Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekends, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: J–532 originally was established to provide a transition route for operations in the Canadian airspace. As a result of a recent airspace review, Transport Canada and the United States agreed that the jet route is no longer necessary for navigation and should be removed. On April 25, 1996, Transport Canada removed that portion of J–532 within the Canadian airspace from Red Lake, Ontario, Canada, to the United States/Canadian border. The FAA is taking this action to remove the remaining segment of J–532 which currently runs from the United States/Canadian border to Humboldt, MN. Jet routes are published in paragraph 2004 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document will be removed subsequently from the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. This docket action is a technical amendment which is necessary to eliminate chart clutter, and, therefore, no adverse or negative comments are anticipated. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the Federal Register indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the Federal Register, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ''**ADDRESSES**.'' All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–AGL–2.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follow:

Paragraph 2004—Jet Routes

* * * * *

J–532 [Removed]

* * * * *

Issued in Washington, DC, on December 12, 1996.

Jeff Griffith,

Program Director for Air Traffic Airspace Management.

[FR Doc. 96–32110 Filed 12–18–96; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 992

[Docket No. 950222055–6228–03]

RIN 0648–AH92

Regulation To Prohibit the Attraction of White Sharks in the Monterey Bay National Marine Sanctuary

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce (DOC).

ACTION: Final rule.

SUMMARY: The National Oceanic and Atmospheric Administration is amending the regulations governing the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) to prohibit the attraction of white sharks in the nearshore areas of the Sanctuary. The prohibition is intended to ensure that Sanctuary resources and qualities are not adversely impacted and to avoid conflicts among various users of the Sanctuary.

DATES: This final rule is effective January 21, 1997.

FOR FURTHER INFORMATION CONTACT: Ed Ueber at 415–561–6622 or Elizabeth Moore at 301–713–3141.

SUPPLEMENTARY INFORMATION:

I. Background

In recognition of the national significance of the unique marine environment centered around Monterey Bay, California, the MBNMS was designated on September 18, 1992. SRD issued final regulations, effective January 1, 1993, to implement the Sanctuary designation (15 CFR Part 922 Subpart M). The MBNMS regulations at 15 CFR 922.132(a) prohibit a relatively narrow range of activities primarily to protect Sanctuary resources and qualities.

In January 1994, SRD became aware that chum was being used to attract white sharks for viewing by SCUBA divers while in underwater cages. This activity occurred in the nearshore area off of Año Nuevo in the MBNMS during the time of year white sharks come to feed. SRD received expressions of concern over this activity and inquiries as to whether attracting sharks for viewing and other purposes is allowed in the MBNMS. NOAA's Sanctuaries and Reserves Division (SRD), with assistance from the MBNMS Advisory Council, and a number of interested parties, identified a number of concerns regarding the subject of attracting white sharks within the MBNMS. The following concerns were identified throughout NOAA's review of this issue: (1) behavioral changes in the attracted species (e.g., feeding and migration); (2) increased risk of attack to other Sanctuary users (e.g., surfers, windsurfers, swimmers, divers, kayakers, and small craft operators), increased user conflicts in the area of the activity, and potential health hazards of the activity; and (3) adverse impacts to other Sanctuary resources and qualities (e.g., disruption of the ecosystem, aesthetic impacts). While California State law makes it unlawful to directly take (e.g., catch, capture, or kill) white sharks in State waters, it does not address attraction of white sharks.

On February 28, 1995, SRD issued an advance notice of proposed rulemaking (ANPR; 60 FR 10812), an optional step in the rulemaking process, to inform the public that SRD was considering restricting or prohibiting attracting sharks within the Sanctuary and to invite submission of written information, advice, recommendations, and other comments. The comment period for the ANPR ended on April 14, 1995. SRD received 302 letters and several petitions. Further, SRD held a public hearing in Aptos, California on March 22, 1995, where 35 oral comments were received. Most comments (over 90%) favored restricting or prohibiting chumming for or otherwise attracting white sharks in some fashion in the MBNMS. On February 12, 1996, SRD issued a proposed rule (61 FR 5335) to prohibit attracting white sharks in State waters of the Sanctuary.[1] The comment period for the proposed rule ended on March 31, 1996. SRD received 51 letters. Further, SRD held a public hearing in El Granada, California on March 1, 1996, where 16 oral comments were received. Most comments (88%) supported the proposed rule; 5% opposed the regulation; and the remaining 7% did not express a clear stand on the issue of white shark attraction.

II. Comments and Responses

The following is a summary of comments received on the proposed rule and NOAA's responses.

(1) *Comment:* Artificially attracting white sharks causes short-term behavioral changes in white sharks, and many cause long-term changes.

Response: NOAA agrees. As stated in the preamble to the proposed rule, research clearly supports that using attractants (e.g., chum) causes short-term behavioral changes in white sharks. This is further evidenced by the fact that artificial shark attraction methods have been successful in bringing sharks into a targeted area for divers in cages to view. Both direct and indirect (e.g., more white sharks remain in a particular area longer, a situation which could alter predator-prey relationships) behavioral changes can result from attracting white sharks in nearshore waters of the Sanctuary. In addition, while few studies have been conducted on the long-term impacts of artificial attraction on white sharks, scientific studies and observations indicate that using human manipulation to attract other species of wild organisms has resulted in behavioral changes.

A report prepared by the Research Activity Panel (RAP Report), a working group of the Sanctuary Advisory Council, indicates that sharks are known to be drawn to a specific area based on sensory (hearing and olfactory) changes in their environment. Some sharks have been trained to respond to both of these stimuli, but the success of that training depends on sufficient frequency. Evidence strongly indicates white shark affinity to the Farallon Islands and Año Nuevo Island areas due to the frequency that they are found in these areas and the continued seasonality of their use of these areas. It has been found that individual white sharks often feed at the same location at similar times during successive years.

It has also been found that white sharks at Dangerous Reef in Southern Australia show a clear tendency to revisit the places where they were previously observed, suggesting a relatively high degree of site attachment. The white sharks exhibited an ''island patrolling'' pattern which may represent a home-ranging pattern. Shark feeding behavior seems to be indiscriminate; white sharks may take learned ''prey-shaped'' items as long as the target ''matches'' a known prey item (e.g., a surfer lying prone on a surfboard has a silhouette similar to a seal). Other findings from studies at Dangerous Reef suggest that white sharks select their prey by shape. However, at the Farallon Islands, it has been documented that white sharks select prey of various shapes and sizes. The RAP Report found that sharks have been observed to alter their feeding behavior based on external clues (e.g., learned behavior). The Fisheries Division of the Southern Australia Department of Primary Industries has recommended that legislation be enacted to prohibit chumming at Dangerous Reef because of changes in the white shark's behavior resulting from chumming activities. Moreover, the Great Barrier Reef Marine Park Authority (Authority) has a policy that permits will not be issued for the feeding or attracting of sharks, identifying reasons similar to those NOAA has regarding its plan to prohibit attraction of white sharks in the nearshore areas of the Sanctuary,

[1] The ANPR and proposed rule also proposed to clarify the traditional fishing exception to the discharge prohibition in the existing regulations, as the shark attraction issue had raised a question as to the applicability of the exception as it pertained to shark attraction activities. Because the shark attraction prohibition fully addresses the concerns raised regarding this issue, NOAA will not address the clarification at this time.

including change in behavior caused by the activity.

Concern about the feeding of or attracting of other species of wild organisms has been addressed in other areas. Dolphin-feeding cruises in the Gulf of Mexico are one example of the use of attractants that has been determined to cause significant negative behavioral changes in marine mammals. NOAA's National Marine Fisheries Service (NMFS) banned dolphin-feeding cruises in 1991 based on the scientific risks to both dolphins and humans. The ban was imposed based on evidence that feeding cruises exposed wild animals to disease and physical danger, and could alter their migratory and feeding behavior. The U.S. Court of Appeals for the Fifth Circuit upheld the ban in 1993, *Strong* v. *U.S.*, 5 F.3d 905 (5th Cir. 1993). The Court agreed with NMFS that scientific evidence supported that feeding activities disturb normal behavior and, therefore, it was reasonable for the agency to restrict or prohibit the feeding of wild dolphins.

Other changes in animal behavior, resulting from people altering the natural feeding methods or locations, have been documented, including changes in prey items, location of feeding, and changes in behavioral patterns. Examples include feeding of bison in Yellowstone National Park, feeding of bear and deer in Parks, polar bears at Churchill, Canada, and feeding of fish in Hawaii. In all cases, the ensuing behavioral changes prompted regulators to prohibit feeding activities to protect the animals and the people feeding them. In the Hawaii example, the feeding resulted in increases in selected fish species and thus affected natural community structure on the reefs. While not directly applicable to white sharks, these examples show that longer-term behavioral changes can and do result from using human-manipulated means to attract (in these instances, feed) wild organisms.

(2) *Comment:* Artificially attracting sharks in nearshore areas creates a risk to other users of those areas.

Response: NOAA agrees. As stated in the preamble to the proposed rule, NOAA considers that even a single instance of white shark attraction conducted near an area where other people are recreating in the water can increase the risk of harm to those individuals from white shark attrack. While the exact potential for increased risk is difficult to assess, and may be an area for further research, most experts on shark biology agree that enhanced risk is probable where attraction is occurring. The American Elasmobranch Society, whose members include professional researchers studying sharks and rays, conducted a survey of its members in 1994 which included questions on shark baiting and the protection of sharks. One of the questions asked was: ''In regard to shark-diving operations which involve regular baiting, is there a cause for concern (re: shark attack) if such shark diving operations are conducted relatively close to bathing or surfing beaches?'' The response resulted in 46% yes, 48% it depends, and 6% no answer. The Great Barrier Marine Park Authority also cited risks to other users as one of the reasons it adopted a policy not to issue permits for the feeding or attracting of sharks. The Authority indicated that if the policy had not been adopted, then shark attracting activities would have been prohibited through regulation.

Therefore, while people that spend time in the water in areas near those known to be inhabited by white sharks are exposed to the possibility of dangerous interactions, the use of attractions in areas frequented by people may increase the likelihood of these interactions.

(3) *Comment:* Artificially attracting white sharks has adverse impacts on Sanctuary resources in general.

Response: NOAA agrees that the potential exists to cause harm to Sanctuary resources and qualities from white shark attraction activities. As stated in the preamble to the proposed rule, altering white shark behavior can result in disruption of the local population and the associated ecosystem (e.g., change in predation rate of target species). Further, attraction of white sharks in nearshore areas can result in adverse impacts to the aesthetic and recreational qualities for which the Sanctuary was designated (e.g., the presence of an oily slick in areas where chumming had occurred was noted by several commenters on the ANPR).

(4) *Comment:* One interpretation of the proposed regulation to prohibit attraction of white sharks might stop traditional recreational water uses that may inadvertently attract white sharks. NOAA should revise the regulation to clarify that it only applies to activities intended to attract white sharks.

Response: NOAA does not intend the prohibition against attracting white sharks to restrict activities (e.g., swimming, diving, surfing, boating) that may lure white sharks by virtue of the mere presence of human beings (e.g., swimmers, divers, surfers, boaters, kayakers). This is the primary reason the regulation is tailored specifically to ''attract or attracting,'' and not a broader prohibition against ''taking.'' However, to ensure that the narrow scope of the prohibition is clear, NOAA has revised the definition of ''attract or attracting'' to indicate that it does not include luring white sharks by the mere presence of human beings.

(5) *Comment:* The area where white shark attraction activities are banned needs to be clarified.

Response: NOAA agrees. The shark attraction prohibition in the proposed regulation applied to State waters of the MBNMS, defined as three miles seaward of the mean high tide line, because, in part, the regulation was prepared in such a way as to supplement the existing State white shark regulation. The proposed definition, however, did not accurately characterize State waters, and left out those areas that may extend beyond three nautical miles from mean high tide, such as is the case with Monterey Bay itself. Therefore, the regulation has been revised to clarify that it applies from mean high tide to the seaward limit of State waters, as established under the Submerged Lands Act (SLA), 43 USC § 1301 *et seq.*, defined for purposes of the regulation as:

> Seaward to a line three nautical miles distant from the coastline of the State of California, where the coastline is the line of ordinary low water along the portion of the coast in direct contact with the open sea. The Coastline for Monterey Bay, which is inland waters, is the straight line marking the seaward limit of the Bay, determined by connecting the following two points: 36°57′6″ N, 121°01′45″ W and 36°38′16″ N, 121° 56′3″ W.

(6) *Comment:* Expand the area where white shark attraction activities would be banned to six nautical miles from shore. The current three nautical miles from shore area does not provide sufficient protection to Sanctuary resources.

Response: NOAA does not believe expanding the area beyond the seaward limit of State waters is warranted at this time. A large part of NOAA's concerns are based on the possible interactions between human users and white sharks, and human users are predominantly found in the nearshore waters of the Sanctuary. However, there will be some areas up to six nautical miles from shore where white shark attraction activities will be banned (see Response to (5) above).

(7) *Comment:* Limit the restriction on white shark attraction to only those areas where white sharks are known to congregate (i.e., use a zoned approach).

Response: NOAA disagrees. There is evidence indicating that, although white sharks may congregate in certain areas

(e.g., Añ Nuevo and the Farallon Islands), white sharks are found all along the coast of the Sanctuary. NOAA believes that the area described in the rule is warranted.

(8) *Comment:* NOAA needs to clarify that white sharks are present in the nearshore areas of the Sanctuary year-round, not only in the fall and winter seasons.

Response: NOAA agrees. While white sharks are in the nearshore areas predominantly during the fall and winter seasons when they congregate near seal and sea lion rookeries, white shark attacks in the nearshore areas of the Sanctuary have been documented at all times of years, indicating a year-round presence of white sharks.

(9) *Comment:* Criteria for research or education permits for attraction of white sharks should be clearly spelled out.

Response: Criteria for permit application consideration are listed in the MBNMS regulations at 15 CFR §§ 922.48 and 922.133.

(10) *Comment:* The criteria for permits are so high that it is highly unlikely permits will ever be issued for research or education activities that involve attracting white sharks. Therefore, the regulation amounts to an all-out prohibition as opposed to a restriction in some areas.

Response: NOAA disagrees. The regulatory procedures and criteria for obtaining a Sanctuary permit, described in the notice of proposed rulemaking and found at 15 CFR §§ 922.48 and 922.133, have been in place since the regulations were promulgated in 1992. The Sanctuary issues a number of permits each year for the conduct of activities that further research related to Sanctuary resources and/or further the educational resource value of the Sanctuary. Applications for permits to conduct white shark attraction activities in the Sanctuary will be assessed on a case-by-case basis based on the regulatory criteria.

(11) *Comment:* Divers, kayakers, and small craft operators need to be added to the list of users who are at risk for white shark attacks.

Response: NOAA agrees. The listing of users in the background portion of the rule has been revised. It should be noted, however, that this listing is intended to be illustrative, not exhaustive.

(12) *Comment:* NOAA should add acoustical and visual types of attractants to the definition of ''attract or attracting''.

Response: The definition of ''attract or attracting'' has been revised to add as examples acoustical and visual attractants. It should be noted, however, that this listing in intended to be illustrative, not exhaustive.

(13) *Comment:* NOAA ignored information in the RAP Report that indicated that concern that non-marine chum acting as a vector for the transfer of terrestrial viruses was not really a concern.

Response: NOAA acknowledges that the RAP Report states it is unlikely that non-marine chum can act as such a vector. The RAP report, however, does not preclude the possibility.

(14) *Comment:* The proposed rule misapplies information (i.e., the response and comment section of the proposed rule contained information regarding the impacts of a fisherman killing four white sharks on the entire white shark population).

Response: NOAA disagrees. The occurrence was offered as an example of how sensitive the white shark population is to human disturbance.

(15) *Comment:* The proposed rule treats a rapidly expanding pinniped population as if it is in balance with a low birth rate shark population.

Response: NOAA believes that the commenter misinterpreted the statement. The preamble to the proposed rule stated ''Consequently, any disruption to the species can have a profound long-term adverse impact. This was evidenced in 1982, when a fisherman killed four adult white sharks off of the Farallon Islands. Researchers documented a significant decline in the occurrence of white sharks attacks on prey species (e.g., seals and sea lions) in that area between 1983–1985. This is significant because research indicates that white shark predation takes approximately 8–10% of the local elephant seal populations and an unknown percentage of California sea lion populations; this is enough of a predation rate to maintain a natural balance in fish and seabird populations.'' The statement was made as an example of how the predation rate of white sharks contributed to keeping a natural balance in fish and seabird populations.

(16) *Comment:* The idea of expanding the taking prohibition in the ESA and MMPA to white sharks is unsettling, when white sharks are not listed under either of those acts.

Response: One option NOAA considered early during this process was expanding the scope of the taking prohibition to include white sharks. NOAA's original definition of ''taking'' was derived from the Marine Mammal Protection Act (MMPA) and Endangered Species Act (ESA), and the current taking prohibition applies only to marine mammals, sea turtles, and seabirds. However, NOAA may use any legal tool at its discretion to protect Sanctuary resources, including expanding current Sanctuary regulations. Extending the ''taking'' prohibition to include white sharks was considered but was not chosen for a variety of reasons (see response to (4)).

(17) *Comment:* The proposed rule is based on emotional arguments that have no place in objective decision-making by a Federal agency, or makes statements not supported by the evidence.

Response: NOAA disagrees. NOAA relied on published scientific literature, the written and oral testimony of acknowledged white shark experts, and the expertise of its own Sanctuary Advisory Council's Research Activity panel, in its decision making process and believes that the regulation is well-supported by accurate and objective information.

(18) *Comment:* The proposed rule changes the standard for acceptable activities, without public review of such a fundamental change (i.e., NOAA is appearing to require that activities provide a benefit with which NOAA will agree).

Response: NOAA is unsure as to what ''standard'' the comment refers. The NMSA requires that NOAA facilitate multiple uses that are compatible with the primary mandate of resource protection. This is the primary factor that NOAA uses in determining what activities are acceptable within Sanctuary boundaries. As regards public review, NOAA has developed this rule through notice and comment rulemaking as required under the Administrative Procedure Act. Further, NOAA added the optional steps of issuing an advance notice of proposed rulemaking and holding public hearings on the advance notice and proposed rule to maximize public input into this rulemaking.

(19) *Comment:* The proposed rule ignores the narrow intent of the California State law (i.e., to prevent the catching, capturing, or killing of white sharks).

Response: NOAA disagrees. This rule is intended to supplement State law based on NOAA's concerns regarding the practice of artificial attraction of white sharks within the Sanctuary boundary, and has been formulated to address those concerns.

(20) *Comment:* The proposed rule does not present a compelling need for Sanctuary regulations as opposed to local laws.

Response: Existing State law prohibits only the direct take (e.g., catch, capture, or kill) of white sharks and does not

prohibit attraction. NOAA requested whether the State would expand its restriction but the State indicated that although legislation was a possible option, such an action could not occur until at least 1997 and that a rule was more appropriately initiated by the Sanctuary and its Advisory Council. Additionally, in promulgating a rule, SRD is under no obligation to present a compelling need for Sanctuary regulations as opposed to State or local laws. Consequently, NOAA decided it was necessary to address this issue through a Sanctuary regulation.

(21) *Comment:* As the boundaries of the Monterey Bay, Gulf of the Farallones, and Cordell Bank National Marine Sanctuaries are contiguous, this regulation should be enacted in all three.

Response: NOAA believes that similar regulations for the Gulf of the Farallones and Cordell Bank National Marine Sanctuaries are not necessary at this time.

III. Summary of Regulations

This final rule amends 15 CFR 922.132(a) by adding a prohibition against attracting any white shark in that part of the Sanctuary out to the seaward limit of State waters, as established under the Submerged Lands Act, 43 U.S.C. 1301 *et seq.* In defining the seaward limit of State waters, the final regulation uses the term ''nautical mile'' in place of the SLA term ''geographical mile'' because ''nautical mile'' is a more commonly used term. However, these terms have the same definition which is a measure of length or distance that contains 6,080 feet. Section 922.131 is also amended by adding a definition of ''attract or attracting.'' This regulation is necessary to protect the white shark and other Sanctuary resources (e.g., pinnipeds); to minimize user conflict in the nearshore areas of the Sanctuary; and to protect the ecological, aesthetic, and recreational qualities of the Sanctuary. Concentration of white sharks, associated species, and people make nearshore areas of the Sanctuary uniquely susceptible to adverse impacts from attracting white sharks in such areas. The regulation is narrowly tailored to attraction of white sharks in order to complement existing California law that prohibits the direct take of white sharks in California waters, and so as not to prohibit divers from viewing white sharks in their natural state without the use of attractants.

There has been some concern expressed that NOAA make clear that activities not intended to attract white sharks, but that could incidentally attract them are not included in the prohibition. To address these concerns, NOAA has revised the definition of ''attract or attracting'' in the final rule as follows: ''the conduct of any activity that lures or may lure white sharks by using food, bait, chum, dyes, acoustics, or any other means, except the mere presence of human beings (e.g., swimmers, divers, boaters, kayakers, surfers).''

IV. Miscellaneous Rulemaking Requirements

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 12612: Federalism Assessment

NOAA has concluded that this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Regulatory Flexibility Act

When this rule was prepared, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted as proposed, would not be expected to have a significant economic impact on a substantial number of small entities. A prohibition against white shark attraction in the nearshore areas of the Sanctuary would not have a significant economic impact on a substantial number of small entities because: the number of commercial operators presently engaging in this activity is small; white shark attraction is not likely the sole source of business for such commercial operators because white sharks only reliably inhabit the nearshore areas during part of the year; and commercial operators would not be prohibited from bringing divers to dive in cages to observe white sharks in their natural state without the use of attractants. The changes to the final rule and the comments on the proposed rule did not cause the reasons for this certification to change. Accordingly, neither an initial nor final Regulatory Flexibility Analysis was prepared.

Paperwork Reduction Act

This final rule does not impose an information collection requirement subject to review and approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 *et seq.*

National Environmental Policy Act

NOAA has concluded that this regulatory action does not constitute a major federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

Unfunded Mandates Reform Act of 1995

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA)) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of the UMRA.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: December 6, 1996.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

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

PART 922—[AMENDED]

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

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

Subpart M—Monterey Bay National Marine Sanctuary

2. Section 922.131 is amended by adding the following definition in alphabetical order to read as follows:

§ 922.131 Definitions.

* * * * *

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

* * * * *

3. Section 922.132 is amended by adding new paragraph (a)(10) to read as follows:

§ 922.132 Prohibited or otherwise regulated activities.

(a) * * *

(10) Attracting any white shark in that part of the Sanctuary out to the seaward limit of State waters. For the purposes of this prohibition, the seaward limit of State waters is a line three nautical miles distant from the coastline of the State, where the coastline is the line of ordinary low water along the portion of the coast in direct contact with the open sea. The coastline for Monterey Bay, which is inland waters, is the straight line marking the seaward limit of the Bay, determined by connecting the following two points: 36°57′6″ N, 121°01′45″ W and 36°38′16″ N, 121°56′3″ W.

* * * * *

[FR Doc. 96–32111 Filed 12–18–96; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 96F–0205]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the additional safe use of 3,9-bis[2-{3-(3-*tert*-butyl-4-hydroxy-5-methylphenyl)propionyloxy}-1,1-dimethylethyl]-2,4,8,10-tetraoxaspiro[5.5]undecane as an antioxidant and/or stabilizer in propylene homopolymer and high-propylene olefin copolymer articles intended for use in contact with food. This action is in response to a petition filed by Sumitomo Chemical America, Inc.

DATES: Effective December 19, 1996; written objections and requests for a hearing by January 21, 1997.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of July 3, 1996 (61 FR 34853), FDA announced that a food additive petition (FAP 6B4510) had been filed by Sumitomo Chemical America, Inc., c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the additional safe use of 3,9-bis[2-{3-(3-*tert*-butyl-4-hydroxy-5-methylphenyl)propionyloxy}-1,1-dimethylethyl]-2,4,8,10-tetraoxaspiro[5.5]undecane intended for use in contact with food.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe, that the food additive will have the intended technical effect, and therefore, that the regulations in § 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before January 21, 1997, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.2010 is amended in the table in paragraph (b) for the entry ''3,9-Bis[2-{3-(3-*tert*-butyl-4-hydroxy-5-methylphenyl)propionyloxy}-1,1-dimethylethyl]-2,4,8,10-tetraoxaspiro[5.5]undecane'' by adding a new entry ''3.'' under the heading ''Limitations'' to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

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(b) * * *