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Assistant Secretary for Export Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 100222109–2171–02]

RIN 0648–AY35

Flower Garden Banks National Marine Sanctuary Regulations

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

ACTION: Final rule; Public availability of final management plan and environmental assessment.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is amending the regulations for Flower Garden Banks National Marine Sanctuary to improve vessel and user safety, protect sanctuary resources from user impacts, clarify discharge language, and make other technical changes and corrections.

DATES: *Effective Date:* May 29, 2012.

ADDRESSES: Copies of the final management plan (FMP) and environmental assessment (EA) described in this rule and the Finding of No Significant Impact (FONSI) are available upon request to Flower Garden Banks National Marine Sanctuary, 4700 Avenue U, Building 216, Galveston, TX 77551. The FMP and EA can also be viewed on the Web and downloaded at *http://flowergarden.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: George Schmahl, Superintendent, Flower Garden Banks National Marine Sanctuary, 4700 Avenue U, Building 216, Galveston, TX 77551. *Email: fgbmanagementplan@noaa.gov. Phone:* (409) 621–5151.

SUPPLEMENTARY INFORMATION:

I. Background

The National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*) authorizes the Secretary of Commerce (Secretary) to designate and protect as a national marine sanctuary areas of the marine environment that are of special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities. Day-to-day management of national marine sanctuaries has been delegated by the Secretary to NOAA's Office of National Marine Sanctuaries (ONMS). The primary objective of the NMSA is to protect sanctuary resources, such as coral reefs, and cultural resources, such as historical shipwrecks, historic structures, and archaeological sites.

NOAA designated Flower Garden Banks National Marine Sanctuary (FGBNMS or sanctuary) on December 5, 1991 (56 FR 63634). Congress subsequently passed a law recognizing the designation in January 1992 (Pub. L. 102–251, Title I, Sec. 101). At the time, the Sanctuary consisted of two areas known as East and West Flower Garden Banks (56 FR 63634). Congress later added Stetson Bank in 1996 (Pub. L. 104–283).

These three areas are located in the northwestern Gulf of Mexico and are described as underwater hills formed by rising domes of ancient salt. The sanctuary ranges in depth from 55 feet to nearly 500 feet, providing conditions that support several distinct habitats, including the northern-most coral reefs in the continental United States. These and similar formations throughout the northern Gulf of Mexico provide the foundation for essential habitat for a variety of species. The combination of location and geology makes the sanctuary an extremely productive and diverse ecosystem, but it also presents a unique set of challenges for managing and protecting its natural wonders.

The FGBNMS regulations implementing the sanctuary were first published on December 5, 1991 (56 FR 63634). Those regulations became effective on January 18, 1994 (58 FR 65664). Among other things, the regulations set forth the sanctuary boundaries, prohibit a relatively narrow range of activities, and establish permit and certification procedures. The regulations were revised in December 2000 to add Stetson Bank to the boundary pursuant to Public Law 104–283 (65 FR 81176). NOAA amended the FGBNMS regulations again in 2001 (66 FR 58370) to conform to the regulations adopted by the International Maritime Organization and prohibit all anchoring in the sanctuary and restrict mooring to vessels 100 feet (30.48 meters) or shorter.

The ONMS is required by NMSA Section 304(e) to periodically review sanctuary management plans to ensure that sanctuary management continues to best conserve, protect, and enhance the sanctuaries' nationally significant living and cultural resources. Management plans generally outline regulatory goals, describe boundaries, identify staffing and budget needs, and set priorities and performance measures for resource protection, research, and education programs. The plans also guide the development of future management activities.

The FGBNMS management plan review process began in the fall of 2006 with the release of the *Flower Garden Banks National Marine Sanctuary State of the Sanctuary Report.* At the outset, NOAA held a series of public meetings to obtain information about the public's interests and priorities for FGBNMS management (71 FR 52757; September 7, 2006). NOAA then worked with the FGBNMS Advisory Council to prioritize issues and develop appropriate management strategies and activities for the preparation of a draft revised management plan. Based on this input, NOAA prepared a revised management plan consisting of six action plans: Sanctuary expansion, education and outreach, research and monitoring, resource protection, visitor use, and operations and administration. Because the resource protection and visitor use action plans include several strategies that require changes to the FGBNMS regulations, NOAA sought to amend the regulations for the sanctuary. Pursuant to the National Environmental Policy Act, 42 U.S.C. 4331–4345 (NEPA), NOAA also prepared a programmatic environmental assessment to analyze the environmental impacts associated with the proposed management plan revision and proposed rule. On October 22, 2010, the proposed rule, draft management plan, and programmatic environmental assessment were released for 90-day public review and comment (75 FR 65256).

NOAA is now amending the FGBNMS regulations to reflect these new strategies. The changes address: Potential conflicts between vessels and divers; protection of rays and whale sharks; and discharges and deposits. The changes also eliminate outdated references to paragraphs that no longer exist, update cross references to other paragraphs, and establish definitions for various new terms adopted in this rulemaking.

II. Summary of the Revisions

This rulemaking:

1. Requires any vessel moored in the sanctuary to exhibit the blue and white International Code flag ''A'' (''alpha'' dive flag) or red and white ''sports diver'' flag whenever a SCUBA diver from that vessel is in the water and

remove the ''alpha'' dive flag or ''sports diver'' flag after all divers exit the water and return on board the vessel, consistent with U.S. Coast Guard guidelines relating to sports diving as contained within ''Special Notice to Mariners'' (00–208) for the Gulf of Mexico;

2. Clarifies and updates the prohibition on discharges or deposits of any material or other matter;

3. Prohibits killing, injuring, attracting, touching, or disturbing a ray or whale shark; and

4. Makes technical corrections.

A. Dive Flag Requirements

NOAA is requiring any vessel engaged in diving activity within the FGBNMS to clearly exhibit the blue and white International Code flag ''A'' (''alpha'' dive flag) or the red and white ''sports diver'' flag whenever a SCUBA diver from that vessel is in the water and remove the ''alpha'' dive flag or ''sports diver'' flag after all SCUBA divers exit the water and return on board the vessel. This is consistent with U.S. Coast Guard guidelines relating to sports diving as contained within ''Special Notice to Mariners'' (00–208) for the Gulf of Mexico. Specifically, the U.S. Coast Guard (USCG) requires any vessel in federal waters engaged in diving operations to use an ''alpha'' dive flag, when that vessel is of a size that makes it impracticable to exhibit all lights and shapes prescribed in USCG regulations (33 CFR 83.27). However, the U.S. Coast Guard makes the distinction between diving operations where divers are attached to the vessel (i.e. surface supplied diving) vs. ''free swimming'' divers (i.e. SCUBA).

In a ''Special Notice to Mariners'' (00–2008) for the Gulf of Mexico (''Special Notice to Mariners''), issued in 2009 (available online at: *http://www.uscg.mil/d8/waterways/marinfo.asp*), the U.S. Coast Guard encourages the use of the red and white ''sports diver'' flag for ''free swimming'' divers. The Special Notice to Mariners states, ''The Alpha flag is to be flown on small vessels engaged in diving operations whenever these vessels are restricted in their ability to maneuver if divers are attached to the vessel. But in sports diving, where divers are usually free swimming, the Alpha flag does not have to be shown and the Coast Guard encourages the continued use of the traditional sports diver flag. The distinction the Coast Guard wants to make clear is: The Alpha flag is a navigational signal intended to protect the vessel from collision. The sports diver flag is an unofficial signal that, through custom, has come to be used to protect the diver in the water. It is the responsibility of the operator of a diving vessel to determine if his craft's movements are restricted.''

NOAA acknowledges that Federal law and policy strongly favor uniform rules wherever it is deemed practical and appropriate. Because the entire sanctuary is within federal waters, NOAA proposes to make the regulations consistent with USCG dive flag requirements.

B. General Discharge/Deposit Prohibition

NOAA is updating and amending the prohibition on discharges or deposits (hereafter referred collectively as ''discharges'') in the FGBNMS regulations by: (1) Clarifying that the prohibition applies to discharges into the sanctuary as well as from within the sanctuary boundaries; (2) modifying the exception for the discharge of fish parts; (3) revising the exception for effluent from marine sanitation devices (MSDs); (4) requiring that MSDs be locked; (5) eliminating the word ''biodegradable'' and replacing that term with a more clear standard; and (6) clarifying the scope of the exception for discharges associated with ''routine vessel operation.''

1. Clarification of a ''direct discharge.'' Since the sanctuary was designated in 1992, NOAA has prohibited discharges or deposits of material or other matter. In doing so, NOAA's regulations have differentiated between discharges that originate from within the boundaries of the sanctuary (hereafter referred to as ''direct discharges'') and those that originate from beyond the sanctuary boundaries, enter the sanctuary, and injure sanctuary resources. The primary difference between these two classes is that proof of injury is required with respect to the latter class for there to be a violation whereas no such proof is required for a violation arising from a direct discharge.

To clarify the intended application of the direct discharge prohibition and to ensure consistency among the regulations for other sanctuaries, this rule clarifies that the prohibition on discharging or depositing any material or other matter applies to discharges or deposits from within ''or into'' the sanctuary.

By adding the words ''or into'', NOAA is clarifying that the prohibition does not only apply to discharges originating in the waters of the sanctuary, the prohibition also applies, for example, to immediate discharges and deposits into the sanctuary from aircraft, when waste is thrown into the sanctuary from a vessel, or from other similar activities.

This regulatory change will not have an effect on the existing oil and gas activities in the vicinity of the sanctuary. For example, the two existing platforms closest to the sanctuary are: (a) High Island 384, located 0.26 miles (1373 feet) from the boundary of West Flower Bank; and (b) High Island 376, located 0.22 miles (1162 feet) from East Flower Garden Bank. Because of the distance between those platforms and the sanctuary boundaries, NOAA does not foresee that either platform would be impacted by the new rule because NOAA does not envision conditions that would enable a discharge from these platforms to be considered a direct discharge under sanctuary regulations and consequently violate 15 CFR 922.122(a)(3)(i).

The purpose of the regulation is not to create new restrictions on otherwise lawful activities occurring beyond, but adjacent to, the sanctuary boundaries. Rather, NOAA's goal is to ensure consistency among the regulations of other sanctuaries and clarify the discharge and deposit regulations. Discharges or deposits originating from beyond the sanctuary would still remain subject to the regulations at § 922.122(a)(3)(ii), which requires proof of entry into the sanctuary and injury to sanctuary resources to constitute a violation.

In the event NOAA decides to pursue sanctuary expansion (as described in the final management plan for the sanctuary, published concurrently with this rulemaking), NOAA will consider the need to revise this regulation and consult with stakeholders, including the oil and gas industry, to ensure adjacent activities are not unnecessarily affected.

2. Exception for discharges of fish parts. The rule also clarifies that the exception to the prohibition on discharges or deposits (hereafter referred collectively as ''discharges'') for fish, fish parts, or chumming materials (bait) applies only to discharges made during the conduct of fishing with conventional hook and line gear within the sanctuary. This rule prevents the dumping of fish, fish parts, or chumming materials at all other times except for during fishing with conventional hook and line gear within the sanctuary.

3. Exception for MSD effluent. This rule clarifies that the exception for discharge or deposit of vessel waste generated by a federally approved marine sanitation device was not intended to allow the discharge of untreated sewage (e.g., discharges from Type III MSDs) into the sanctuary. Type

I and Type II MSDs treat sewage, whereas Type III MSDs store sewage until it is removed at designated pump-out stations on shore or discharged at sea. Therefore, NOAA is modifying the FGBNMS regulations to clarify that only discharges of effluent from properly functioning Type I or II MSDs are allowed in the sanctuary.

4. Locking MSDs. In addition, NOAA is requiring all MSDs be locked in a manner that prevents discharge or deposit of untreated sewage. The requirement that MSDs be locked (e.g., locking closed an overboard discharge valve) helps prevent both intentional and unintentional overboard discharges of untreated sewage within the sanctuary.

5. Standard for excepted discharges or deposits. The revised regulations would only allow a vessel to discharge clean effluent from a Type I or Type II MSD. The use of the word ''clean'' would replace the use of the word ''biodegradable'' in the regulations. Under the revised regulations, ''clean'' means not containing detectable levels of harmful matter; and ''harmful matter'' means any substance, or combination of substances, that because of quantity, concentration, or physical, chemical, or infectious characteristics may pose a present or potential threat to sanctuary resources or qualities, including but not limited to: Fishing nets, fishing line, hooks, fuel, oil, and those contaminants (regardless of quantity) listed at 40 CFR 302.4 (§ 922.131) pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C 9601(14)).

NOAA decided to remove the term ''biodegradable'' from the regulations because NOAA has determined that the term has no recognized legal definition, and products are labeled ''biodegradable'' without reference to a fixed set of standards. NOAA could define the term; however, it would not be reasonable to expect a vessel operator to know which of the wide spectrum of products labeled as ''biodegradable'' meet NOAA's definition. Defining the terms ''clean'' and ''harmful matter'' provide vessel operators with a definition of what is prohibited, and focuses on the types of contaminants that pose the greatest threat to water quality within the sanctuary.

6. Scope of discharges or deposits from routine vessel operations. NOAA is replacing the exception for ''water generated from routine vessel operations'' with an exception for clean deck wash down, clean cooling water, and clean bilge water provided they are free of detectable levels of ''harmful matter'' as defined by the regulations. This facilitates compliance by clearly identifying what types of discharges from routine vessel operations are allowed, and focusing on those contaminants that pose the greatest threat to water quality. The requirement also makes the regulations consistent with recent requirements governing other national marine sanctuaries.

C. Killing, Injuring, Attracting, Touching or Disturbing a Ray or Whale Shark

Approximately 20 species of sharks and rays have been documented at the Flower Garden and Stetson Banks; some are seasonal, and others frequent the sanctuary year-round. During the winter months, spotted eagle rays (*Aetobatus narinari*) visit all three banks. The reason for the seasonal visits is unclear, but the occurrence is quite predictable. Summer months usually bring whale sharks (*Rhincodon typus*). These filter-feeding creatures can reach over 30 feet (9 meters) in length. Manta rays (*Manta birostris*) and the very similar-looking mobula rays (*Mobula spp.*) are regular visitors to the sanctuary throughout the year. At least 58 different individual manta rays have been documented and identified by distinctive markings on their undersides. Recent acoustic tracking of the manta rays has revealed that the mantas are moving between the three banks of the sanctuary.

Whale sharks and rays are transient creatures and migrate between areas for feeding and mating. The sanctuary is a place where rays and whale sharks should be protected from human-induced death, injury, or other harm. Humans can physically harm rays and whale sharks by attracting, touching, riding, or pursuing these animals. Their external sensory systems are affected by unnatural activation, which has unknown consequences on their ability to sense their environment. These animals may actively avoid diver interaction by changing direction or diving, and may exhibit violent shuddering. When these responses occur, rays and whale sharks expend energy in ways other than feeding and other natural activities, which can adversely affect their overall health. In addition, people can injure the skin of these animals through touching, and can expose the animals to other potential injuries. Finally, attracting rays and whale sharks changes their behavior and may negatively impact their health. As an example of how rays have been affected by divers, stingrays in the Cayman Islands have developed shoaling behavior and altered feeding habits, as well as exhibit skin abrasions from handling. Scientific citations regarding the concerns and examples here can be found in the references section of the environmental assessment (see **ADDRESSES** for instructions on obtaining a copy).

Rays and whale sharks are not listed under the Endangered Species Act (ESA). These species are also not designated as depleted under the Marine Mammal Protection Act (MMPA) because they are not mammals. Therefore, they are not protected in the same manner as threatened or endangered species protected under the ESA or depleted marine mammals protected under the MMPA. With this final rule, NOAA is strengthening the protection of rays and whale sharks from harm (or likelihood thereof) in the sanctuary by prohibiting killing, injuring, attracting, touching, or disturbing these animals. The intent is to prevent intentional human interaction with rays and whale sharks in such a manner that the animals change direction, dive away from human interaction, shudder, or have any other adverse behavioral or physical reaction. An exception to this new prohibition is made for incidental by-catch of a ray or whale shark when using conventional hook-and-line fishing gear. In order to make this new prohibition as clear as possible, NOAA is adding definitions for the terms ''attract or attracting'' and ''disturb or disturbing a ray or whale shark'' in § 922.121.

D. Technical Corrections

NOAA is making a technical correction to eliminate the references in the regulations to § 922.122(a)(4), because that clause no longer exists. This subparagraph references a specific prohibition on vessel anchoring activities that was eliminated from the FGBNMS regulations in 2001 (66 FR 58370).

NOAA also is updating cross references in § 922.122(c) through (g) and updating cross references in § 922.123(a) and (c) that may change as a result of the re-designation of paragraphs associated with this rule.

Last, NOAA is amending the regulations to update the sanctuary office address in § 922.123(b). The sanctuary office moved from Bryan, TX to Galveston, TX in 2006, and the regulations were not amended immediately following the move.

III. Differences Between the Proposed Rule and the Final Rule

The Administrative Procedure Act (APA) notice-and-comment process (5 U.S.C. 553) contemplates that changes may be made to the proposed rule without triggering an additional round

of public notice and comment so long as the changes are ''in character with the original scheme'' and are of a type that could have been reasonably anticipated by the public (i.e., a logical outgrowth of the proposal or comments received) (*Foss* v. *National Marine Fisheries Service,* 161 F.3d 584, 591 (9th Cir. 1998); *Chemical Mfrs Ass'n* v. *United States Environmental Protection Agency,* 870 F.2d 177 (5th Cir. 1989). In addition, the APA provides exceptions to notice and comment rulemaking for ''(A) interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice; or (B) when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest'' (5 U.S.C. 553(b)). The proposed rule text published in October 2010 (75 FR 65256) and this final rule, including the bases for changes, are summarized as follows:

A. NOAA is amending the ''alpha'' dive flag requirement (proposed as § 922.122(a)(2)(iii)). The proposed rule published in October 2010 only required the use of the ''alpha'' flag (75 FR 65256). In this final rule, NOAA is requiring any vessel engaged in diving activity within the FGBNMS to clearly exhibit the blue and white International Code flag ''A'' (''alpha'' dive flag) or the red and white ''sports diver'' flag whenever a SCUBA diver from that vessel is in the water and remove the ''alpha'' dive flag or ''sports diver'' flag once all SCUBA divers exit the water and return on board the vessel. This is consistent with U.S. Coast Guard guidelines relating to sports diving as contained within ''Special Notice to Mariners'' (00–208) for the Gulf of Mexico. NOAA is making this change in the final rule to ensure consistency with the U.S. Coast Guard regulations and the Special Notice to Mariners (available online at: *http://www.uscg.mil/d8/waterways/marinfo.asp*). NOAA views the change in the final rule as a logical outgrowth of the originally proposed rule.

B. NOAA is amending the definition for ''disturb or disturbing a ray or whale shark''. NOAA received many public comments requesting a change to the definition proposed in the Notice of Proposed Rulemaking published in 75 FR 65256. The public was mainly concerned that under the definition (as originally proposed) a violation could arise if the animal initiated interaction or if the animal exhibited some natural behavioral traits (like shuddering) without provocation. That was not NOAA's intent. Therefore, in response to these comments, the final rule clarifies that behavioral responses by the animal produced by passive interaction with a human does not constitute a violation of the regulations. NOAA is only concerned with active human conduct that disturbs a ray or whale shark, through (but not limited to) touching, handling, riding, pursuing, chasing, hunting, or restraining the animal.

C. NOAA is creating a new exception for the prohibition on killing, injuring, attracting, touching or disturbing a ray or whale shark. Public comments received by NOAA indicate that some small rays such as sting rays can sometimes be caught as by-catch by lawful hook-and-line fishing. NOAA's intention with this new regulation was not to impose restrictions on users of conventional hook and line gear, as the species of rays and whale sharks NOAA is concerned about protecting would not be likely by-catch of hook and line recreational fishing. By adding an exception for the use of conventional hook and line gear, NOAA clarifies that the prohibition on killing, injuring, attracting, touching or disturbing rays and whale sharks does not apply to incidental by-catch during lawful fishing in the sanctuary.

D. NOAA is amending the regulations to update the sanctuary office address in § 922.123(b). The sanctuary office moved from Bryan, TX to Galveston, TX in 2006, and the regulations were not amended immediately following the move. NOAA finds good cause to change the address because the public must be able to contact the office for permit applications and other reasons, and the modification is exempt from normal notice and comment procedures since it is a minor technical change affecting current agency organization or practice.

E. NOAA is amending § 922.122(a)(4) to clarify that the only exception to the prohibition on drilling into, dredging or otherwise altering the seabed is for activities conducted in areas of the sanctuary outside the no-activity zones and incidental to exploration for, development of, or production of oil or gas in those areas (§ 922.122(c)). The original regulatory language provided a broad exception for anchoring; however, this was rendered obsolete with the promulgation of the anchoring prohibition in 2001 (66 FR 58370). Since the only anchoring currently allowed in FGBNMS pertains to § 922.122(c), NOAA finds good cause to clarify the regulations. NOAA views this as a technical change and logical outgrowth of the 2001 rulemaking. This change does not alter the intent of the regulations, nor is it expected to substantially impact any users of the sanctuary since the existing anchoring prohibition in FGBNMS has been in effect for more than a decade; therefore, no changes were made to the environmental assessment associated with this rulemaking and additional notice and comment is not required under the APA.

For ease of reference and understanding, NOAA is reprinting section 922.122 as it would read in its entirety as amended, and section 922.123(a) through (c), rather than printing individual, editorial instructions to the **Federal Register**. Except as noted above, there are no additional changes to the sections from the proposed rule.

IV. Responses to Public Comments

The National Oceanic and Atmospheric Administration (NOAA) conducted two public hearings to gather input on the FGBNMS draft management plan (DMP)/programmatic environmental assessment (PEA) and proposed rule during the public comment period from October 22, 2010 to January 20, 2011. All written and verbal comments received during the public comment period were compiled and grouped into eight categories. Similar comments from multiple submissions have been treated as one comment for purposes of response. NOAA considered all comments (including editorial comments on the DMP/PEA) and, where appropriate, made changes that are reflected in this final rule, the final management plan (FMP), and the programmatic environmental assessment (EA). Substantive comments received are summarized below, followed by NOAA's response.

Sanctuary Expansion

Comment 1. Sanctuary expansion is not necessary because the proposed reefs and banks have relatively low visitation by scuba divers and fishers compared to other sanctuaries. Are there other ways to protect additional reefs and banks in the Gulf of Mexico without sanctuary expansion?

The National Marine Sanctuaries Act (NMSA) authorizes the Secretary of Commerce to designate and protect areas of the marine environment with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities as national marine sanctuaries. It is this concept of special places that persuades us to protect and enhance certain marine areas, even before impacts occur or without immediate

pressures on the resource. Sanctuary expansion would allow other reefs and banks in the northwestern Gulf of Mexico to benefit from comprehensive management, something currently not available by other means.

The sanctuary expansion action plan does not make any determination regarding the various options for expanding the sanctuary or regulations within expansion areas. The action plan only lays out the framework for conducting a thorough environmental review required by NEPA and NMSA. Alteration to the boundaries of FGBNMS (or expanding the sanctuary) would necessitate a change to the FGBNMS terms of designation, regulations, and coordinates. Should NOAA decide to pursue boundary expansion, NOAA would prepare a draft environmental impact statement (DEIS) and conduct extensive public review.

Other means of protecting additional reefs and banks in the Gulf of Mexico include, for example, No Activity Zones managed by the Bureau of Ocean Energy Management (BOEM) or Habitat Areas of Particular Concern managed by NOAA's National Marine Fisheries Service. These kinds of conservation measures have specific purposes and are not designed to address the need to protect an ecosystem from a holistic perspective.

Comment 2. The public should not have limited access to and use of potential new sanctuary areas. Regulations in any new sanctuary areas should not prohibit fishing and diving.

This final rule does not expand any area of the Sanctuary. NOAA has yet to determine potential areas to be added to the sanctuary or what regulations are needed in possible new expansion areas. The management plan states that new areas would be subject to the regulations of the current sanctuary, which generally allow fishing and diving; however, site specific regulations may be appropriate. The current FGBNMS management plan would apply or a new management plan would be written and applied to any new areas. Should NOAA decide to pursue boundary expansion, NOAA would prepare a DEIS and conduct extensive public review.

Comment 3. NOAA has not conducted socioeconomic studies to support sanctuary expansion or research only areas.

Activity 1.1 of the sanctuary expansion action plan in the final management plan states that NOAA will develop a DEIS to evaluate alternatives for incorporating additional reefs and banks in the northwestern Gulf of Mexico into FGBNMS. The DEIS will discuss the consequences of sanctuary expansion on the human environment or the socioeconomic resources of the region. The socioeconomic impact analysis will focus on the industries/user groups that depend on the resources of the current FGBNMS and the banks currently being evaluated for inclusion in FGBNMS through sanctuary expansion.

Comment 4. If sanctuary expansion occurs, NOAA should install mooring buoys at all new sites to enhance fishing and diving activities as anchoring would be prohibited.

NOAA agrees that mooring buoys are a useful tool to promote sanctuary use that is compatible with resource protection. Activity 3.1 of the visitor use action plan in the final management plan proposes to create a mooring buoy plan that will evaluate the need for additional buoys, both in the existing sanctuary and in the event any new areas are considered in a sanctuary expansion process. The sanctuary expansion action plan does not make any determination regarding the various options for expanding the sanctuary or regulations within expansion areas. The action plan only lays out the framework for conducting a thorough environmental review required by NEPA and NMSA. Alteration to the boundaries of FGBNMS (or expanding the sanctuary) would necessitate a change to the FGBNMS terms of designation, regulations, and coordinates. Should NOAA decide to pursue boundary expansion, NOAA will prepare a draft environmental impact statement (DEIS) and conduct extensive public review. NOAA has yet to determine the areas to be potentially added to the sanctuary or what regulations are needed in possible new expansion areas. The management plan states that as an extension of the current sanctuary, it is assumed that if any areas are considered for future addition those new areas will be subject to the regulations of the current sanctuary; however, site specific regulations may be appropriate. The current FGBNMS management plan would apply or a new management plan would be written and applied to any new areas. Should NOAA decide to pursue boundary expansion, NOAA would prepare a DEIS and conduct extensive public review.

Comment 5. Designating new reefs and banks in the northwestern Gulf of Mexico as sanctuaries will increase visibility and activity by fishers and divers leading to increased impacts to the resources. Similarly, too much information about the habitats of the sanctuary and surrounding areas, and fishing sites, is provided on the FGBNMS Web site.

The criteria for evaluation of potential new sites were based on the primary NMSA mandate of resource protection. The benefits of a comprehensive management approach offered by sanctuary designation could outweigh any risk that might exist from increased visibility and activity by fishers and divers. Should NOAA decide to pursue boundary expansion, NOAA will prepare a DEIS that would include an analysis of the potential impacts of increased visibility and visitation.

Research results and information provided on both the FGBNMS Web site and the National Coastal Data Development Center (NCDDC) Web site are in the public domain and intended for use by sanctuary users and constituents. One of the purposes and policies of the NMSA is to enhance public awareness, understanding, appreciation, and wise and sustainable use of the marine environment, and the natural, historical, cultural, and archeological resources of the National Marine Sanctuary System. NOAA's goal is to make people aware of their impacts and give them the knowledge and skills to become good stewards of the sanctuary and the regional marine environment.

Fishing

Comment 6. NOAA's gear prohibition for fish harvesting in FGBNMS should be reconsidered. The impact of spearfishing on the sanctuary environment is minimal. What research has been done to support the current prohibition and why is spearfishing not allowed in the sanctuary?

NOAA is not proposing to change regulations associated with spearfishing, or any other type of fishing, at this time. If the boundary of FGBNMS is expanded, however, any regulations related to fishing, including spearfishing, would be evaluated through a public process for each new area under consideration.

Spearfishing has been prohibited in FGBNMS since its designation in 1992. The prohibition was due primarily to concerns raised by studies that demonstrated that spearfishing could be detrimental to fisheries resources through the selective removal of large predator species. Research conducted since sanctuary designation supports this concern and reinforces the rationale for a spearfishing prohibition. A summary of this research is available on the sanctuary Web site (*http://flowergarden.noaa.gov*).

Comment 7. NOAA should allow boaters to carry stowed spearguns on

board vessels in FGBNMS to facilitate spearfishing in areas outside of the sanctuary before or after a sanctuary visit.

Sanctuary regulations prohibit the possession of any type of fishing equipment (including spearguns), except for conventional hook and line gear, unless passing through without interruption. The reason for this restriction is related to the ability to reasonably enforce the regulation. It is difficult to enforce a spearfishing prohibition if the possession of spearfishing equipment is allowed in the sanctuary. If only the use of such equipment is prohibited, it would require that direct observation of spearfishing activity be made by a law enforcement entity. In a remote location such as FGBNMS, where the activity would occur 70–100 feet below the surface, enforcement by observation only would be nearly impossible. The existing regulation has been in effect since designation 20 years ago, and it has not resulted in undue restriction on visitor use and activity. Therefore, the regulation will remain as written. If expansion is considered in future analysis, when regulations are considered for any potential new areas to be added to the sanctuary, the use and possession of spearguns would be evaluated on an individual area basis.

Comment 8. NOAA should limit the use of inappropriate fishing gear to protect sanctuary resources or prohibit fishing altogether in the existing sanctuary.

National marine sanctuaries are managed by NOAA to protect and conserve their resources, and to allow uses that are compatible with resource protection. Current FGBNMS regulations limit fishing within the sanctuary to conventional hook and line gear. Fishing by use of any other gear, including spear guns, is prohibited.

During the scoping process for the revised management plan and in response to the DMP, many commenters asked NOAA to consider closing all or portions of the FGBNMS to fishing. Although fishing pressure is perceived to be moderate, the impact on local fish populations is not well known at this time. The spatial resolution of fishing data is currently not precise enough to quantitatively assess fishing pressure within the sanctuary. The research and monitoring action plan and the visitor use action plan in the final management plan lay out strategies to obtain information that would allow NOAA to evaluate compatible uses of the sanctuary. In addition, Activity 2.3 of the resource protection action plan addresses the need for additional measures to protect resources from impacts associated with inappropriate fishing gear.

Comment 9. NOAA has not presented evidence that further fishing restrictions are needed or that fish populations are declining. Why are fishing and diving impact studies necessary?

At this time, NOAA is not proposing any regulations that would further restrict fishing activity.

It is well documented that most fishery stocks for which there are stock assessments in the northern Gulf of Mexico have undergone or are still undergoing overfishing. Many species, such as snapper, some species of grouper, amberjack and others have declined significantly in the Gulf of Mexico since records have been kept. Although there are recent data to suggest that some species (such as red snapper) have shown limited recovery in population size, they are still much lower than historical levels. It is logical to assume that fish populations within FGBNMS have also been similarly affected by the general decline of fish stocks throughout the Gulf of Mexico. However, the data that do exist, such as fish landing survey information, have not been collected at a scale to adequately evaluate impacts on an area the size of the sanctuary. Therefore, NOAA believes that the fishing and diving impact studies would provide valuable information for the management of the sanctuary.

Diving

Comment 10. Through multiple DMP proposals, NOAA is pursuing policies that seem to discourage recreational diving. The recreational dive community should be embraced and encouraged to assist with resource protection.

ONMS embraces and welcomes diving at FGBNMS. The management strategies are not intended to discourage recreational diving within the sanctuary. Rather, NOAA is protecting the resource while enhancing visitor safety. Traditionally, recreational divers have been among the strongest supporters of the sanctuary—from leading the effort for sanctuary designation, to serving as naturalists onboard charter boats, to reporting observations when visiting the sanctuary. NOAA intends that the changes in sanctuary management will not diminish the recreational diver's experience. By working together with sanctuary users, especially recreational divers, NOAA can more effectively meet its goals and protect sanctuary resources.

Comment 11. NOAA should adopt the ''Blue Star'' program for FGBNMS.

The Blue Star program was established by Florida Keys National Marine Sanctuary management to recognize charter boat operators who promote responsible, sustainable, and educational diving and snorkeling practices. An activity to examine the implementation of the Blue Star program for FGBNMS was added to the Education and Outreach Action Plan (activity 3.3).

Ray/Whale Shark Regulations

Comment 12. The proposed regulation prohibiting the disturbance of whale sharks and all species of rays is too broad. The prohibition should only apply to manta rays and whale sharks.

There are a variety of ray species that utilize the habitats within FGBNMS. In addition to the giant manta, there are other pelagic (free swimming) ray species commonly observed, including at least two species of *mobula* (devil) rays, the spotted eagle ray, and the cownose ray. Several species of bottom-dwelling rays also live within the sanctuary, including the southern stingray and roughtail stingray. NOAA believes that all species of rays should be included in the regulation that prohibits disturbance. It has been demonstrated in other areas of the world that stingrays and other rays can be subject to negative disturbance from visitor activities. See the programmatic environmental assessment for additional detail and references regarding impacts on ray species in the FGBNMS.

Comment 13. The proposed regulation to protect rays and whale sharks relies on a definition of ''disturb or disturbing a ray or whale shark'' that includes any activity that ''has the potential to disrupt.'' NOAA should revise this catch-all phrase in the definition which would potentially place every sanctuary visitor in violation of the proposed rule.

NOAA agrees. The definition has been revised to address this concern and additional information has been added to the preamble.

Comment 14. Using scientific studies from other locations (e.g. the Cayman Islands) to support regulations at FGBNMS is inappropriate because the interactions between sanctuary visitors and wildlife are different at the sanctuary than elsewhere. FGBNMS does not have heavy visitor use like other areas.

The purpose of the reference to the Cayman Island study on stingrays was to provide an example of an area that is experiencing visitor use that may be having potentially detrimental impacts on a species of ray. It is not anticipated

or suggested that this particular issue is or will ever be a problem at FGBNMS. It is relevant, however, because stingrays are included in the proposed regulation for FGBNMS, and it clearly demonstrates that intense visitor activity can affect the behavior and health of a ray species, requiring management action to control potential impacts.

Comment 15. NOAA has not demonstrated that divers are causing physical harm to rays and whale sharks. The proposed regulation is excessive.

NOAA has supplemented the programmatic environmental assessment with additional information and references on the impacts of divers on rays and whale sharks.

Visitor Use

Comment 16. The proposed dive flag regulation should include the use of the red and white diver down or ''sports diver'' flag, because it is more widely recognized by divers. The proposed regulation also appears to be inconsistent with the existing requirement for use of the alpha flag in the USCG navigation rules.

NOAA agrees. The regulation has been revised to address this concern and make it consistent with USCG navigation rules.

Comment 17. NOAA should implement a vessel registration system for FGBNMS. Access to the sanctuary could be controlled by issuing visitation permits.

Although NOAA agrees that a vessel registration system would provide information on visitor use dynamics, establishing a visitation permitting system would be difficult. NOAA plans to evaluate the effectiveness of the voluntary registration system before considering a mandatory visitation permitting system. NOAA is gathering more information about sanctuary use and has asked visitors to use the voluntary trip report form available on the FGBNMS Web site. Activities 1.1 and 1.2 of the visitor use action plan describe the need for and benefits of voluntary vessel registration and a visitor use monitoring program.

Comment 18. NOAA should collaborate with other agencies and industry to increase enforcement efforts at FGBNMS. More enforcement is needed. Add surveillance equipment to platforms.

NOAA agrees. Currently, enforcement of sanctuary regulations is done with support from the U.S. Coast Guard and NOAA's Office of Law Enforcement. NOAA plans to increase collaboration with those entities as well as the Texas and Louisiana state law enforcement agencies. Enforcement at the sanctuary is logistically difficult due to the distance from shore. NOAA recognizes that partnering with industry to place monitoring or surveillance equipment on the production platform that lies within current sanctuary boundaries could greatly enhance enforcement capabilities. Therefore, NOAA has added an activity to the resource protection action plan in the final management plan to consider this more thoroughly.

Discharge

Comment 19. NOAA should prohibit all discharges within the sanctuary, including treated sewage.

NOAA is not prepared to prohibit all discharges within the sanctuary at this time. Given the distance from shore, water depth, number and type of vessels currently operating in the area, and current scientific knowledge, NOAA feels that allowing clean discharges will provide adequate protection for sanctuary resources while still allowing compatible uses.

Comment 20. The new language in the proposed rule that prohibits ''discharging or depositing from within or into the sanctuary'' is too broad and open-ended and is cause for concern by the oil and gas industry, especially where entities are already permitted under a National Pollutant Discharge Elimination System (NPDES) general permit for the Gulf of Mexico.

By adding the words ''or into'', NOAA is clarifying that the prohibition does not only apply to discharges originating in the sanctuary, the prohibition also applies, for example, to immediate discharges and deposits into the sanctuary from aircraft, when waste is thrown into the sanctuary from a vessel, or from other similar activities.

This regulatory change will not have an effect on the existing oil and gas activities in the vicinity of the sanctuary. For example, the two existing platforms closest to the sanctuary are: (a) High Island 384, located 0.26 miles (1373 feet) from the boundary of West Flower Bank; and (b) High Island 376, located 0.22 miles (1162 feet) from East Flower Garden Bank. Because of the distance between those platforms and the sanctuary boundaries, NOAA does not foresee that either platform would be impacted by the new rule because NOAA does not envision conditions that would enable a discharge from these platforms to be considered a direct discharge under sanctuary regulations and consequently violate 15 CFR 922.122(a)(3)(i).

The purpose of the regulation is not to create new restrictions on otherwise lawful activities occurring beyond, but adjacent to, the sanctuary boundaries. Rather, NOAA's goal is to ensure consistency among the regulations of other sanctuaries. Discharges or deposits originating from beyond the sanctuary would still remain subject to the regulations at § 922.122(a)(3)(ii), which requires proof of entry into the sanctuary and injury to sanctuary resources to constitute a violation.

Education and Outreach

Comment 21. NOAA should build constituency and numbers of sanctuary advocates by increasing volunteer recruitment.

NOAA agrees and recognizes the need for increased volunteer involvement. The strategy to increase public support and stewardship of the sanctuary in the final management plan (EO.3, activity 3.2) includes an activity to enhance the FGBNMS volunteer program. The planned addition of a volunteer coordinator (OA.1, activity 1.1), subject to budget allocations, would enable NOAA to fully develop the FGBNMS volunteer program.

Comment 22. NOAA should establish outreach programs in coastal area communities other than Galveston. It should establish a presence in Louisiana near recommended sanctuary expansion areas.

Due to limited budget for outreach, NOAA is currently focusing the majority of its sanctuary outreach efforts in the Galveston area in order to develop a strong local constituency in the region closest to the sanctuary. Nonetheless, NOAA agrees that outreach efforts should not be limited only to the Galveston area, and welcomes opportunities to work with partners throughout the region. For example, NOAA already has sanctuary outreach programs in the form of exhibits in the Audubon Aquarium of the Americas in New Orleans, LA, the Texas State Aquarium in Corpus Christi, TX and the Tennessee Aquarium in Chattanooga, TN. NOAA has also begun to develop avenues for communicating with fishermen and divers in Louisiana. In the event that the sanctuary is expanded to include banks off of Louisiana, education and outreach programs to reach that region would be developed at that time. The sanctuary expansion action plan does not make any determination regarding the various options for expanding the sanctuary or regulations within expansion areas. The action plan only lays out the framework for conducting a thorough environmental review required by NEPA and NMSA.

Comment 23. Education and outreach programs should emphasize how human activities impact marine habitats and the benefits of marine reserves.

NOAA education and outreach presentations, programs, and products routinely include information about human impacts on marine habitats. NOAA also recognizes the value and importance of educating people about a variety of marine management techniques, including marine reserves. For example, NOAA produces lesson plans and activities on topics such as watersheds and marine debris. In addition, information about human impacts is incorporated throughout the FGBNMS Web site.

Other

Comment 24. The FGBNMS management plan should thoroughly address the potential risks to FGBNMS associated with oil and gas industry operations in the Gulf of Mexico. NOAA should consider additional regulations due to the potential impact of oil spills.

The FGBNMS is located within one of the most heavily developed offshore oil and gas exploration areas in the world. The potential for impact to the marine environment of the Flower Garden Banks from an oil-related incident has been considered since before the area became a national marine sanctuary. Beginning in the 1970s, the Minerals Management Service (now reorganized into the Bureau of Ocean Energy Management (BOEM) and the Bureau of Safety and Environmental Enforcement (BSEE)), identified the Flower Garden Banks and many other reefs and banks of the northwestern Gulf of Mexico as areas that warranted special protection. They developed a set of requirements, called stipulations, to help minimize the threat of impact from offshore oil and gas activities (Reference: Notice to Lessees, NTL No. 2009–G39, ''Biologically-Sensitive Underwater Features and Areas'', Effective Date: January 27, 2010). The earliest such stipulations were published in the Final Environmental Impact Statement for the Gulf of Mexico Outer Continental Shelf (OCS) lease sale 34 in May 1974. Since the time that these, and other stipulations, have been in place, they have shown to be very effective in protecting the sanctuary from routine operations associated with offshore oil and gas exploration and development.

Planning for an appropriate response to an oil spill or other hazardous material release in the vicinity of the Flower Garden Banks is of the highest priority for the sanctuary. The Oil Pollution Act of 1990 requires the U.S. Coast Guard to develop an Area Contingency Plan (ACP) for each region of coastal waters. NOAA continues to coordinate with the USCG on updating and refining the ACP for Texas and Louisiana offshore waters. In addition, NOAA will assist the USCG in the development of a specific sub-area contingency plan for oil spill response for the Flower Garden Banks National Marine Sanctuary area, as described in Activity 2.4 of the Resource Protection Action Plan.

Prior to the Deepwater Horizon event in April 2010, which occurred slightly east of the northwestern Gulf of Mexico, there had not been a significant hydrocarbon spill or other incident in the region since the designation of FGBNMS. However, a similar incident could potentially occur in an area that would threaten the health of sanctuary resources. For that reason, NOAA is working closely with BOEM and EPA in reviewing, and revising, if necessary, environmental policies related to offshore oil and gas leasing and development to ensure the highest level of protection of sensitive biological communities.

Given these existing various mechanisms geared toward protecting the FGBNMS from the disastrous effects of a potential oil spill, NOAA did not include a specific action plan on this topic in the revised management plan. Rather, staff effort will focus on continuing to coordinate with other agencies. Similarly, NOAA did not revise the sanctuary regulations. NOAA believes the current regulations in place addressing disturbance of the seafloor and discharges in the sanctuary are adequate at this time.

Comment 25. Climate change is the biggest threat to sanctuary resources.

NOAA recognizes that climate change is a potential threat to sanctuary resources. In 2010, NOAA finalized a Climate Strategy for national marine sanctuaries and implemented a ''Climate-Smart Sanctuaries'' Initiative. Language has been added to the operation and administration and education and outreach action plans to incorporate various aspects of this initiative. In addition, NOAA will develop a climate change site scenario and climate change action plan for FGBNMS and plans to pursue Climate-Smart Sanctuary Certification as detailed in activity 2.6 of the resource protection action plan in the final management plan.

Comment 26. Artificial reefs should be protected.

There are no artificial reefs in FGBNMS. If presented with opportunities to make recommendations during decommissioning processes for platforms within sanctuary boundaries, NOAA would examine the options on a case-by-case basis.

Comment 27. NOAA must take aggressive action to prevent the establishment of the invasive lionfish in FGBNMS.

Lionfish have been observed in sanctuary waters since July 2011. As stated in Activity 5.2 of the research and monitoring action plan in the final management plan, NOAA is currently developing research priorities and a response plan to study and manage the impacts of invasive species, including lionfish, on sanctuary resources.

At this time, NOAA's policy is to remove any lionfish encountered in sanctuary boundaries using prescribed protocols. Permits for the removal of lionfish have been issued to some dive masters of recreational dive charters that frequent the sanctuary to assist in this effort. The diving public is also encouraged to help monitor the situation by reporting any lionfish sightings, including date, time, location, size of the lionfish, and any other information about the habitat or the behavior of the fish to sanctuary staff.

Comment 28. The cost to implement the management plan is unreasonably high. NOAA should carefully consider availability of funds during the proposed sanctuary expansion and prioritize activities, which should include R/V Manta operations.

The budget estimates given in the draft management plan are those necessary to support all of the activities identified within the various action plans. While the plan was developed with realistic expectations, NOAA recognizes that not all of the activities can or will be carried out due to budgetary restrictions or other factors. Therefore, NOAA agrees with the suggestion that activities should be prioritized in the plan, and this has been added to the document. However, over the years, NOAA has taken a number of steps to increase resources available for sanctuaries. These have included pursuing outside funding sources for critical operations such as grants, partner cost-sharing, donations, and special use permit fees. NOAA has also been successful in leveraging partner capabilities and in-kind support. For example, the U.S. Coast Guard has provided aerial overflights for surveillance and enforcement at FGBNMS.

During the preliminary evaluation of possible sanctuary expansion alternatives by the Sanctuary Advisory Council, budgetary factors were taken into consideration. For example, the areas presented for potential expansion

by the Sanctuary Advisory Council were limited by the distance that could be serviced within the operational capabilities of the existing sanctuary vessel (approximately 200 miles from Galveston TX), reducing the need for additional vessels or infrastructure. Priority consideration was also given to the anticipated amount of funds available in the sanctuary budget to operate the *R/V Manta* in other areas of the Gulf of Mexico.

The effective operation of the *R/V Manta* is necessary in the implementation of almost all aspects of sanctuary management. As such, the continued maintenance of this asset is a high priority for NOAA, and will be given due consideration in the allocation of available resources.

V. Classification

A. National Environmental Policy Act

NOAA has prepared a final programmatic environmental assessment to analyze the potential environmental impacts of this rulemaking. The programmatic environmental assessment analyzes the administrative and programmatic activities associated with the No Action Alternative and the Preferred Alternative to revise the FGBNMS management plan and take regulatory actions. Administrative activities conducted within existing facilities, such as consultations, outreach, administrative frameworks, development of plans, and data analysis will have little to no potential to significantly affect the quality of the human environment according to NEPA standards. Activities to manage the sanctuary as outlined in the final management plan, considered together with the many natural and human-induced stressors to sanctuary resources, generally result in a cumulative beneficial impact to these resources. However, as with the administrative activities, the positive impacts do not meet the NEPA threshold for significance. This is because at a programmatic level, no single activity, when taken in consideration with others, will have significant beneficial or negative impacts on any individual or combined resource.

To the extent that future activities considered under any of the action plans (which range from infrastructure construction, management measures to implement sanctuary expansion, or establishment of an experimental closure to evaluate the impacts of diving and fishing) are conducted in the human environment, a NEPA review to analyze the impacts of alternatives would be conducted.

The programmatic environmental assessment on the final management plan and revised regulations for FGBNMS results in a Finding of No Significant Impact (FONSI). Accordingly, no environmental impact statement was prepared. Copies of the environmental assessment and FONSI are available at the address and Web site listed in the **ADDRESSES** section of this final rule.

B. Executive Order 12866: Regulatory Impact

Under Executive Order 12866, if the proposed regulations are ''significant'' as defined in section 3(f) of the Order, an assessment of the potential costs and benefits of the regulatory action must be prepared and submitted to the Office of Management and Budget. This rule has been determined to be not significant within the meaning of Executive Order 12866.

C. Executive Order 13132: Federalism Assessment

All of the actions occur in the Exclusive Economic Zone beyond state jurisdiction. NOAA has concluded this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

D. Paperwork Reduction Act

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

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

E. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* the Chief Counsel for Regulation at the Department of Commerce certified to the Chief Counsel for Advocacy, Small Business Administration that this action will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published with the proposed rule and is not repeated here. No comments were received regarding the economic impact of this rule. As a result, a final regulatory flexibility analysis was not prepared.

VI. References for Citations

All references that NOAA used as a basis for this rule can be made available to the public upon request as specified in the **ADDRESSES** section.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Fish, Fisheries, Historic preservation, Intergovernmental relations, Marine resources, Monuments and memorials, Natural resources, Wildlife, Wildlife refuges, Wildlife management areas.

Dated: April 18, 2012.

David M. Kennedy,

Assistant Administrator for Ocean Services and Coastal Zone Management.

For the reasons discussed in the preamble, part 922, title 15 of the Code of Federal Regulations is amended as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

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

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

■ 2. Revise § 922.121 to read as follows:

§ 922.121 Definitions.

As used in this subpart:

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

Clean means not containing detectable levels of harmful matter.

Disturb or disturbing a ray or whale shark means to, or attempt to touch, handle, ride, pursue, chase away, hunt, restrain, detain (no matter how temporarily), capture, collect, or conduct any other activity that disrupts or has the potential to disrupt any ray or whale shark in the Sanctuary by any means. Notwithstanding the above, the mere presence of human beings (e.g., swimmers, divers, boaters, kayakers) is exempted from this definition.

Harmful matter means any substance, or combination of substances, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose a present or potential threat to Sanctuary resources or qualities, including but not limited to: Fishing nets, fishing line, hooks,

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

No-activity zone means the two geographic areas delineated by the Department of the Interior in stipulations for OCS lease sale 112 over and surrounding the East and West Flower Garden Banks, and the geographic area delineated by the Department of the Interior in stipulations for OCS lease sale 171 over and surrounding Stetson Bank, as areas in which activities associated with exploration for, development of, or production of hydrocarbons are prohibited. The precise aliquot part description of these areas around the East and West Flower Garden Banks are provided in appendix B of this subpart; the no-activity zone around Stetson Bank is defined as the 52 meter isobath. These particular aliquot part descriptions for the East and West Flower Garden Banks, and the 52 meter isobath around Stetson Bank, define the geographic scope of the ''no-activity zones'' for purposes of the regulations in this subpart. The descriptions for the East and West Flower Garden Banks no-activity zones are based on the ''1/41/41/4'' system formerly used by the Department of the Interior, a method that delineates a specific portion of a block rather than the actual underlying isobath.

■ 3. Revise § 922.122 to read as follows:

§ 922.122 Prohibited or otherwise regulated activities.

(a) Except as specified in paragraphs (c) through (h) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1) Exploring for, developing, or producing oil, gas, or minerals except outside of all no-activity zones and provided all drilling cuttings and drilling fluids are shunted to the seabed through a downpipe that terminates an appropriate distance, but no more than ten meters, from the seabed.

(2) (i) Anchoring any vessel within the Sanctuary.

(ii) Mooring any vessel within the Sanctuary, except that vessels 100 feet (30.48 meters) or less in registered length may moor to a Sanctuary mooring buoy.

(iii) Mooring a vessel in the Sanctuary without clearly displaying the blue and white International Code flag ''A'' (''alpha'' dive flag) or the red and white ''sports diver'' flag whenever a SCUBA diver from that vessel is in the water and removing the ''alpha'' dive flag or ''sports diver'' flag after all SCUBA divers exit the water and return back on board the vessel, consistent with U.S. Coast Guard guidelines relating to sports diving as contained within ''Special Notice to Mariners'' (00–208) for the Gulf of Mexico.

(3)(i) Discharging or depositing from within or into the Sanctuary any material or other matter except:

(A) Fish, fish parts, chumming materials, or bait used in or resulting from fishing with conventional hook and line gear in the Sanctuary, provided that such discharge or deposit occurs during the conduct of such fishing within the Sanctuary;

(B) Clean effluent generated incidental to vessel use by an operable Type I or Type II marine sanitation device (U.S. Coast Guard classification) approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended (FWPCA), 33 U.S.C. 1322. Vessel operators must lock marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage;

(C) Clean vessel deck wash down, clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, or anchor wash;

(D) Engine exhaust;

(E) In areas of the Sanctuary outside the no-activity zones, drilling cuttings and drilling fluids necessarily discharged incidental to the exploration for, development of, or production of oil or gas in those areas and in accordance with the shunting requirements of paragraph (a)(1) of this section unless such discharge injures a Sanctuary resource or quality.

(ii) Discharging or depositing, from beyond the boundaries of the Sanctuary, any material or other matter, except those listed in paragraphs (a)(3)(i)(A) through (D) of this section, that subsequently enters the Sanctuary and injures a Sanctuary resource or quality.

(4) Drilling into, dredging, or otherwise altering the seabed of the Sanctuary (except as allowed under paragraph (c) of this section); or constructing, placing, or abandoning any structure, material, or other matter on the seabed of the Sanctuary.

(5) Injuring or removing, or attempting to injure or remove, any coral or other bottom formation, coralline algae or other plant, marine invertebrate, brine-seep biota, or carbonate rock within the Sanctuary.

(6) Taking any marine mammal or turtle within the Sanctuary, except as permitted by regulations, as amended, promulgated under the Marine Mammal Protection Act, as amended, 16 U.S.C. 1361 *et seq.,* and the Endangered Species Act, as amended, 16 U.S.C. 1531 *et seq.*

(7) Killing, injuring, attracting, touching, or disturbing a ray or whale shark in the Sanctuary. Notwithstanding the above, the incidental and unintentional injury to a ray or whale shark as a result of fishing with conventional hook and line gear is exempted from this prohibition.

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

(9) Possessing within the Sanctuary (regardless of where collected, caught, harvested or removed), except for valid law enforcement purposes, any carbonate rock, coral or other bottom formation, coralline algae or other plant, marine invertebrate, brine-seep biota, or fish (except for fish caught by use of conventional hook and line gear).

(10) Possessing or using within the Sanctuary, except possessing while passing without interruption through it or for valid law enforcement purposes, any fishing gear, device, equipment or means except conventional hook and line gear.

(11) Possessing, except for valid law enforcement purposes, or using explosives or releasing electrical charges within the Sanctuary.

(b) If any valid regulation issued by any Federal authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation deemed by the Director as more protective of Sanctuary resources and qualities shall govern.

(c) The prohibitions in paragraphs (a)(2)(i), (a)(4), and (a)(11) of this section do not apply to necessary activities conducted in areas of the Sanctuary outside the no-activity zones and incidental to exploration for, development of, or production of oil or gas in those areas.

(d) The prohibitions in paragraphs (a)(2) through (11) of this section do not apply to activities necessary to respond to emergencies threatening life, property, or the environment.

(e)(1) The prohibitions in paragraphs (a)(2) through (11) of this section do not apply to activities being carried out by the Department of Defense as of the effective date of Sanctuary designation (January 18, 1994). Such activities shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources and qualities. The prohibitions in paragraphs (a)(2)

through (11) of this section do not apply to any new activities carried out by the Department of Defense that do not have the potential for any significant adverse impacts on Sanctuary resources or qualities. Such activities shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources and qualities. New activities with the potential for significant adverse impacts on Sanctuary resources or qualities may be exempted from the prohibitions in paragraphs (a)(2) through (11) of this section by the Director after consultation between the Director and the Department of Defense. If it is determined that an activity may be carried out, such activity shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources and qualities.

(2) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings, caused by a component of the Department of Defense, the cognizant component shall promptly coordinate with the Director for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

(f) The prohibitions in paragraphs (a)(2) through (11) of this section do not apply to any activity executed in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to § 922.48 and § 922.123 or a Special Use permit issued pursuant to section 310 of the Act.

(g) The prohibitions in paragraphs (a)(2) through (11) of this section do not apply to any activity authorized by any lease, permit, license, approval or other authorization issued after January 18, 1994, provided that the applicant complies with § 922.49, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities.

(h) Notwithstanding paragraphs (f) and (g) of this section, in no event may the Director issue a National Marine Sanctuary permit under § 922.48 and § 922.123 or a Special Use permit under section 10 of the Act authorizing, or otherwise approve, the exploration for, development of, or production of oil, gas, or minerals in a no-activity zone. Any leases, permits, approvals, or other authorizations authorizing the exploration for, development of, or production of oil, gas, or minerals in a no-activity zone and issued after the January 18, 1994 shall be invalid.

■ 4. Amend § 922.123 by revising paragraphs (a) through (c) as follows:

§ 922.123 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by § 922.122(a)(2) through (11) if conducted in accordance with the scope, purpose, terms, and conditions of a permit issued under this section and § 922.48.

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

(c) The Director, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by § 922.122(a)(2) through (11), if the Director finds that the activity will: Further research related to Sanctuary resources; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or assist in managing the Sanctuary. In deciding whether to issue a permit, the Director shall consider such factors as: The professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and the duration of its effects; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities; the cumulative effects of the activity; and the end value of the activity. In addition, the Director may consider such other factors as he or she deems appropriate.

* * * * *

[FR Doc. 2012–10093 Filed 4–26–12; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0046]

RIN 1625–AA08

Special Local Regulation for Marine Events; Temporary Change of Dates for Recurring Marine Events in the Fifth Coast Guard District, Ocean City Maryland Offshore Grand Prix, Ocean City, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the enforcement period for a special local regulation for one recurring marine event in the Fifth Coast Guard District, specifically, the ''Ocean City Maryland Offshore Grand Prix,'' hydroplane races on the North Atlantic Ocean near Ocean City, Maryland. The event consists of approximately 50 V-hull and twin-hull inboard hydroplanes racing in heats counter-clockwise around an oval race course, this regulation is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the North Atlantic Ocean near Ocean City, Maryland during the event.

DATES: This rule is effective from 11 a.m. to 5 p.m. on May 13, 2012.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0046 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0046 in the ''Search'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LCDR Hector Cintron, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, email *Hector.L.Cintron@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.