August 7, 2014, final rule. Therefore, this regulation is issued in final form.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Therefore, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, parts 740 and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended by making the following correcting amendments.

PART 740—[AMENDED]

■ 1. The authority citation for 15 CFR Part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

■ 2. In Supplement No. 1 to Part 740, Country Groups, Country Group A is amended by revising the entry for ''Mexico'' to read as follows:

SUPPLEMENT NO. 1 TO PART 740—COUNTRY GROUPS

[Country group A]

Country	[A:1]	[A:2] Missile technology control regime	[A:3] Australia group	[A:4] Nuclear suppliers group	[A:5]	[A:6]
* * *	*	*		*	*	
Mexico	.....	.....	X	X	.....	.....
* * *	*	*		*	*	

PART 774—[AMENDED]

■ 3. The authority citation for 15 CFR Part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

■ 4. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 6 Sensors and Lasers, ECCN 6A203 is amended by adding a new paragraph .d and a Technical Note at the end of the ''Items'' paragraph, under the List of Items Controlled section, to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

6A203 High-speed cameras, imaging devices and ''components'' therefor, other than those controlled by 6A003 (see List of Items Controlled).

* * * * *

List of Items Controlled

Related Controls: * * *

Related Definitions: * * *

Items:

* * * * *

d. Radiation-hardened TV cameras, or lenses therefor, ''specially designed'' or rated as radiation hardened to withstand a total radiation dose greater than 50×10^4 Gy (silicon) without operational degradation.

Technical Note: The term Gy (silicon) refers to the energy in Joules per kilogram absorbed by an unshielded silicon sample when exposed to ionizing radiation.

* * * * *

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2014–21209 Filed 9–4–14; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 130403324–4647–03]

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: Final rule.

SUMMARY: With this final rule, the National Oceanic and Atmospheric Administration (NOAA) expands the boundary of Thunder Bay National Marine Sanctuary (TBNMS or sanctuary), clarifies the correlation between TBNMS regulations and Indian tribal fishing activities, and revises the corresponding sanctuary terms of designation. The new boundary for TBNMS increases the size of the sanctuary from 448 square miles to 4,300 square miles and extends protection to 47 additional known historic shipwrecks of national significance. NOAA has prepared a final environmental impact statement for this action.

DATES: *Effective Date:* Pursuant to section 304(b) of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1434(b)), the revised designation and regulations shall take effect and become final after the close of a review period of forty-five days of continuous session of Congress beginning on September 5, 2014. NOAA will publish an announcement of the effective date of the final regulations in the **Federal Register**.

ADDRESSES: Copies of the final environmental impact statement (FEIS) described in this rule and the record of decision (ROD) are available upon request to Thunder Bay National Marine

Sanctuary, 500 W. Fletcher, Alpena, Michigan 49707, Attn: Jeff Gray, Superintendent. The FEIS can also be viewed and downloaded at *http://thunderbay.noaa.gov/management/expansion.html.*

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

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 sanctuaries areas of the marine or Great Lakes 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 the Office of National Marine Sanctuaries (ONMS) within the National Oceanic and Atmospheric Administration (NOAA). The primary objective of the NMSA is to protect sanctuary resources.

A. Thunder Bay National Marine Sanctuary

Located in northwestern Lake Huron, Thunder Bay is adjacent to some of the most treacherous stretches of water within the Great Lakes system. Unpredictable weather, murky fog banks, sudden gales, and rocky shoals earned the area the name ''Shipwreck Alley''. Fire, ice, collisions, and storms have claimed nearly 200 vessels in and around Thunder Bay over the last 150 years.

NOAA designated the area as a national marine sanctuary in 2000. The Thunder Bay National Marine Sanctuary and Underwater Preserve (TBNMS or sanctuary) is managed jointly by NOAA and the State of Michigan under a 2002 Memorandum of Agreement. The primary purpose of the sanctuary is to provide comprehensive, long-term protection for these nationally-significant shipwrecks and maritime heritage sites.

To date, 45 shipwrecks have been discovered within the sanctuary boundary designated in 2000. In addition to helping to protect and interpret individual shipwreck sites, managing the sanctuary in the context of a maritime cultural landscape reveals a broad historical canvas that encompasses many different perspectives of the maritime past. Well preserved by Lake Huron's cold, fresh water, the shipwrecks and related maritime heritage sites in and around Thunder Bay are historically, archaeologically and recreationally significant.

B. Need for Action

The purpose of this proposed action is to provide long-term protection and comprehensive management for 47 additional known historic shipwrecks of special national significance, and other maritime heritage resources (e.g., docks, cribs), located in Lake Huron outside the sanctuary's original boundary. The action also provides authority for the protection of additional historic shipwrecks and maritime heritage resources known to be in the area, but yet to be discovered.

Human threats to TBNMS resources include looting and altering sanctuary shipwreck sites and damaging or destroying sites by anchoring. Natural threats include damage from wind, waves, storms and ice. Invasive species such as zebra and quagga mussels also impact TBNMS resources by obscuring surfaces, accelerating corrosion of iron features, or displacing features because of the weight of mussels. Although each of these threats can jeopardize the long term sustainability of sunken historic shipwrecks and other maritime heritage resources, it is when combined they pose the greatest hazard. Thus, in order to ensure long-term protection of nationally significant historical resources, fill important gaps in archeological knowledge and historical context, and enhance sustainable recreational and tourism opportunities within the greater Thunder Bay region, these shipwrecks require the same comprehensive and coordinated management (including extensive research, education, and public outreach programs) NOAA provides to sites within the existing TBNMS boundary.

While state laws and other applicable federal law (such as The Abandoned Shipwreck Act codified in 43 U.S.C. 2101, *et seq.*) intended to reduce the impact of human activities on historic shipwrecks and related maritime heritage resources have been effective, those laws only apply to abandoned property, as defined under the Abandoned Shipwrecks Act of 1987 (43 U.S.C. 2101–2106). There are some historical shipwrecks and artifacts that are significant but are not included in that definition (given they may not be considered ''abandoned''). Therefore, expanding TBNMS will provide these resources with the following conservation benefits: (1) Prohibiting the use of grappling hooks or other anchoring devices on underwater cultural resource sites marked with a mooring buoy; (2) Prohibiting ''hand-taking'' of artifacts even if they are located away from the original shipwreck; (3) Permitting that satisfies Federal Archaeology Program guidelines for all sites located within the revised sanctuary boundary, which prevent inadvertent damage to shipwrecks; and (4) Deterring violations with the ability to assess civil penalties under the NMSA for violation of sanctuary regulations.

C. History of This Process

NOAA designated TBNMS as the nation's thirteenth national marine sanctuary in 2000 for the purpose of: ''Providing long-term protection and management to the conservation, recreational, research, educational, and historical resources and qualities of the area.'' Because new challenges and opportunities emerge with time, the NMSA requires periodic updating of sanctuary management plans (and regulations, if appropriate) to reevaluate sanctuary-specific goals and objectives and to develop management strategies and activities to ensure that the sanctuary best protects its resources. The original TBNMS management plan was written as part of the sanctuary designation process and published in the final environmental impact statement.[1]

The designation of the sanctuary has had a tremendously positive socioeconomic impact on community development and maritime heritage tourism in Northeast Michigan, and as a result, government officials and the public expressed interest in how an expanded sanctuary could further contribute to recreational and tourism opportunities in other regional communities along Lake Huron. The idea of TBNMS boundary expansion has received considerable support over the last several years, including letters, resolutions, Congressional testimony, and Sanctuary Advisory Council recommendations.[2]

During the 2007 TBNMS management plan review process, NOAA established a working group of the Sanctuary Advisory Council to evaluate whether the sanctuary boundary should be expanded to protect, manage, and interpret additional shipwrecks and other potential maritime heritage resources within Lake Huron. The

[1] *http://thunderbay.noaa.gov/pdfs/thunderbayeis.pdf.*

[2] *http://thunderbay.noaa.gov/management/expansion.html.*

boundary expansion working group identified and considered a 4,110-square-mile area that extended the current sanctuary south into Alcona County, north into Presque Isle County, and east to the international border with Canada. The study area was identified based on the density of both known and undiscovered resources; the historical, archaeological, and recreational significance of individual and collective resources; and the maritime landscape. On May 22, 2007, the boundary expansion working group presented this recommendation to the Sanctuary Advisory Council, which then passed a resolution in support of the area. Based on this resolution, Senator Carl Levin and Representative Bart Stupak introduced five sanctuary expansion bills into the U.S. Congress and, but they never passed (S. 2281, S. 380, S. 485, H.R. 6204, and H.R. 905).

In 2009, NOAA published a revised management plan.[3] In response to the Sanctuary Advisory Council's resolution, the management plan included a strategy to ''evaluate and assess a proposed expansion of the sanctuary to a 3,662-square-mile area from Alcona County to Presque Isle County, east to the international border with Canada to protect, manage, and interpret additional shipwrecks and other potential maritime heritage resources'' (Strategy RP–1). This action plan formed the basis for NOAA's current proposed action. (When added to the existing TBNMS boundary, this 3,662-square-mile area results in a total sanctuary area of 4,110 square-miles.)

In April 2012, NOAA held three public scoping meetings on the concept of boundary expansion in Alpena, Harrisville, and Rogers City, MI. In addition, NOAA received several written public comments on boundary expansion, most of which were in support. In fact, several commenters suggested a slightly larger area than 4,110 square-miles to protect an additional five historic shipwrecks. This larger area, for a total of 4,300 square miles, is the final boundary described in this action.

On June 14, 2013, NOAA published in the **Federal Register** a proposed rule (78 FR 35776) and availability of a draft environmental impact statement (DEIS) (78 FR 35928). The rule proposed to 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 protected under the NMSA. The proposed boundary extended from Alcona County, Michigan to Presque Isle County, Michigan, included selected submerged maritime heritage resources in Cheboygan and Mackinaw counties, and ran east to the United States/Canada international boundary. The proposed boundary also included the ports at Rogers City and Presque Isle.

In July 2013, NOAA held three public meetings on the proposed rule in various towns in Michigan, and extended the comment period 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 decided to publish an amendment to the proposed rule on May 9, 2014 (79 FR 26654) for two reasons: (1) To propose, in response to comments from the Governor of Michigan and other regional interests, that the ports of Rogers City and Presque Isle not be included in the sanctuary boundary and that the port of Alpena be removed from the sanctuary boundary; and (2) to clarify that sanctuary regulations had no impact on the treaty fishing rights of regional tribes.

The amendment also addressed the Great Lakes shipping industry's concern that the proposed TBNMS expansion would limit or prohibit ballasting operations for vessels transiting the sanctuary, given USCG (33 CFR 151.2050) and EPA requirements (Section 2.2.3.3 of 2013 Vessel General Permit) 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.''

In light of these requirements, the Great Lakes shipping industry requested that 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. NOAA seriously considered this request, and 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 continue 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. As a result, no change was necessary to the proposed rule.

The public comment period on the amended proposed rule closed on June 9, 2014. NOAA's response to the public comments received on the June 14, 2013 proposed rule and the May 9, 2014 amended proposed rule, is in Section V of this final rule.

II. Summary of the Regulations

1. Boundaries

This regulatory action expands the TBNMS boundary, increasing the total area of the sanctuary from 448 square miles to approximately 4,300 square miles. The southern boundary of the sanctuary begins where the southern boundary of Alcona County intersects with the ordinary high water mark of Lake Huron and runs east until it intersects the U.S./Canada international boundary. The eastern boundary of the sanctuary follows the international boundary until it intersects with the 45°50′N line of latitude. The northern boundary follows this line of latitude (45°50′N) westward until it intersects the 84°20′W line of longitude. The western boundary extends south along this line of longitude (84°20′W) 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, until it intersects the southern boundary of Alcona County. As discussed above, the revised boundary does not include the ports of Rogers City and Presque Isle. It also excludes the port of Alpena, which was previously included in the sanctuary boundary.

The table in Appendix A of Thunder Bay National Marine Sanctuary regulations provides several coordinates used to define the boundaries of the sanctuary. A map of this expanded area can be found at *http://thunderbay.noaa.gov/management/expansion.html* and in the final environmental impact statement.

2. Consultation With Federally-Recognized Indian Tribes

As part of this rulemaking, NOAA consulted with the Chippewa Ottawa Resource Authority (CORA) which is the organizing body for the following regional 1836 treaty fishing tribes: Bay Mills Indian Community (Brimley, MI), Grand Traverse Band of Ottawa and

[3] *http://sanctuaries.noaa.gov/management/mpr/tbnmsmp.pdf.*

Chippewa Indians (Suttons Bay, MI), Little River Band of Ottawa Indians (Manistee, MI), Little Traverse Bay Band of Odawa Indians (Petoskey, MI), and Sault Ste. Marie Tribe of Chippewa Indians (Sault Ste. Marie, MI).

As a result of this government-to-government consultation, NOAA is amending the TBNMS regulations to clarify that Indian treaty fishing rights are not modified, altered, or in any way affected by the proposed boundary expansion. In particular, NOAA is adding a definition to the TBNMS definitions at 15 CFR 922.191 that clarifies the term ''treaty fishing rights'' as referring to those rights reserved under the 1836 Treaty of Washington and in subsequent related court decisions. This definition would not replace, but would rather complement, the existing definition of ''traditional fishing'', which refers to the treaty fishing rights without explicitly defining them. This new definition was specifically suggested during consultation with CORA.

In addition, based on the comments received during tribal consultation and during the comment period, NOAA is amending 15 CFR 922.197 to ease concerns raised by the federally-recognized tribes that sanctuary expansion could potentially undercut its treaty fishing rights. This section directs NOAA to regularly consult with the governing bodies of affected federally-recognized Indian tribes regarding areas of mutual concern. Although NOAA already stated 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) under 15 CFR 922.193(b), NOAA believes that adding a statement to a separate section of the TBNMS regulations at 15 CFR 922.197 provides further assurance and clarification to the tribes that treaty fishing rights would not be adversely impacted by sanctuary expansion.

III. Summary of 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.

To implement this action, NOAA is making changes to the TBNMS terms of designation, which were previously published in the **Federal Register** on June 22, 2000 (65 FR 39042). The changes:

1. Modify Article II ''Description of the Area'' by changing the description of the size of the sanctuary and describing its new boundary.
2. Modify Article III ''Characteristics of the Area That Give It Particular Value'' by changing the description of the nationally significant characteristics of the area included in the sanctuary.
3. Modify Article V ''Effect on Other Regulations, Leases, Permits, Licenses, and Rights'' to reflect the new position of the Office of National Marine Sanctuaries within the NOAA organizational structure.

The revised terms of designation are proposed to read as follows (new text in parentheses and deleted text in brackets):

Terms of Designation for the Thunder Bay National Marine Sanctuary and Underwater Preserve

Under the authority of the National Marine Sanctuaries Act, as amended (the ''Act'' or ''NMSA''), 16 U.S.C. 1431 *et seq.*, Thunder Bay and its surrounding waters offshore of Michigan, and the submerged lands under Thunder Bay and its surrounding waters, as described in Article II, are hereby designated as the Thunder Bay National Marine Sanctuary and Underwater Preserve for the purposes of providing long-term protection and management to the conservation, recreational, research, educational, and historical resources and qualities of the area.

Section 304(a)(4) of the NMSA requires that the terms of designation include the geographic area included within the Sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value; and the types of activities that will be subject to regulation by the Secretary of Commerce to protect those characteristics. The terms of designation may be modified only by the procedures provided in Section 304(a) of the Act (the same procedures by which the original designation is made). Thus, the terms of designation serve as a constitution for the Sanctuary.

Article I. Effect of Designation

The NMSA authorizes the issuance of such regulations as are necessary and reasonable to implement the designation, including managing and protecting the conservation, recreational, historical, research, and educational resources and qualities of the Thunder Bay National Marine Sanctuary and Underwater Preserve (the ''Sanctuary''). Section 1 of Article IV of this Designation Document lists those activities that may be regulated on the effective date of designation, or at some later date, in order to protect Sanctuary resources and qualities. Listing does not necessarily mean that an activity will be regulated; however, if an activity is not listed it may not be regulated, except on an emergency basis, unless Section 1 of Article IV is amended to include the type of activity by the same procedures by which the original Sanctuary designation was made, as outlined in Section 304(a) of the NMSA.

Article II. Description of the Area

The Thunder Bay National Marine Sanctuary and Underwater Preserve consists of an area of approximately (4,300) [448] 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.) [The boundary forms an approximately rectangular area by extending along the ordinary high water mark of the Michigan shoreline from 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 the regulations.] (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.)

Article III. Characteristics of the Area That Give It Particular Value

Thunder Bay and its surrounding waters contain approximately (92 known) [116] (historic) shipwrecks spanning more than a century of Great Lakes maritime history. (Archival research indicates that as many as 100 additional historic shipwrecks may exist in the area but are yet to be formally discovered.) Virtually every type of

vessel used on open Great Lakes waters has been documented in the Thunder Bay region, linking Thunder Bay inextricably to Great Lakes commerce. Most of the Great Lakes trades had a national, and sometimes an international, significance, and resulted in uniquely-designed vessels. Although not all of Thunder Bay's shipwrecks have been identified, studies undertaken to date indicate strong evidence of the [Bay's] (region's) national historic significance. The sunken vessels reflect transitions in ship architecture and construction methods, from wooden sailboats to early iron-hulled steamers.

(We draw s) [S]everal [major] conclusions regarding Thunder Bay's shipwrecks [may be drawn] from research and analysis undertaken to date:

- They are representative of the composition of the Great Lakes merchant marine from 1840 to 1970;
- they provide information on the various phases of American westward expansion;
- they provide information on the growth of American extraction and use of natural resources;
- they illustrate various phases of American industrialization;
- one shipwreck, (the (*Isaac M. Scott,*) may be used to study and interpret a specific event (the Great Storm of 1913) that had strong repercussions regionally, nationally, and internationally; and they provide interpretive material for understanding American foreign intercontinental trade within the Great Lakes. Thunder Bay was established as the first State of Michigan Underwater Preserve in 1981 to protect underwater cultural resources. Increasing public interest in underwater cultural resources underscores the importance of continued efforts to discover, explore, document, study and to provide long-term, comprehensive protection for the Bay's shipwrecks and other underwater cultural resources. (In addition to the submerged resources described above, there are other aspects of the region's maritime cultural landscape. A cultural landscape is a geographic area including both cultural and natural resources, coastal environments, human communities, and related scenery that is associated with historic events, activities or persons, or exhibits other cultural or aesthetic values. The Thunder Bay region is comprised of many shoreline features such as beached shipwrecks, lighthouses, aids to navigation, abandoned docks, working waterfronts and Native American sites. Also important are the intangible elements such as spiritual places and legends.)

Article IV. Scope of Regulations

Section 1. Activities Subject to Regulation. The following activities are subject to regulation under the NMSA, including prohibition, to the extent necessary and reasonable to ensure the protection and management of the conservation, recreational, historical, research and educational resources and qualities of the area:

a. Recovering, altering, destroying, possessing, or attempting to recover, alter, destroy or possess, an underwater cultural resource;

b. Drilling into, dredging or otherwise altering the lake bottom associated with underwater cultural resources, including contextual information; or constructing, placing or abandoning any structure, material or other matter on the lake bottom associated with underwater cultural resources, except as an incidental result of:

(i) Anchoring vessels;

(ii) Traditional fishing operations (as defined in the regulations); or

(iii) Minor projects as defined upon adoption of this regulation in R.322.1013 of Part 325, Great Lakes Submerged Lands of Public Act 451 (1994), as amended, that do not adversely affect underwater cultural resources (see Appendix B of Subpart R);

c. Using grappling hooks or other anchoring devices on underwater cultural resource sites that are marked with a mooring buoy;

d. Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the NMSA or any regulations issued under the NMSA.

Section 2. Consistency with International Law. The regulations governing the activities listed in Section 1 of this Article shall apply to United States-flag vessels and to persons who are citizens, nationals, or resident aliens of the United States and shall apply to foreign flagged vessels and persons who are not citizens, nationals, or resident aliens of the United States to the extent consistent with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party.

Section 3. Emergencies. 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, including those not listed in Section 1, are subject to immediate temporary regulation, including prohibition. Any such emergency regulation shall not take effect without the approval of the Governor of Michigan.

Article V. Effect on Other Regulations, Leases, Permits, Licenses, and Rights

Section 1. Fishing Regulations, Licenses, and Permits. Fishing in the Sanctuary shall not be regulated as part of the Sanctuary management regime authorized by the Act. However, fishing in the Sanctuary may be regulated [other than under the Act] by (other) Federal, State, Tribal and local authorities of competent jurisdiction, and designation of the Sanctuary shall have no effect on any regulation, permit, or license issued thereunder.

Section 2. Other. If any valid regulation issued by any Federal, State, or local authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation deemed by the (Office of National Marine Sanctuaries) Director, [Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration,] or his or her designee, in consultation with the State of Michigan, to be more protective of Sanctuary resources shall govern. Pursuant to Section 304(c)(1) of this Act, 16 U.S.C. 1434(c)(1), no valid lease, permit, license, approval, or other authorization issued by any Federal, State, or local authority of competent jurisdiction, or any right of subsistence use or access, may be terminated by the Secretary of Commerce, or his or her designee, as a result of this designation, or as a result of any Sanctuary regulation, if such lease, permit, license, approval, or other authorization, or right of subsistence use or access was issued or in existence as of the effective date of this designation. However, the Secretary of Commerce, or his or her designee, in consultation with the State of Michigan, may regulate the exercise of such authorization or right consistent with the purposes for which the Sanctuary is designated.

Article VI. Alteration of This Designation

The terms of designation, as defined under Section 304(e) of the Act, may be modified only by the same procedures by which the original designation is made, including public hearings, consultations with interested Federal, State, Tribal, regional, and local authorities and agencies, review by the appropriate Congressional committees, and review and non-objection by the Governor of the State of Michigan, and

approval by the Secretary of Commerce, or his or her designee.

[End of Terms of Designation.]

IV. Changes From Proposed to Final Rule

1. Boundary Change

NOAA received several comments on the June 14, 2013 proposed rule regarding the inclusion of the ports at Rogers City (also recognized as Calcite Quarry, Carmeuse), 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 amended the proposed rule that removed those areas. In this final rule, NOAA is finalizing those amendments by not including the ports at Rogers City and Presque Isle within, and removing Alpena from, the TBNMS boundary in the final regulations.

2. Tribal Fishing Rights

NOAA amended the TBNMS regulations at 15 CFR 922.191 and 15 CFR 922.197 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. A detailed description of those changes can be found in Section II of this final rule.

3. Technical Change to Boundary Coordinates

There was an inadvertent discrepancy between the narrative description in 15 CFR 922.190 and the actual coordinates of the proposed boundary in Appendix A of the TBNMS regulations. NOAA updated the final rule to ensure that the narrative description accurately reflects the precise location of the sanctuary's proposed boundary.

V. Response to Comments

NOAA received 94 individual comments during the public comment period on the June 14, 2013 proposed rule and the May 9, 2014 amended proposed rule. A summary of the comments are provided below, and when possible, responses to similar comments on the proposed measures have been consolidated.

Support for Expansion

1. *Comment:* Sanctuary expansion will have a positive impact on cultural resource protection by including an additional 47 known shipwreck sites in the sanctuary's research and resource protection programs. Expansion will also have a positive impact on local and regional economies through increased heritage tourism and visiting researchers. Communities in the expanded area are also looking forward to increased education and outreach partnership opportunities.

Response: NOAA agrees and is moving forward with the boundary expansion process.

Tribal Treaty Rights

2. *Comment:* The DEIS and proposed rule do not contain the clear and unambiguous statement that Treaty secured fishing rights shall not now, or in the future be impaired or impeded by NOAA in the exercise of its regulatory authority. Indian tribes who fish in the expanded sanctuary believe the existing TBNMS regulations are ambiguous.

Response: NOAA conducted government-to-government consultations with federally recognized tribes that fish in the current and proposed boundary of the sanctuary, as required by E.O. 13175. Based on this consultation, NOAA amended the regulations to clearly state that Treaty fishing rights are not impacted by sanctuary expansion. NOAA also added and defined the term ''treaty fishing rights'' in the TBNMS definitions at 15 CFR 922.191. This amendment sufficiently addresses concerns raised during the consultation that took place between the tribes and NOAA.

Invasive Species

3. *Comment:* NOAA should review and potentially adopt vessel permitting programs in TBNMS, such as those from other marine protected areas managed by ONMS, specifically as it pertains to the spread of invasive species. NOAA should review the state of Hawai'i's Administrative Rules Chapter 13–76 pertaining to invasive species and assess their applicability to TBNMS.

Response: NOAA believes invasive species are currently well-managed by other Federal and state agencies with jurisdiction over vessel operations in the Great Lakes. Additional NOAA regulations within the TBNMS would not significantly improve the management regime that already exists for invasive species. For the same reasons, NOAA does not believe that additional regulations relating to hull fouling are needed to protect sanctuary resources. Hawai'i's Administrative Rules are not readily applicable to protecting maritime heritage resources in the Great Lakes, which is the purpose of TBNMS. Each national marine sanctuary has its own set of regulations tailored specifically to resource protection needs of that sanctuary. Therefore, NOAA is not altering the permitting framework with respect to TBNMS.

4. *Comment:* The discussion in the environmental impact statement should include data on vessel traffic in the Great Lakes and its impact on sanctuary resources.

Response: Analyzing data on vessel traffic throughout the Great Lakes is beyond the scope of this federal action. The operation and common practices of commercial vessels in the Great Lakes are not affected by the expansion of the sanctuary, and whatever effect they may have on sanctuary resources (if any) would occur regardless of sanctuary expansion. Therefore no additional environmental analysis is required.

5. *Comment:* With the rise of the impact of invasive mussels on shipwrecks, the best way to preserve artifacts is to allow sport divers and commercial salvage companies to remove artifacts from the underwater site. The expansion of TBNMS would not allow removal of artifacts from the dozens or hundreds of shipwrecks located in the expansion area, which would prevent the preservation of many artifacts before they are smothered by invasive mussels.

Response: Salvage of underwater artifacts is prohibited by both NOAA and State of Michigan regulations. As such, should the expansion of TBNMS not occur, salvage would still be prohibited under State law. Additionally, NOAA does not believe salvage of artifacts is in congruence with the TBNMS resource protection mission, nor is it a viable strategy for meeting the challenge of invasive mussels.

Appropriate Type of Protection

6. *Comment:* The Thunder Bay Underwater Preserve provides adequate protection to the region's underwater cultural resources; there is no need to duplicate efforts.

Response: Designation of the sanctuary was intended to build on and strengthen the Thunder Bay Underwater Preserve, which was designated by the state of Michigan in 1981. The management of Thunder Bay National Marine Sanctuary is a partnership between NOAA and the State of Michigan. NOAA and the State work together to ensure they do not duplicate each other's efforts. Given the additional financial resources and legal authorities NOAA has to offer, joint management between the State of Michigan and NOAA provides opportunities that neither could offer on its own. There are numerous benefits associated with a national marine sanctuary, including enhanced opportunities for research and long-term monitoring, additional development of education and outreach efforts, and increased support for enforcement. The designation of an area as a sanctuary draws attention to the fact that the area is nationally significant and worth protecting on a national level.

For a more complete discussion of the differences between State law and Sanctuary regulations, see: Section 5, Regulatory Alternatives, of the Final Environmental Impact Statement/ Management Plan; the Final Environmental Impact Statement: Boundary Expansion June 2014; and the Thunder Bay National Marine Sanctuary Condition Report, February 2013).

7. *Comment:* Designation of the sanctuary will result in the loss of State control of Lake Huron, and a takeover of both management and regulation of the area by the Federal government.

Response: Thunder Bay National Marine Sanctuary does not change the ownership or control of State lands or waters; that is, no loss of State or tribal sovereignty has occurred, or will occur, as a result of national marine sanctuary designation or expansion. NOAA and the State agree that the State's jurisdiction and rights will be maintained and will not be relinquished, and all existing State laws, regulations, and authorities remain in effect. A Memorandum of Understanding (MOU) for the joint management of TBNMS between the State of Michigan and NOAA contains several provisions to address this concern. A key provision states: ''The State of Michigan has not conveyed title to or relinquished its sovereign authority over any State owned submerged lands or other State owned resources, by agreeing to include those submerged lands and resources.''

8. *Comment:* Because TBNMS is being expanded for the purpose of protecting maritime cultural heritage resources, federal restrictions that apply within national marine sanctuaries designated for the purpose of protecting ecological resources should not apply.

Response: National marine sanctuaries are managed as a system by NOAA's Office of National Sanctuaries. The National Marine Sanctuaries Act authorizes NOAA to designate and protect as national marine sanctuaries areas of the marine or Great Lakes environment that are of special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities. The statue does not distinguish the specific resources of particular sanctuaries. Therefore, it is immaterial whether a site is designated for its ecological or cultural characteristics (or both), because all are designated national marine sanctuaries under the statute. For this same reason, other government agencies' regulations or guidelines that refer to national marine sanctuaries do not distinguish sanctuaries based on the specific resources it is designated to protect. As envisioned by Congress, only the individual national marine sanctuary regulations are tailored to the specific resources that the national marine sanctuary is mandated to protect. In this instance, the regulations that NOAA promulgated for TBNMS are focused on protecting the shipwrecks and maritime heritage resources of the sanctuary.

Diver Access

9. *Comment:* Will sanctuary expansion limit diver access to shipwrecks within the sanctuary? Will NOAA release the coordinates of new shipwrecks, unlike when the M.F. Merrick and Etruria were found in 2011 and the coordinates were kept secret?

Response: Sanctuary regulations do not prohibit or limit access to shipwrecks within the current or expanded sanctuary; there is no access restriction for diving on the shipwrecks in TBNMS. TBNMS fosters free and open access to all underwater cultural resources within sanctuary boundaries.

However, on rare occasions (and it has not happened to date at TBNMS), TBNMS may need to place temporary emergency limits on access to a shipwreck for purposes of resource protection. This action would be accomplished through imposition of an emergency regulation pursuant to 15 CFR 922.196. NOAA has not promulgated such regulations since the sanctuary's designation in 2000. In accordance with TBNMS regulations and the MOU with the State, NOAA cannot impose a temporary emergency regulation without the approval of the Governor of Michigan.

Similarly, NOAA may decide to withhold the release of coordinates of a newly discovered, historically significant shipwreck for a period of time so that NOAA and the State can document the site and its artifacts. Under this scenario, NOAA will use agency and partner resources (and possibly volunteers) to document the site. Once documented, the public would be provided full access to the site.

Management Framework

10. *Comment:* Does NOAA have to apply and be granted permits from the State of Michigan to remove or salvage artifacts from Michigan shipwrecks?

Response: NOAA is required to consult with the Michigan State Underwater Archaeologist and Michigan State Archaeologist to conduct activities that may require a state permit, and apply for a permit (currently, through Michigan Department of Environmental Quality and the Office of the State Archaeologist) should one be deemed necessary. In addition, the procedures and criteria for securing a sanctuary permit are set forth in 15 CFR 922.195.

11. *Comment:* How will the sanctuary come up with the funds to adequately manage the sanctuary?

Response: An increase in the TBNMS budget does not automatically accompany sanctuary expansion. Within its current budget, and with supplemental funds from grants and partners, NOAA would provide effective management of sanctuary resources, including on-water research, outreach and education in the expanded sanctuary boundary. More information on TBNMS management can be found in the 2008 final management plan, which is available at *www.thunderbay.noaa.gov,* and in the 2013 Thunder Bay Condition Report found at *http://sanctuaries.noaa.gov/ science/condition/tbnms/.*

12. *Comment:* Many of the 200 estimated wrecks included in sanctuary expansion are of no real historical or archaeological value. NOAA has not established that the entire area within the proposed expanded boundary is of special significance.

Response: The collection of 92 known shipwrecks located within the entire new sanctuary boundary represents a large diversity of vessels that navigated the Great Lakes in the 19th and 20th centuries, which NOAA believes, per section 303(a)(2) of the NMSA are of special national significance. This is based on a NOAA-funded study conducted in the Thunder Bay region

during pre-designation of the sanctuary that indicated these shipwrecks would likely qualify as a National Historic Landmark. In addition, several of the known shipwrecks individually have potential national historic significance, e.g., Isaac M. Scott, which foundered in the Great Storm of 1913 (See Section 4 of the FEIS/MP for a complete discussion of these shipwrecks). The expanded boundary was chosen because it includes shipwrecks of particular historical, archeological and recreational value that complement those within the sanctuary's current boundaries. See also the 2013 Thunder Bay National Marine Sanctuary Condition Report. See the 2013 Thunder Bay National Marine Sanctuary Condition Report (*http://sanctuaries.noaa.gov/science/condition/tbnms/*) for a detailed description of the historical and archaeological significance of the resources. The boundary of the sanctuary was chosen to include as many of the shipwrecks in this collection as possible in a shape that would be easily represented on nautical charts.

13. *Comment:* NOAA will have to spend millions of dollars to remove mussels to study the sites of these additional shipwrecks.

Response: Despite the presence of invasive mussels, Great Lakes shipwrecks possess high archeological, historical and recreational value, and NOAA has been able to carry out effective research, resource protection and education programs since the sanctuary's designation in 2000. NOAA does not envision the large scale removal of invasive mussels, but rather selected mussel removal where the benefit of retrieving significant archeological information outweighs any potential damage to a shipwreck site or artifact. Given the scale of invasive mussel infestation in Lake Huron, it is unreasonable and unnecessary to remove all mussels from all shipwrecks in order to achieve significant public benefits. A more thorough discussion of invasive mussels and the impact on sanctuary shipwrecks can be found in the 2013 Thunder Bay Condition report at *http://sanctuaries.noaa.gov/science/condition/tbnms/.*

Expansion Process

14. *Comment:* Why did NOAA conduct the expansion hearings rather than the State of Michigan or a federal entity?

Response: NOAA was carrying out its statutory duty. Section 304(a)(3) of the NMSA requires NOAA to conduct public hearings and receive views of interested parties whenever the agency is designating or amending the designation of a national marine sanctuary. NOAA's actions were consistent with the laws governing public review of Federal actions. In addition, because TBNMS is jointly managed with the State of Michigan, appropriate state agencies were consulted during the entire expansion process.

15. *Comment:* Why were the hearings not held in Lansing?

Response: Section 304(a)(3) of the NMSA requires public hearings to be held in the areas most affected by the expansion. Given this, NOAA selected communities that were the most likely to be affected by the expansion of the sanctuary. Recognizing that it is not cost-effective to hold hearings in every community, NOAA also accepted submissions of public comments by mail as well as electronically during a public comment period that extended from June 14 to December 19, 2013. NOAA afforded the public an additional opportunity to express views when the agency published the amended proposed rule and reopened the public comment period from May 9, 2014 through June 9, 2014.

16. *Comment:* Who votes on expansion and when?

Response: No one actually votes on expansion. Rather, the sanctuary boundary expansion process was part of an administrative action led by NOAA, which included significant opportunity for public input during the scoping period (April 12 through May 25, 2012) as well as during the public comment period on the proposal (June 14 to December 19, 2013). Additionally, expansion was a major issue addressed in Thunder Bay's Management Plan Review process that took place between 2006 and 2009. As part of this process, there were numerous opportunities for public comment. Ultimately, the Management Plan included a strategy for the sanctuary to explore boundary expansion, as recommended by a 2007 SAC resolution. For more information see: *http://thunderbay.noaa.gov/management/management_plan.html* All public comments were reviewed, analyzed, and integrated in the final action. As a result, NOAA, in collaboration with the State of Michigan, under authority given by the National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.), made the decision to expand TBNMS.

17. *Comment:* With the current federal financial situation, why would NOAA want to expand its reach into the Great Lake rather than serve its core mission?

Response: NOAA's mission is ''Science, Service, and Stewardship'' and includes a specific goal to conserve and manage coastal and marine ecosystems and resources (*http://www.noaa.gov/about-noaa.html*). The expansion of TBNMS serves to further NOAA's core mission by protecting the nationally significant maritime heritage resources of the Thunder Bay region.

18. *Comment:* NOAA failed to include an analysis of cost and benefits required under section 303(b)(1)(H) of the NMSA (16 U.S.C. 1431 et seq.) or an analysis of economic impacts in Regulatory Flexibility. Analysis required under the Regulatory Flexibility Act (5 U.S.C. 601–602).

Response: NOAA believes it has adequately analyzed the environmental and socioeconomic impacts of this action in the environmental consequences section of the FEIS, as well as in the Regulatory Flexibility Act summary located in the classification section in the proposed rule. NOAA did not include an extensive description of costs to the Great Lakes shipping industry related to its action because no negative impacts to that industry are expected to result from this action.

19. *Comment:* NOAA failed to include an analysis of impacts under NEPA (42 U.S.C. 4321 et seq.) and to consult with appropriate stakeholders.

Response: See response to Comment 18 with regards to NOAA's analysis of impacts. NOAA disagrees with the commenter's statement that it did not conduct consultation with appropriate stakeholders. NOAA published a notice of intent to prepare a draft EIS on April 12, 2012 (77 FR 21878), followed by a public comment period of approximately 45 days. During this time, NOAA held three public scoping meetings to gather input from the communities on possible boundary expansion alternatives. In June 2013, NOAA published the proposed rule (78 FR 35776) and draft EIS and held another public comment period with public hearings, which was extended until December 2013. In response to the public comments that were received, NOAA amended the proposed rule and re-opened the comment period for another 30 days, from May 9, 2014 to June 9, 2014 (79 FR 26654). Therefore, NOAA believes it has more than adequately fulfilled the requirement to engage with stakeholders during a public process.

20. *Comment:* The Environmental Impact Statement (EIS) for boundary expansion should include an analysis of increased traffic on existing roadways, along with analysis of need to expand existing facilities and parking area. The

EIS should evaluate the impact to surrounding wetlands and flood plains.

Response: NOAA does not believe that sanctuary expansion requires an analysis of increased traffic of existing roadways. Current sanctuary facilities and parking will adequately accommodate any increase in visitation resulting from sanctuary boundary expansion, and no new such facilities are currently in development. If NOAA pursues the development of a new facility or parking area in the future, it will comply with all requirements for public notification and review and will prepare an environmental analysis under NEPA as part of a separate public process. In addition, NOAA does not believe that boundary expansion would have any impact on wetlands or flood plains.

21. *Comment:* NOAA failed to include a resource assessment as required under section 304(a)(2)(B) of the NMSA.

Response: The EIS as a whole documents all of the topics covered in a resource assessment, such as ''present and potential uses of the area, including commercial and recreational fishing, research and education, minerals and energy development [not applicable in TBNMS], subsistence uses, and other commercial, governmental, or recreational uses'', and this analysis was available for public review from June 2013 to June 2014. Therefore, NOAA believes it has met all the requirements of the NMSA that apply to this action.

22. *Comment:* NOAA should reserve a seat for a marine industry representative on the TBNMS Sanctuary Advisory Council (SAC) to ensure continued industry input and engagement on management of the sanctuary.

Response: The issue of Sanctuary Advisory Council (SAC) composition was raised as early as 2007 when the concept of expanding the sanctuary was first discussed. Once sanctuary expansion is final, the SAC will discuss the possibility of changing the number and composition of its seats. In the meantime, any representative from the marine industry could apply to the business seat when the position is up for selection. There is also a period of time devoted to public comment during every SAC meeting, when anyone interested in matters related to TBNMS are welcome to attend and provide comment on the record. The TBNMS SAC meeting schedule can be found at [*http://thunderbay.noaa.gov/management/advisory_council.html*].

Jurisdiction Over Shipwrecks

23. *Comment:* How will sanctuary expansion affect the Abandoned Shipwreck Act of 1987, which states that a shipwreck has to be both abandoned and ''embedded'' on the bottomlands in order for the state to own it.

Response: Sanctuary designation and subsequent boundary expansion has no effect on the Abandoned Shipwreck Act of 1987 and the state's ownership of historic shipwrecks.

24. *Comment:* Does the maritime law of salvage trump sanctuary authority?

Response: The law of salvage is a concept in maritime law which states that a person who recovers another person's ship or cargo after peril or loss at sea is entitled to a reward commensurate with the value of the property so saved. In the case of TBNMS, all shipwrecks within the sanctuary are located on State of Michigan bottomlands. This means that any salvage that might take place in the sanctuary would require a state permit and review by the sanctuary. State of Michigan Public Act 154 and Public Act 452 of 1988 govern the recovery of submerged artifacts, and sanctuary regulations prohibit recovering, altering, destroying, possessing, or attempting to recover, alter, destroy or possess an underwater cultural resource.

Enforcement

25. *Comment:* Will enforcement just pertain to wrecks, or will it be expanded to a comprehensive program over the water and under the water?

Response: Law enforcement within TBNMS applies only to the enforcement of sanctuary regulations. All sanctuary regulations, as currently implemented, pertain solely to maritime heritage resources; any activity considered illegal by other regulations (such as those of another Federal agency), whether over or under the water, could not (and would not) be subject to NOAA enforcement authority.

Boundary Concerns

26. *Comment:* There is a discrepancy between the narrative description and the actual coordinates of the proposed boundary.

Response: NOAA updated the final rule to ensure that the narrative description accurately reflects the precise location of the sanctuary's proposed boundary.

27. *Comment:* The expansion should include some of the adjacent land as well, since there are parts of several wrecks that exist on land adjacent to the wrecks either because of natural phenomena or from human intervention.

Response: As agreed to by the State of Michigan and NOAA during the sanctuary's designation, the landward boundary of the sanctuary is defined by the Ordinary High Water Mark (see page 191 in the Thunder Bay National Marine Sanctuary and Underwater Preserve *Final Environmental Impact Statement (2000)*). The National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.) directs NOAA to designation as marine national sanctuaries areas of the marine environment that meet certain criteria, where ''marine environment'' is defined as ''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'' (16 U.S.C. 1432 (3)). Therefore, NOAA would not have the authority to include adjacent lands in TBNMS.

28. *Comment:* NOAA should consider including in the Preferred Boundary Alternative several shipwrecks around Reynolds and Spectacle Reefs, near Cheboygan, Michigan.

Response: NOAA analyzed these areas in its Draft Environmental Impact Statement, and ultimately included these shipwrecks in its Preferred Boundary Alternative.

29. *Comment:* The ports used for commercial shipping should not be included in the sanctuary expansion area.

Response: NOAA received several comments on the proposed rule published on June 14, 2013 regarding inclusion of the ports at Rogers City (also recognized as Calcite Quarry, Carmeuse), 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 did not include the ports at Rogers City and Presque Isle within, and removed Alpena from, the revised TBNMS boundary in the final regulations.

30. *Comment:* NOAA should designate the sanctuary with boundaries restricted to a one-mile radius around each known and future discovered shipwreck.

Response: The final boundary configuration identified in this final rule reflects considerable input and recommendations from a wide variety of interests in the greater Thunder Bay region. (A history of the public's involvement with this process can be found at *http://thunderbay.noaa.gov/management/expansion.html.*) NOAA chose to analyze the alternatives in the DEIS based on this input and has ultimately decided to implement the boundary configuration of the preferred alternative, which received widespread public support.

31. *Comment:* The port of Alpena was never included in the original TBNMS boundary.

Response: The original boundary of TBNMS included the port of Alpena (65 FR 39042). The description set forth in 15 CFR 922.190 referred to the ordinary high water mark (OHWM) as the shoreward boundary of the sanctuary. However, this final rule is altering the boundary to remove the port of Alpena from the new boundary of the sanctuary.

Discharges and Shipping Operations

32. *Comment:* Sanctuary expansion would limit the ability of commercial ships to conduct routine ship operations, particularly ballasting, within the new sanctuary boundary. Specifically, the enforcement of U.S. Coast Guard (USCG) and U.S. Environmental Protection Agency (EPA) requirements regarding ballast water exchange would result in negative consequences to commercial shipping. Some commenters, including the Governor of Michigan, requested that the ports of Alpena, Rogers City and Presque Isle not be included in the boundary of the Thunder Bay National Marine Sanctuary.

Response: As a response to specific requests from the Governor of Michigan, the Lake Carriers' Association, the Canadian Shipowners Association, and the Shipping Federation of Canada, NOAA published an amended proposed rule (79 FR 26654) proposing to make changes to the boundary initially put forward for sanctuary expansion. Specifically, NOAA decided not to include the commercial ports at Presque Isle and Rogers City in the expanded sanctuary boundary. NOAA also excluded the port at Alpena from the original sanctuary boundary. The majority of ship ballasting occurs at these three ports. NOAA knows of no nationally significant maritime resources within these port areas; therefore, delineating a boundary that does not include these three ports does not result in any negative effects to the maritime heritage resources in that region. In addition, with this rulemaking, NOAA is clarifying ballasting operations are consistent with the maritime heritage protection mission of the TBNMS, an allowable activity within the revised boundaries of the sanctuary (the response to question 33 below elaborates further on this issue).

33. *Comment:* The proposed expansion of TBNMS threaten the viability of the Great Lakes shipping industry due to USCG and EPA regulations prohibiting certain essential and unavoidable discharge of ballast water within the boundaries of a national marine sanctuary.

Response: 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 that 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 seriously considered this request, and 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. As a result, no change was necessary to the regulations presented in the proposed rule.

34. *Comment:* Expansion of the prohibition on discharge of bilge water, which originates in the U.S. Environmental Protection Agency (EPA)'s VGP restrictions, is unnecessary. Bilge water is highly regulated and is only discharged after processing through an oily water separator capable of producing an effluent with an oil content of less than 5ppm.

Response: NOAA agrees that further regulations on the discharge of bilge water in the waters of TBNMS were not necessary for the primary purpose of maritime heritage resources. Therefore, NOAA did not propose to implement additional regulations on the discharge of bilge water. In addition to USCG regulations (33 CFR 151.10), bilge water is regulated by EPA (Section 2.2.2 of 2013 Vessel General Permit), which requires the operator of a vessel greater than 400 gross tons to not discharge treated bilge water into waters of a national marine sanctuary. However, EPA mentions that such discharge is allowed if necessary to maintain the stability and safety of the ship (Section 2.2.2 of 2013 Vessel General Permit), which mitigates the impact that this regulation may have as a result of the expansion of TBNMS.

35. *Comment:* The proposed expansion will unnecessarily and inadvertently extend prohibitions on essential and normal bulk carrier operations, such as discharge of minimal quantities of benign dry cargo residues to such an area that it will severely disrupt or limit commercial marine operations. It is critical that shippers be allowed to wash down dry bulk cargo residue at port and while underway to prevent accumulation of cement dust which turns to hard cement under wet conditions.

Response: The USCG restrictions on the practice of washing down dry bulk cargo residue, known as dry cargo sweeping, apply within the original TBNMS boundary (33 CFR 151.66). This final rule does not result in any changes to those USCG regulations and dry cargo sweeping will not be impacted. Moreover, dry cargo sweeping is prohibited by State law in all Michigan

waters. For more information on state laws governing discharges practices, see Section 324.9502 and Subsection 9501(d) of Part 95, Watercraft Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.

36. *Comment:* For safe vessel operations, vessels must be able to anchor if necessary to prevent damage to human life, property and the environment. It is not clear whether anchoring would be allowed in TBNMS.

Response: TBNMS regulations do not include a prohibition on anchoring in the sanctuary. The use of anchors or grappling hooks is prohibited only on underwater cultural resource sites that are marked with a mooring buoy. Moreover, the prohibition does not apply to any activity necessary to respond to an emergency threatening life or the environment.

37. *Comment:* NOAA should adopt regulations similar to those in Gray's Reef National Marine Sanctuary (GRNMS) to clarify that ballast water exchange would be allowed in TBNMS.

Response: The regulations for GRNMS prohibit ''operating a watercraft other than in accordance with the Federal rules and regulations that would apply if there were no Sanctuary'' (15 CFR 922.92(a)(4)). This does not mean that a watercraft, or vessel, could operate in GRNMS with disregard to other agencies' regulations, as implied by the commenter. The regulatory history of the GRNMS language shows that NOAA has historically required vessels ''to be operated in accordance with Federal rules and regulations'' (46 FR 7942). This means that any vessel in GRNMS should not only comply with sanctuary regulations but also with any other regulation by another government agency that pertains to vessels. Therefore, adopting a similar language in TBNMS would not, in fact, provide an exemption from the regulations and guidelines set forth by the USCG and EPA.

National Guard Operations

38. *Comment:* Alternative C of the proposed expansion overlaps the boundaries of Restricted Area (R–4207) used by Alpena Combat Readiness Training Center (CRTC) for military operations as issued by the Federal Aviation Administration (FAA). The Michigan Air National Guard (MANG) requests the opportunity to provide further comment in the event that a new wreck is discovered in the confines of R–4207 and requests that NOAA better define the types of activities subject to regulation by NOAA in the terms of designation.

Response: A list of activities subject to regulation by NOAA is found in Article IV, Section I of the terms of designation, which can be found in Section III of this final rule. This list defines sufficiently the types of activities subject to regulation by NOAA, and thus NOAA is making no changes. NOAA has provided the MANG with a map depicting the location of the shipwrecks currently known in TBNMS. NOAA will initiate consultation with the MANG should a new wreck be found within the confines of R–4207.

VI. Classification

A. National Environmental Policy Act

NOAA has prepared a final environmental impact statement to evaluate the impacts of this proposed rulemaking. No significant adverse impacts to resources and the human environment are expected. Rather, long-term beneficial impacts are anticipated if the proposed action is implemented. Under NEPA (43 U.S.C. 4321 et seq.), an environmental assessment would have sufficed to analyze the impacts of this action since NOAA's analysis showed that no significant impacts were likely. However, the NMSA requires NOAA to publish a draft environmental impact statement (DEIS) regardless of the intensity of the impacts of the proposed action if NOAA is considering changing the terms of designation of a sanctuary (16 U.S.C. 1434 (a)(2)). Copies of the FEIS are available at the address and Web site listed in the **ADDRESSES** section of this proposed rule.

B. Executive Order 12866: Regulatory Impact

This final 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 rulemaking, NOAA invited the Chippewa Ottawa Resource Authority (CORA) to participate in government-to-government consultation. CORA is the organizing body for 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. NOAA made changes to TBNMS regulations as a result of consultation under E.O. 13175, as identified in Section II of this 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 of that rule (78 FR 35776; Jun. 14, 2013). As explained in the preamble of the amended rule published on May 9, 2014 (79 FR 26654), the changes to the sanctuary boundary (removing the ports of Alpena, Roger City, and Presque Isle) and clarification Indian tribal fishing rights did not affect the determination of no significant economic impact. During the comment periods for the proposed rule and amended proposed rule, NOAA received 20 individual submissions commenting on the economic impact of prohibiting ballast water and other discharges in the area of the expanded sanctuary. These comments are summarized and responded to in comments 18, 19, 32, 33, 34 and 35 in the section above. As discussed in these comments, NOAA explained that it does not anticipate vessel operations (specifically ballasting operations) to be impacted as a result of this rulemaking. No changes to the proposed measures were made as a result of these public comments. Therefore, the determination that this rule will not have a significant economic impact on a substantial number of small entities is unchanged. As a result, a final regulatory flexibility analysis is not required and one was not prepared.

F. Paperwork Reduction Act

This final 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. 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.

Nationwide, NOAA issues approximately 200 national marine sanctuary general permits each year. Of this amount, TBNMS does not typically issue any sanctuary general permits. The permitting regulations for TBNMS specify that under certain conditions a person may conduct an otherwise prohibited activity if it is conducted in accordance with a state permit and the State Archaeologist certifies to NOAA that the activity will be conducted consistent with the Memorandum of Agreement. In the absence of certification from the State Archaeologist or if no State permit is required, a person may secure a sanctuary general permit directly from NOAA to conduct a prohibited activity if the activity is conducted in accordance with a Federal permit. Even though this proposed rule may result in a few additional permit applications, due to the overall larger area under management, 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.

Comments on this determination were solicited in the proposed rule. No comments were received. Notwithstanding any other provision of 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.

G. National Historic Preservation Act

The National Historic Preservation Act of 1966 (NHPA; Public Law 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 (ACHP) a reasonable opportunity to comment. The historic preservation review process mandated by Section 106 is outlined in regulations issued by ACHP (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 after the expansion of the sanctuary becomes effective and if it is determined to be necessary.

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: August 28, 2014.

Holly A. Bamford,

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

Accordingly, for the reasons set forth above, NOAA amends 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 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 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 lined 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; and

(3) Alpena.

(c) The coordinates of each boundary area appear in appendix A of this subpart.

■ 3. Amend § 922.191(a) by revising the definition for ''Traditional fishing'' and adding the definition for ''Traditional 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
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.

[FR Doc. 2014–20965 Filed 9–4–14; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 627

[FHWA Docket No. FHWA–2013–0039]

RIN 2125–AF64

Value Engineering

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FHWA is updating the existing value engineering (VE) regulations to make them consistent with the statutory changes in the Moving Ahead for Progress in the 21st Century Act (MAP–21) and to make other non-substantive changes for clarity.

DATES: This final rule is effective October 6, 2014.

FOR FURTHER INFORMATION CONTACT: For technical information: Mr. Ken Leuderalbert, FHWA Utilities and Value Engineering Program Manager, FHWA Office of Program Administration, 317–226–5351, or via email at *ken.leuderalbert@dot.gov.* For legal questions, please contact Mr. William Winne, FHWA Office of the Chief Counsel, 202–366–1397, or via email at *william.winne@dot.gov.* Office hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document, the notice of proposed rulemaking (NPRM), and all comments received may be viewed online through the Federal eRulemaking portal at: *http://www.regulations.gov.* The Web site is available 24 hours each day, 365 days each year. Please follow the instructions. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's Web site at *http://www.archives.gov* or the Government Printing Office's Web site at *http://www.gpo.gov/fdsys/.*

Background

This final rule modifies the regulations that govern VE analyses in the planning and development of highway improvement projects due to recent changes to section 106(e) of title 23, United States Code. On July 6, 2012, MAP–21 (Pub. L. 112–141) was signed into law. Section 1503(a)(3) of MAP–21 amended 23 U.S.C. 106(e) by increasing the project monetary thresholds that trigger a VE analysis; eliminating the VE analysis requirement for design-build projects; and defining the requirements for a State Transportation Agency (STA) to establish and sustain a VE program.

The National Highway System Designation Act of 1995 directed the Secretary to establish a program that required States to carry out a VE analysis for all Federal-aid highway projects on the National Highway System (NHS) costing $25 million or more. On February 14, 1997, FHWA established the FHWA VE program and the requirement that STAs create and sustain a VE program at title 23, Code of Federal Regulations, part 627 (23 CFR 627). Section 1904 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59) required that a VE analysis be conducted for bridge projects with an estimated total cost of $20 million or more and any other projects as determined by the Secretary of Transportation.

Section 1503(a)(3) of MAP–21 amends 23 U.S.C. 106(e) to modify the requirements for the value engineering program and raise the VE analysis requirement threshold to $50,000,000 or more for projects on the NHS that use Federal-aid Highway Program Funding assistance, and $40,000,000 or more for bridge projects on the NHS that receive Federal assistance. Section 1503(a)(3) removed the VE analysis requirement for design-build projects. In addition, MAP–21 defined the requirements for an STA to establish and sustain a VE program under which VE analyses are conducted on all applicable projects, consistent with the current regulations pertaining to STA VE Programs (as specified in 23 CFR 627.9).