sanctuary boundary then follows the MHWL northward to the northern terminus at Rocky Point. The shoreward Sanctuary boundary excludes a small area between Point Bonita and Point San Pedro. Pillar Point Harbor, Santa Cruz Harbor, Monterey Harbor, and Moss Landing Harbor are all excluded from the Sanctuary shoreward from the points listed in appendix A except for Moss Landing Harbor, where all of Elkhorn Slough east of the Highway One bridge, and west of the tide gate at Elkhorn Road and toward the center channel from the MHWL is included within the Sanctuary, excluding areas within the Elkhorn Slough National Estuarine Research Reserve. Exact coordinates for the seaward boundary and harbor exclusions are provided in appendix A to this subpart.

(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>) of ocean waters and the submerged lands thereunder. The shoreward boundary of this portion of the Sanctuary is located approximately 65 nmi off the coast of San Simeon in San Luis Obispo County. Exact coordinates for the Davidson Seamount Management Zone boundary are provided in appendix F to this subpart.

■ 34. Revise § 922.131 to read as follows:

**§ 922.131 Definitions.**

In addition to those definitions found at 15 CFR 922.11, the following definitions apply to this subpart:

*Davidson Seamount Management Zone* means the area bounded by geodetic lines connecting a rectangle centered on the top of the Davidson Seamount, and consists of approximately 585 square nautical miles (nmi<sup>2</sup>) of ocean waters and the submerged lands thereunder. The

shoreward boundary of this portion of the Sanctuary is located approximately 65 nautical miles (nmi) off the coast of San Simeon in San Luis Obispo County. Exact coordinates for the Davidson Seamount Management Zone boundary are provided in appendix F to this subpart.

*Hand tool* means a hand-held implement, utilized for the collection of jade pursuant to 15 CFR 922.132(a)(1), that is no greater than 36 inches in length and has no moving parts (e.g., dive knife, pry bar, or abalone iron). Pneumatic, mechanical, electrical, hydraulic, or explosive tools are, therefore, examples of what does not meet this definition.

■ 35. Amend § 922.132 by revising paragraphs (d) and (f) to read as follows:

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

\* \* \* \* \*

(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 (a)(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 or ONMS authorization issued pursuant to subpart D of this part and 922.133 or a Special Use permit issued pursuant to section 310 of the Act.

\* \* \* \* \*

(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 and 922.133 or a Special Use permit under section 310 of the Act authorizing, or otherwise approve: the exploration for, development, or production of oil, gas, or minerals within the Sanctuary, except for the collection of jade pursuant to paragraph (a)(1) of this section; the discharge of primary-treated sewage within the Sanctuary (except by certification, pursuant to 15 CFR 922.47, of valid authorizations in existence on January 1, 1993 and issued by other authorities of competent jurisdiction); or the disposal of dredged material within the Sanctuary other than at sites authorized by EPA (in consultation with COE) before January 1, 1993. Any purported authorizations issued by other authorities within the Sanctuary shall be invalid.

\* \* \* \* \*

■ 36. Revise § 922.133 to read as follows:

**§ 922.133 Permit procedures.**

Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Monterey Bay National Marine Sanctuary, 299 Foam Street, Monterey, CA 93940.

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

■ 37. Revise § 922.140 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>) of Federal marine waters and the submerged lands thereunder, over and around Stellwagen Bank and other submerged features off the coast of Massachusetts. The boundary encompasses the entirety of Stellwagen Bank; Tillies Bank, to the northeast of Stellwagen Bank; and portions of Jeffreys Ledge, to the north of Stellwagen Bank.

(b) The Sanctuary boundary is identified by the following coordinates, indicating the most northeast, southeast, southwest, west-northwest, and north-northwest points: N 42.76662 degrees W 70.21716 degrees (NE) ; N 42.09320 degrees W 70.03559 degrees (SE); N 42.12914 degrees W 70.47096 degrees (SW); N 42.5482 degrees W 70.59788 degrees (WNW); and N 42.65113 degrees W 70.50314 degrees (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 N 42.11516 degrees W–70.27853 degrees. 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.

■ 38. Revise § 922.141 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 § 922.10.

■ 39. Amend § 922.142 by revising paragraphs (a)(3), (d) and (f) to read as follows:

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

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

\* \* \* \* \*

(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 section 310 of the Act.

\* \* \* \* \*

(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 § 922.47, of valid authorizations in existence on November 4, 1992) and any leases, licenses, permits, approvals or other authorizations authorizing the exploration for, development or production of industrial materials in the Sanctuary issued by other authorities after November 4, 1992, shall be invalid.

■ 40. 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.

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

■ 41. Revise § 922.150(a) to read as follows:

**§ 922.150 Boundary.**

(a) The Olympic Coast National Marine Sanctuary (Sanctuary) consists of an area of approximately 2408 square nautical miles (nmi<sup>2</sup>) of coastal and ocean waters, and the submerged lands thereunder, off the central and northern coast of the State of Washington.

\* \* \* \* \*

■ 42. Revise § 922.151 to read as follows:

**§ 922.151 Definitions.**

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

*Indian reservation* means a tract of land set aside by the Federal Government for use by a Federally recognized American Indian tribe and includes, but is not limited to, the Makah, Quileute, Hoh and Quinault Reservations.

*Treaty* means a formal agreement between the United States Government and an Indian tribe.

■ 43. Amend § 922.152 by revising paragraphs (a)(4), (e) and (h) to read as follows:

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

(a) \* \* \*

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

\* \* \* \* \*

(e) The prohibitions in paragraphs (a) (2) through (7) 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 section 310 of the Act.

\* \* \* \* \*

(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 § 922.47, of valid authorizations in existence on July 22, 1994 and issued by other authorities of competent jurisdiction); the disposal of dredged material within the Sanctuary other than in connection with beach nourishment projects related to 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 (7) 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.

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

■ 45. Revise § 922.161 to read as follows:



**§ 922.161 Boundary.**

The Sanctuary consists of an area of approximately 2872 square nautical miles (nmi<sup>2</sup>) 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.

■ 46. Revise § 922.162 to read as follows:

**§ 922.162 Definitions.**

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

*Acts* means the Florida Keys National Marine Sanctuary and Protection Act, as amended, (FKNMSPA) (Pub. L. 101–605), and the National Marine Sanctuaries Act, as amended (NMSA), also known as Title III of the Marine Protection, Research, and Sanctuaries Act, as amended, (MPRSA) (16 U.S.C. 1431 *et seq.*).

*Adverse effect* means any factor, force, or action that independently or cumulatively damages, diminishes, degrades, impairs, destroys, or otherwise harms any Sanctuary resource, as defined in section 302(8) of the NMSA (16 U.S.C. 1432(8)) and in this section, or any of the qualities, values, or purposes for which the Sanctuary is designated.

*Airboat* means a vessel operated by means of a motor driven propeller that pushes air for momentum.

*Areas To Be Avoided* means the areas in which vessel operations are prohibited pursuant to section 6(a)(1) of the FKNMSPA (see § 922.164(a)). Appendix VII to this subpart sets forth the geographic coordinates of these areas, including any modifications thereto made in accordance with section 6(a)(3) of the FKNMSPA.

*Closed* means all entry or use is prohibited.

*Coral* means but is not limited to the corals of the Class Hydrozoa (stinging and hydrocorals); Class Anthozoa, Subclass Hexacorallia, Order Scleractinia (stony corals); Class Anthozoa, Subclass Ceriantipatharia, Order Antipatharia (black corals); and Class Anthozoa, Subclass Ocotocorallia, Order Gorgonacea, species *Gorgonia ventalina* and *Gorgonia flabellum* (sea fans).

*Coral area* means marine habitat where coral growth abounds including patch reefs, outer bank reefs, deepwater banks, and hardbottoms.

*Coral reefs* means the hard bottoms, deep-water banks, patch reefs, and outer bank reefs.

*Ecological Reserve* means an area of the Sanctuary consisting of contiguous, diverse habitats, within which uses are subject to conditions, restrictions and prohibitions, including access restrictions, intended to minimize human influences, to provide natural spawning, nursery, and permanent residence areas for the replenishment and genetic protection of marine life, and also to protect and preserve natural assemblages of habitats and species within areas representing a broad diversity of resources and habitats found within the Sanctuary. Appendix IV to this subpart sets forth the geographic coordinates of these areas.

*Existing Management Area* means an area of the Sanctuary that is within or is a resource management area established by NOAA or by another Federal authority of competent jurisdiction as of the effective date of these regulations where protections above and beyond those provided by Sanctuary-wide prohibitions and restrictions are needed to adequately protect resources. Appendix II to this subpart sets forth the geographic coordinates of these areas.

*Exotic species* means a species of plant, invertebrate, fish, amphibian, reptile or mammal whose natural zoogeographic range would not have included the waters of the Atlantic Ocean, Caribbean, or Gulf of Mexico without passive or active introduction to such area through anthropogenic means.

*Fishing* means:

(1) The catching, taking, or harvesting of fish; the attempted catching, taking, or harvesting of fish; any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or any operation at sea in support of, or in preparation for, any activity described in this subparagraph (1).

(2) Such term does not include any scientific research activity which is conducted by a scientific research vessel.

*Hardbottom* means a submerged marine community comprised of organisms attached to exposed solid rock substrate. Hardbottom is the substrate to which corals may attach but does not include the corals themselves.

*Idle speed only/no-wake* means a speed at which a boat is operated that is no greater than 4 knots or does not produce a wake.

*Idle speed only/no-wake zone* means a portion of the Sanctuary where the speed at which a boat is operated may

be no greater than 4 knots or may not produce a wake.

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

*Live rock* means any living marine organism or an assemblage thereof attached to a hard substrate, including dead coral or rock but not individual mollusk shells (e.g., scallops, clams, oysters). Living marine organisms associated with hard bottoms, banks, reefs, and live rock may include, but are not limited to: sea anemones (Phylum Cnidaria: Class Anthozoa: Order Actinaria); sponges (Phylum Porifera); tube worms (Phylum Annelida), including fan worms, feather duster worms, and Christmas tree worms; bryozoans (Phylum Bryozoa); sea squirts (Phylum Chordata); and marine algae, including Mermaid's fan and cups (*Udotea* spp.), coralline algae, green feather, green grape algae (*Caulerpa* spp.) and watercress (*Halimeda* spp.).

*Marine life species* means any species of fish, invertebrate, or plant included in subsection (2), (3) or (4) of Rule 68B–42.001, Florida Administrative Code, or any part thereof.

*Military activity* means an activity conducted by the Department of Defense with or without participation by foreign forces, other than civil engineering and other civil works projects conducted by the U.S. Army Corps of Engineers.

*No-access buffer zone* means a portion of the Sanctuary where vessels are prohibited from entering regardless of the method of propulsion.

*No motor zone* means an area of the Sanctuary where the use of internal combustion motors is prohibited. A vessel with an internal combustion motor may access a no motor zone only through the use of a push pole, paddle, sail, electric motor or similar means of operation but is prohibited from using its internal combustion motor.

*Officially marked channel* means a channel marked by Federal, State of Florida, or Monroe County officials of competent jurisdiction with navigational aids except for channels marked idle speed only/no wake.

*Prop dredging* means the use of a vessel's propulsion wash to dredge or otherwise alter the seabed of the Sanctuary. Prop dredging includes, but is not limited to, the use of propulsion wash deflectors or similar means of dredging or otherwise altering the

seabed of the Sanctuary. Prop dredging does not include the disturbance to bottom sediments resulting from normal vessel propulsion.

*Prop scarring* means the injury to seagrasses or other immobile organisms attached to the seabed of the Sanctuary caused by operation of a vessel in a manner that allows its propeller or other running gear, or any part thereof, to cause such injury (e.g., cutting seagrass rhizomes). Prop scarring does not include minor disturbances to bottom sediments or seagrass blades resulting from normal vessel propulsion.

*Residential shoreline* means any man-made or natural:

- (1) Shoreline,
- (2) Canal mouth,
- (3) Basin, or
- (4) Cove adjacent to any residential

land use district, including improved subdivision, suburban residential or suburban residential limited, sparsely settled, urban residential, and urban residential mobile home under the Monroe County land development regulations.

*Sanctuary* means the Florida Keys National Marine Sanctuary.

*Sanctuary Preservation Area* means an area of the Sanctuary that encompasses a discrete, biologically important area, within which uses are subject to conditions, restrictions and prohibitions, including access restrictions, to avoid concentrations of uses that could result in significant declines in species populations or habitat, to reduce conflicts between uses, to protect areas that are critical for sustaining important marine species or habitats, or to provide opportunities for scientific research. Appendix V to this subpart sets forth the geographic coordinates of these areas.

*Sanctuary wildlife* means any species of fauna, including avifauna, that occupy or utilize the submerged resources of the Sanctuary as nursery areas, feeding grounds, nesting sites, shelter, or other habitat during any portion of their life cycles.

*Special-use Area* means an area of the Sanctuary set aside for scientific research and educational purposes, recovery or restoration of Sanctuary resources, monitoring, to prevent use or user conflicts, to facilitate access and use, or to promote public use and understanding of Sanctuary resources. Appendix VI to this subpart sets forth the geographic coordinates of these areas.

*Stem* means the foremost part of a vessel, consisting of a section of timber or fiberglass, or cast, forged, or rolled metal, to which the sides of the vessel are united at the fore end, with the

lower end united to the keel, and with the bowsprit, if one is present, resting on the upper end.

*Stern* means the aftermost part of the vessel.

*Tank vessel* means any vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that—

- (1) Is a United States flag vessel;
- (2) Operates on the navigable waters of the United States; or
- (3) Transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States [46 U.S.C. 2101].

*Tropical fish* means any species included in 68B-42 of the Florida Administrative Code, or any part thereof.

*Wildlife Management Area* means an area of the Sanctuary established for the management, protection, and preservation of Sanctuary wildlife resources, including such an area established for the protection and preservation of endangered or threatened species or their habitats, within which access is restricted to minimize disturbances to Sanctuary wildlife; to ensure protection and preservation consistent with the Sanctuary designation and other applicable law governing the protection and preservation of wildlife resources in the Sanctuary. Appendix III to this subpart lists these areas and their access restrictions.

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

■ 47. Amend § 922.163 by revising paragraphs (a)(3), (b), (c) and (f) to read as follows:

**§ 922.163 Prohibited activities—Sanctuary-wide.**

(a) \* \* \*

(3) *Alteration of, or construction on, the seabed.* Drilling into, dredging, or otherwise altering the seabed of the Sanctuary, or engaging in prop-dredging; or constructing, placing or abandoning any structure, material, or other matter on the submerged lands of the Sanctuary, except as an incidental result of:

\* \* \* \* \*

(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 this 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, renewals and extensions of authorizations in existence on the effective date of these regulations constitute authorizations issued after the effective date of these regulations.

\* \* \* \* \*

(f) Notwithstanding paragraph (b) of this section and paragraph (a) of § 922.168, in no event may the Director issue a permit under § 922.166 and subpart D of this part, 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 after the effective date of these regulations for any of these activities within the Sanctuary shall be invalid.

\* \* \* \* \*

■ 48. Amend § 922.164 by revising paragraph (e)(1)(iii) to read as follows:

**§ 922.164 Additional activity regulations by Sanctuary area.**

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(iii) “Research-only area” to provide for scientific research or education relating to protection and management, through the issuance of a Sanctuary General permit for research pursuant to § 922.166 of these regulations and subpart D of this part; and

\* \* \* \* \*

■ 49. Revise § 922.166 to read as follows:

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

(a) A person may conduct an activity otherwise prohibited by §§ 922.163 or 922.164, other than an activity involving the survey/inventory, research/recovery, or deaccession/transfer of Sanctuary maritime heritage resources, 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.

(b) 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 33037.

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

**(d) National Marine Sanctuary Survey/Inventory of Maritime Heritage Resources Permit.**

(1) A person may conduct an activity otherwise prohibited by §§ 922.163 or 922.164 involving the survey/inventory of Sanctuary maritime heritage resources if the activity is specifically allowed by and conducted in accordance with the scope, purpose, terms and conditions of a Survey/Inventory of Historical Resources permit issued under this paragraph (c). If a survey/inventory activity will involve test excavations or removal of artifacts or materials for evaluative purposes, a Survey/Inventory of Maritime Heritage Resources permit is required. Persons who have demonstrated their professional abilities under a Survey/Inventory permit will be given preference over other persons in consideration of the issuance of a Research/Recovery permit. While a Survey/Inventory permit does not grant any rights with regards to areas subject to pre-existing rights of access which are still valid, once a permit is issued for an area, other survey/inventory permits will not be issued for the same area during the period for which the permit is valid.

(2) The Director, at his or her discretion, may issue a Survey/Inventory permit under this paragraph (b), subject to such terms and conditions as he or she deems appropriate, if the Director finds that such activity:

(i) Satisfies the requirements for a permit issued under subpart D;

(ii) Either will be non-intrusive, not include any excavation, removal, or recovery of historical resources, and not result in destruction of, loss of, or injury to Sanctuary resources or qualities, or if intrusive, will involve no more than the minimum manual alteration of the seabed and/or the removal of artifacts or other material necessary for evaluative purposes and will cause no significant adverse impacts on Sanctuary resources or qualities; and

(iii) That such activity will be conducted in accordance with all requirements of the Programmatic Agreement for the Management of Maritime Heritage Resources in the Florida Keys National Marine Sanctuary among NOAA, the Advisory Council on Historic Preservation, and the State of Florida (hereinafter Programmatic Agreement (PA), and that such permit issuance is in accordance with such PA. Copies of the PA may also be examined at, and obtained from, <http://floridakeys.noaa.gov> or from the Florida Keys National Marine Sanctuary Office, P.O. Box 1083, Key Largo, FL 33037.

**(e) National Marine Sanctuary Research/Recovery of Sanctuary Maritime Heritage Resources Permit.**

(1) A person may conduct any activity prohibited by §§ 922.163 or 922.164 involving the research/recovery of Sanctuary historical resources if such activity is specifically authorized by and is conducted in accordance with the scope, purpose, terms and conditions of a Research/Recovery of Maritime Heritage Resources permit issued under this paragraph (c).

(2) The Director, at his or her discretion, may issue a Research/Recovery of Historical Resources permit, under this paragraph (c), and subject to such terms and conditions as he or she deems appropriate, if the Director finds that:

(i) Such activity satisfies the requirements for a permit issued under section 922.33;

(ii) The recovery of the resource is in the public interest as described in the PA;

(iii) Recovery of the resource is part of research to preserve historic information for public use; and

(iv) Recovery of the resource is necessary or appropriate to protect the resource, preserve historical information, and/or further the policies and purposes of the NMSA and the FKNMSPA, and that such permit issuance is in accordance with, and that the activity will be conducted in accordance with, all requirements of the PA.

(3) Any permit authorizing the research/recovery of Maritime Heritage resources shall be subject to the following terms and conditions:

(i) A professional archaeologist shall be in charge of planning, field recovery operations, and research analysis.

(ii) An agreement with a conservation laboratory shall be in place before field recovery operations are begun, and an approved nautical conservator shall be in charge of planning, conducting, and supervising the conservation of any artifacts and other materials recovered.

(iii) A curation agreement with a museum or facility for curation, public access and periodic public display, and maintenance of the recovered historical resources shall be in place before commencing field operations (such agreement for the curation and display of recovered maritime heritage resources may provide for the release of public artifacts for deaccession/transfer if such deaccession/transfer is consistent with preservation, research, education, or other purposes of the designation and management of the Sanctuary.

Deaccession/transfer of maritime heritage resources requires a Special-use permit issued pursuant to paragraph (d) and such deaccession/transfer shall be executed in accordance with the requirements of the PA).

(iv) The site's archaeological information is fully documented, including measured drawings, site maps drawn to professional standards, and photographic records.

■ 50. Amend § 922.167 by revising paragraph (b)(1) to read as follows:

**§ 922.167 Permits for access to the Tortugas Ecological Reserve.**

\* \* \* \* \*

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

Key West office: telephone: (305) 292–0311

\* \* \* \* \*

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

■ 51. Revise § 922.181(a) 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>), 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:

\* \* \* \* \*

■ 52. Amend § 922.182 by revising the definition for “Alteration of the seabed” to read as follows:

**§ 922.182 Definitions.**

\* \* \* \* \*

*Alteration of the seabed* means drilling into, dredging, or otherwise altering a natural physical characteristic of the seabed of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands of the Sanctuary.

\* \* \* \* \*

(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.*

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

■ 53. Revise § 922.190 to read as follows:

**§ 922.190 Boundary.**

The Thunder Bay National Marine Sanctuary and Underwater Preserve (Sanctuary) consists of an area of approximately 338 square nautical miles (nmi<sup>2</sup>) of waters of Lake Huron and the submerged lands thereunder, over, around, and under the underwater cultural resources in Thunder Bay. The boundary forms an approximately rectangular area by extending along the ordinary high water mark between the northern and southern boundaries of Alpena County, cutting across the mouths of rivers and streams, and lakeward from those points along latitude lines to longitude 83 degrees west. The coordinates of the boundary are set forth in appendix A to this Subpart.

■ 54. Amend § 922.191 by removing the definition for “traditional fishing.”

■ 55. Remove and reserve § 922.194.

**§ 922.194 [Reserved].**

■ 56. 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) of this subpart 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) through (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 § 922.195(e)(9) of this section). The plan must provide adequate description of methods to be used for excavation, recovery and the storage of artifacts and related materials on site, and describe the rationale for selecting the proposed methods over any alternative methods;

(5) Archaeological recording, including site maps, feature maps, scaled photographs, and field notes;

(6) An excavation plan describing the excavation, recovery and handling of artifacts;

(7)(i) A conservation plan documenting:

(A) The conservation facility’s equipment;

(B) Ventilation temperature and humidity control; and

(C) Storage space.

(ii) Documentation of intended conservation methods and processes must also be included;

(8) A curation and display plan for the curation of the conserved artifacts to ensure the maintenance and safety of the artifacts in keeping with the Sanctuary’s federal stewardship responsibilities under the Federal Archaeology Program (36 CFR part 79, Curation of Federally-Owned and Administered Archaeological Collections); and

(9) Documentation of the professional standards of an archaeologist supervising the archaeological recovery of historical artifacts. The minimum professional qualifications in archaeology are a graduate degree in archaeology, anthropology, or closely related field plus:

(i) At least one year of full-time professional experience or equivalent specialized training in archeological research, administration or management;

(ii) At least four months of supervised field and analytic experience in general North American archaeology;

(iii) Demonstrated ability to carry research to completion; and

(iv) At least one year of full-time professional experience at a supervisory level in the study of archeological resources in the underwater environment.

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