

57–6027, Revision 07, dated June 6, 2011: Within 3 months after the effective date of this AD, or before further flight after doing the modification, whichever occurs later, contact the FAA, ANM–116, Transport Airplane Directorate, or EASA (or its delegated agent, or the Design Approval Holder (DAH) with EASA design organization approval, as applicable) for repetitive post-repair inspections and corrective actions, and do those actions.

**(m) Exceptions to the Service Bulletin**

(1) Where Note 01 and Note 02 of paragraph 1.E., “Compliance,” of Airbus Service Bulletin A300–57–6027, Revision 07, dated June 6, 2011, specifies to contact Airbus for inspection requirements, this AD requires, at the applicable compliance time specified in Table 1 and Table 2 in the “Grace Period,” column in paragraph 1.E., “Compliance,” of Airbus Service Bulletin A300–57–6027, Revision 07, dated June 6, 2011, to repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or European Aviation Safety Agency (EASA) (or its delegated agent, or the Design Approval Holder (DAH) with EASA design organization approval, as applicable). For a repair method to be approved, the repair approval must specifically refer to this AD.

(2) Where the Airbus Service Bulletin A300–57–6027, Revision 07, dated June 6, 2011 specifies a compliance time in Table 1 and Table 2 in the “Grace Period,” column in paragraph 1.E., “Compliance,” this AD requires compliance within the specified compliance time after the effective date of this AD.

(3) Where Table 1 and Table 2 in paragraph 1.E., “Compliance,” of Airbus Service Bulletin A300–57–6027, Revision 07, dated June 6, 2011, specifies a choice between flight cycle or flight hours, this AD requires a compliance time within the specified flight cycles or flight hours, whichever occurs first.

(4) Where Table 1 and Table 2 in paragraph 1.E., “Compliance,” of Airbus Service Bulletin A300–57–6027, Revision 07, dated June 6, 2011, specifies pre-modification 8609, this AD requires compliance within the compliance time specified in the “Threshold Inspection” column. Those compliance times are flight cycles or flight hours since new.

(5) Where Table 1 and Table 2 in paragraph 1.E., “Compliance,” of Airbus Service Bulletin A300–57–6027, Revision 07, dated June 6, 2011, specifies any post modification or repair, this AD requires compliance within the compliance time specified in the “Threshold Inspection” column. Those compliance times are flight cycles or flight hours since accomplishing the modification or repair.

**(n) Credit for Previous Actions**

This paragraph provides credit for actions required by paragraph (i)(1) of this AD, if those actions were performed before the effective date of this AD using the service information in paragraph (n)(i) through (n)(iii) of this AD.

(i) Airbus Service Bulletin A300–57–6027, Revision 04, dated August 4, 1999.

(ii) Airbus Service Bulletin A300–57–6027, Revision 05, dated November 21, 2002.

(iii) Airbus Service Bulletin A300–57–6027, Revision 06, dated March 2, 2005.

**(o) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be emailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD. AMOCs approved previously for AD 98–18–02, Amendment 39–10718 (63 FR 45689, August 27, 1998), are approved as AMOCs for the corresponding provisions in paragraph (g) of this AD.

(3) *Airworthy Product*: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

**(p) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2012–0194, dated September 25, 2012, for related information. This MCAI may be found in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2014–0282.

(2) For service information identified in this AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email [account.airworth-eas@airbus.com](mailto:account.airworth-eas@airbus.com); Internet [www.airbus.com](http://www.airbus.com). You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on May 2, 2014.

**Jeffrey E. Duven,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**15 CFR Part 922**

**[Docket No. 130403324–4310–02]**

**RIN 0648–BC94**

**Boundary Expansion of Thunder Bay National Marine Sanctuary**

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

**ACTION:** Amendment to proposed rule; request for public comments.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) hereby amends a proposed rule published on June 14, 2013. The June 14, 2013 proposed rule sought to expand the boundary of Thunder Bay National Marine Sanctuary (TBNMS or sanctuary) and revise the corresponding sanctuary terms of designation. This rule focuses specifically on modifying the proposed boundary of the sanctuary, addressing questions and concerns on ballasting operations within the proposed expansion area, and clarifying the correlation between TBNMS regulations and Indian tribal fishing activities. NOAA is soliciting public comment only on the amendments in this proposed rule. Previously submitted public comments need not be resubmitted.

**DATES:** Comments will be considered if received by June 9, 2014.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NOS–2012–0077, by any of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/](http://www.regulations.gov/) #!docketDetail;D=NOAA-NOS-2012-0077, click the “Comment Now!” icon, complete the required fields and enter or attach your comments.

- **Mail:** Submit written comments to Thunder Bay National Marine Sanctuary, 500 W. Fletcher, Alpena, Michigan 49707, Attn: Jeff Gray, Superintendent.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period may not be considered by NOAA. All comments received are a part of the public record and will 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. If you are submitting electronic comments and wish to remain anonymous, enter "N/A" in the required fields. Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Jeff Gray, Superintendent, Thunder Bay National Marine Sanctuary at 989-356-8805 ext. 12 or [jeff.gray@noaa.gov](mailto:jeff.gray@noaa.gov).

Copies of the amended proposed rule and related material can be downloaded or viewed on the Internet at [www.regulations.gov](http://www.regulations.gov) (search for docket # NOAA-NOS-2012-0077) or at <http://thunderbay.noaa.gov>. Copies can also be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 et seq.) authorizes the Secretary of Commerce (Secretary) to designate and protect as a national marine sanctuary 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. Day-to-day management of national marine sanctuaries has been delegated by the Secretary to NOAA's Office of National Marine Sanctuaries (ONMS). The primary objective of the NMSA is to protect sanctuary resources.

NOAA designated Thunder Bay National Marine Sanctuary in October 2000 (65 FR 39042). The existing sanctuary boundary encompasses approximately 448 square miles of waters, submerged lands, and underwater cultural resources located in northwestern Lake Huron, adjacent to one of the most treacherous stretches of water within the Great Lakes system. The port of Alpena is included within the current boundary of the sanctuary. The sanctuary is located entirely in state waters, off the northeast coast of Michigan's Lower Peninsula, and is jointly managed by NOAA and the State of Michigan under the umbrella of a 2002 Memorandum of Agreement (December 2002). The primary purpose of the sanctuary is to provide comprehensive, long-term protection for the nationally-significant collection of underwater cultural resources (i.e.,

historical shipwrecks and maritime heritage sites) found within the area. To date, 45 shipwrecks are protected within the sanctuary. These shipwrecks and related maritime heritage sites in and around Thunder Bay represent a microcosm of Great Lakes maritime history spanning well over 150 years.

##### II. Original Notice of Proposed Rulemaking

On June 14, 2013, NOAA published in the **Federal Register** notice of a proposed rule (78 FR 35776) and availability of an accompanying draft environmental impact statement (DEIS) (78 FR 35928). As proposed, the rule would increase the geographic size of the sanctuary from 448 square miles to 4,300 square miles and more than double the number of nationally significant shipwrecks that are protected under the NMSA. The proposed boundary would extend from Alcona County, Michigan to Presque Isle County, Michigan, include selected submerged maritime heritage resources in Cheboygan and Mackinaw counties, and run east to the United States/Canada international boundary. The proposed expansion also includes the ports at Rogers City and Presque Isle, as shown in a map of the area at <http://thunderbay.noaa.gov/management/expansion.html>.

Three public meetings on the proposed rule were held in July 2013 in Michigan, and the public comment period was extended on three separate occasions, eventually closing on December 19, 2013 (78 FR 49700, 64186 and 73112). NOAA extended the comment period to gather more information from stakeholders and consult with the U.S. Coast Guard (USCG) and U.S. Environmental Protection Agency (EPA), both of whom have regulations that apply to national marine sanctuaries. In response to public comments and information received, NOAA has decided to amend the proposed rule and provide additional time for the public to submit comments on the proposed amendments.

##### III. Summary of Changes to the Proposed Rule

This proposed rulemaking would:

- A. Propose a new boundary for the sanctuary that would not include the ports at Rogers City, Presque Isle, and Alpena;
- B. Address questions and concerns related to ballasting in the expanded sanctuary; and
- C. Clarify and update TBNMS regulations pertaining to treaty fishing rights of area Indian tribes.

##### A. Sanctuary Boundary

NOAA received several comments on the proposed rule regarding the inclusion of the ports at Rogers City (also recognized as Calcite Quarry, Carneuse), Presque Isle (also recognized as Stoneport Quarry), and Alpena (also recognized as LaFarge North America) within the proposed revised boundaries of TBNMS. In particular, the Governor of Michigan, the Lake Carriers' Association, the Canadian Shipowners Association, the Shipping Federation of Canada, local government officials, other commercial interests, and members of the general public requested these ports not be included within the boundary to avoid any limitation or prohibition on port operations "critical to the local, regional, and national economies." (A map of this expanded area, including the exclusion of the ports mentioned above, can be found on the TBNMS Web site at <http://thunderbay.noaa.gov/management/expansion.html>.)

In response to these concerns, and because NOAA knows of no nationally significant maritime resources within these port areas, NOAA proposes to not include the ports at Rogers City, Presque Isle, and Alpena within the TBNMS boundary.

##### B. Ballasting Within the Proposed Sanctuary Expansion

The Great Lakes shipping industry also expressed concern that the proposed TBNMS expansion would limit or prohibit ballasting operations for vessels transiting the sanctuary, given USCG and EPA requirements that require certain vessels equipped with ballast tanks to "avoid the discharge and uptake of ballast water in areas within, or that may directly affect marine sanctuaries, marine preserves, marine parks, or coral reefs." NOAA appreciates and applauds the current management efforts implemented by both USCG and EPA in mitigating negative environmental effects from ballasting both within, and outside of, the Great Lakes. NOAA also appreciates the critical role ballasting plays in the operation of vessels operating within the Great Lakes, especially with regard to safety.

According to many commenters, the uptake and discharge of ballast may occur while transiting the sanctuary "in response to weather conditions, to accommodate a port call, enter a restricted channel, or as part of routine operations known as trimming". To illustrate when ballasting might be performed in response to weather conditions, one commenter explained:

"Ballast is used to lower a vessel deeper into the water and by doing so stabilize the vessel so there is less exposure of a vessel's profile to the winds."

Another commenter highlighted the importance of ballast "trimming" by explaining a vessel may take on ballast water "to slow its speed and eventually come to a complete stop as it approaches a port and eventually reaches the dock." Yet another commenter noted "The 'trimming' process involves the adjustment of levels of ballast water in the vessel for reasons that involve the safety, stability, and efficiency of the vessel. Some have analogized the trimming of a vessel to the necessary and important operational adjustments that an airline pilot makes as [the pilot] flies and lands an airplane."

Consistent with these comments, the Great Lakes shipping industry requested NOAA clarify, by the adoption of regulatory text or otherwise, that the uptake and discharge of ballast water in the sanctuary while transiting the lake is permissible, even in light of USCG and EPA requirements regarding the avoidance of ballast in areas such as national marine sanctuaries. NOAA has seriously considered this request, and has consulted with the USCG, EPA, and stakeholders to inform its decision-making. Based on information in the written comments, other literature on Great Lakes ballasting, and input from USCG and EPA on their respective requirements (which continues in effect) NOAA believes ballasting operations, to include safety and to control or maintain trim, draught or stability of the vessel, are consistent with the maritime heritage protection mission of the TBNMS, and therefore, are an allowable activity within the proposed boundaries of the sanctuary.

#### C. Indian Tribal Rights

NOAA proposes to amend the TBNMS regulations in order to clarify that the exercise of Indian treaty fishing rights are not modified, altered, or in any way affected by the proposed boundary expansion. In particular, NOAA plans to add and define the term "treaty fishing rights" to the TBNMS definitions at 15 CFR 922.191. The definition was specifically suggested during tribal consultations undertaken pursuant to E.O. 13175 with the Chippewa Ottawa Resource Authority (CORA) which represents all 1,836 treaty fishing tribes and contained in several written public comments received from a federally-recognized Indian tribe and an interested tribal resource agency. The purpose of the definition is to clarify that the term

"treaty fishing rights" refers to those rights reserved in the 1836 Treaty of Washington and in subsequent related court decisions because the tribes believe the existing TBNMS regulations are ambiguous. This definition would not replace, but would rather complement, the existing definition of "traditional fishing" which also refers to the 1836 Treaty of Washington currently codified in 15 CFR 922.191.

In addition, based on the comments received during tribal consultation and during the comments received during the comment period, NOAA is amending 15 CFR 922.197 to ease concerns raised by the federally-recognized tribes that sanctuary expansion potentially undercuts its treaty fishing rights. Under 15 CFR 922.193(b), NOAA already states that members of a federally-recognized Indian tribe may exercise treaty-secured rights without regards to the regulations that apply to TBNMS, as long as these rights are authorized by the tribe by regulation, license, or permit. This provision was added to the final regulations promulgating the sanctuary designation in 2000 in response to comments from federally-recognized Indian tribes. However, NOAA believes that by adding a statement to a separate section of the TBNMS regulations at 15 CFR 922.197 the action would provide further assurance and clarification to the tribes that treaty fishing rights would not be adversely impacted by sanctuary expansion.

#### IV. Summary of Proposed Changes to the Sanctuary Terms of Designation

Section 304(a)(4) of the NMSA requires that the terms of designation for national marine sanctuaries include: (1) The geographic area included within the Sanctuary; (2) the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value; and (3) the types of activities subject to regulation by NOAA to protect those characteristics. This section also specifies that the terms of the designation may be modified only by the same procedures by which the original designation is made.

On June 14, 2013, NOAA proposed to make changes to the TBNMS terms of designation, which were previously published in the **Federal Register** on June 22, 2000 (65 FR 39042). The changes sought to: (1) Change the geographic size and description of the sanctuary in Article II "Description of the Area"; (2) change the description of the nationally significant characteristics of the sanctuary identified in Article III "Characteristics of the Area That Give It

Particular Value"; and (3) amend Article V "Effect on Other Regulations, Leases, Permits, Licenses, and Rights" to reflect the new organization within NOAA. While no new changes are being made to the modifications of Articles III and V as proposed in 78 FR 35776, Article II is being further modified to reflect the changes made in this amended proposed rule.

Article II of the revised terms of designation is proposed to read as follows (new text in brackets):

[. . .]

#### Article II. Description of the Area

The Thunder Bay National Marine Sanctuary and Underwater Preserve consists of an area of approximately 4,300 square miles of waters of Lake Huron and the submerged lands thereunder, over, around, and under the underwater cultural resources in Thunder Bay. The boundaries form a polygon by extending along the ordinary high water mark of the Michigan shoreline from approximately the northern and southern boundaries of Presque Isle and Alcona counties, respectively, cutting across the mouths of rivers and streams, [excluding the harbors at Alpena, Rogers City and Presque Isle,] and lakeward from those points along latitude lines to the U.S./Canada international boundary. A more detailed description of the boundary and a list of coordinates are set forth in the regulations for the sanctuary at 15 CFR part 922 subpart R.

[. . .]

#### END OF TERMS OF DESIGNATION

#### V. Classification

##### A. National Environmental Policy Act

Under the National Environmental Policy Act (NEPA) (43 U.S.C. 4321 *et seq.*) and the Council on Environmental Quality's (CEQ) regulations implementing NEPA, an agency is required to prepare a supplemental environmental impact statement (EIS) if "(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 CFR 1502.9(c).

Federal courts have upheld agencies' decisions not to supplement where the relevant environmental impacts of the proposed change have been fully considered. In so holding, federal courts have interpreted the "substantial change" provision of the CEQ regulations to require agencies to issue a supplement if the changes will impact the environment "in a significant manner \* \* \* not already considered by the federal agency." *Ark. Wildlife Fed'n v. U.S. Army Corps of Engineers*, 431 F.3d 1096, 1102 (8th Cir. 2005)

(quoting *Airport Impact Relief, Inc. v. Wykle*, 192 F.3d 197, 204 (1st Cir. 1999)). Under applicable case law, a change is considered “substantial” under the regulations only if “it presents a ‘seriously different picture of the environmental impact’ ” than that previously considered. *Id.* (quoting *South Trenton Residents Against 29 v. Fed. Highway Admin.*, 176 F.3d 658, 663 (3d Cir. 1999)). In addition to asking whether the agency has fully considered the environmental impact of the proposed change, federal courts have also asked whether the change is “‘qualitatively within the spectrum of alternatives that were discussed’ in a prior [EIS].” *In re Operation of the Missouri River System Litigation*, 516 F.3d at 693 (quoting *Dubois v. U.S. Dep’t of Agric.*, 102 F.3d 1273, 1292 (1st Cir. 1996)). This language first appeared in a 1981 CEQ guidance document, commonly referred to as the CEQ “Forty Questions.” See Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations, 46 FR 18026, 18035 (1981).

In this instance, NOAA has decided that a supplemental NEPA analysis is not required for this proposed amended rule because the draft environmental impact statement (DEIS) presented the public with a comprehensive analysis of the spectrum of environmental impacts. Specifically, the DEIS, made available to the public in June 2013 (78 FR 35928), analyzed three regulatory alternatives for this proposed rulemaking. The alternatives included a non-action alternative, an alternative that would barely double the geographic size of the proposed expanded sanctuary, and the preferred alternative which would increase the geographic size of the sanctuary from 448 square miles to 4,300 square miles and more than double the number of national significant historic shipwrecks that are protected under the NMSA. Based on the evaluation of the alternatives, NOAA determined that no significant adverse impacts to resources and the human environment are expected if the preferred alternative is adopted. Instead, long-term beneficial impacts were anticipated if the proposed action is implemented.

Copies of the DEIS are available at the address and Web site listed in the **ADDRESSES** section of this proposed rule. NOAA will analyze the comments that have been previously received on the DEIS when the final rule and FEIS are prepared and issued. NOAA also invites the public to provide additional comments on the DEIS.

#### B. Executive Order 12866: Regulatory Impact

This proposed rule has been determined to be not significant within the meaning of Executive Order 12866.

#### C. 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.

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

Concurrent with the development of this proposed rule, NOAA invited the Chippewa Ottawa Resource Authority (CORA) to participate in government-to-government consultation. CORA gathers representatives from the Bay Mills Indian Community, Grand Traverse Band of Ottawa and Chippewa Indians, Little River Band of Ottawa Indians, Little Traverse Bay Bands of Odawa Indians, Sault Ste. Marie Tribe of Chippewa Indians under its mantle. NOAA plans to continue collaboration with the CORA and invite each individual tribe to government-to-government consultation. Consultation under E.O. 13175 resulted in the publication of this amended proposed rule and is expected to be completed before the publication of the final rule.

#### E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended and codified at 5 U.S.C. 601 *et seq.*, requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency (or his or her designee) certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, submitted a memorandum to the Chief Counsel for Advocacy, Small Business Administration, certifying that original proposed rule would not have a significant impact on a substantial number of small entities. The rationale for that certification was set forth in the preamble (78 FR 35776; Jun. 14, 2013). This rule proposes to modify the proposed boundary of the

sanctuary, address questions and concerns on ballasting operations within the proposed expansion area, and clarify the correlation between TBNMS regulations and Indian tribal fishing activities. The only substantive regulatory change made in this amended proposed rule is the change to the proposed sanctuary boundary that would not include the ports of Alpena, Rogers City and Presque Isle. Current operations in those three ports would not be affected with the absence or presence of sanctuary regulations; therefore, no economic impact, significant or otherwise, is expected to result from these proposed changes. There is no substantive regulatory change from the original proposed rule on the topics of ballasting operations within the proposed expansion area and of the correlation between TBNMS regulations and Indian tribal fishing activities; therefore, no economic impact is expected to result from these either. In conclusion, the provisions contained in this amended proposed rule do not change the original determination that this rule will not result in a significant economic impact on a substantial number of small entities.

#### F. Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) which has been approved by the Office of Management and Budget (OMB) under control number 0648-0141. As explained in the original proposed rule published at 78 FR 35776 (Jun. 14, 2013), the public reporting burden for national marine sanctuary general permits is estimated to average 1 hour 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This rulemaking would not appreciably change the average annual number of respondents on a national level or the reporting burden for this information requirement. Therefore, NOAA has determined that the proposed regulations do not necessitate a modification to its information collection approval by the Office of Management and Budget under the Paperwork Reduction Act.

#### G. National Historic Preservation Act

The National Historic Preservation Act of 1966 (NHPA; Pub. L. 89-665; 16 U.S.C. 470 et seq.) is intended to preserve historical and archaeological sites in the United States of America.

The act created the National Register of Historic Places, the list of National Historic Landmarks, and the State Historic Preservation Offices. Section 106 of the NHPA requires Federal agencies to take into account the effects of their undertakings on historic properties, and afford the Advisory Council on Historic Preservation (AHP) a reasonable opportunity to comment. The historic preservation review process mandated by Section 106 is outlined in regulations issued by AHP (36 CFR part 800). The Michigan State Historic Preservation Office, which implements section 106 of the NHPA, is located in the Michigan State Housing Development Authority. NOAA has and continues to consult with the State Historic Preservation Officer on matters related to Section 106 of the NHPA. A programmatic agreement will be developed if the expansion of the sanctuary is finalized and if it is determined to be necessary.

## VI. Request for Comments

NOAA requests comments on this proposed rule for 30 days after publication of this document.

## VII. References

A list of references is available upon request and online at: <http://thunderbay.noaa.gov/management/expansion.html>.

### List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Fishing gear, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Wildlife.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: May 2, 2014.

**Holly A. Bamford,**

Assistant Administrator, National Ocean Service, National Oceanic and Atmospheric Administration.

Accordingly, for the reasons set forth above, NOAA proposes amending part 922, title 15 of the Code of Federal Regulations as follows:

## PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

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

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

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

- 2. Revise § 922.190 to read as follows:

#### § 922.190 Boundary.

(a) Except as provided in paragraph (b) of this section, the Thunder Bay National Marine Sanctuary and Underwater Preserve (Sanctuary) consists of an area of approximately 3,247 square nautical miles (sq. nmi) (4,300 sq. mi.) of waters of Lake Huron and the submerged lands thereunder, over, around, and under the underwater cultural resources in Thunder Bay. The eastern boundary of the sanctuary begins at the intersection of the southern Alcona County boundary and the U.S./Canada international boundary (Point 1). The eastern boundary of the sanctuary approximates the international boundary passing through Points 2–5. The boundary continues west through Point 6 and then back to the northeast until it intersects with the 45.83333° N line of latitude at Point 7. The northern boundary follows the line of latitude 45.83333° N westward until it intersects the –84.33333° W line of longitude at Point 8. The western boundary extends south along the –84.33333° W line of longitude towards Point 9 until it intersects the ordinary high water mark at Cordwood Point. From there, the western boundary follows the ordinary high water mark as defined by Part 325, Great Lakes Submerged Lands, of P.A. 451(1994), as amended, cutting across the mouths of rivers and streams until it intersects the line formed between Point 10 and Point 11 south of Rogers City, MI. From there the boundary moves offshore through Points 11–15 in order until it intersects the ordinary high water mark along the line formed between Point 15 and Point 16. At this intersection the boundary continues to follow the ordinary high water mark south until it intersects with the line formed between Point 17 and Point 18 near Stoneport Harbor Light in Presque Isle, MI. From there the boundary moves offshore through Points 18–20 in order until it intersects the ordinary high water mark along the line formed between Point 20 and Point 21. At this intersection the boundary continues to follow the ordinary high water mark south until it intersects the line formed between Point 22 and Point 23 near the Lafarge dock in Alpena, MI. At this intersection the boundary moves towards Point 23 until it intersects the ordinary high water mark. At this intersection the boundary follows the ordinary high water mark south until it intersects the southern Alcona County boundary along the line formed between Point 24 and Point 25 in Greenbush, MI. Finally, at this intersection the boundary moves

eastward and offshore until it reaches Point 25.

(b) Excluded from the Sanctuary boundary are the following ports:

- (1) Rogers City;
- (2) Presque Isle;
- (3) Alpena;

(c) The coordinates of each boundary area appear in Appendix A of this Subpart.

- 3. Amend § 922.191(a) to revise the definition for “Traditional fishing” and add a definition for “Treaty fishing rights” in alphabetical order to read as follows:

#### § 922.191 Definitions.

(a) \* \* \*

*Traditional fishing* means those commercial, recreational, and subsistence fishing activities that were customarily conducted within the Sanctuary prior to its designation or expansion, as identified in the relevant Final Environmental Impact Statement and Management Plan for this Sanctuary. Traditional fishing includes tribal fishing rights as provided for in the 1836 Treaty of Washington and subsequent court decisions related to the Treaty.

*Treaty fishing rights* means those rights reserved in the 1836 Treaty of Washington and in subsequent court decisions related to the Treaty.

\* \* \* \* \*

- 4. Revise § 922.197 to read as follows:

#### § 922.197 Effect on affected federally-recognized Indian tribes.

The exercise of treaty fishing rights is not modified, altered, or in any way affected by the regulations promulgated in this Subpart. The Director shall consult with the governing body of each federally-recognized Indian tribe mentioned in the 1836 Treaty of Washington and in subsequent court decisions related to the Treaty regarding any matter which might affect the ability of the Tribe's members to participate in treaty fishing activities in the Sanctuary.

- 5. Revise Appendix A to Subpart R of Part 922 to read as follows:

#### Appendix A to Subpart R of Part 922—Thunder Bay National Marine Sanctuary and Underwater Preserve Boundary Coordinates [Based on North American Datum of 1983]

Point ID	Latitude (north)	Longitude (west)
1 .....	44.512834	-82.329519
2 .....	44.858147	-82.408717
3 .....	45.208484	-82.490596
4 .....	45.335902	-82.52064
5 .....	45.771937	-83.483974

Point ID	Latitude (north)	Longitude (west)
6 .....	45.773944	-83.636867
7 .....	45.833333	-83.584432
8 .....	45.833333	-84.333333
9* .....	45.662858	-84.333333
10* .....	45.41733	-83.77327
11 .....	45.42103	-83.79487
12 .....	45.42708	-83.79371
13 .....	45.42343	-83.75318
14 .....	45.41748	-83.75333
15 .....	45.41210	-83.76805
16* .....	45.40738	-83.76785
17* .....	45.29672	-83.41908
18 .....	45.29682	-83.40965
19 .....	45.29010	-83.40965
20 .....	45.29464	-83.41914
21* .....	45.29681	-83.42277
22* .....	45.06632	-83.40715
23* .....	45.06560	-83.40810
24* .....	44.511734	-83.320169
25 .....	44.512834	-82.329519

**Note:** The coordinates in the table above marked with an asterisk (\*) are not part of the sanctuary boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline for the purpose of charting the boundary.

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## MILLENNIUM CHALLENGE CORPORATION

### 22 CFR Part 1305

[MCC FR 14-02]

#### Touhy Regulations

**AGENCY:** Millennium Challenge Corporation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The purpose of this document is to outline the procedures by which the Millennium Challenge Corporation proposes to respond to subpoenas or other official demands for information and testimony served upon itself or its employees.

**DATES:** Submit comments by July 8, 2014.

**ADDRESSES:** Send comments to: Office of the General Counsel, Millennium Challenge Corporation, 875 Fifteenth Street NW., Washington, DC 20005-2221.

**FOR FURTHER INFORMATION CONTACT:** John C. Mantini, Office of the General Counsel, Millennium Challenge Corporation, 875 15th Street NW., Washington, DC 20005-2221

**SUPPLEMENTARY INFORMATION:** The United States Supreme Court held in *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951), that the head of a

federal agency may make the determination on his/her sole authority to produce documents and authorize employee's testimony in response to a subpoena or other demand for information. This proposed regulation will govern the Millennium Challenge Corporation's procedures for authorizing or denying such demands.

#### List of Subjects in 22 CFR Part 1305

Administrative Practice and procedure, Courts, Disclosure, Exemptions, Government employees, Subpoenas, Records, Testimony.

For the reasons set forth above, the Millennium Challenge Corporation proposes to amend Chapter XIII of 22 CFR by adding Part 1305, to read as follows:

#### PART 1305—RELEASE OF OFFICIAL INFORMATION AND TESTIMONY BY MCC PERSONNEL AS WITNESSES

- § 1305.1 Purpose and Scope
- § 1305.2 Definitions
- § 1305.3 Production Prohibited Unless Approved
- § 1305.4 Factors the General Counsel May Consider
- § 1305.5 Service of Demands
- § 1305.6 Processing Demands
- § 1305.7 Final Determination
- § 1305.8 Restrictions that Apply to Testimony
- § 1305.9 Restrictions that Apply to Released Documents
- § 1305.10 Procedure When a Decision is Not Made Prior to the Time a Response is Required
- § 1305.11 Procedure in the Event of an Adverse Ruling
- § 1305.12 No Private Right of Action

**Authority:** 5 U.S.C. 301.

#### § 1305.1 Purpose and Scope

Pursuant to 5 U.S.C. 301, the head of an executive department or military department may prescribe regulations for the government of his/her department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. Section 301 does not authorize withholding information from the public or limiting the availability of records to the public. This part contains the regulations of the Millennium Challenge Corporation (MCC) concerning procedures to be followed when a request, subpoena, order or other demand (hereinafter in this part referred to as a "demand") of a court or other authorities in any state or federal proceeding is issued for the production or disclosure of:

- (a) Any material contained in the files of MCC;

(b) Any information relating to materials contained in the files of MCC; or

(c) Any information or material acquired by an employee of MCC during the performance of the employee's official duties or because of the employee's official status.

#### § 1305.2 Definitions

For purposes of this part:

(a) *Demand* means a request, order, or subpoena for testimony or documents related to or for possible use in a legal proceeding.

(b) *Document* means any record or other property, no matter what media and including copies thereof, held by MCC, including without limitation, official letters, telegrams, memoranda, reports, studies, calendar and diary entries, maps, graphs, pamphlets, notes, charts, tabulations, analyses, statistical or informational accumulations, any kind of summaries of meetings and conversations, film impressions, magnetic tapes and sound or mechanical reproductions.

(c) *Employee* means all employees and officers of MCC, including contractors who have been appointed by, or are subject to the supervision, jurisdiction or control of MCC. The procedures established within this part also apply to former employees and contractors of MCC.

(d) *General Counsel* means the General Counsel or MCC employee to whom the General Counsel has delegated authority to act under this subpart.

#### § 1305.3 Production Prohibited Unless Approved

No employee or former employee shall, in response to a demand of a court or other authority, disclose any information relating to materials contained in the files of MCC, or disclose any information or produce any material acquired as part of the performance of the person's official duties, or because of the person's official status, record without the prior, written approval of the General Counsel.

#### § 1305.4 Factors to be considered by the General Counsel

(a) In deciding whether to authorize the release of official information or the testimony of employees concerning official information, the General Counsel shall consider the following factors:

(1) Whether the demand is unduly burdensome;

(2) MCC's ability to maintain impartiality in conducting its business;